STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF CHEBOYGAN

JODI CLARMONT, next friend of GC and CC, minors,

Plaintiffs,

v

Case No. 21-8841-CZ

DISTRICT HEALTH DEPARTMENT #4,
JOSHUA MEYERSON in his capacity as its Medical Director,
and CHEBOYGAN AREA HIGH SCHOOL,

FILED BY: MP

Defendants.
_____/

APR 29 2021

CHEBOYGAN COUNTY CLERK

OPINION AND ORDER GRANTING IN PART, AND DENYING IN PART, PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

PRELIMINARY INJUNCTION AGAINST DEFENDANTS' DISTRICT HEALTH DEPARTMENT #4 AND JOSHUA MEYERSON, ITS DIRECTOR

Introduction

The COVID-19 pandemic has led to vigorous and substantial debates about the proper policy response, in terms of public health measures and government control of individual behavior Many have expressed outrage over restrictions on individual liberty and behavior, believing that some of those restrictions are unconstitutional, unnecessary, or even harmful in themselves. In our own State, these issues have even included fundamental questions about the separation of powers and the extent of the emergency powers of the executive branch. And while these debates on important policy and legal questions have raged on, so has the virus, killing more than a half million Americans, including over 17,000 Michiganders. The stakes are undeniably high.

But there is good news also. American ingenuity and innovation has led to vaccines that are quickly turning the tide of the pandemic. And American courts have remained open, even over virtual videoconferencing software when necessary, to continue to protect the rule of law.

Emergencies require nimble responses, no doubt. But the Constitution is not suspended during an emergency. And courts have intervened at times to preserve Constitutional structures of government and protections of individual liberty.

One of the most important features of that Constitutional framework is the separation of powers. Courts of law exercise the judicial function of government, which is to resolve disputes according to rule of law. Courts are not entrusted with resolving policy debates—and that's a good thing. Self-government requires that those debates be settled at school board meetings, in township halls and legislative chambers, and at the ballot box. A judge is not a ruler, but a referee.

Plaintiffs' Claims, and What They Have Not Claimed

Therefore, it is important to understand what the legal issues are in this case, and what they are *not*. Legal cases are framed by the pleadings and arguments of the parties. Plaintiffs have raised three claims against the local health department (DHD4) and high school (CAHS), and they seek a preliminary injunction on all three claims. Count one of the complaint alleges two statutory violations—first, that DHD4[1] has quarantined a student beyond the scope of its authority to issue a warning notice to an individual under MCL 333.5203, and second, that CAHS has violated MCL 37.2102 of the Elliot-Larsen Civil Rights Act (ELCRA) by discriminating against the religious beliefs of two student-athletes by requiring them to take rapid screening tests for COVID as a condition of participating in school sports. Count two of the complaint alleges that both DHD4 and CAHS have unlawfully quarantined a student without providing constitutionally required due process. Count three of the complaint alleges that DHD4 has violated the Administrative Procedures Act (APA), MCL 24.201 *et seq.*, by implementing the state health department's emergency order and interim guidance regarding COVID testing of student-athletes without following the normal processes of promulgating an administrative rule under the APA.

As noted above, the parties have the responsibility in our adversarial legal system to present the issues for a court to decide. See *In re Knight*, ___ Mich App ___ (Docket No. 346554, issued September 27, 2020), slip op at 4-5. This principle of party presentation is an important restraint on judicial power. "Courts do not, or should not, sally forth each day looking for wrongs to right. We wait for cases to come to us, and when they do, we normally decide only questions presented by the

[1] Plaintiffs have also named Dr. Meyerson, the medical director of DHD4, as a defendant. Plaintiffs do not raise separate claims against Defendants DHD4 and Meyerson, so for ease of reference this Opinion will refer to DHD4 as encompassing both District Health Department #4 and Joshua Meyerson.

parties." *Greenlaw v United States*, 554 US 237, 244 (2008) (internal quotation marks and citation omitted). So this Court's review is limited to the precise legal claims asserted by Plaintiffs. Notably, these legal claims do *not* include whether the public health or public school response to the pandemic are wise, whether they are unnecessary, or whether alternative approaches would be better. The legal claims do *not* include whether masks are efficacious or whether quarantining students who were masked and socially distanced is a good idea. Also, Plaintiffs have not presented a challenge to the emergency order and interim guidance of the Michigan Department of Health and Human Services (MDHHS). And with good reason—such a claim would need to be brought (and indeed, has been brought) in the Michigan Court of Claims, which has exclusive jurisdiction in the matter.

