

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

GEORGIA ASSOCIATION OF EDUCATORS,  
on behalf of its educator members;

M.J., on her own behalf and on behalf of her  
minor child, R.J.,

*Plaintiffs,*

v.

BRIAN P. KEMP, Governor of the State of  
Georgia, in his individual capacity;

RICHARD WOODS, State School  
Superintendent of the Georgia Department of  
Education, in his individual capacity;

KATHLEEN TOOMEY, Commissioner of the  
Georgia Department of Public Health, in her  
individual capacity;

BRIAN OTOTT, Superintendent of the Paulding  
County School District and member of the  
district's Board of Education, in his individual  
capacity;

NICHOLAS CHESTER, member of the  
Paulding County School District's Board of  
Education, in his individual capacity;

THERESA LYONS, member of the Paulding  
County School District's Board of Education, in  
her individual capacity;

JOHN DEAN, member of the Paulding County  
School District's Board of Education, in his  
individual capacity;

GLEN ALBRIGHT, member of the Paulding  
County School District's Board of Education, in  
his individual capacity;

CIVIL ACTION

NO. 2020CV341280

KIM COBB, member of the Paulding County School District's Board of Education, in her individual capacity;

JEFF FULLER member of the Paulding County School District's Board of Education, in his individual capacity;

DAN NOLAN, member of the Paulding County School District's Board of Education, in his individual capacity;

*Defendants.*

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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**PRELIMINARY STATEMENT**

1. In this action, Plaintiffs seek protection for themselves and their families against the unreasonable risk of exposure to Severe Acute Respiratory Syndrome Coronavirus 2 (“SARS-COV-2” or “the novel coronavirus”), and of the debilitating and life-threatening illnesses that can result therefrom, caused by the Defendants’ acts and omissions. Those acts and omissions amount to an abject failure at all levels of Georgia government, from the state to the school district, to adequately address the threat that the novel coronavirus poses to public school students, staff, and their families—a chain of failure that violates rights guaranteed by the Georgia Constitution and by state statutory and common law.

**PARTIES**

2. Plaintiff Georgia Association of Educators (“GAE”) is a non-profit membership organization with more than 28,000 members employed as public-school teachers, counselors, and education support professionals by school systems throughout the State of Georgia. GAE’s mission is to advance the teaching profession and the quality of public education throughout the

State and to support, protect, and strengthen the education employees who nurture Georgia's children.

3. GAE brings this action on behalf of its members, who would otherwise have standing to sue in their own right as they are directly and adversely affected by Defendants' violation of their constitutional, statutory, and common-law duties. The interests that GAE seeks to protect in this action—safeguarding the health and lives of education employees and students—are germane to GAE's purpose. Because this action seeks only declaratory and injunctive relief, and does not raise any issues of individual damages, neither the claims asserted nor the types of relief requested require the participation of individual members in the lawsuit.

4. Plaintiff M.J. is an education employee who works for a public school within Paulding County School District and a parent of Plaintiff R.J., a student at a public school within Paulding County School District. Plaintiffs M.J. and R.J. are proceeding pseudonymously because they fear retaliation by school district officials. Plaintiffs M.J. and R.J. are collectively referred to herein as "the Individual Plaintiffs."

5. Defendant Brian P. Kemp is the Governor of the State of Georgia. He is sued in his individual capacity.

6. Defendant Richard Woods is the State School Superintendent of the Georgia Department of Education. He is sued in his individual capacity.

7. Defendant Kathleen Toomey is the Commissioner of the Georgia Department of Public Health. She is sued in her individual capacity.

8. Defendants Kemp, Woods, and Toomey are collectively referred to herein as "the State Defendants."

9. Defendant Brian Otott is the Superintendent of the Paulding County School District and a member of the district's Board of Education. He is sued in his individual capacity.

10. Defendant Nicholas Chester is a member of the Paulding County School District's Board of Education. He is sued in his individual capacity.

11. Defendant Theresa Lyons is a member of the Paulding County School District's Board of Education. She is sued in her individual capacity.

12. Defendant John Dean is a member of the Paulding County School District's Board of Education. He is sued in his individual capacity.

13. Defendant Glen Albright is a member of the Paulding County School District's Board of Education. He is sued in his individual capacity.

14. Defendant Kim Cobb is a member of the Paulding County School District's Board of Education. She is sued in her individual capacity.

15. Defendant Jeff Fuller is a member of the Paulding County School District's Board of Education. He is sued in his individual capacity.

16. Defendant Dan Nolan is a member of the Paulding County School District's Board of Education. He is sued in his individual capacity.

17. Defendants Otott, Chester, Lyons, Dean, Albright, Cobb, Fuller, and Nolan are collectively referred to herein as "the School District Defendants."

#### **JURISDICTION AND VENUE**

18. This Court has jurisdiction over this action under the Georgia Constitution and under O.C.G.A. §§ 9-4-2 to 9-4-3 and 9-5-1.

19. Venue is proper in Fulton County as Plaintiffs seek equitable relief against a Defendant residing in Fulton County. *See* O.C.G.A. § 9-10-30.

## **FACTUAL ALLEGATIONS**

### **A. COVID-19 GENERALLY**

20. Coronavirus Disease 2019 (“COVID-19”), is an infectious disease caused by a new strain of coronavirus known as the Severe Acute Respiratory Syndrome Coronavirus 2 (“SARS-COV-2” or “novel coronavirus”). Those infected with the novel coronavirus commonly experience respiratory problems, including dry cough, sore throat, loss of taste and smell, and difficulty breathing—as well as influenza-like symptoms such as fever, body aches, headaches, and extreme fatigue. Some infected people experience severe respiratory problems, including clogging of lung air sacs, and inflammation of the lungs. Among those with severe symptoms, some develop acute respiratory distress syndrome, multi-organ failure, septic shock, and blood clots. COVID-19 is not, however, limited to the respiratory system. Many people who become ill from infection by the novel coronavirus suffer damage to the heart and vascular system, to the gastrointestinal organs, to the kidneys, and to the brain.

21. Although most people who contract COVID-19 recover, the disease is fatal in a significant number of cases—particularly among older persons and those with certain underlying conditions. To date, more than 200,000 Americans have died from COVID-19, among them more than 6,500 Georgians. And even among those who recover from the disease, many suffer long-term problems, including cardiovascular, pulmonary, renal, gastrointestinal, and/or neurological damage.

22. Some populations are especially vulnerable to the consequences of COVID-19. The Centers for Disease Control and Prevention (hereafter, “CDC”) recognizes that the risk of severe illness from COVID-19 increases progressively with age, such that persons who are

over 50 face increasingly higher risks at and above ages 60, 70, and 85.<sup>1</sup> The CDC also recognizes that persons of all ages are at increased risk if they have cancer, chronic kidney disease, chronic obstructive pulmonary disease, a weakened immune system resulting from organ transplants, obesity, serious heart conditions, sickle cell disease, or Type 2 diabetes mellitus.<sup>2</sup> In addition, the CDC recognizes a host of other conditions that may increase a person's risk, including moderate to severe asthma, cystic fibrosis, hypertension, immunocompromised state resulting from disease or medication, liver disease, pregnancy, smoking, and Type 1 diabetes mellitus.<sup>3</sup>

23. COVID-19 is highly contagious. The most common ways for COVID-19 to spread is through close interaction with an infected person that allows the virus to spread through airborne and/or aerosolized droplets released through exhalation, talking, coughing, or sneezing; COVID-19 can also be spread through contact with contaminated surfaces. The risk of infection through spread increases dramatically when individuals are in close physical proximity (i.e., within six feet of each other), particularly when such individuals are indoors, in places with poor outside-air ventilation, and for extended periods of time—as is typical in the school setting. The risk of infection increases exponentially for those in contact with infected persons who sneeze or cough or otherwise project secretions into the air.

24. COVID-19 can be spread by individuals who show no symptoms or only mild symptoms. For this reason, the CDC and other health authorities throughout the United states

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<sup>1</sup> CDC, “Older Adults” (updated Sept. 11, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>.

