

## **Locust Valley Board of Education Meeting 1-18-22**

### **November 24<sup>th</sup> extension.**

Determination was still being called an emergency regulation.

For the reason that the Department of Health did not file a notice of proposed rule-making opened up for public commentary on December 15<sup>th</sup>, this was repealed and adopted as new.

This was done because they failed to do something previously that was a procedural requirement to extend that emergency regulation and query whether or not they have the authority to adopt a new, November emergency regulation that was identical to the previous one.

Kept the same language as the August 27<sup>th</sup> document.

### **December 10<sup>th</sup> addition to the 2.60.**

Slipped in taking away mask breaks in schools as well as indoor masking for all of New York State.

Wording was changed to Emergency *Proposed* Regulation.

Changed the language of the November 24<sup>th</sup> document in order to file on December 15<sup>th</sup> with the New York State Register and follow proper SAPA procedures.

### **New York State Register.**

Department of Health is following SAPA procedures to put forth the emergency regulation to become a permanent regulation on February 24<sup>th</sup>.

If this happens, then the permanent regulations will carry the weight of the law as opposed to an emergency regulation that cannot be continually renewed without following SAPA.

Open for public comment until February 14<sup>th</sup>.

Upon the expiration of the November 24<sup>th</sup> determination (February 24<sup>th</sup>) and the acceptance and filing of the proposed regulation, the determination will become law.

### **Dangers of an emergency regulation becoming a permanent regulation.**

Takes away the branches of government.

Takes away the checks and balances.

Gives the Department of Health full-blown, totalitarian control to make any decisions under a public health crisis as decided by themselves.

Nothing would have to go through the New York State Assembly.

Any bills, such as the A416 encampment bill, the COVID mandate bill, or the bill giving school nurses the ability to administer COVID-19 shots and other immunizations to children can be pushed through the Department of Health permanent regulation.

They will never have to pass unfavorable bills through the Assembly.

Once this becomes permanent, it affects 19 million people, not just children.

### **Current situation.**

The fact that the Department of Health is following SAPA to put this permanent regulation through proves that we are not living under a law right now.

Those who are going public stating that Blakeman is disobeying have failed to provide the actual law he is "disobeying."

Continuing to keep ourselves and our children masked is keeping this non-law alive because right now, we are in a "legal dead-zone."

Department of Health is waiting to get to the end zone of February 24<sup>th</sup> and those wearing a mask is helping them to get there.

Department of Health, although following SAPA now, gave themselves the ability to surpass SAPA in August and November.

Between November 24<sup>th</sup> and December 10<sup>th</sup>, we were in "no-man's land."

Not only are rules not making sense, but they do not work.

37 other states have no mask requirements in place.

Hypothetically, on February 1<sup>st</sup> when the indoor mask policy expires, people would be able to go back into the public freely with no masks, but children still cannot be mask-free in school until February 24<sup>th</sup>.

A couple of weeks ago, the Department of Health declared mental health in children a public crisis.

### **United States Constitution.**

Article III grants all lawmaking power to the Senate and the House.

Every day, boards of education are violating Article III by following determinations not made by the legislature.

### **Emergency Session for the New York State Assembly in August 2021.**

Called in to extend the rent moratorium.

Multiple bills were brought to the floor, including a bill by Dinowitz and Holyman for the vaccine mandate.

No bill regarding masking was brought to the floor because it is unconstitutional.

### **Other districts.**

Looking at a certain date after February 24<sup>th</sup>, somewhere in March.

Open to negotiation regarding a metric such as a number of cases per 10 thousand, a hundred thousand population in Nassau County or within a own township or within their own building.

### **NSSBA (Nassau-Suffolk School Boards Association).**

As paying members, they have been lobbying for school boards.

They should be writing a letter to Governor Hochul on behalf of their members asking for an end game.

Lorraine Deller (Executive Director) stated that Michael Kelly's letter only pointed out that the County Executive does not have the authority to require school boards in Nassau and Suffolk County to vote on this issue in January; it was not about masking vs. unmasking.

According to legal, they may be saying it's more probable that the County Executive did not have the authority to require boards of education to vote on the issue.

### **NYSUT (New York State United Teachers).**

Put up a regulation in the New York State Register to allow school nurses to give students shots.

### **Preemption Document.**

Questionable as to if the field has already been preempted by virtue that the County Executive is issuing orders that are inconsistent with the Department of Health regulation.

## **BOARD QUESTIONS**

- 1. Would the Locust Valley Board of Education consider allowing the determination to expire and allow children to choose and parents to choose what's best for their own children?**

**Lauren** – Would allow it to expire and give parents the choice.

**George** – Not ready to answer that question. Waits to await more answers from Chris.

- 2. Is the Locust Valley Board of Education willing to draft a letter of their concerns, including the current status of the district, to Governor Hochul?**

**Shawn** – I'm open.

**John** – Yes

**George** – Sure.

**Brian** – Ok, I am as well.

**Questions and Answers between Locust Valley Board of Education trustees and Ingram Smith Attorney, Chris Venator.**

**Q.** Was the letter from Michael Kelly of NSSBA a result of a legal consultation?

**A.** \*Not answered at this time\*

**Q.** Would Ingram Smith put in writing that Bruce Blakeman does not have the authority?

**A.** What we're going to put in writing is analysis of the law and to recite a couple of important doctrines such as the Municipal Home Rule Law and the Preemption Document as well as the issues surrounding whether or not the County Executive has been delegated with the authority to regulate in this area. We will give you an opinion reflecting what we believe the probable outcome would be if this were to be litigated and some of the potential consequences that we think you should be aware of. We're going to opine on the particulars of the Municipal Home Rule Law, the Preemption Document and give you our best legal analysis of where you stand and what the probability of anybody being able to successfully challenge the Department of Health and their law and the ability of the County Executive to issue an Executive Order that's inconsistent with the Department of Health regulation.

**Q.** Are you going to opine on the fact that the determination 2.60 includes section 7 which is indoor masking for the whole state and one of his Executive Orders was to unmask the county workers who are in the State of New York and that there hasn't been any article 78 or emergency injunction put against Blakeman for violating that portion of 2.60?

**A.** I don't think that was our focus. Our focus was more on addressing the issue about masking in school and whether or not the County Executive has the authority to require boards to vote by the end of February concerning, the Department of Health's requirement to have masks in schools. That's what we were focusing on, and we will focus on.

**Q.** Is there no concern that they're picking and choosing within one, one determination?

**A.** \*Not answered at this time\*

**Q.** Wouldn't there have to be consistent legal action taken across each component of 2.60? Wouldn't there have to be consistent recourse or response from the Governor's office regarding all of 2.60?

**A.** There could be. There could be some determination with respect to one component and a different determination with respect to another component.

**Q.** Last week, the Locust Valley Board of Education was on record stating "no, we give mask breaks, we give mask breaks." Have we received any correspondence from the state that we're not following 2.60 section 3, elimination of mask breaks?

**A.** No.