

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

GINA KILDAHL

(b) County of Residence of First Listed Plaintiff Eau Claire (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Frederick Melms 6329 Spindrift Foam ave, Las Vegas, NV 89139 715-892-3023

DEFENDANTS

SCHOOL DISTRICT OF FALL CREEK; SCHOOL DISTRICT OF FALL CREEK BOARD OF EDUCATION: County of Residence of First Listed Defendant Eau Claire (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, INTELLECTUAL PROPERTY RIGHTS, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and codes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S. Code § 1983. Brief description of cause: Violation of fourteenth Amendment right to be protected from Covid 19

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/11/2021 SIGNATURE OF ATTORNEY OF RECORD /s/ Frederick Melms

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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7 *Attorney for Plaintiff*
8 **GINA KILDAHL**

9 **UNITED STATES DISTRICT COURT**

10 **FOR THE WESTERN DISTRICT OF WISCONSIN**

11 SK b/n/f GINA KILDAHL and on behalf
12 of themselves and those similarly
13 situated,

14 Plaintiff,

15 vs.

16 SCHOOL DISTRICT OF FALL
17 CREEK; SCHOOL DISTRICT OF
18 FALL CREEK BOARD OF
19 EDUCATION; BROCK WRIGHT.;
20 ERIC RYAN ; ANNMARIE
21 ANDERSON; JILL GESKE;
22 COURTNEY KNEIFL; JOE
23 SANFELIPPO ; and Does 1-10 on behalf
24 of themselves and those similarly
25 situated,

26 Defendants.

Case No.

**COMPLAINT AND REQUEST FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1. Equal Protection, Affirmative Duty to Protect-State Created Danger. (42 U.S.C. § 1983)
2. Equal Protection, Affirmative Duty to Protect-Special relationship. (42 U.S.C. § 1983)
3. Public Nuisance.

27 **COMPLAINT AND REQUEST FOR DECLARATIVE AND INJUNCTIVE**
28 **RELIEF**

Plaintiff, GINA KILDAHL individually, as the Next Friend of Minor SK, and as class representative for all K-12 public school students, their Next Friends, and Parents and Legal Guardians in the State of Wisconsin brings this Complaint against

1 Defendants, SCHOOL DISTRICT OF FALL CREEK, SCHOOL DISTRICT OF
2 FALL CREEK BOARD OF EDUCATION, BROCK WRIGHT, ERIC RYAN,
3 ANNMARIE ANDERSON, JILL GESKE, COURTNEY KNEIFL, JOE
4 SANFELIPPO, and Does 1-10 as representatives of a class of Wisconsin Defendant
5 School Districts, School Boards, School Board Members and Superintendents
6 recklessly refusing to implement the reasonable and scientifically supported
7 COVID-19 mitigation strategies recommended by the Wisconsin Department of
8 Public Instruction and the Centers for Disease Control. The failure by this class of
9 Defendants to take adequate Covid-19 related safety measures has needlessly and
10 recklessly placed Wisconsin school children and their communities at risk of serious
11 illness and death. This Plaintiff class vs Defendant class action seeks injunctive and
12 declaratory relief to remedy the failure of Wisconsin School Districts to adequately
13 protect their students and communities.

14
15 **INTRODUCTION**

16 1. This Plaintiff class vs Defendant Class action seeks injunctive relief from a
17 class of Defendants for violating various student rights under the United States
18 Constitution, state law, and abatement of a public nuisance under Federal
19 Common law and Wisconsin state law in connection with the refusal of many
20 Wisconsin school boards to implement reasonable Covid-19 mitigation
21 strategies.

22
23 **JURISDICTION AND VENUE**

24 2. This civil action is brought for the redress of alleged deprivations of
25 constitutional rights as protected by 42 U.S.C. §§ 1983, 1985, 1986, 1988, and
26 the Fourth, Fifth, and Fourteenth Amendments of the United States
27 Constitution. Jurisdiction is founded on 28 U.S.C. §§ 1331, 1343, and 1367
28 and statutory and Constitutional provisions.

1 3. Jurisdiction is also proper under Federal Common Law and 28 U.S.C.
2 § 1367(a).