<sup>2</sup> CDC, “People With Certain Medical Conditions” (updated Sept. 11, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

<sup>3</sup> *Id.*

and the world have recommended that every individual should take significant efforts to avoid close contact with persons outside of their own households, whether those other persons appear to be infected or not, and to take further measures such as wearing face coverings when in public. Research published by the CDC suggests that a single person with COVID-19 is likely to infect five or six other individuals unless strict physical distancing practices and other precautions are taken.<sup>4</sup>

## **B. COVID-19 ENDANGERS CHILDREN, EDUCATORS, AND SUPPORT STAFF**

25. Children of all ages can become infected with the novel coronavirus; they also can become ill, sometimes seriously ill, from such infections—although at a lower rate than adults do.<sup>5</sup> While children between the ages of 1 and 5 tend to be less likely than older children and adults to contract severe illness from COVID-19 infection, as children grow their susceptibility to COVID-19 increases as well.<sup>6</sup> And when children require hospitalization due to COVID-19, they require treatment in intensive care units as often as hospitalized adults with

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<sup>4</sup> See Steven Sanche, *et al.*, “High Contagiousness and Rapid Spread of Severe Acute Respiratory Syndrome Coronavirus 2,” *Emerging Infectious Diseases* Vol. 26, No 7 (July 2020), available at [https://wwwnc.cdc.gov/eid/article/26/7/20-0282\\_article](https://wwwnc.cdc.gov/eid/article/26/7/20-0282_article).

<sup>5</sup> See Mayo Clinic Staff, “COVID-19 (coronavirus) in babies and children” (Aug. 14, 2020), available at <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-in-babies-and-children/art-20484405>; Lara S. Shekerdeman, *et al.*, “Characteristics and Outcomes of Children With Coronavirus Disease 2019 (COVID-19), Infection Admitted to US and Canadian Pediatric Intensive Care Units,” *JAMA Pediatrics* Vol. 174, No. 9 (May 11, 2020), 868-873 available at <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2766037>.

<sup>6</sup> See Rebecca Leeb, *et al.*, “COVID-19 Trends Among School-Aged Children — United States, March 1–September 19, 2020,” CDC Morbidity and Mortality Weekly report (Oct. 2, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6939e2.htm>; Taylor Heald-Sargent, “Why children are not immune to Covid-19,” *BBC Future* (March 31, 2020), available at <https://www.bbc.com/future/article/20200330-coronavirus-are-children-immune-to-covid-19>.

COVID-19 do.<sup>7</sup> Moreover, children of all ages with certain underlying conditions—including metabolic disorders, obesity, diabetes, asthma and chronic lung disease, or immunosuppression—face the risk of serious illness from contacting the virus.<sup>8</sup> And some children who have been infected with or exposed to the virus contract multisystem inflammatory syndrome, a serious and sometimes life-threatening condition in which organs and blood vessels become inflamed.<sup>9</sup>

26. The CDC recently analyzed data from a single reporting system that confirmed more than 275,000 COVID-19 infections among school children from March 1 to September 19, 2020. Neary 60% of those children experienced at least one symptom of the disease. More than 3,000 were hospitalized, including more than 400 who were admitted to intensive care units, and 51 died from the disease.<sup>10</sup> The CDC points out that that the actual incidence is apt to be higher, since the study examined data from one reporting system, and also because testing is more common for individuals with symptoms and asymptomatic infection in children is common.<sup>11</sup>

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<sup>7</sup> See Mayo Clinic Staff, “COVID-19 (coronavirus) in babies and children” (Aug. 14, 2020), available at <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-in-babies-and-children/art-20484405>.

<sup>8</sup> See CDC, “People with Certain Medical Conditions” (Updated Sept. 11, 2020), available at [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html#children-underlying-conditions](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html#children-underlying-conditions).

<sup>9</sup> See Mayo Clinic, “Multisystem inflammatory syndrome in children (MIS-C) and COVID-19” (June 12, 2020), available at <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/mis-c-in-children-covid-19/art-20486809>; CDC, “Multisystem Inflammatory Syndrome in Children (MIS-C) associated with COVID-19” (May 20, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/children/mis-c.html>.

<sup>10</sup> See Rebecca Leeb, *et al.*, “COVID-19 Trends Among School-Aged Children — United States, March 1–September 19, 2020,” CDC Morbidity and Mortality Weekly report (Oct. 2, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6939e2.htm>.

<sup>11</sup> *Id.*

Moreover, this CDC study showed that the number of reported cases of COVID-19 in school-aged children began rising in early September as many children returned to their schools.<sup>12</sup>

27. Similarly, a recent study by the American Academy of Pediatrics shows that the proportion of COVID-19 cases among children nationally has risen substantially since the Spring—rising from 3% of new weekly cases in April to between 12-15.9% of new weekly reported cases from late July through late September.<sup>13</sup> This dramatic increase in COVID-19 cases coincides with the reopening of schools in many jurisdictions.

28. In addition to facing the risk of serious illness and death themselves, school-aged children who are infected the novel coronavirus can put those with whom they are in close contact at risk of serious illness and death. While children ages 1 to 5 who are exposed to the novel coronavirus are less likely to spread the virus than are older children or adults, children between the ages of 10 and 19—a group that includes students in grades 5 through 8 and all high school students—spread the virus just as readily as adults do.<sup>14</sup> Because children are more likely to have a mild or asymptomatic infection, infections among children may go undetected or

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<sup>12</sup> *Id.*

<sup>13</sup> See Blake Sisk, *et al.*, “National Trends of Cases of COVID-19 in Children Based on US State Health Department Data,” *Pediatrics* (Sept. 23, 2020), available at <https://pediatrics.aappublications.org/content/pediatrics/early/2020/09/25/peds.2020-0766.full.pdf>.

<sup>14</sup> See Park, Young Joon, *et al.*, “Contact Tracing during Coronavirus Disease Outbreak, South Korea, 2020,” *Emerging Infectious Diseases* Vol. 26, No. 10 (Oct. 2020), available at [https://wwwnc.cdc.gov/eid/article/26/10/20-1315\\_article?s=09](https://wwwnc.cdc.gov/eid/article/26/10/20-1315_article?s=09); Apoorva Mandavilli, “Older Children Spread the Coronavirus Just as Much as Adults, Large Study Finds,” *N.Y. Times* (July 18, 2020; updated July 30, 2020), available at <https://www.nytimes.com/2020/07/18/health/coronavirus-children-schools.html>.

undiagnosed. As a result, infected children with only mild symptoms, or none at all, can unknowingly spread the novel coronavirus for weeks.<sup>15</sup>

29. Educators, education support professionals (*e.g.*, bus drivers, cafeteria workers, custodial staff), and their families face serious risks from the resumption of in-person instruction without adequate safeguards given that their work involves being indoors or other, more limited enclosed spaces like buses, with large numbers of children and other employees throughout the day. These risks are particularly acute for the significant number of education employees who are at high risk of serious illness and death from COVID-19, as well as family members of education employees who are at high risk: A recent study has shown that more than 40% of school employees meet the CDC’s criteria for being at increased risk of severe illness from a COVID-19 infection and that more than 63.2 percent of school employees live in households with at least one adult who meet the CDC’s criteria for increased risk.<sup>16</sup>

### **C. INTERNATIONAL, NATIONAL, AND STATE RESPONSES TO THE COVID-19 PANDEMIC**

30. On March 11, 2020, the World Health Organization (hereafter, “WHO”) declared COVID-19 to be a global pandemic.

31. On March 13, 2020, President Donald Trump declared a national state of emergency in the United States by reason of the COVID-19 pandemic.

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<sup>15</sup> See Roberta L. DeBiasi, *et al.*, “Symptomatic and Asymptomatic Viral Shedding in Pediatric Patients Infected With Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2),” *JAMA Pediatrics* (Aug. 28, 2020), available at <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2770149>.

<sup>16</sup> Thomas M. Selden, *et al.*, “The Risk Of Severe COVID-19 Within Households Of School Employees And School-Age Children,” *Health Affairs* Vol. 39, No. 11 (September 17, 2020), available at <https://www.healthaffairs.org/doi/full/10.1377/hlthaff.2020.01536>.