So this Court cannot and will not address whether the MDHHS emergency order and interim guidance amount to an unconstitutional delegation of power from the Legislature, whether the MDHHS director's declaration of an epidemic is no longer tenable, whether the MDHHS has violated the APA, or whether the precise directives in the emergency order and interim guidance exceed the scope of the director's statutory authority to "prohibit the gathering of people for any purpose and . . . establish procedures to be followed during the epidemic to insure continuation of essential public health services and enforcement of health laws." MCL 333.2253(1).

Standards for Granting Preliminary Injunctive Relief

Plaintiffs seek a preliminary injunction on their claims. MCR 3.310(A) governs the procedure for obtaining such relief. Under MCR 3.310(A)(4), "the party seeking injunctive relief has the burden of establishing that a preliminary injunction should be issued." This is true even where, as here, the Court has previously granted a temporary restraining order (TRO).

"To obtain a preliminary injunction, the moving party bears the burden of proving that the traditional four elements favor the issuance of a preliminary injunction." *Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 647 (2012) (quotation marks and citation omitted). "The trial court must evaluate whether (1) the moving party made the required demonstration of irreparable harm, (2) the harm to the applicant absent such an injunction outweighs the harm it would cause to the adverse party, (3) the moving party showed that it is likely to prevail on the merits, and (4) there will be harm to the public interest if an injunction is issued." *Detroit Fire Fighters Ass'n IAFF Local 344 v City of Detroit*, 482 Mich 18, 34 (2008), citing *Michigan State Employees Ass'n v Dep't of Mental Health*, 421 Mich 152, 157-158 (1984).

Count One (A)—DHD4 Quarantine Statutory Violation

Plaintiffs first claim that DHD4 has exceeded its authority under MCL 333.5203. That statute allows a local health department to issue a "warning notice" to certain individuals seeking their cooperation with the health department to prevent transmission of disease. It provides as follows:

> (1) Upon a determination by a department representative or a local health officer that an individual is a carrier and is a health threat to others, the department representative or local health officer shall issue a warning notice to the individual requiring the individual to cooperate with the department or local health department in efforts to prevent or control transmission of serious communicable diseases or infections. The warning notice may also require the individual to participate in education, counseling, or treatment programs, and to undergo medical tests to verify the person's status as a carrier.
>
> (2) A warning notice issued under subsection (1) shall be in writing, except that in urgent circumstances, the warning notice may be an oral statement, followed by a written statement within 3 days. A warning notice shall be individual and specific and shall not be issued to a class of persons. A written warning notice shall be served either by registered mail, return receipt requested, or personally by an individual who is employed by, or under contract to, the department or a local health department.
>
> (3) A warning notice issued under subsection (1) shall include a statement that unless the individual takes the action requested in the warning notice, the department representative or local health officer shall seek an order from the probate court, pursuant to this part. The warning notice shall also state that, except in cases of emergency, the individual to whom the warning notice is issued has the right to notice and a hearing and other rights provided in this part before the probate court issues an order. [MCL 333.5203.]

