

# **Legislative/Systems Improvement Committee**

## **Zoom Meeting for all members**

**Wednesday, October 20, 2021**

**10:00 A.M.**

### **MEETING SUMMARY**

*In attendance on Zoom conference:* Tony Podojil, Jessica Voltolini guests Julie Martin and Derek Towster (Scott Scriven), and member representatives from 60 school districts.

Tony Podojil convened the meeting by zoom conference at 10:00 a.m. The primary focus of this meeting was to give an update on current legal issues regarding mask mandates, quarantine, HB244, vaccinations, board meeting reminders, and ESSER funding.

#### **Lawsuits**

Mr. Towster described the 9 lawsuits filed against school districts in Ohio that are based on challenges related to mandating mask for student use.

He stated that with two of the lawsuits, the judge ruled that the cases had no merit and denied the preliminary injunction.

In the southern district of Ohio's federal court, three lawsuits were filed by parents representing their minor children by proxy. However, Ohio has a precedent that states parents cannot bring complaints on behalf of their minor children unless the parents are represented by an attorney. If a parent sues on the behalf of a minor child, it exhausts the rights of the minor's statute of limitations rights that the child will own at age 18. In addition, if a parent represents the child, the parents are practicing law without a license. As a result, these three cases were dismissed from court based on the above. If the parents find an attorney these cases can be refiled.

The northern district has four cases, which have motions to dismiss due to the situation involving parents representing their children as described above. These have not been ruled on yet.

All these Federal cases are being filed based on various constitutional violations that stem from the idea that masks cause harm to the wearer. Parents are alleging that the school district is denying their children the constitutional right to a public education in a safe environment leaving them with the choice of masking their child or keeping the child home.

#### **HB244**

Ms. Martin updated the members on the provisions related to HB244, a law which went into effect on October 13, 2021. HB244 states that public school districts cannot require an individual to get a vaccine that has not been granted full FDA approval and can't discriminate against any individual that has not gotten a vaccine that has a full FDA approval. This includes requiring those individuals to engage in or refrain from activities or precautions that differ from activities or precautions that a person that is vaccinated with an FDA approved vaccine.

On August 23, 2021, the FDA approved the vaccine for ages 16 and older, however, children 12 and older can receive the vaccine but ages 12 thru 15 are not FDA approved. This law applies to students under 16 years of age, school districts can develop policies related to quarantine based on vaccine status for students under the age of 16.

The local department of health would have to issue an order to quarantine for those students. This will be a concern for parents that believed by vaccinating their student the student would be able to remain in school rather than quarantining. Another option that some districts are using is contact tracing letting parents know that the student has been exposed but can return to school with modified safety protocols.

The local health departments have expressed concerns regarding the option of having all students return to school. It is suggested that districts review what their district's board policy states. Several districts were adopting policies that go beyond mask covering policies to include broad statements that talk about following DOH mandates and requirements. Districts want to be sure they are not in conflict with HB244.

Some districts are working with the DOH by doing the contact tracing and then asking the DOH for a letter to go with the request to quarantine. The DOH can then follow up with quarantine request.

For a sample letter you can view the Franklin County Public Health website.

Jessica will keep members posted on updates to this law around November 3, 2021.

### **Mask mandates**

Potential lawsuits could result from parents suing based on mask mandates if a school district was to impose a mask mandate for grades K- 5 and not other grade levels, this would be considered discrimination based on those students' vaccination status. To plan for that potential situation districts should think about masking policies moving forward, put in writing the reason for the mask mandate which should include non-discriminatory legitimate reasons for the mask mandate such as your districts COVID rates or the ability of older students to follow social distance guidelines compared to younger students.

A few other potential lawsuits could focus on violations related to an individual's right to free practice of their religion and a disability-based exemption. Districts should review each request for an exemption in the same way districts would review any request based on section 504. Document the decision that was made by the district.

### **Public meetings**

Ms. Martin suggested that superintendents read the National School Board Association's letter to President Biden requesting federal assistance to stop threats and acts of violence at school board meetings, many examples came from Ohio school districts.

Although it is not required, most boards allow the public time to speak at a regular board meeting. Once the board allows for public comment the first amendment limits the board's ability to regulate that speech. The board can impose time, place, and manner restrictions on public comment, but it cannot engage in viewpoint discrimination.

Speakers have the right to express their opinions and the board must accept it, but the board can change its policy based on the process included in their guidelines. Districts can change the policies to remove public comment, limit to residents of the district only, limit public participation to people that sign-up in advance,

hear comments only on topics that are on the agenda, and /or move all public participation to the end of the meeting.

Districts that have NEOLA have bylaws allowing public participation with specific ways in which bylaws can be changed.

Board Policies can not prohibit language that is abusive, directed to one person, or antagonistic based on a decision from the 6<sup>th</sup> Circuit Court of Appeals because it is viewpoint discrimination. Be sure to check your policies to be sure the language does not violate constitutional rights.

Be sure your board members know how to manage a board meeting. They should be aware of when they can and cannot recess a board meeting. Before you are in a meeting, reading a statement that shares what the district's mission is and that everyone is to conduct themselves civilly and respectfully during the meeting is a good practice.

Seating arrangements is another option to consider, by social distancing people and board members it allows space from each other during conflict.

Reconsider live streaming your meetings, maybe record them and then post the meeting on your website. If you decide to continue with live streaming, consider dismantling the live comment feature. Have the camera and audio focused on the board's comments.

Consider surveillance and where you are holding your meetings for the safety of both board members and the public attending. Any potential of banning certain people from board property you have surveillance behavior for potential action.

Involving law enforcement, Ohio revised code 2917.12 states that no person can do any act which obstructs or interferes with the due conduct of such meeting, procession or gathering and whoever violates this section is guilty of disturbing a lawful meeting, a misdemeanor of the fourth degree. You should have a plan in place with local law enforcement to see if they are willing to intervene in a meeting and how they are willing to intervene. (i.e., escorting someone out, issue a citation, only be present at the meeting)

### **Member Question:**

How to use Roberts rules of order?

Think about how to recess a meeting, motion to recess for a certain amount of time, second the motion, clear the room, have board members leave the room. Make sure Board members walk out of the room to defuse the situation, do not talk about public business until the board is back in the meeting. You can then amend the agenda to complete the business on the agenda and move public comments to the end of the meeting. When in recess be sure to turn off recording devices.

### **HB248 and HB435 (Vaccinations Restrictions)**

Jessica stated these bills are paused; Jessica will keep members posted moving forward.

### **SB229 Flexibility on Blended learning plans**

Passed Senate Education Committee yesterday afternoon, the Senate is voting on the bill today, then it will move to the House Education Committee. Jessica will send the as passed language of the bill to members with more information as it unfolds.

## **SB1 Financial Literacy**

The legislation now include the flexibility for substitute teachers, this is pending the Governor's signature. Jessica will let us know when it is signed.

Jessica and Tony will share updates on the ESSR funding (Rounds 2 and 3) and the distribution methodology that negatively impacts many Alliance members as available. Meetings have been scheduled in the Seante to introduce a solution to this situation.

### ***Next Meeting:***

The next meeting is **TBD**.

The meeting adjourned at 11:15 a.m.