3 4. Venue is proper in this Court under 28 U.S.C. § 1391(b), because Defendants
4 reside in, and all incidents, events, and occurrences giving rise to this action
5 occurred in, the County of Eau Claire, Wisconsin, within the Western District
6 of Wisconsin.

7 **PARTIES**

8 5. At all relevant times, GINA KILDAHL (“PLAINTIFF”) is mother and Next
9 Friend of Minor SK, both of whom were and are residents of Eau Claire
10 County, Wisconsin

11 6. At all relevant times Minor SK was a student in the School District of
12 Waukesha at Fall Creek Elementary School.

13 7. GINA KILDAHL also brings this suit as class representative for all K-12
14 students and their Next Friends.

15 8. At all times herein mentioned, The Defendant, SCHOOL DISTRICT OF
16 FALL CREEK BOARD OF EDUCATION (hereinafter “BOARD”) employs
17 and controls the staff, operates, and exercises policy making authority over
18 Defendant SCHOOL DISTRICT OF FALL CREEK (hereinafter FCSD).

19 9. Defendant, BROCK WRIGHT (hereinafter “WRIGHT”) was at all times
20 relevant to this action President of the BOARD and acting under the color of
21 law. He is sued in his official capacity for injunctive relief only.

22 10. Defendant, JOE SANFELIPPO (hereinafter “SANFELIPPO”) was at all
23 times relevant to this action superintendent of FCSD and acting under the
24 color of law. He is sued in his official capacity for injunctive relief only.

25 11. Defendant, ANNMARIE ANDERSON (hereinafter “ANDERSON”) was at
26 all times relevant to this action Clerk of the BOARD and acting under the
27 color of law. He is sued in his official capacity for injunctive relief only.
28

1 12. Defendant, JILL GESKE (hereinafter “GESKE”) was at all times relevant to
2 this action Treasurer of the BOARD and acting under the color of law. He is
3 sued in his official capacity for injunctive relief only.

4 13. Defendant, COURTNEY KNEIFL (hereinafter “KNEIFL”) was at all times
5 relevant to this action a member of the BOARD and acting under the color of
6 law. He is sued in his official capacity for injunctive relief only.

7 14. Defendant, ERIC RYAN (hereinafter “RYAN”) was at all times relevant to
8 this action Vice President of the BOARD and acting under the color of law.
9 She is sued in his official capacity for injunctive relief only.

10 15. At all relevant times, DOES 1 through 10 are employees, administrators, or
11 individuals with other policy making authority over the SCHOOL DISTRICT
12 OF FALL CREEK and are sued in their official capacity for injunctive relief
13 only.

14

15 **FACTS COMMON TO ALL CLAIMS FOR RELIEF**

16 16. PLAINTIFF repeats and realleges each and every allegation in paragraphs 1
17 through 15 of this Complaint with the same force and effect as if fully set
18 forth herein.

19 17. COVID-19 also known as COVID and the coronavirus, is a contagious
20 disease caused by severe acute respiratory syndrome coronavirus 2 or (SARS-
21 CoV-2)

22 18. The SARS-CoV-2 virus has an incubation period between two and fourteen
23 days and is highly contagious and deadly. The virus causes a myriad of
24 symptoms ranging from a fever or chills, a cough, shortness of breath or
25 difficulty breathing, fatigue, muscle or body aches, a headache, a loss of taste
26 or smell, a sore throat, congestion or runny nose, nausea or vomiting, diarrhea,
27 organ failure, and respiratory failure.

