STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL OPINION By MARK BRNOVICH ATTORNEY GENERAL December 17, 2021	No. I21-009 (R21-012) Re: Whether A.R.S. § 36-789(M) applies to isolated or quarantined students sent home from a school due to potential exposure to COVID-19

To: Kelly Townsend, Senator
Arizona Senate

Question Presented

Arizona law provides that "[t]he court shall appoint counsel at state expense to represent a person or group of persons who is subject to isolation or quarantine pursuant to this article and who is not otherwise represented by counsel." A.R.S. § 36-789(M). Does the requirement to appoint counsel apply to quarantined or isolated students sent home from a school due to potential exposure to COVID-19?

Summary Answer

If a school relies upon a quarantine or isolation protocol established by a county health department pursuant to A.R.S. §§ 36-788 and 36-789 to quarantine or isolate a student, then all requirements of § 36-789 apply, including the requirement of appointment of counsel contained in § 36-789(M).

Background

Arizona law contains a myriad of provisions allowing the State and local governments to respond to public health emergencies. This includes provisions allowing the State and local governments to combat the spread of highly contagious and fatal diseases. One such provision, A.R.S. § 36-788, permits state and local health departments to isolate or quarantine individuals who have contracted a highly contagious or fatal disease or who have been exposed to the disease.

As to local health departments specifically, A.R.S. § 36-788(B) allows local health authorities to "[r]equire isolation or quarantine of any person." There are, however, a number of conditions that a local health department must satisfy before doing so under § 36-788. First, the isolation or quarantine may only occur "during [a] state of emergency or state of war emergency declared by the governor." A.R.S. § 36-788(B). Second, the local health department must use "the least restrictive means necessary to protect the public health." A.R.S. § 36-788(B)(2). Third, the local health department "must terminate isolation or quarantine of a person if it determines that the isolation or quarantine is no longer necessary to protect the public health." A.R.S. § 36-788(F).

There are also a number of procedural protections, contained in A.R.S. § 36-789, that a local health department must follow when imposing a quarantine. Specifically, the local health department may only require quarantine or isolation without a court order when "any delay in the isolation or quarantine of the person would pose an immediate and serious threat to the public health." A.R.S. § 36-789(A). Otherwise, and in all cases within ten days after imposing a quarantine, the local health department "shall file a petition for a court order authorizing the initial or continued isolation or quarantine of a person or group of persons." A.R.S. § 36-789(B). The court must hold a hearing on the local health department's petition within five days after filing. A.R.S. § 36-789(E). The local health department must establish by a preponderance of the

evidence that isolation or quarantine is "reasonably necessary to protect the public health." A.R.S. § 36-789(F).

Those individuals subject to quarantine or isolation may also seek affirmative relief from a court: "A person or group of persons isolated or quarantined pursuant to this section may apply to the court for an order to show cause why the person or group of persons should not be released." A.R.S. § 36-789(I). The court must hold a hearing on such a petition within 24 hours and issue a decision within 48 hours. A.R.S. § 36-789(I).

An individual subject to quarantine may also "request a court hearing regarding the person's treatment and the conditions of the quarantine or isolation." A.R.S. § 36-789(J). The court must hold a hearing on such a request within 10 days. A.R.S. § 36-789(K). If the court determines that the isolation or quarantine does not comply with §§ 36-788 or -789, "the court may provide remedies appropriate to the circumstances of the state of emergency, the rights of the individual and in keeping with the provisions of this article." A.R.S. § 36-789(K).

Finally, any time an action is initiated under § 36-789(B), (I), or (J), a person or group of persons subject to isolation or quarantine are entitled to appointment of counsel at state expense: "The court shall appoint counsel at state expense to represent a person or group of persons who is subject to isolation or quarantine pursuant to this article and who is not otherwise represented by counsel." A.R.S. § 36-789(M). Moreover, "[r]epresentation by appointed counsel continues throughout the duration of the isolation or quarantine of the person or group of persons." A.R.S. § 36-789(M).

In response to the COVID-19 pandemic, certain local health departments have required school districts to isolate or quarantine students exposed to COVID-19. For example, in August 2021, the Maricopa County Department of Public Health ("MCDPH") announced that public

school students who come in close contact with an individual who tests positive for COVID-19 are required to quarantine at home for 10 days. Close contact occurs when a student comes within six feet of a person with COVID-19 for more than 15 minutes over a 24-hour period. Despite close contact, a student does not need to quarantine if both students used fitted masks at all times, if the exposed student is vaccinated, or if the exposed student has previously tested positive for COVID-19 within the prior 90 days.

To implement these quarantine requirements, MCDPH created a form letter—on MCDPH letter head and signed by MCDPH officials—for school districts to provide to parents or guardians of students required to quarantine due to close contact with COVID-19. The letter explains that "[p]er MCDPH, and in accordance with CDC and ADHS guidance, close contacts who are not fully vaccinated or have not tested positive for COVID-19 in the last 90 days are to quarantine … for up to 10 days."[1] The letter further explains that "[i]f your child is to quarantine per MCDPH and does not develop any symptoms consistent with COVID-19, they may end quarantine after 10 full days following their last exposure." Alternatively, the student may return to school after 7 full days of quarantine if they undergo a test for COVID-19 on day 6 or 7 after last full exposure and receive a negative test result.