32. On March 14, 2020, Defendant Kemp declared a public health state of emergency “due to public health emergency from the spread of COVID-19.” That declaration acknowledged the CDC’s warnings “that COVID-19 is proliferating via ‘community spread,’ meaning people have contracted the virus in areas of Georgia as a result of direct or indirect contact with infected persons, including some who are not sure how or where they became infected.” The declaration states that it is “necessary and appropriate to take action to protect the health, safety, and welfare of Georgia’s residents and visitors to ensure that COVID-19 remains controlled throughout the state” and accordingly ordered the Georgia Department of Public Health “to take any action necessary to protect the public’s health” by, among other things, “[e]stablishing protocols to control the spread of COVID-19” and “[i]mplementing quarantine, isolation, and other necessary health interventions.”

33. Defendant Kemp renewed the March 14, 2020 state of emergency declaration seven times. The latest renewal issued on September 30, 2020 and remains in effect as of the date of this Complaint.

34. As of the date of this Complaint, the Georgia Department of Public Health has reported more than 320,000 cases of COVID-19, more than 7,200 deaths from COVID-10, and more than 29,000 hospitalizations due to COVID-19.<sup>17</sup>

35. The WHO, the CDC, and doctors, scientists, and epidemiology and public health experts throughout the world agree that infection from COVID-19 can be minimized only by slowing the spread of the disease, principally by limiting human-to-human contact (including

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<sup>17</sup> Georgia Department of Public Health COVID-19 Daily Status Report, available at <https://dph.georgia.gov/covid-19-daily-status-report> (accessed October 7, 2020).

through physical distancing) and by taking other preventative measures, such as the use of personal protective equipment and frequent handwashing and sanitization of physical objects.

36. Public health experts across the country and the world have issued extensive recommendations regarding whether and how schools should reopen. While these recommendations vary in terms of their details and precise thresholds for reopening schools, a clear consensus has emerged that schools should only be opened for in-person instruction where levels of COVID-19 transmission in the surrounding community are low; and once that criterion is met, schools must implement mitigation measures to reduce the risk of transmission.<sup>18</sup>

37. The WHO has advised that the test positivity rate—that is, the percentage of diagnostic COVID-19 tests that are positive—should be below 5% before communities reopen.<sup>19</sup>

38. On May 20, 2020, the CDC issued detailed guidelines (hereafter, “CDC Guidelines”) concerning when, and under what conditions, to reopen schools as part of a comprehensive document concerning the surveillance and control of COVID-19 entitled “CDC Activities and Initiatives Supporting the COVID-19 Response and the President’s Plan for Opening America Up Again,” available at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/CDC-Activities-Initiatives-for-COVID-19-Response.pdf>.

39. The CDC Guidelines call for “a gradual scale up towards pre-COVID-19 operating practices” in schools that is tied to the CDC’s three-phase framework for gradually

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<sup>18</sup> See Harvard Global Health Institute, “The Path to Zero and Schools: Achieving Pandemic Resilient Teaching and Learning Spaces” (July 2020), available at [https://globalepidemics.org/wp-content/uploads/2020/07/pandemic\\_resilient\\_schools\\_briefing\\_72020.pdf](https://globalepidemics.org/wp-content/uploads/2020/07/pandemic_resilient_schools_briefing_72020.pdf); John Lowe, *et al.*, “COVID-19 Back to School PlayBook: Guiding Principles to Keep Students, Teachers, and Staff Safe in K-12 Schools,” *Univ. of Neb. Medical Center College of Public Health* (Aug. 8, 2020), available at <https://www.nebraskamed.com/sites/default/files/documents/covid-19/K-12-Playbook.pdf?date=08052020>.

<sup>19</sup> See WHO, *Public health criteria to adjust public health and social measures in the context of COVID-19* at 1-2 (May 12, 2020), available at <https://apps.who.int/iris/rest/bitstreams/1277773/retrieve>.

lifting restrictions. Each of those phases, in turn, is tied to six separate “gating indicators” that set thresholds for entering each phase, to wit, (1) a downward trajectory (or near-zero incidence) of documented cases over a 14-day period; (2) a downward trajectory (or near-zero incidence) in emergency department and/or outpatient visits for COVID-like illness; (3) a downward trajectory (or near-zero incidence) in emergency department and/or outpatient visits for influenza-like illness; (4) a downward trajectory (or near-zero percent positive) of positive tests as a percentage of total tests over a 14-day period; (5) the ability to treat all patients without crisis care (measured by intensive-care-unit-bed capacity, no staff shortages, and adequate supplies of personal protective equipment); and (6) a robust testing program (measured by the percentage of positive tests and the speed with which results are available).

40. The CDC Guidelines state that for communities that are in the first phase, schools that are closed should remain closed. For “[c]ommunities with low levels of COVID-19 spread and those with confidence that the incidence of infection is genuinely low (e.g., communities that remain in low transmission or that have entered Step 2 or 3)” the CDC advised that schools implement specific health and safety measures “as part of a gradual scale up of operations.” Those health and safety measures include:

- a. Implementing healthy hygiene practices, including:
  - i. Hand-washing and proper cough and sneeze etiquette; wearing of face coverings, particularly when physical distancing is difficult.
  - ii. Having adequate hygiene supplies, including soap, hand sanitizer with at least 60 percent alcohol (for staff and older children who can safely use hand sanitizer), paper towels, tissues, and no-touch trash cans.
  - iii. Posting signs on how to stop the spread of COVID-19, properly wash hands, promote everyday protective measures, and properly wear a face covering.
- b. Intensifying cleaning, disinfection, and ventilation, including:

- i. Cleaning and disinfecting frequently touched surfaces in the school and school buses.
    - ii. Ensuring ventilation systems operate properly and increasing circulation of outdoor air.
  - c. Social distancing, including by:
    - i. Ensuring that student and staff groupings are as static as possible by having the same group of children stay with the same staff.
    - ii. Restricting mixing between groups.
    - iii. Cancelling all field trips, inter-group events, and extracurricular activities
    - iv. Limiting gatherings, events, and extracurricular activities to those that can maintain social distancing, support proper hand hygiene, and restrict attendance of those from higher transmission areas.
    - v. Restricting nonessential visitors, volunteers, and activities involving other groups at the same time.
    - vi. Spacing seating/desks to at least 6 feet apart.
    - vii. Closing communal use spaces such as dining halls and playgrounds where possible or otherwise staggering use.
    - viii. Serving meals in classrooms instead of cafeterias.
    - ix. Staggering arrival and drop-off times or locations, or put in place other protocols to limit close contact with parents or caregivers as much as possible.
    - x. Creating social distance between children on school buses.
  - d. Planning for when a staff member, child, or visitor becomes sick, including by:
    - i. Establishing procedures for safely transporting anyone sick home or to a healthcare facility.
    - ii. Notifying local health officials, staff, and families immediately of a possible case while maintaining confidentiality consistent with the Americans with Disabilities Act (ADA) and other laws.
    - iii. Closing off areas used by a sick person, waiting 24 hours, and then cleaning and disinfecting.

- iv. Advising sick staff members and children not to return until they have met CDC criteria to discontinue home isolation.
  - v. Inform those who have had close contact to a person diagnosed with COVID-19 to stay home and self-monitor for symptoms and to follow CDC guidance if symptoms develop.
- e. Maintain healthy operations, including by:
- i. Implementing flexible sick leave policies and practices.
  - ii. Creating a communication system for staff and families for self-reporting of symptoms and notification of exposures and closures.

41. On September 1, 2020, the CDC released guidance titled “Operating Schools During COVID-19: CDC’s Considerations” (hereafter, “CDC Considerations”), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>.

42. The CDC Considerations state that schools should “make decisions about school reopening based on available data including levels of community transmission and their capacity to implement appropriate mitigation measures in schools to protect students, teachers, administrators, and other staff.”

43. The guidance also provides detailed recommendations for appropriate mitigation measures schools can take to reduce the spread of COVID-19, including “key” measures such as physical distancing within buses, classrooms and other areas of the school; healthy hygiene habits; cleaning and disinfection; use of masks; staggering student schedules; and planning for staff and teacher absences.