28

- 1 19.The SARS-CoV-2 virus was originally discovered in late 2019 and spread
2 globally within mere months.
- 3 20.The World Health Organization declared Covid-19 a pandemic on March 11,
4 2020.
- 5 21.In December of 2020 the Delta variant of the SARS-CoV-2 virus emerged in
6 India and was detected in the United States in March of 2021.
- 7 22.The Delta variant of the SARS-CoV-2 virus has proved to be more contagious
8 than the original variant and is capable of causing deadly infections in
9 vaccinated individuals.
- 10 23.At the time of this filing, there have been over 40 million confirmed Covid-19
11 cases in the United States causing over 700,000 deaths.
- 12 24.At the time of this filing, there have been over 890,000 confirmed Covid-19
13 cases in Wisconsin causing over 8,900 deaths.
- 14 25.Individuals can take steps to limit the spread of Covid-19, these steps include
15 getting vaccinated and wearing facemasks.
- 16 26.Currently there are three different vaccines available, only one of which is
17 available to children from 12-17. No vaccine is currently available to children
18 under 12.
- 19 27.The Covid-19 pandemic drastically effected K-12 schooling during the Spring
20 of 2020. All Wisconsin schools were shut down by order of Governor Evers
21 and most students were taught virtually.
- 22 28.During the 2020-2021 School year, schooling throughout Wisconsin was
23 either conducted virtually, or in person with Covid-19 mitigation strategies in
24 place including universal masking.
- 25 29.When the 2021-2022 School year began, many school districts, including the
26 School District of Fall Creek brought students back without adequate Covid-
27 19 mitigation measures in place including mandatory face masking, social
28

1 distancing, or contact tracing, creating an incredibly dangerous learning
2 environment.

3 30. On August 10, 2021, the Wisconsin Department of Public Instruction
4 (hereinafter “DPI”) released a publication entitled COVID-19 Infection
5 Control and Mitigation Measures for Wisconsin Schools 2021/2022.

6 31. In the COVID-19 Infection Control and Mitigation Measures for Wisconsin
7 Schools 2021/2022, the Wisconsin Department of Public Instruction makes
8 several recommendations for steps Wisconsin schools should take to limit the
9 spread of Covid-19.

10 32. Specifically, the DPI recommends that schools encourage children and staff
11 who have been exposed to COVID-19 to stay home and get tested, encourage
12 good hand hygiene, promote vaccination to eligible students and staff,
13 maintain a policy of physical distancing between students and staff, limit non-
14 essential visitation to the schools, establish contact tracing programs, improve
15 ventilation where possible and disinfect surfaces within the school on a daily
16 basis.

17 33. Finally, the DPI recommends that all Wisconsin schools institute mandatory
18 masking policies for students and staff.

19 34. On August 5, 2021, the Centers for Disease Control (hereinafter “CDC”)
20 published their most recent Guidance for COVID-19 Prevention in K-12
21 Schools.

22 35. The CDC recommends that schools encourage children and staff who have
23 been exposed to COVID-19 to stay home and test, encourage good hand
24 hygiene, promote vaccination to eligible students and staff, maintain a policy
25 of physical distancing between students and staff, limit non-essential visitation
26 to the schools, establish contact tracing programs, improve ventilation where
27 possible and disinfect surfaces within the school on a daily basis.

28

1 36.The CDC also recommends that schools implement universal masking
2 policies.

3 37.The CDC has found that universal masking policies drastically reduce the rate
4 of Covid-19 infections in schools.

5 38. Wisconsin School districts are all implementing different Covid-19 mitigation
6 policies, many of which recklessly ignore DPI and CDC recommendations.

7 39.The School Districts refusing to implement Covid-19 mitigation strategies in
8 their schools are functionally hosting daily “super spreader” events.

9 40.During the Spring of 2020, The School District of Fall Creek held classes
10 remotely, this policy continued sporadically during the 2020-2021 school
11 year. When School District of Fall Creek brought students back to in person
12 learning the school district had a robust Covid-19 mitigation strategy that
13 included mandatory masking.

14 41. During the 2020-2021 School year SK attended Fall Creek Elementary
15 School which had several different Covid-19 infection mitigation strategies in
16 place. These strategies included universal masking and social distancing.

17 42. The Board of Education for the School District of Fall Creek voted to end
18 many of their Covid-19 mitigation policies, including their universal masking
19 requirement for the 2021-2022 school year.

20 43.When the 2021-2022 School year began, SK returned to school and wore a
21 mask daily.

22 44.Many of SK’s classmates choose not to wear masks to school.

23 45.On September 20, 2021, one of SK’s classmates tested positive for Covid-19

24 46.On September 24, 2021, another of SK’s classmates tested positive for Covid-
25 19.