MCDPH's form letter also sets forth MCDPH's purported authority for imposing a student quarantine. The only statute cited is A.R.S. § 36-624, which in relevant part provides that "the county health department or public health services district may adopt quarantine and sanitary

[1] MCDPH's form letter is available online at https://www.maricopa.gov/DocumentCenter/View/70635/MCDPH-Letter-to-In-School-COVID-19-Close-Contact--Student?bidId (last visited Dec. 15, 2021).

measures consistent with department rules and *§§ 36-788 and 36-789* to prevent the spread of the disease." (emphasis added).

Upon information and belief, many (if not all) school districts located in Maricopa County are utilizing MCDPH's form letter to impose student quarantines. For example, the Scottsdale Unified School District's 2021-2022 Safe Return to In-Person Instruction Plan provides that "[a]ny unvaccinated student determined to be a close contact of a confirmed COVID positive person is required by the Maricopa County Department of Public Health to quarantine for 10 days or until a negative COVID case result is presented to the school nurse, per MCDPH guidelines."[2]

Analysis

When a school district enforces a quarantine requirement enacted by a local health department pursuant to A.R.S. § 36-788, the procedural requirements in § 36-789 apply, including appointment of counsel at state expense for court proceedings brought under A.R.S. § 36-789(B), (I), or (J). *See* A.R.S. § 36-789(M).

This conclusion stems from the plain language of A.R.S. §§ 36-788 and -789. When interpreting a statute, courts follow the rules of statutory construction and first look to the statutory language. *State v. Williams*, 175 Ariz. 98, 100 (1993); *Patterson v. Mahoney*, 219 Ariz. 453, 456, ¶ 9 (App. 2008). "When construing a statute, [the courts'] goal 'is to fulfill the intent of the legislature that wrote it.'" *City of Sierra Vista v. Dir., Ariz. Dep't of Env't Quality*, 195 Ariz. 377, 380, ¶ 10 (App. 1999). If the statutory language "is clear and unequivocal, it is determinative." *Patterson*, 219 Ariz. at 456, ¶ 9. If a statute is ambiguous, on the other hand, courts look to rules of statutory construction and "'consider the statute's context; its language, subject matter, and

[2] Scottsdale Unified School District's 2021-2022 Safe Return to In-Person Instruction Plan is available online at https://www.susd.org/Page/5012 (last visited Dec. 15, 2021).

historical background; its effects and consequences; and its spirit and purpose.'" *Callan v. Bernini*, 213 Ariz. 257, 260, ¶ 13 (App. 2006).

There is nothing ambiguous or equivocal about A.R.S. § 36-789(M). If all of the statutory requirements are met, a local health department may require that an individual quarantine or isolate. Ordinarily, the local health department is required to obtain a court order imposing a quarantine. Even if a local health department imposes a quarantine without a court order, however, the individual subject to quarantine is entitled at any time to challenge a quarantine in court. An individual is also entitled to request a court hearing regarding the person's treatment or the conditions of the quarantine. The language in A.R.S. § 36-789(M) unambiguously provides that the court shall appoint counsel at state expense in any of those circumstances, and there is no exception that would apply where a school district enforces a quarantine requirement enacted by a local health department pursuant to A.R.S. § 36-788.

For example, under MCDPH's quarantine requirements, which appear to be issued pursuant to A.R.S. § 36-788, MCDPH, through public schools, is mandating student quarantines without a court order.[3] Once a parent or guardian receives the MCDPH letter requiring quarantine, the parent or guardian is entitled under § 36-789(I), on behalf of the student, to immediately seek a court order lifting the quarantine. Unlike § 36-789(J), which arguably requires MCDPH to obtain a court order only to extend a quarantine beyond ten days, § 36-789(I) allows a parent or guardian to immediately seek a court order lifting a quarantine. And once a parent or guardian requests court review, A.R.S. § 36-789(M) requires the court to appoint counsel for the student at state

[3] Whether doing so complies with the statutory requirements is beyond the scope of this Opinion.

expense.[4] Similarly, if a parent or guardian files an action on behalf of the student challenging the conditions of a quarantine, the court is required to appoint counsel for the student at state expense.

Conclusion

If a school relies upon a quarantine or isolation protocol established by a county health department pursuant to A.R.S. §§ 36-788 and 36-789 to quarantine a student, in any court action to establish or challenge the quarantine, A.R.S. § 36-789(M) requires the court to appoint counsel for the student at state expense.

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[4] The term "state expense" is not defined in the statute. That term, however, could reasonably be interpreted to mean that counsel shall be appointed at the expense of the governmental entity imposing the quarantine, including a county health department. *See Amphitheater Unified Sch. Dist. No. 10 v. Harte*, 128 Ariz. 233, 234 (1981) ("The usual meaning of the term 'state' is not easily determined because it has been defined and used in various ways in statutes and court decisions."). Moreover, if an individual challenging a quarantine is indigent, it may be appropriate for the court to appoint the public defender to represent the individual's interests. *See* A.R.S. § 11-584(A)(10) (providing that the public defender shall appear as counsel for any individual "who is entitled to counsel as a matter of law and who is not financially able," including in "any other proceeding or circumstance in which a party is entitled to counsel as a matter of law if the court appoints the public defender and the board of supervisors has advised the presiding judge of the county that the public defender is authorized to accept these appointments as specified.").