44. On September 15, 2020, the CDC released further guidance on reopening schools titled “Indicators for Dynamic School Decision-Making” (hereafter, “CDC Indicators”), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/indicators.html>.

45. The CDC Indicators identify two “core” factors that should be considered in deciding whether to open schools for in-person learning—the level of community transmission, and the school’s ability to implement critical mitigation measures like contact tracing, physical distancing, and use of masks—as well as “secondary” factors such as the number of local hospital beds and the 7-day change in the number of new cases.

46. The CDC Indicators note that schools are at the highest risk for transmission where they are located in communities with test positivity rates over 10%.

47. As of October 6, 2020, Georgia’s overall test positivity rate stood at 10%, and the positivity rate over the prior two-week period stood at 5.9%. In 32 counties, including many of the most populous counties in the state, the positivity rate for the past two weeks was more than 10%, placing them in the CDC’s highest risk category and well above the WHO’s 5% threshold for reopening. In four of those counties, as of October 6, the two-week positivity rate was *20% or higher*.<sup>20</sup>

48. Since the beginning of the pandemic, the State Defendants have steadfastly refused to issue meaningful, binding requirements for school districts concerning how they are expected to operate during the pandemic. The Defendants’ treatment of schools stands in sharp contrast to standards it has set for other entities such as restaurants, retailers, or summer camps.

49. On March 16, 2020, Governor Kemp issued Executive Order 03.16.20.01, which closed all public elementary, secondary, and post-secondary schools through March 31, 2020. Governor Kemp extended that order through April 24, 2020 via Executive Order 03.26.20.02,

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<sup>20</sup> See Georgia Department of Public Health Daily Status Report, available at <https://dph.georgia.gov/covid-19-daily-status-report> (accessed October 7, 2020).

and subsequently extended it through the remainder of the 2019-2020 school year through Executive Order 04.01.20.01.

50. On April 2, 2020, Governor Kemp issued Executive Order 04.02.20.01, establishing statewide shelter-in-place restrictions to stop the spread of COVID-19.

51. On May 28, 2020, Governor Kemp issued Executive Order 05.28.20.02, which restricted “Gatherings of Persons” across the state. The order imposed limitations on gatherings for a variety of entities including restaurants, summer camps, and non-profits. The order also specified steps businesses needed to take to mitigate exposure and spread of COVID-19 if they wished to remain open including requiring hand washing, screening workers, and observing physical distancing.

52. Executive Order 05.28.20.02 exempted summer school programs from limitations on gatherings, and while it directed districts to implement “additional measures to prevent the spread of COVID-19” it did not identify any specific mandatory standards and instead offered suggestions for steps districts “may” take such as “[e]ncouraging handwashing” or “discouraging” students from sharing phones, desks and other equipment. At the time of this executive order, community transmission rates, as measured by the 7-day moving average of new daily cases, were more than 25 times what they were when Defendant Kemp closed schools on March 16 and more than double what they were when Defendant Kemp instituted his April 2, 2020 shelter-in-place order.<sup>21</sup>

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<sup>21</sup> As the Georgia Department of Health’s data shows, the 7-day average of daily new cases on was 30.6 on March 16, 514 on April 2, and 740 on May 28. See Georgia Department of Public Health Daily Status Report, available at <https://dph.georgia.gov/covid-19-daily-status-report> (accessed October 7, 2020).

53. The Governor justified his differential treatment of schools in Executive Order 05.28.20.02 not by pointing to any decreased risk of disease transmission or severe illness in schools, but because of “the limited resources of school districts in this state.”

54. On July 13, 2020, GADOE and the Georgia Department of Public Health released guidance on reopening schools titled “Georgia’s Path to Recovery for K-12 Schools” (hereafter, “July Guidance”). At this time, community transmission rates in Georgia were sky-high, with an average of more than 3,300 new cases per day—more than 100 times what they were when Defendant Kemp closed schools on March 16, and more than six times what they were when Defendant Kemp instituted his April 2 shelter-in-place order.<sup>22</sup>

55. The July Guidance encouraged school districts to establish practices to prevent and address the spread of COVID-19, including closing schools where necessary—but stressed that the actions recommended therein were “not mandated, or state required.” Exhibit A at 1 (emphasis in original).

56. On July 15, 2020, Governor Kemp issued Executive Order 07.15.20.01, “Providing Additional Guidance for Empowering a Healthy Georgia in Response to COVID-19.” Like previous pronouncements, Executive Order 07.15.20.01 restricted “Gatherings of Persons” across the state. It allowed “Critical Infrastructure” businesses to open, but orders them to implement telework “to the maximum extent practicable.” For both essential and non-essential businesses, the order imposed mandatory standards to prevent the spread of COVID-19. For example, the order requires childcare facilities to screen children before admitting them to the facility and observe cleaning protocols for toys. The order requires gyms and bars to provide

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<sup>22</sup> As the Georgia Department of Health’s data shows, the 7-day average of daily new cases on was 30.6 on March 16, 514 on April 2, and 740 on May 28. See Georgia Department of Public Health Daily Status Report, available at <https://dph.georgia.gov/covid-19-daily-status-report> (accessed October 7, 2020).

hand sanitizer to patrons, requires movie theaters to employ ushers to enforce physical distancing, and prohibits restaurants from operating self-serve food stations.

57. By contrast, Executive Order 07.15.20.01 directed school districts to implement “additional measures to prevent the spread of COVID-19” but only mandated that schools screen *symptomatic* employees and students and require them to stay home and seek medical attention, despite the fact that the novel coronavirus has an incubation period of up to two weeks and that some twenty percent of those who contract the novel coronavirus are asymptomatic—a number that climbs to 40% among school-aged children.<sup>23</sup> While the Order suggests school districts implement additional measures like reducing class sizes, disinfecting surfaces, and ensuring adequate ventilation, districts need only take these steps “as appropriate,” “as practicable,” or in a manner that “encourages” or “discourages” particular behaviors on the part of staff or students.

58. Governor Kemp has issued four subsequent executive orders since Executive Order 07.15.20.01 that address “Providing Additional Guidance for Empowering a Healthy Georgia in Response to COVID-19,” most recently on September 15, 2020. Each order contains the same language as Executive Order 07.15.20.01 with respect to school reopening; none impose additional requirements on public school districts, and they continue to largely exempt schools from safety measures required of other entities by citing “the limited resources of school districts in this state.”

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<sup>23</sup> Studies published from March to June 2020 showed that up to one in five persons infected with the novel coronavirus do not show symptoms of the disease. See Diana Buitrago-Garcia, “Occurrence and transmission potential of asymptomatic and presymptomatic SARS-CoV-2 infections: A living systematic review and meta-analysis,” PLOS Medicine Vol. 7 No. 9 (Sept. 22, 2020), available at <https://doi.org/10.1371/journal.pmed.1003346>. The CDC has found that only about 60% of school-aged children infected by the novel coronavirus show any symptoms. See Rebecca Leeb, *et al.*, “COVID-19 Trends Among School-Aged Children — United States, March 1–September 19, 2020,” CDC Morbidity and Mortality Weekly report (Oct. 2, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6939e2.htm>.

59. Clear warning signs as to dangers posed by Defendant Kemp’s *laissez faire* approach to schools emerged well before schools even began to resume in-person instruction. In June 2020, a summer camp in north Georgia that operated in compliance with Defendant Kemp’s executive orders—which contain similarly inadequate requirements for summer camps—quickly became a super-spreader event. In early July of 2020, it was widely reported that the camp was forced to close within days after the first camp employee developed symptoms and that at least 85 campers and staff had tested positive.<sup>24</sup> A subsequent study by the CDC, first released on July 31, 2020, showed that in the end, 260 of the 344 children and staff at the camp had become infected.<sup>25</sup>

60. National and regional news regarding school reopenings in other states also should have set off alarm bells. On August 1, 2020, the *New York Times* reported that one of the very first school districts in the country to resume in-person classes, Garfield Central Junior High in Indiana, “did not even make it a day before” learning that a student had become infected with the novel coronavirus and ordering all those who had contact with that student to go into quarantine.<sup>26</sup> And on August 2, it was reported that a school that opened in neighboring

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<sup>24</sup> See Lori Daniel, et al., “YMCA camp in Georgia closes after a staff member tested positive for coronavirus,” *CNN* (updated July 6, 2020), available at <https://edition.cnn.com/2020/07/05/us/georgia-ymca-camp-coronavirus/index.html>; Cox Media Group National Content Desk, “85 campers and staff test positive for COVID-19 at YMCA summer camp,” *WFTV 9* (July 11, 2020), available at <https://www.wftv.com/news/trending/85-campers-staff-test-positive-covid-19-ymca-summer-camp/OPSPVDSXRFCLZOD7SEMLCYN2OA/>.