MCL 333.5201 defines "carrier" and "health threat to others" as follows:

> (a) "Carrier" means an individual who serves as a potential source of infection and who harbors or who the department reasonably believes to harbor a specific infectious agent or a serious communicable disease or infection, whether or not there is present discernible disease.
>
> (b) "Health threat to others" means that an individual who is a carrier has demonstrated an inability or unwillingness to conduct himself or herself in such a manner as to not place others at risk of exposure to a serious communicable disease or infection. Health threat to others includes, but is not limited to, 1 or more of the following:

> (i) Behavior by the carrier that has been demonstrated epidemiologically to transmit, or that evidences a careless disregard for transmission of, a serious communicable disease or infection to others.
>
> (ii) A substantial likelihood that the carrier will transmit a serious communicable disease or infection to others, as evidenced by the carrier's past behavior or statements made by the carrier that are credible indicators of the carrier's intention to do so.
>
> (iii) Affirmative misrepresentation by the carrier of his or her status as a carrier before engaging in behavior that has been demonstrated epidemiologically to transmit the serious communicable disease or infection.

If someone receives a warning notice and fails or refuses to comply with it, the local health department may seek a court order for relief under MCL 333.5205.

Plaintiffs argue that DHD4 orders students into quarantine who have been in "close contact" with someone who tests positive for COVID-19, and enforces that quarantine for 14 days after the contact. In their complaint, plaintiffs argue that this exceeds the statutory authority outlined above.

DHD4 responds that it has worked with the local school system to implement a procedure that it calls the "School Process" to address situations where a student tests positive for COVID-19.[2] When the close contacts of a positive case are identified by the school, DHD4 produces what it calls a "Quarantine Notice" with the dates the affected students need to quarantine, which the school then provides to the students.[3] At the hearing, it became apparent that this process has resulted in some confusion regarding the legal force of the Quarantine Notice. Counsel for DHD4 conceded that the Quarantine Notice lacked force of law, that the student was not legally required to comply with it, and that the schools are not legally required to enforce it. Of course, DHD4 hopes that the students and schools will comply, because DHD4 believes that the quarantine is a necessary public health measure. But the Quarantine Notice that many students and their families have received has no force of law. Therefore, says DHD4, it has exceeded no authority because it has not imposed or enforced a quarantine "order" in any way. DHD4 acknowledges that, in order to seek a legally enforceable quarantine order, it must follow the statutory process outlined above to seek a court order. DHD4 essentially argues that the Quarantine Notice is, legally speaking, simply a request.

[2] The School Process was Exhibit 2 to DHD4's brief.
[3] The Quarantine Notice was Exhibit 5 to DHD4's brief.

Thus, it has violated no law and cannot be enjoined with respect to the school's decisions about student attendance once such a notice has been given.

This position would likely prevail, except for the coercive wording of the School Process and the Quarantine Notice. For example, the School Process states that, for secondary schools, students within 6 feet of the positive student "*will need to quarantine.*" (Emphasis added). It also states that when the school determines the close contact list, DHD4 will provide to the school the Quarantine Notice, which is referred to in the School Process as a "DHD4 School Quarantine Letter," which includes "*quarantine dates.*" (Emphasis added). It also provides a way for DHD4 to communicate the "*return to school date.*" (Emphasis added). Similarly, the Quarantine Notice to students and families states that "[c]lose contacts of a person with COVID-19 *must quarantine* for 14 days from their last contact with the person while they were contagious." (Emphasis added). It also contains the following information:

> Your student's end of quarantine date is: DATE
> Your student can return to school if they do not develop symptoms on: DATE

The Quarantine Notice also includes a second page, which tells the recipient that, "If you have been exposed to someone with COVID-19, *you will be required to stay at home* for 14 days." (Emphasis added). Under a heading entitled "What do I need to do?" the second page of the Quarantine Notice commands:

> **You <u>must</u> stay at home for 14 days!** Do not go to work, school, church, stores, or anywhere there are people other than your household members. [Emphasis in original.]