26 47.SK’s sick classmate did not wear a mask to school.

27 48.On September 27, 2021, SK tested positive for Covid-19.

28

1 49. After SK tested positive for Covid-19, Plaintiff chose to quarantine SK and he
2 missed two weeks of school.

3 **FIRST CLAIM FOR RELIEF**

4 **Equal Protection, Affirmative Duty to Protect-State Created Danger (42**
5 **U.S.C. § 1983)**

6 **(SK b/n/f GINA KILDAHL and on behalf of those similarly situated, Against**
7 **SCHOOL DISTRICT OF FALL CREEK; SCHOOL DISTRICT OF FALL**
8 **CREEK BOARD OF EDUCATION; BROCK WRIGHT.; ERIC RYAN ;**
9 **ANNMARIE ANDERSON; JILL GESKE; COURTNEY KNEIFL; JOE**
10 **SANFELIPPO ; and Does 1-10 on behalf of themselves and those similarly**
11 **situated,)**

12 50. PLAINTIFF repeats and re-alleges each and every allegation in paragraphs 1
13 through 49 of this Complaint with the same force and effect as if fully set
14 forth herein.

15 51. SK and those similarly situated have a cognizable right under the Fourteenth
16 Amendment to the United States Constitution to be safe from state created
17 dangers while in school.

18 52. At the beginning of the Covid-19 Pandemic the schools within FCSD were
19 closed by Emergency Order of Governor Evers on April 16, 2020, as was
20 every other school in the State of Wisconsin

21 53. Due to the school closures, FCSD and nearly every other school district in the
22 State of Wisconsin transitioned to virtual learning.

23 54. FCSD chose to bring their students back to school and reinstated in person
24 learning during the 2020-2021 School year, placing their students in danger of
25 Covid-19 infection.

26 55. FCSD has also resumed extracurricular activities which currently do not have
27 adequate Covid-19 mitigation measures in place, this further increases the
28 opportunity for a Covid-19 outbreak in the FCSD schools.

56. FCSD and the BOARD are also currently allowing visitors and volunteers to
enter the FCSD schools without masks, Covid-19 screenings, or requiring

1 negative test results. Each visitor and volunteer in the FCSD schools brings
2 with them the possibility of a Covid-19 outbreak.

3 57. Similarly, employees at the FCSD schools are not universally masking.

4 58. By bringing students back to class around unmasked staff, reinstating
5 extracurricular activities, and allowing potentially contagious visitors and
6 volunteers into the schools without masks, FCSD and the BOARD threw
7 students into a Covid-19 “snake pit” creating an affirmative duty to keep their
8 students safe from Covid-19.

9 59. The FCSD and the BOARD’S reckless refusal to implement reasonable
10 Covid-19 mitigation measures was the direct and proximate cause SK’s
11 infection and illness.

12 60. By throwing SK and the rest of the FCSD students into the Covid-19 “snake
13 pit” FCSD and the BOARD created an affirmative duty under the Fourteenth
14 Amendment to the Constitution of the United States of America to maintain
15 adequate Covid-19 mitigation measures to protect their students.

16 61. FCSD and the BOARD are aware that by removing their COVID-19
17 mitigation measures they are needlessly and recklessly endangering the health
18 and safety of their students.

19 62. FCSD and the BOARD’s refusal to implement the reasonable Covid-19
20 mitigation strategies recommended by the CDC and the DPI is reckless and
21 shocks the conscious.

22 63. As a result of the unconstitutional conduct of the Defendants, SK was infected
23 with Covid-19 and suffered needlessly.

24 64. PLAINTIFF brings this claim for Declaratory and Injunctive Relief as Next
25 Friend of SK and Plaintiff class representative.