<sup>25</sup> Christine M. Szablewski, et al., “SARS-CoV-2 Transmission and Infection Among Attendees of an Overnight Camp — Georgia, June 2020” CDC Morbidity and Mortality Weekly Report (Aug. 7, 2020; posted online as an Early Release on July 31, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6931e1.htm>.

<sup>26</sup> See Eliza Shapiro, “A School Reopens, and the Coronavirus Creeps In,” *N.Y. Times* (Aug. 1, 2010), available at <https://www.nytimes.com/2020/08/01/us/schools-reopening-indiana-coronavirus.html>.

Mississippi on July 27, 2020 had a student tested positive for the novel coronavirus during the first week of classes.<sup>27</sup> That case led to a quarantine of 116 students and staff.<sup>28</sup>

61. Despite these clear warning signs, Defendants still failed to provide any meaningful, binding guidelines for when, and if so to what extent and under what conditions, schools could resume in-person instruction. And predictably, when some Georgia schools reopened in August of 2020, prematurely and without even the most essential safeguards, outbreaks promptly occurred and forced schools to reclose.

62. On Monday, August 3, 2020, several school districts in Georgia opened for in-person instruction, including the Paulding County School District and the Cherokee County School District.

63. Shortly after North Paulding High School students shared photos on social media from the first days of school, showing hallways packed wall-to-wall with mask-less students crowded together, the school announced that six students and three staff members had tested positive for the novel coronavirus and that the school would be closed for two days so that buildings could be disinfected.<sup>29</sup> The school, which had been planning to hold softball and

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<sup>27</sup> Justin Vicory, “Corinth School District, first to reopen in Mississippi, reports COVID-19 case,” *Mississippi Clarion Ledger* (Aug. 2, 2020), available at <https://eu.clarionledger.com/story/news/2020/07/31/student-covid-corinth-mississippi-first-week-school-reopening/5559279002/>.

<sup>28</sup> See Jaclyn Peiser, “A Mississippi town welcomed students back to school last week. Now 116 are home in quarantine,” *Washington Post* (Aug. 6, 2020), available at <https://www.washingtonpost.com/nation/2020/08/06/school-coronavirus-outbreak-mississippi/>.

<sup>29</sup> Derek Hawkins, “Georgia school in viral photos will close for cleaning after nine people test positive for coronavirus,” *Washington Post* (Aug. 9, 2020), available at <https://www.washingtonpost.com/education/2020/08/09/nine-people-test-positive-coronavirus-georgia-school-where-photos-packed-hallways-went-viral/>.

volleyball games, also cancelled extracurricular activities.<sup>30</sup> The superintendent of the Paulding County School District, Defendant Otott, stated that “[t]here is no question that the photo does not *look good*” and defended the district’s approach, claiming that it was not possible to require students to wear face coverings.<sup>31</sup> At the same time, the school disciplined a student who had shared the images on social media, reversing that decision only after drawing media attention and a massive public outcry.<sup>32</sup>

64. At a news conference on August 10, 2020, Defendant Kemp stated, “I think quite honestly this week went real well other than a couple of virtual photos.”<sup>33</sup>

65. Within two days of that assessment, 11 schools in the Cherokee County School District were forced to close, and school officials asked some 1,200 students and staff members to quarantine due to possible COVID-19 exposure.<sup>34</sup>

66. Also during the first week of reopening, the Deputy Superintendent of the Camden County School District, amid rumors that a staff member had tested positive, sent a memorandum to all school administrators on August 5, 2020 forbidding staff who have tested

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<sup>30</sup> Braktkton Booke, “9 Test Positive For Coronavirus After In-Person Classes Resume At Georgia High School,” NPR (Aug. 10, 2020), available at <https://www.npr.org/sections/coronavirus-live-updates/2020/08/10/900846570/georgia-high-school-temporarily-switches-to-virtual-learning-after-9-positive-te>.

<sup>31</sup> See Giulia McDonnell Nieto del Rio, “Suspension Lifted of Georgia Student Who Posted Photos of Crowded Hall,” *N.Y. Times* (Aug. 6, 2020; updated Aug. 12, 2020).

<sup>32</sup> *Id.*

<sup>33</sup> See Associated Press, “Georgia governor: School openings going well except photos of crowded hallways,” *Politico* (Aug. 10, 2020), available at <https://www.politico.com/news/2020/08/10/georgia-crowded-schools-governor-393151>.

<sup>34</sup> Richard Fausset, “1,193 Quarantined for Covid. Is This a Successful School Reopening?,” *N.Y. Times* (Aug. 12, 2020), available at <https://www.nytimes.com/2020/08/12/us/georgia-school-coronavirus.html>.

positive from “notify[ing] any other staff members, parents of their students or any other person/entity” of their possible exposure.<sup>35</sup>

67. On August 12, 2020, in the midst of school closures due to outbreaks of COVID-19 among students, the Georgia Department of Health issued interim guidance for school districts, titled “Guidance for Georgia K-12 Schools and School-Based Programs” (“August Guidance”), available at <https://dph.georgia.gov/document/document/guidance-georgia-schools/download>.

68. Like Defendant Kemp’s executive orders, the August Guidance from the Department of Health is grossly inadequate to protect the health of students, staff, and their families. The actions required of school districts by the August Guidance can be boiled down into just two components. First, districts must require teachers, staff and students to stay home from school if they have tested positive or are showing COVID-19 symptoms, or if they have had close contact with a person with COVID-19. Second, schools are required to notify their public health department about cases, clusters and outbreaks of COVID-19 identified in the school setting.

69. The August Guidance “recommends”—but does not require—that school districts:

- a. Take measures to effect social distancing, including placing desks six feet apart, reducing class sizes, or installing signs around school buildings reminding students and staff to maintain physical distance;
- b. Discontinue self-service food and beverage distribution in school cafeterias;
- c. Provide personal protective equipment or cleaning supplies for staff;

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<sup>35</sup> Dan Levin, “Covid in the Classroom? Some Schools Are Keeping It Quiet,” N.Y. Times (Aug. 22, 2020), available at <https://www.nytimes.com/2020/08/22/us/school-reopenings-coronavirus-reporting.html>.

- d. Require students and staff to wear cloth face coverings, while at the same time acknowledging that face coverings are “most essential” in instances where physical distancing is difficult;
- e. Consider ways to accommodate students, staff and families at higher risk for severe COVID-19 illness;
- f. Implement protocols for cleaning and disinfecting school buildings and school buses;
- g. Ensure building ventilation systems operate properly, and water systems are safe;
- h. Conduct screenings of people entering school buildings, such as checking temperatures with touchless thermometers; and
- i. Make reliable, age-appropriate, and culturally responsive information available to students, families, and staff about COVID-19 prevention and mitigation strategies.