DHD4 maintains that it hasn't issued a quarantine "order" to anyone. But any reasonable recipient of DHD4's Quarantine Notice would believe that they have been ordered by the government to remain quarantined in their home. The notice says as much. Yet DHD4 concedes that it lacks the legal authority to do this, without following a statutory procedure. The Quarantine Notice to students and families does not even follow the protections and limits contained in the statutory warning notice authorized by MCL 333.5203. Some of those protections include a requirement that the person receiving the warning be informed that if the recipient fails to take "the action *requested* in the warning notice," the health department could seek a court order requiring

compliance. MCL 333.5203(3) (emphasis added). So the statutory warning notice is a request that can be followed by seeking a court order. But the Quarantine Notice sent by DHD4 is phrased as a command, not a request, and provides no information about a court process.

Perhaps following the statutory requirements for a warning notice and a court hearing would prove burdensome on the government when there are many cases to handle simultaneously in an epidemic. But the alternative path chosen by the health department is deeply troubling—simply ordering citizens to be confined in their homes without advising them of their legal options whatsoever. That cannot be the proper approach in a free republic.

Is this issue moot? DHD4 argues that it is, because this Court granted a TRO to the minor CC and her quarantine period has expired anyway. Courts generally do not decide moot questions, such as where a remedy is no longer needed. But the mootness doctrine is not an inflexible command. In cases of public importance, an issue will be resolved when it is capable of repetition but evading review. *Turunen v Director of the Dep't of Natural Resources*, ___ Mich App ___ (Docket No. 350913, issued March 18, 2021), slip op at 5. This is especially true "where the remedy requested would be impossible to award because of the passage of time." *Id.* Here, requiring a person unlawfully ordered to be quarantined in their home to gather information, seek counsel, and file a lawsuit with a request for a temporary restraining order, to obtain some measure of relief during a 14-day quarantine, leaves them with little meaningful remedy. For example, in this case, the TRO shaved a couple of days off the student's quarantine at best. And Plaintiffs' complaint seeks declaratory relief in addition to injunctive relief. So the controversy is still alive and justiciable.

This Court finds that Plaintiffs have established that they are entitled to preliminary injunctive relief on this issue. First, they have shown irreparable harm—being ordered confined to their home for a 14-day period, akin to house arrest. The liberty interest impacted is substantial. Second, they have shown that the harm they would suffer absent a preliminary injunction outweighs the harm it would cause to DHD4. As noted, Plaintiffs' harm is a substantial infringement on their liberty by being confined to their home for 14 days. And the "harm" to DHD4 is simply requiring it to follow the law set forth in MCL 333.5203 and MCL 333.5205. Third, for all the reasons set forth above, Plaintiffs have shown that they are likely to prevail on the merits of their claim that DHD4 has exceeded their statutory authority when it comes to quarantines. And fourth, the Court must consider whether there will be harm to the public interest if an injunction is issued. This is a serious

question, given the reality of COVID-19 and the suffering it has inflicted. But the present context must be taken into account. According to the State of Michigan's own freely available online COVID vaccine dashboard, "Safe Start" map, and cumulative data, of which the Court takes judicial notice, cases in Michigan are declining and vaccines are quickly putting COVID-19 on the run. For example, in Cheboygan County, according to the data reported up through April 27, 2021, vaccination status as a percentage of population is as follows:[4]

Age Range	Vaccination Completed	Vaccination Initiated
75+	67.2	72.7
65-74	63.2	69.6
50-64	40.6	50.5
40-49	23.1	33.5
30-39	18.0	28.5
20-29	11.0	20.9
16-19	4.2	14.7

Also, the confirmed cases and deaths in Cheboygan County, according to the data reported up through April 28, 2021, are as follows:[5]

Age Range	Confirmed Cases	Deaths
80+	80	26
70-79	133	10
60-69	198	
50-59	243	
40-49	191	
30-39	195	
20-29	202	
10-19	183	
0-9	45	

[4] "Covid-19 Vaccine Dashboard," available at <<https://www.michigan.gov/coronavirus/0,9753,7-406-98178_103214-547150--,00.html>> (accessed April 29, 2021).
[5] "Coronavirus Michigan Data," available at <<https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173---,00.html>> (accessed April 29, 2021).

