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November 30, 2020

ISSUED VIA REGULAR AND ELECTRONIC MAIL

Mr. Eric J. Zgodzinski, MPH, RS, CPH
Secretary, Lucas County Regional Health Board of Directors
Email: boardofhealth@co.lucas.oh.us
635 N. Erie Street
Toledo, Ohio 43604

Re: Resolution No. 2020.11.189

Dear Mr. Zgodzinski:

Please be advised that I have been retained to represent the Ohio Christian Education Network (“OCEN”), a network of private religious institutions facilitated by Citizens for Community Values with networked schools in your community (“Member Schools”), regarding Lucas County Regional Health Board Resolution No. 2020.11.189. The purpose of my writing is to respectfully request the Board revisit the Resolution prior to its effective enforcement date of December 4th. The reasons underlying my request are more particularly set forth in the paragraphs that follow.

For a period of time lasting from December 4th until January 11th, the Board resolved as follows:

- Member Schools cannot remain open to provide in-person instruction for students in grades 7-12 unless the school has a K-8 configuration (in which case they may remain open for in-person instruction for all grades).
- Member Schools may remain open to provide in-person instruction for students in grades K-6.
- Member Schools may open their buildings “to hold religious educational classes or religious ceremonies...to hold exams, [for] staff to provide virtual instruction, and for special needs education requiring in-person instruction.”
- Member Schools cannot open the interior space of their buildings for sports practices and games or extracurricular activities.

Well-intended as the restrictions may be, the Resolution is unconstitutional because it lacks a narrowly tailored, compelling governmental interest to violate the First Amendment rights of Member Schools to freely exercise their religion. “[E]ducating young people in their faith, inculcating its teachings, and training them to live their faith are responsibilities that lie at the very core of the mission of a private religious school.” *Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2064 (2020).



Moreover, the Supreme Court has held, “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976). If the Resolution is enforced through January 11th, Member Schools will be effectively barred from: (i) providing daily in-person mentorship and training of religious values for several grade levels (inarguably less effective in a virtual context), (ii) engaging in corporate prayer throughout the day, (iii) collectively sharing musical worship and communal recognition, and (iv) spiritually encouraging and praying for individual students (who may be profoundly suffering through the isolation of this pandemic). Each of these religious rights and responsibilities is sacred to Member Schools and the families who choose private religious education, and – as a consequence – are guaranteed by the First Amendment.

The Resolution’s practical repercussions mirror its constitutional overstep. For the grade 7-12 students targeted by the Resolution, numerous studies have detailed the profound negative consequences forced quarantine and isolation causes among their demographic. Across the country, this age group has seen exponential increases in severe depression, anxiety disorders, suicide attempts, substance abuse problems, and mental health-related pediatric emergency department visits. Meanwhile, Member Schools stand poised to provide not only top flight educational experiences, but they offer these very students purpose, faith, and abiding hope. Member Schools are motivated by the deeply-held conviction, certainly now more than ever, that they are called by God to provide in-person instruction for all of their students, in every facet of the educational experience, especially those in grades 7-12.

Turning to the Board’s governmental interest, the Resolution cherry-picks scientific support exaggerating concerns over in-person instruction’s impact upon transmission. As an initial matter, the Resolution forbids in-person instruction for grades 7-12, yet permits in-person instruction for grades K-6 and fails to address instruction for pre-schools and colleges and universities. The Board’s reasoning for inconsistent restrictions remains not only unsettled among the scientific community, but contradicted by leading public health officials. The inconsistencies do not end there.

On the one hand, the Board’s President indicated “there is enough community spread going on that the coronavirus could move into schools.”¹ On the other, the Board does not address community spread, having decided, apparently, that social distancing protocols are sufficient for offices, laundromats, liquor stores, or even casinos (Hollywood Casino Toledo remains open for business, daily). In other words, if you’re interested in playing a couple of hands of blackjack, just wear a mask, observe social distancing protocols, and good luck! If, however, you’re interested in preparing 11th graders for the SAT (or life after high school), your only option is to roll the dice with remote learning...

Just as there are studies detailing the consequences for lonely adolescents, there are equally compelling studies indicating in-person instruction is preferable to remote learning (and does not cause community spread). Comprehensive studies from UNICEF, the European Centers for Disease Control, and the CDC have concluded in-person instruction is not an accelerant to transmission. On November 19, 2020, CDC Director Robert Redford stated, “[t]he truth is, for kids K-12, one of the safest places they can be, from our perspective, is to remain in school” and that it is “counterproductive...from a public health point of view, just in containing the epidemic, if there was an emotional response, to say, ‘Let’s close the schools.’” Yesterday, NIAID Director Dr. Anthony Fauci, during an interview now widely reported upon by the national media, stressed: “Close the bars and keep the schools open...The default position would be to try as best as possible, within reason, to keep

¹ WTOL Newsroom Article: “Health Board Orders Virtual Learning...” – published November 25, 2020.



the children in school. If you look at the data, the spread among children (and from children) is not really very big at all – not like one would have suspected.”

It also appears the Board may not have fully considered relevant local data when making its determination.² During the meeting announcing the Resolution, impacted superintendents attempted to communicate statistical data sets to the Board but were not afforded the opportunity to share. Dr. Adam Fineski, Superintendent of Ottawa Hills Local Schools (973 students in grades K-12), explained his desire to share the district’s experience effectively educating students under operative protocols – Ottawa Hills had only 13 positive cases over the course of 14 weeks of daily in-person instruction.³ Expressing some measure of consternation with the Resolution, Dr. Fineski referenced the mental health needs of his students in grades 7-12.⁴ The bottom line is the Resolution is inconsistent and without practical support; existing data and scientific recommendations do not support targeted regulations for isolating students in grades 7-12.

Accordingly, OCEN respectfully requests that the Board rescind the Resolution prior to its effective enforcement date or, at the very least, postpone the Resolution’s enforcement date until Member Schools have been provided with an opportunity to be heard. While litigation in the constitutional context of this issue is always an option, we are all stakeholders in the shared future of how the Lucas County community handles this virus and the education of its children in grades 7-12. Rather than resorting to that, OCEN and Member Schools prefer to sit down with the Board to discuss how to best balance competing interests to develop the most reasonable path forward for our students and the safety of our community. Please contact me at your earliest convenience to arrange a time to discuss. Obviously time is of the essence.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. Fox', with a long horizontal flourish extending to the right.

Brian W. Fox, Esq.

BWF:mf

² The Resolution ignores the overwhelming costs borne by families and businesses throughout the community, who must adapt to execute on the remote learning model and ensure the safe care of students now quarantined in their homes.

³ *Id.*

⁴ *Id.*