70. While the State Defendants have issued grossly inadequate guidelines, or otherwise failed to act responsibly to help avoid schools’ predictably becoming nodes of widespread virus transmission—and the School District Defendants have, in turn, used their latitude to generally spurn all guidance from the CDC and the state, apart from the few wholly inadequate requirements issued at the state level—the COVID-19 pandemic continues to wreak havoc on the health and lives of Georgians statewide. As of October 6, 2020, the Georgia Department of Health has confirmed a total of more than 324,000 COVID-19 cases since the beginning of the pandemic, resulting in more than 29,000 hospitalizations, more than 5,400 ICU admissions, and more than 6,500 deaths.<sup>36</sup>

71. Reported transmission of the novel coronavirus remains high statewide, even as the state’s largest testing site at Hartsfield-Jackson Atlanta International Airport has closed. The seven-day average of daily new cases stands at over 1,200. Although that figure is down from

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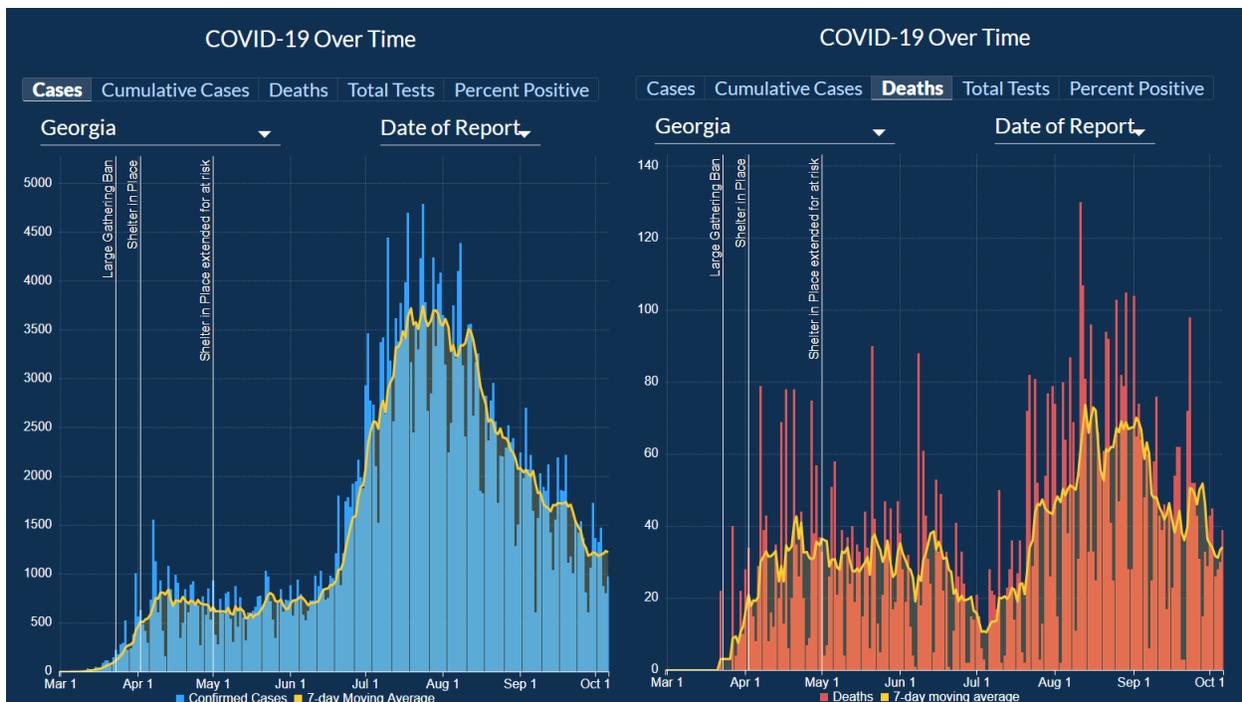
<sup>36</sup> Georgia Department of Public Health Daily Status Report, available at <https://dph.georgia.gov/covid-19-daily-status-report> (last accessed Sept. 20, 2020).

the staggering seven-day average of over 3,700 daily new cases reached in late July, the current average of daily new cases is still far above the that reached during the initial wave of infections in April, when Defendant Kemp issued his shelter-in-place order.<sup>37</sup> Indeed, the Georgia Department of Health's figures show that that initial wave had barely begun to level off before the staggering wave of infections in July—which more than tripled the case rate during the peak of the state's initial wave of infections—followed Defendant Kemp's relaxation of COVID-19 restrictions in his executive orders of May and June. Similarly, the seven-day average of COVID-19 deaths remains high statewide, at 42—roughly equal to the highest seven-day average during the initial wave that resulted in Defendant Kemp's shelter-in-place order.

72. Just as with cases, the number of deaths also exploded in late July and early August, after Defendant Kemp relaxed the shelter-in-place and other COVID-19 restrictions in his executive orders of May and June. The following two graphs from the Georgia Department of Health's daily update starkly illustrate these facts:

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<sup>37</sup> *Id.*



73. Notwithstanding the continuing high transmission, hospitalization, and death rates from COVID-19, the State Defendants have given Districts free rein open for full in-person instruction regardless of community infection rates, their ability or willingness to implement key mitigation strategies, or other factors related to the health and well-being of students, staff and community members while the COVID-19 pandemic continues to rage within the state.

74. A recent report from the White House Coronavirus Task Force similarly reports that Georgia remains in the “red zone” of states having more than 100 new cases per 100,000 residents over the prior week.<sup>38</sup> With its rate of 132 deaths per 100,000 over the prior week, the report notes, Georgia had the 12th highest rate of new infections in the country, despite a decline in cases from the statewide peak in late July.<sup>39</sup>

<sup>38</sup> White House Coronavirus Task Force State Report: Georgia (Sept. 6, 2020), available at <https://www.documentcloud.org/documents/7204532-Georgia-9-6-20.html>.

<sup>39</sup> *Id.*

75. At the local level, the White House Coronavirus Task Force Report, as well as a recent report from the Georgia Department of Health, paint a dire picture. The White House report found that 75% of Georgia counties had moderate or high levels of community transmission, with Fulton County, Gwinnett County, and Cobb County having the highest number of new cases over the prior three weeks; together, those three counties alone accounted for nearly 22% of the new cases in the state.<sup>40</sup> The most recent update from Georgia Department of Health on COVID-19 trends shows that 58 counties have what the department considers ‘High Transmission Indicators,’ meaning that in those counties, the 14-day rate of new cases is over 100 for every 100,000 residents, more than 10 new cases were identified over the 14-day period, and the 14-day average positivity rate for the novel coronavirus is over 10%.<sup>41</sup> That report also shows grim trends with respect to the criteria that the CDC has recognized as critical “Gating Indicators” for entering phases of reopening: in 32 counties, the two-week average of new confirmed cases is rising, with 29 of those counties showing a rise of 5% or more; in 69 counties, emergency department visits with COVID-19 Syndrome is rising, with 53 of those counties showing a rise of 5% or more; and in 74 counties emergency department visits with influenza-like illness is rising, with 61 of those counties showing a rise of 5% or more.<sup>42</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> Georgia Department of Public Health, “DPH Provides Update on COVID-19 Trends in Georgia” at 1 (Sept. 15, 2020), available at <https://dph.georgia.gov/document/document/dphnewsrelease-covid-19update9-15-2020pdf/download>.

<sup>42</sup> *Id.* at 2-6.

**D. THE INDIVIDUAL PLAINTIFFS ARE AT RISK BECAUSE  
THE STATE AND SCHOOL DISTRICT DEFENDANTS HAVE FAILED TO  
INSTITUTE EVEN MINIMALLY ADEQUATE COVID-19  
MITIGATION MEASURES FOR SCHOOLS**

76. Plaintiff M.J. has worked in the Paulding County School District for almost two decades. She is a career educator who holds several professional degrees related to teaching.

77. Plaintiff M.J. the sole source of income for her household. She is a single mother whose entire career has been dedicated to teaching the Georgia public school students.

78. Plaintiff M.J.'s work experience has been as a public school teacher. If she is unable to continue teaching, she will not be able to obtain another job to support her family.

79. Plaintiff M.J. lives with an adult parent who is nearly eighty years old and has been diagnosed with chronic obstructive pulmonary disease ("COPD"), a chronic inflammatory lung disease that creates obstructed airflow from the lungs. Plaintiff M.J.'s parent requires supplemental oxygen to breathe and is considered to be at high risk if exposed to COVID-19.

80. Plaintiff M.J. also has children who attend Paulding County School District, one of whom requires medical interventions to control an upper respiratory illness.

81. On August 3, 2020, the first day of school in the Paulding County School District, the two-week test positivity rate for Paulding County was 9.3%. It remained over 9% throughout the first week of school.