One caveat to the above table—the website states that "Data are suppressed when the number of deaths is five or below to protect the confidentiality of individuals." The total reported deaths in Cheboygan County are 41, leaving 5 deaths among the age ranges from 0-69 unreported in the table.

From this data, and from the common knowledge of every American over the last year or so, it is apparent that COVID-19 poses the greatest danger to older Americans, and little danger to healthy, young people. And the present situation in Cheboygan County is that the vaccine is widespread among adults in the most vulnerable age ranges. Moreover, DHD4 states that most of the new cases in Cheboygan are from young people. Yet DHD4 presented no evidence of any deaths or even hospitalizations of young people in Cheboygan County due to COVID-19. Therefore, the harm to the public interest has been mitigated significantly from the early stages of this pandemic.

Balancing all these factors as a whole, this Court finds that Plaintiffs have established grounds for the issuance of a preliminary injunction as to their claim in Count One of the verified complaint as against Defendants DHD4 and Meyerson. Dr. Meyerson's affidavit urges this Court not to enter any order that would infringe on DHD4's ability to conduct contact tracing and quarantine or isolate affected individuals. Importantly, this Court's order is not intended to have any such effect. DHD4 may still notify affected individuals about a possible COVID-19 exposure and recommend a course of action to them. Or, DHD4 may choose to follow the statutory process of providing a warning notice under MCL 333.5203, asking the person to cooperate with the health department in efforts to prevent or control the transmission of COVID-19. Any such notice must include the statements required by MCL 333.5203(3) advising the person that if they do not take the actions requested in the warning notice, the health department may seek a court order. And nothing in this Court's order today prevents DHD4 from seeking any court orders it deems necessary under MCL 333.5205. This Court is not stopping DHD4 from contact tracing and quarantining individuals if it can establish that it is necessary to prevent a health threat to others; rather, this Court is simply requiring that DHD4 follow the law when it does so.

A scheduling conferencing will be set at the end of this Opinion and Order to schedule the trial on the merits as to permanent injunctive relief and declaratory relief.

Count One (B)—CAHS Religious Discrimination:

In their complaint, Plaintiffs allege that Defendant Cheboygan Area High School (CAHS) has violated MCL 37.2102 of the Elliot-Larsen Civil Rights Act (ELCRA) by discriminating against

their religious beliefs by requiring them to take rapid screening tests for COVID as a condition of participating in school sports. Plaintiff minor GC testified at the hearing that she believes that God has told her that she will not contract COVID and that she need not fear the illness. She also testified that part of her religious belief is that, if she were to submit to weekly COVID testing as required to participate in her sports team, she would be questioning God's promise. Although still a minor, the Court notes that GC testified with grace and courage, and she is to be commended for her willingness to speak up for her beliefs and to forgo activities she enjoys in order to live them out.[6]

Nonetheless, this Court must consider only the claims presented by the parties. Plaintiffs argue that CAHS, by requiring that they submit to COVID testing in violation of their religious beliefs, has violated MCL 37.2102, which provides that:

> The opportunity to obtain employment, housing and other real estate, and the full and equal utilization of public accommodations, public service, and educational facilities without discrimination because of religion, race, color, national origin, age, sex, height, weight, familial status, or marital status as prohibited by this act, is recognized and declared to be a civil right.

Thus, to prevail, Plaintiffs must establish that CAHS is denying Plaintiffs "the full and equal utilization of . . . educational facilities" due to "discrimination because of religion." The first question is whether school sports are a part of those "educational facilities." Plaintiffs assert, without citation to legal authority, that "the Supreme Court of Michigan has stated that sports are a part of education."[7] Defendant has countered that the Supreme Court has described participation in extracurricular sports as a privilege and not a right. See, e.g., *Kirby v Michigan High School Athletic Ass'n*, 459 Mich 23, 34 (1998); *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 81 (1991). But even if sports participation is a privilege, denying it based on religious discrimination may well be actionable. For example, a high school basketball coach surely could not kick a player off the team simply because she was Catholic. But at this stage in the proceeding, Plaintiffs bear the burden of establishing that they are *likely* to prevail on the merits in order to obtain preliminary injunctive relief. They have not met that burden or pointed to any legal authority that would clearly entitle them to relief. Perhaps this is a case of first impression and

[6] The parties stipulated that no testimony from Plaintiff minor CC was necessary and that both sisters shared the same pertinent religious beliefs.
[7] Verified Complaint. ¶ 25.