26 **SECOND CLAIM FOR RELIEF**

27 **Equal Protection, Affirmative Duty to Protect-Special relationship (42 U.S.C. §**
28 **1983)**

1 **(SK b/n/f GINA KILDAHL and on behalf of those similarly situated, Against**
2 **SCHOOL DISTRICT OF FALL CREEK; SCHOOL DISTRICT OF FALL**
3 **CREEK BOARD OF EDUCATION; BROCK WRIGHT.; ERIC RYAN ;**
4 **ANNMARIE ANDERSON; JILL GESKE; COURTNEY KNEIFL; JOE**
5 **SANFELIPPO ; and Does 1-10 on behalf of themselves and those similarly**
6 **situated,)**

7 65. Plaintiff repeats and re-alleges each and every allegation in paragraphs 1
8 through 64 of this Complaint with the same force and effect as if fully set
9 forth herein.

10 66. SK and those similarly situated have a cognizable right under the Fourteenth
11 Amendment to the United States Constitution to be protected from Covid-19
12 by the FCSD and Board due to the special relationship between students and
13 school administration created by the initial response to the Covid-19
14 Pandemic.

15 67. During the 2019-2020 and 2020-2021 school years the FCSD and BOARD
16 implemented appropriate COVID-19 mitigation measures, including a
17 universal masking requirement.

18 68. By implementing Covid-19 mitigation measures during the 2019-2020 and
19 2020-2021 school years FCSD and the BOARD deliberately assumed control
20 over SK's physical welfare as it related to the Covid-19 pandemic and created
21 a "special relationship" with him and his classmates in which FCSD and the
22 Board are responsible for his keeping students safe from Covid-19.

23 69. The special relationship between students and FCSD and the BOARD
24 creates an affirmative duty whereby FCSD and the BOARD have a duty
25 under the Fourteenth Amendment to the Constitution of the United States of
26 America to maintain adequate Covid-19 mitigation measures to protect their
27 students.
28

1 70. FCSD and the BOARD breached this affirmative Duty when they removed
2 many of their Covid-19 mitigation measures that were in place during the
3 2020-2021 school.

4 71. FCSD and the BOARD breach this affirmative duty on a daily basis by
5 recklessly holding in person classes after removing their Covid-19 mitigation
6 measures from the school.

7 72. As a result of the unconstitutional conduct of the Defendants, SK was
8 infected with Covid-19 and suffered needlessly.

9 73. PLAINTIFF brings this claim for Declaratory and Injunctive Relief as Next
10 Friend of SK and Plaintiff class representative.

11 **THIRD CLAIM FOR RELIEF**

12 **PUBLIC NUISANCE**

13 **(PLAINTIFF and similarly situated individuals against all Defendants**
14 **and those similarly situated)**

15 74. PLAINTIFF repeats and re-alleges each and every allegation in paragraphs 1
16 through 73 of this Complaint with the same force and effect as if fully set
17 forth herein.

18 75. The Covid-19 pandemic has been a public health disaster in Wisconsin and
19 the United States a whole.

20 76. The Covid-19 pandemic has killed over 8,900 Wisconsinites and
21 overwhelmed our healthcare systems.

22 77. The general public has the right to be free from unnecessary exposure to
23 infectious diseases like Covid-19.

24 78. The general public and Wisconsin communities have a public health interest
25 in limiting the spread of Covid-19.

26 79. By holding classes without adequate Covid-19 mitigation measures the
27 BOARD and FCSD are causing Covid-19 to spread within the district's
28 schools.

1 80. SK and other students within FCSD are being needlessly infected with
2 Covid-19 due to the reckless conduct of FCSD and the BOARD. These
3 infected students then leave school and spread Covid-19 throughout the
4 community.

5 81. By holding classes without adequate Covid-19 mitigation measures the
6 FCSD and BOARD are knowingly, needlessly, unreasonably, and recklessly
7 exposing the public to Covid-19, interfering with the general public's right to
8 be free from unnecessary exposure to infectious diseases like Covid 19, and
9 endangering public health.

10 82. FCSD and the BOARD's reckless and unreasonable conduct caused special
11 injuries to SK. SK became infected with Covid-19 forcing him into
12 quarantine and to miss school.

13 83. PLAINTIFF brings this claim for Injunctive and Declaratory relief on behalf
14 of SK and on behalf of all similarly situated individuals.