82. Plaintiff M.J. did not receive any formal training from the Paulding County School District on reducing the risk of COVID-19 exposure prior to the reopening of her school. School administrators informally told Plaintiff R.J. to keep the classroom clean and keep kids distanced, but the school district did not distribute any formal protocols, policies or additions to the employee handbook regarding COVID-19 exposure.

83. School administrators told Plaintiff M.J. that mask wearing is not required at school by faculty, staff, administrators, or students.

84. At Plaintiff M.J.'s school, only a very small percentage of the school community wears any face covering. Most of the students on campus do not wear masks.

85. School administrators told Plaintiff M.J. that she could not tell students to wear masks even though she is concerned about her own exposure to COVID-19 and the impact that has on the family in her household, including her mother.

86. School administrators told Plaintiff M.J. that she could not support or oppose mask wearing on school grounds.

87. Since reopening, the school where Plaintiff M.J. teaches has already once been returned to virtual instruction after twenty-four cases of COVID-19 were reported. Most recently, the school district transitioned some schools back to a hybrid instructional program as a scheduled fall break has kept the school closed for five days.

88. Plaintiff R.J. attends school in the Paulding County School District. R.J. is a strong student, active in extra-curricular activities and enjoys being part of the PCSD community.

89. Plaintiff R.J. has a compromised respiratory system and suffers from asthma and severe allergies that require pharmaceutical treatment. Plaintiff R.J. carries an inhaler and must be careful to monitor her breathing.

90. Plaintiff R.J. has been unable to access virtual instruction because the complexity of the subject matter and the rigorous workload of her curriculum made virtual instruction a poor choice.

91. According to Plaintiff R.J., a very small population of the school community, including faculty, staff, administration and students, wears masks. Plaintiff R.J. reports that a culture of “no mask wearing” exists inside the school community.

92. Plaintiff R.J. reports that social distancing is not required by school administrators and that the physical proximity of students inside the classrooms, hallways, and common areas such as the cafeteria is much closer than six feet.

93. When on campus, Plaintiff R.J. wears a mask all the time.

94. The Paulding County School District has not updated its infectious disease policy since 2001. That policy states as follows:

The Paulding County Board of Education recognizes the importance of protecting the health and welfare of students, teachers, and other employees of the educational system from the spread of Acquired Immunodeficiency Syndrome (AIDS). The Board, the Paulding County Health Department and/or the Georgia Department of Human Resources has the authority to require immunizations or other preventive measures including quarantine, isolation and segregation of persons with communicable disease or conditions likely to endanger the health of others.

95. In July 2020, the Paulding County School District announced that in-person instruction would resume in the 2020-2021 school year. The school district gave students an option to either attend in-person instruction or register for virtual instruction.

96. By August 4, 2020, the virtual instruction option was fully subscribed and the school district had neither the staffing nor the resources to accommodate all families that sought to exercise the virtual option.

97. The Paulding County School District formally announced that for students returning to in-person instruction, “[t]he school district recognizes that wearing a face mask is a personal choice for families and, therefore, will not mandate that masks be worn. See Exhibit 1, *PCSD Back to School Supplemental Q&A*.

98. Superintendent Otott reported to the Board of Education on August 11, 2020 that the District has approximately 20,000 students attending for face to face instruction, and for the first time, the District is offering a virtual program for all three levels with 3,726 attending elementary, 2,495 attending middle and 3,088 attending high school. See Exhibit 2, *Paulding County Board of Education Minutes*, August 11, 2020.

99. Following that meeting, four of the five high schools in Paulding County reported on-campus cases of COVID-19. On August 12, 2020, the day after the Board meeting, North Paulding High School announced thirty-five confirmed cases of COVID-19. See Exhibit 3, *Letter from NPSH to In-Person Instruction Parents*, dated August 12, 2020.

100. Paulding County High School, East Paulding High School, South Paulding High School and McClure Middle School all reported on-campus cases of COVID-19.

101. Despite the confirmed cases, the school district continued to provide in-person instruction while not requiring masks or social distancing.

102. The Paulding County School District posts an updated table of “new confirmed cases of COVID-19 as reported to the central office by each school for each week of the school year beginning August 3, 2020.” As of October 5, 2020, the school district reported 289 COVID-19 cases in the school community.

103. In the face of these grim realities, the State Defendants have failed to require local school districts to adhere to the kinds of measures that public health authorities from the CDC on down have recognized as effective for mitigating the risk of virus transmission in schools—measures governing whether it is safe to resume any level of in-person learning, and if so when and under what conditions to do so. And the School District Defendants—granted free rein by the State Defendants to resume in-person instruction regardless of community infection rates,

their ability or willingness to implement key mitigation strategies, or other factors related to the health and well-being of students, staff, families, and community members—have used that freedom irresponsibly, failing to delay or provide alternatives to in-person instruction or to implement the most critical health and safety measures necessary before beginning any amount of in-person instruction. Through their utterly inadequate actions as the COVID-19 pandemic continues to rage within the state, the Defendants have failed to protect students and staff, as well as their families and communities, from the spread of the novel coronavirus in violation of constitutional, statutory, and common-law duties.

### **CLAIMS FOR RELIEF**

#### **COUNT I: FAILURE TO PROVIDE AN ADEQUATE PUBLIC EDUCATION UNDER ARTICLE VIII, SECTION 1, PARA. I OF THE GEORGIA CONSTITUTION (AGAINST THE STATE DEFENDANTS)**

104. The allegations in Paragraphs 1-17, 20-103 are re-alleged and incorporated herein by reference.

105. The Georgia Constitution provides, in emphatic and mandatory terms, that “[t]he provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia.” Ga. Const. art. VIII, § 1, Para. I.

106. Even a “minimum” education “must provide each child with an opportunity to acquire the basic minimum skills necessary for the enjoyment of the rights of speech and of full participation in the political process.” *McDaniel v. Thomas*, 248 Ga. 632, 644, 285 S.E.2d 156, 165 (1981) (quoting *San Antonio School District v. Rodriguez*, 411 U.S. 1, 37 (1973)). And an adequate education lies “beyond this minimum.” *Id.*

107. As many state supreme courts have recognized, an education system that lacks critical safety standards for protecting the health and safety of students, staff and communities is

not “minimal,” let alone “adequate.” See, e.g., *Abbott v. Burke*, 710 A.2d 450, 470 (N.J. 1998) (“The State's constitutional educational obligation includes the provision of adequate school facilities.”); *Hull v. Albrecht*, 950 P.2d 1141 (Ariz. 1997) (holding that the legislature was required to establish standards for adequate school facilities); *Campbell Cty. Sch. Dist. v. State*, 907 P.2d 1238, 1275 (Wyo. 1995) (“Safe and efficient physical facilities with which to carry on the process of education are a necessary element of the total educational process”).

108. The Defendants have violated the duty to provide an adequate education by failing to set any meaningful and binding standards to ensure that Georgia’s public schools reopen only when it is safe to do so and with the necessary mitigation measures to ensure that students have access to a public education that does not place their health and the health of their families and communities at risk.

109. As a result of the Defendants’ failure to meet their obligations under the Education Clause and set standards to ensure schools reopen safely, the Individual Plaintiffs will suffer increased exposure to unsafe, inadequate school facilities that violate the student plaintiff’s right to education under Ga. Const. Art. VIII, § I, Para. I.

**COUNT II:  
PUBLIC NUISANCE  
(AGAINST THE SCHOOL DISTRICT DEFENDANTS)**

110. The allegations in Paragraphs 1-17, 20-103 are realleged and incorporated herein by reference.

111. The School District Defendants’ acts and omissions have created or substantially assisted in the creation of a public nuisance under Georgia’s long-standing common-law of nuisance, as presently codified by the General Assembly at O.C.G.A. §§ 41-1-1 and 41-1-2. See *Hill v. McBurney Oil & Fertilizer Co.*, 112 Ga. 788, 793, 38 S.E. 42 (1901) (holding that earlier

iteration of Georgia’s nuisance statute was “not intended to change the common–law definition of a nuisance”).