Plaintiffs will prevail at trial. But cases of first impression are generally not a good case for preliminary injunctive relief.[8]

CAHS also argues that Plaintiffs have made no *prima facie* showing of religious discrimination under the ELCRA, since CAHS is simply applying a uniform rule to all student-athletes within a certain age range to submit to weekly COVID testing as a condition of participating in sports. The ELCRA does not require that all religious beliefs be accommodated under all circumstances, but only bars religious *discrimination.* CAHS also argues that any impact on a particular student's religious beliefs must be weighed against its legitimate interest in protecting the health and safety of other students. And CAHS finally contends that it is required to test the student-athletes under the MDHHS emergency order and interim guidance and has no discretion in the matter. These are substantial legal questions, and Plaintiffs have failed to meet their burden of establishing that they are entitled to preliminary injunctive relief. Once again, it remains to be seen whether their claims will prevail or fall short, but this is not a proper case for a preliminary injunction as to the asserted religious exemption to testing. Accordingly, the TRO will be dissolved and the request for a preliminary injunction on this issue will be denied.

Count Two—Due Process Violations

Plaintiffs also argue that both DHD4 and CAHS have violated their constitutional right to due process by quarantining them without any notice and opportunity to be heard. As to DHD4, this Court has already explained why preliminary injunctive relief will issue as to the currently utilized Quarantine Notice. As to CAHS, at the hearing it was established that during the fourteen-day period, the student is not actually excluded from education, but is transitioned from in-person instruction to virtual learning. Some of that virtual learning is "asynchronous," meaning that the student watches or works through prerecorded material. Plaintiffs' counsel asserted his personal belief that such instruction falls far short of the benefits of in-person instruction, so much so that it amounts to a denial of the right to an education. But Plaintiffs presented no evidence, by way of testimony, affidavit, or otherwise, to support this contention. The fact remains that, on this record, CAHS does not stop providing educational instruction to any student during any quarantine period. Additionally, even if CAHS forbids a student from participating in sports during the fourteen-day

[8] By contrast, Plaintiffs' request for preliminary injunctive relief against DHD4's quarantine orders is grounded on clear statutory authority.

period, as noted earlier, the legal cases cited to this Court show that participation in extracurricular sports is a privilege and not a right. Perhaps upon hearing evidence at the trial of this case on the merits, evidence will establish that virtual instruction really amounts to a denial of education. But perhaps not. That is unclear. But what is clear is that, at this stage, Plaintiffs have not established entitlement to preliminary injunctive relief. Accordingly, the TRO will be dissolved and the request for a preliminary injunction against CAHS on this issue will be denied.

Count Three—Violation of APA

Finally, Plaintiffs allege that DHD4 has violated the Administrative Procedures Act (APA), MCL 24.201 *et seq.*, by implementing the state health department's emergency order and interim guidance regarding COVID testing of student-athletes without following the normal processes of promulgating an administrative rule under the APA. As noted earlier, the emergency order and interim guidance in question have been issued by the director of the MDHHS. Plaintiffs have not sued, and could not sue, the MDHHS or its director for these claims in this Court. Instead, the Michigan Court of Claims has exclusive jurisdiction over that issue. And a non-profit corporation, Let Them Play Michigan, Inc., has brought such a lawsuit against the MDHHS director in the Court of Claims. On April 28, 2021, that Court denied the request for a preliminary injunction on those very issues.