15
16 **CLASS ACTION ALLEGATIONS**
17

18 84. PLAINTIFF repeats and re-alleges each and every allegation in paragraphs
19 1 through 83 of this Complaint with the same force and effect as if fully set
20 forth herein.

21 85. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
22 23(b)(2) as the named and absent Defendants have acted or refused to act on
23 grounds generally applicable to the class, making final Declaratory and
24 Injunctive relief appropriate.

25 86. Pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2), Plaintiff brings
26 this action on behalf of SK, and the class, particularly the following Statewide
27 class of similarly situated persons defined as all K-12 students attending
28

1 public schools in the state of Wisconsin who have become infected with
2 Covid-19 at school and their Next Friends.

3 87. Pursuant to Federal Rules of Civil Procedure 23(a) and (b)(2), Plaintiff
4 brings this action against a class of Defendants, particularly a Statewide class
5 of similarly situated School Boards, School Board members and school
6 districts defined as all K-12 public schools failing to implement CDC and DPI
7 guidelines and recommendations for Covid-19 mitigation.

8 88. This action has been brought and may properly be maintained as a class
9 action as it both Plaintiff and Defendant classes satisfy the numerosity,
10 commonality, typicality and adequacy requirements of Rule 23(a)

11 89. The Plaintiff Class consists of all public-school K-12 students who have
12 been infected with Covid-19 while at school, satisfying the numerosity
13 requirement.

14 90. The Defendant Class consists of school boards, school board members,
15 superintendents and school districts refusing to implement the Covid-19
16 mitigation guidance and recommendations for K-12 Schools from the DPI
17 and CDC satisfying the numerosity requirement.

18 91. The claims of Plaintiff as next friend of SK share common questions of law
19 and fact with the claims of the absent members of the Plaintiff Class
20 satisfying the commonality requirement.

21 92. The defenses and conduct of the named and absent Defendant Class
22 members share common aspect of law and fact satisfying the commonality
23 requirement.

24 93. The claims of Plaintiff as next friend of SK have a common origin and share
25 a common basis with the absent class members. Their claims originate from
26 reckless refusal of school boards and school districts to implement reasonable
27
28

1 Covid-19 mitigation measures. As such, the Plaintiff class meets the
2 typicality requirement.

3 94. The conduct of the named and absent Defendants in this action is virtually
4 identical. They have all recklessly refused to implement reasonable Covid-19
5 mitigation measures. As such, both the named and absent Defendant class
6 members should have defenses with a common origin which will share a
7 common basis meeting the typicality requirement.

8 95. Plaintiff is willing and prepared to serve the Court and proposed class in a
9 representative capacity with all of the obligations and duties material hereto.
10 She will fairly and adequately protect the interest of the class and has no
11 interests adverse to, or which directly and irrevocably conflict with, the
12 interests of other members of the class. She has also engaged the services of
13 counsel indicated below. Said counsel is experienced in civil rights and class
14 litigation, will adequately prosecute this action, and will assert, protect and
15 otherwise well represent the named class representatives and absent class
16 members.

17 96. The named Defendants are all from the FCSD and should have the means to
18 defend this action. Given that the action is exclusively for declaratory and
19 injunctive relief there should not be any conflict between the named and
20 absent Defendant Class members. Similarly, this action focuses almost
21 exclusively on questions of law and is not particularly fact specific, as such if
22 the named Defendants' counsel adequately represents the named Defendants
23 in this action, they are also adequately representing the class.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff Gina Kildahl, as Next Friend of SK, and as a class representative, requests entry of judgment in her favor and against Defendants SCHOOL DISTRICT OF FALL CREEK, SCHOOL DISTRICT OF FALL CREEK BOARD OF EDUCATION, BROCK WRIGHT, ERIC RYAN, ANNMARIE ANDERSON, JILL GESKE, COURTNEY KNEIFL, JOE SANFELIPPO, and Does 1-10 on behalf of themselves and those similarly situated, as follows:

- A. For declaratory and injunctive relief.
- B. Attorney Fees and Costs.

DATED: October 11, 2021 FREDERICK B. MELMS Esq

Bv: /s/ Frederick Melms _____
Frederick Melms
Attorney for Plaintiff
Gina Kildahl