112. “A nuisance,” as a general matter, “is anything that causes hurt, inconvenience, or damage to another and the fact that the act done may otherwise be lawful shall not keep it from being a nuisance.” O.C.G.A. § 41-1-1. “A public nuisance is one which damages all persons who come within the sphere of its operation, though it may vary in its effects on individuals. O.C.G.A. § 41-1-2. To establish a public nuisance, it is not necessary “that every person in the area must have been actually hurt or injured”; rather, “[i]t is sufficient if it injures those of the public who may actually come in contact with it.” *Atlanta Processing Co. v. Brown*, 227 Ga. 203, 211, 179 S.E.2d 752 (1971).

113. Acts and/or omissions that are injurious to the health of others plainly qualify as a public nuisance. *See, e.g., Savannah, F. & W. Ry. Co. v. Parish*, 117 Ga. 893, 45 S.E. 280, 280 (1903) (evidence that company failed to drain stagnant pond, into which “filth” was drained or thrown, to the detriment of plaintiff’s health sufficient to show a public nuisance); *De Vaughn v. Minor*, 77 Ga. 809, 812, 1 S.E. 433, 434 (1887) (evidence that defendant’s having allowed a broken dam to form a pond that “was a potential factor in producing malarial diseases” supported public nuisance claim). *See also Restatement (Second) of Torts* § 821B (1979) (noting that it has long been recognized at common law that “a significant interference with the public health” constitutes a public nuisance).

114. By their actions and inactions as alleged herein, Defendants are causing and, unless enjoined will continue to cause, public school students and staff, including but not limited to the Individual Plaintiffs, to be exposed to a heightened risk of contracting the novel coronavirus virus, a risk that could be mitigated by the adoption of measures that public health

authorities, including the CDC and the Georgia Department of Health, have recognized as effective to contain the spread of the virus in school settings. The Defendants' acts and omissions not only expose public school students and staff to this heightened risk but also heighten the risk that members of their families and communities may contract the novel coronavirus, thus substantially and unreasonably creating and assisting in the creation of a grave risk to public health and safety that constitutes a public nuisance as defined by O.G.C.A. §§ 41-1-1 and 41-1-2.

115. The acts and omissions of the Defendants that create and assist in the creation of a public nuisance cause special damage to the Individual Plaintiffs and to the myriad education employee members of GAE on whose behalf GAE brings this action, as required to bring a private action for public nuisance under O.G.C.A. § 41-1-3. As the Georgia Supreme Court has repeatedly recognized, adverse effects on individuals' health constitutes special injury under public nuisance doctrine. *See Savannah, F. & W. Ry. Co. v. Parish*, 117 Ga. 893, 45 S.E. 280, 280 (1903) (“[T]he public cannot be said to enjoy health or suffer sickness. In the very nature of things, that can only be predicated of the individual. Whatever affects his health affects him specially, and him alone. Such damage is special damage within the meaning of the Code, and the fact that other citizens suffer similar special damages does not convert his injury into the nature of public damages.”); *De Vaughn v. Minor*, 77 Ga. 809, 815, 1 S.E. 433, 436 (1887) (“All injury to health is special, and necessarily limited in its effect to the individual affected, and is, in its nature, irreparable. It matters not that others within the sphere of the operation of the nuisance, whether public or private, may be affected likewise.”).

116. The Individual Plaintiffs and the education employee members of GAE on whose behalf GAE brings this action suffer special damage in another respect, inasmuch as public school students and staff, bear transmission risks that arise by reason of conditions that are

particular to the school setting—*e.g.*, being in close proximity to children and other employees in poorly ventilated rooms for extended periods of time. And this is all the more the case given that, as a result of the Defendants’ acts and omissions, public schools operate under far more lax requirements than do restaurants, bowling alleys, or the other enterprises covered by defendant Kemp’s executive orders. The risks that students, staff, and their families face are particular to the school setting and constitute special harm within the contemplation of O.G.C.A. § 41-1-3 for these reasons as well.

117. It is not necessary, for the purposes of bringing an action to declare and abate a public nuisance affecting health and safety, that Plaintiffs show that they have already suffered illness or infection. Where, as here, adverse health consequences are reasonably certain to occur, “a court of equity may interfere to arrest a nuisance before it is completed.” *De Vaughn*, 77 Ga. at 815, 1 S.E. at 436.

**COUNT III:  
VIOLATION OF THE DUTY TO PROVIDE A SAFE WORKPLACE  
(AGAINST THE SCHOOL DISTRICT DEFENDANTS)**

118. The allegations in Paragraphs 1-17, 20-103 are realleged and incorporated herein by reference.

119. The Georgia common law of master and servant has long recognized that employers owe employees a duty to exercise ordinary care to provide employees a safe place within which to work. *See Williamson v. Kidd*, 65 Ga. App. 285, 15 S.E.2d 801, 801 (1941) ; *J.S. Betts Co. v. Hancock*, 139 Ga. 198, 77 S.E. 77, 80 (1912); *Horton v. Ammons*, 125 Ga. App. 69, 72, 186 S.E.2d 469, 473 (1971), *aff’d sub nom. Smith v. Ammons*, 228 Ga. 855, 188 S.E.2d 866 (1972). As the Georgia Court of Appeals has recognized, “it is just as much the duty of a master to use reasonable care to protect his servants against dangers of the employment which

may reasonably be expected to produce disease as it is to use reasonable care to protect his servants against dangers of the employment which may produce physical injuries.” *Connell v. Fisher Body Corp.*, 56 Ga.App. 203, 208, 192 S.E. 484, 487 (1937).

120. As is the case with public nuisance law, the General Assembly codified these common-law principles in the statute that in its present form is set forth at O.C.G.A § 34-2-10, which provides that “[e]very employer shall furnish employment which shall be reasonably safe for the employees therein, shall furnish and use safety devices and safeguards, shall adopt and use methods and processes reasonably adequate to render such an employment and place of employment safe, and shall do every other thing reasonably necessary to protect the life, health, safety, and welfare of such employees.” The terms “safe” or “safety,” for the purposes of this duty, “include conditions and methods of sanitation and hygiene reasonably necessary for the protection of the life, health, safety, and welfare of employees.” O.C.G.A § 34-2-10. These standards have been held to be congruent with those of the common law. *See Williamson*, 65 Ga. App. at 285, 15 S.E.2d at 801; *Horton*, 125 Ga. App. at 72, 186 S.E.2d at 473.

121. By their acts and omissions as alleged herein, the School District Defendants have manifestly violated their duty to provide their employees a reasonably safe workplace.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Declare that each named minor child and student Plaintiff has a right, pursuant to Ga. Const. Art. VIII, § I, Para. I, to school facilities that meet basic health and safety standards.
2. Declare that the Defendants, by failing to impose binding standards that are reasonably calculated to ensure that schools operate safely in the midst of the COVID-19

pandemic, have violated and are violating Plaintiffs' constitutional right to an adequate education.

3. Enter injunctive relief to remedy the State Defendants' violation of their duties pursuant to the Education Clause of the Georgia Constitution by requiring the State Defendants to issue binding standards that are reasonably calculated to ensure that schools operate safely in the midst of the COVID-19 pandemic and consistent with the guidelines issued by recognized public health authorities such as the CDC.

4. Declare that Defendants' actions and inactions have created and/or assisted in the creation of a public nuisance injurious to public health and to the health of Plaintiffs.

5. Enter injunctive relief to abate Defendants' creation and/or assistance in the creation of a public nuisance by ordering Defendants to adopt binding standards that are reasonably calculated to ensure that schools operate safely in the midst of the COVID-19 pandemic and consistent with the guidelines issued by recognized public health authorities such as the CDC.

6. Declare that the School District Defendants have violated their duty to provide a reasonably safe workplace.

7. Enter injunctive relief to remedy the School District Defendants' violation of their duty to provide a reasonably safe workplace by ordering the School District Defendants to adopt, and ensure the implementation of, binding standards that are reasonably calculated to ensure that schools operate safely in the midst of the COVID-19 pandemic and consistent with the guidelines issued by recognized public health authorities such as the CDC.

8. Award to Plaintiffs the attorneys' fees, expenses, and costs incurred in prosecuting this lawsuit.

9. Grant to Plaintiffs any additional relief this Court may deem just and proper.

Respectfully submitted this 7<sup>th</sup> day of October, 2020.

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