This Court is aware, as Plaintiffs' counsel noted at the hearing, that the Court of Claims is a trial court with equal authority as this Court, so the decision of the Court of Claims is not binding on this Court. But the fact remains that Plaintiffs' APA claims lie against the MDHHS, not DHD4. Indeed, at the hearing, DHD4 insisted that it has no role in the COVID testing of student-athletes under the MDHHS emergency order and interim guidance to sports organizers. Again, this Court is not empowered to decide whether the testing regime is wise or necessary. This Court's role is to exercise the judicial power over only the claims brought before it.

Plaintiffs have not established a likelihood of prevailing on the merits of this claim, so a preliminary injunction will not issue to invalidate the COVID testing of student-athletes.

Proper School Defendant

Plaintiffs brought this action against Defendant Cheboygan Area High School. Defense counsel noted that the proper party defendant is the Cheboygan Area Schools, and that CAHS is not

a legal entity but rather a building. Defense counsel did not press any objection to an amendment of the complaint to name the Cheboygan Area Schools as a defendant in place of Cheboygan Area High School. Therefore, on the Court's own motion, Plaintiffs will be allowed to amend their verified complaint to substitute the school defendant within 7 days of the date of this Opinion and Order.

What Next?

Under MCR 3.310(A)(5), a pretrial conference must be promptly scheduled, and trial of the action on the merits must be held within six months after the injunction has been granted. Accordingly, the Court will conduct a pretrial conference to discuss the case schedule, whether discovery is needed, and the trial date for the claims of permanent injunctive relief and declaratory relief. The pretrial conference will be held on Wednesday, May 5, 2021 at 11:00 by Zoom appearances only, with public access provided via YouTube livestream.

Orders of the Court

For all the reasons set forth in this opinion, the Court enters the following orders:

IT IS ORDERED that the Temporary Restraining Order issued by this Court on April 21, 2021 is hereby DISSOLVED.

IT IS FURTHER ORDERED that, effective immediately, Defendants District Health Department #4 and Joshua Meyerson, its Medical Director, and their officers, agents, servants, employees, and attorneys, and any persons acting in active concert or participation with them who receive actual notice of this order by personal service or otherwise, ARE HEREBY ENJOINED AND RESTRAINED from issuing any quarantine notice or other written or oral communication to these Plaintiffs or any persons within Cheboygan County that *orders* them to quarantine or refrain from any activities for any period of time. This injunction does not prevent the enjoined persons and entities from conveying information to any persons that they have been in close contact with a probable or confirmed COVID-19 case and *requesting* that they would quarantine in their home for a specified period. This injunction does not prevent the enjoined persons and entities from following the statutory warning notice and court hearing process set forth at MCL 333.5203, MCL 333.5205 and related provisions. This injunction continues until further Order of this Court. Violations are punishable as contempt of Court.

IT IS FURTHER ORDERED that Plaintiffs' request for a preliminary injunction against Defendant Cheboygan Area High School to require them to allow Plaintiffs to participate in sports activities without submitting to COVID testing is DENIED.

IT IS FURTHER ORDERED that Plaintiffs' request for a preliminary injunction against Defendant Cheboygan Area High School to forbid them from requiring students subject to a quarantine request from the local health department to attend school by virtual learning during the quarantine period, and instead require the school to allow such students to attend classes in person and participate in extracurricular sports is DENIED.

IT IS FURTHER ORDERED that Plaintiffs' request for a preliminary injunction against Defendants District Health Department #4 and Joshua Meyerson, its Medical Director, to require them not to implement the MDHHS director's emergency order and interim guidance regarding student-athletes is DENIED.

IT IS FURTHER ORDERED that Plaintiffs may amend their verified complaint within 7 days to substitute Cheboygan Area Schools as a defendant instead of Cheboygan Area High School.

IT IS FURTHER ORDERED that a pretrial conference will be held on Wednesday, May 5, 2021, at 11:00 a.m., by Zoom appearances ONLY. Public access to the hearing will be provided via YouTube livestream.

This is not a final order and does not close this case.

IT IS SO ORDERED.

DATE AND TIME: 4-29-21
4:45pm

HON. AARON J. GAUTHIER (P60364)
53rd Circuit Judge