



# Arkansas Department of Health

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Governor Asa Hutchinson  
José R. Romero, MD, Secretary of Health

## MEMORANDUM

TO: Secretary Johnny Key, Arkansas Department of Education

FROM: Secretary José Romero, Arkansas Department of Health *JR 9.3.21*

DATE: September 3, 2021

SUBJECT: Isolation/Quarantine Authority

The COVID-19 Delta variant is now the predominant COVID-19 strain in Arkansas. The Delta variant is two-to-three times more transmissible, which means that an infected person can spread COVID-19 to twice as many people as observed earlier in the pandemic. The COVID-19 Delta variant appears to cause more severe disease and a greater likelihood of hospitalization in unvaccinated young people than we observed earlier in the pandemic. While adolescents over 12 years of age and adults can be protected from the Delta variant by the COVID-19 vaccines, children under 12 remain at high risk. Children represent an increasing proportion of new COVID-19 cases, including hospitalizations and severe disease. In light of the spread of this more transmissible variant (and potential future strains), ADH and ADE should continue to urge schools to maintain as many mitigation measures as possible, or risk increased spread within the school setting.

To address any concerns about the authority of the Departments to utilize quarantine and isolation measures, the laws of the State of Arkansas provide guidance. The Secretary of Health, in consultation with the Governor, has authority over all instances of quarantine and isolation throughout Arkansas, as necessary and appropriate to control disease in the state of Arkansas, as authorized by Ark. Code Ann. §§ 20-7-109 and 110 (2021); see also Board of Health Rules Pertaining to the Control of Reportable Diseases (2019) (providing for the prevention and control of communicable diseases to protect the public health, welfare, and safety of the citizens of Arkansas). The State Board of Health imposes certain responsibilities on the Director of the agency, “[w]hen the Director has knowledge, or is informed of the existence of a suspected case or outbreak of a communicable disease, [he] shall take whatever steps necessary for the investigation and control of the disease.” See Rules, Section VII, page

10. Additionally, the Director shall impose such quarantine restrictions upon all individuals that may be necessary to prevent the introduction of communicable disease within the State. See Rules, Section X, page 11.

Moreover, it is the duty of local health officials or a school physician or nurse to make examinations for contagious or infectious disease. See Ark. Code Ann. § 6-18-701 (Repl. 2018). Generally, isolation is a temporary separation, for the period of communicability, of a known infected person in such places and under such conditions as to prevent or limit the transmission of the infectious disease. Quarantine is the temporary restriction of the activities of persons who have been exposed to a communicable disease, during its period of communicability, to prevent disease transmission. Contact tracing is a best practice tool used by health officials around the world to stop the spread of disease by contacting those that need to quarantine. Indeed, it is the duty of a principal or other person in charge of any school, or childcare facilities to exclude any child, teacher or employee affected with a communicable disease until the individual is free from it. See Board of Health Rules Pertaining to the Control of Reportable Diseases, Section XIV.<sup>1</sup> These particular delegations of authority are consistent with longstanding law regarding public health challenges. See Jacobson v. Commonwealth of Mass., 197 U.S. 11, 27 (1905) (holding that the authority to respond to a public health crisis must be “lodged somewhere” and to vest such authority in officials “appointed, presumably because of their fitness to determine such questions” is not unusual or unreasonable.)

Finally, it should be noted that, in Jacobson, the Supreme Court held that, when faced with a public health crisis, a state may implement measures that infringe on constitutional rights, subject to certain limitations. The Court explained that the “liberty secured by the Constitution . . . does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint.” Id. at 26. While constitutional rights do not disappear during a public health crisis, “the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint, to be enforced by reasonable regulations, as the safety of the general public may demand.” Id. at 29; see also In re: Leslie Rutledge, et. al., No. 20-1791 (8<sup>th</sup> Cir. April 22, 2020).

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<sup>1</sup> The General Assembly reviewed and approved the most recent version of the Rules in 2018 to be effective in 2019. The Rules authorize the Secretary of Health to take this particular action during a public health crisis. The Administrative Procedure Act explicitly states that it does not “repeal delegations of authority as provided by law.” Ark. Code Ann. § 25-12-202.