

EXECUTIVE SUMMARY

Topic: Lawsuit to Challenge the Constitutionality of Act 1002

Short Summary:

I am recommending to the Little Rock Board of Education that we formally challenge the constitutionality of Act 1002. In the event that the State Legislature repeals Act 1002, this lawsuit could be dismissed. I am asking the Board to address this at a special meeting on Wednesday after our Town Hall meeting at Hall H.S. This meeting would begin at 7:00 PM and would be a single item issue for the Board to consider and potentially take action.

It is my responsibility as the Superintendent of Schools to protect all students and staff. I am concerned that the State Legislature may not repeal 1002 and that would not leave us with an option to mandate masks. There are actually at least two action items for the State Legislative body to consider. One is would allow school districts to create their own policy regarding mask mandates and the other would be an emergency clause which would also have to be approved. The latter requires a 2/3 vote by legislators to approve the emergency clause. Governor Asa Hutchinson has done everything in his power to take action based on medical data and research, input from stakeholders, and a common sense approach. His declaration of a Public Health Emergency is needed at this time and I appreciate his focus on the medical community as well as his efforts to allow local school authorities to create a mask policy. I hope that our community will be supportive of our approach to tackle the challenge of COVID-19 and the new Delta variant. We have to be responsible and have a clear plan for the start of school.

This Spring, the Arkansas State Legislature approved a law that prevents public entities like the LRSD from mandating masks. This Act is unconstitutional on four fronts that you will be able to see with the proposed draft lawsuit that is attached. The four pillars are:

1. Violates Article 14 Sect. 1.
2. Equal Protect Article 2 Sect. 3
3. Federal Preemption
4. Separation of Powers

This lawsuit can be joined by our sister school districts. Those school boards would need to take their own formal action to become a partner in this lawsuit.

Background:

The Little Rock School District has been a part of conversations with all the key medical leaders in this community. These same stakeholders are leading at the State level, with Little Rock being a hub of support for medical care. We have also reached out to our community to better understand their comfort with masks. Results from a recent District wide survey (4,031 respondents) indicated that the majority were comfortable with masks. (Survey Attached) This past week we have already had two significant groups of students impacted by COVID-19 as we had to quarantine the Pinnacle View M.S. football team and quarantine a large number of our SW Volleyball team. This ties with State numbers released on July 29 that indicated over 2,800 positive cases and clear data that showed the Delta variant creating more severe health issues for those not vaccinated.

This District has been proactive in getting both students and staff vaccinated. Success on vaccinations has been easier to achieve with staff and I am confident that over 70% of our staff have received both shots. We have had less success with student vaccinations, my best estimation is that less than 10% of our eligible students have actually received vaccinations. Obviously, we also have a large number of students who are not eligible for a vaccination under

12 years of age who will attend our preschools and elementary schools in several weeks.

It is of interest that our hospitals already have a mask mandate and this week, federal courts have instituted a mask mandate.

Recommendation:

- **Action Steps for Board of Education**

The action step needed from the Board would be a motion to authorize the Superintendent to pursue this action. Such wording could be as follows:

I move that the LRSD Board of Directors authorize the Superintendent to proceed with filing a lawsuit to formally challenge the constitutionality of Act 1002.

Action Steps to be taken:

If approved by the Board of Education, we will work with Chris Heller of the Friday Firm to file the lawsuit. We also will provide updates to any school district or other political entity that is interested in potentially joining us.

The Ready for Learning Committee will need to provide recommendations mask compliance for the upcoming year.

Key Points:

There are numerous factors that drive us forward with a recommendation to file a lawsuit.

1. We believe that the State Legislature passed a law that is flawed and unconstitutional.
2. We realize that the Delta variant is a whole new health factor for us to address. This variant is far more transmittable than past variants.
3. We still have not come close to herd immunity with vaccines. LRSD will continue to provide vaccine clinics for students, staff, and parents. We also will promote vaccine clinics in the community as we are made aware of them.
4. Our local medical community is taxed. Local hospitals are quickly running out of space, they are experiencing high numbers of staff needing to be quarantined, and they are dealing with patients with significant health issues that basically match where we were as a State back in January and February. It should be noted that Children's Hospital on July 29, 2021 had admitted over 20 patients who had COVID-19. MIM's is also challenged to get patients to a hospital with a bed.
5. We have reached out to multiple attorneys to seek advice on the basis of this lawsuit and feel confident that we are correct in our position.

Key Players:

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Fiscal Impact

Legal costs on this matter will be limited. This is not like a personnel matter that can last for months or years. We would expect a quick hearing on this request and we do not anticipate this issue to go past two months. We expect an expedited hearing on our request for a preliminary injunction, and the result of that hearing will, as a practical matter, decide the case. Unless there is an appeal, the cost should be well below \$10,000. We will continue to share resources, research and information with other potential parties in order to reduce the cost of litigation.

REFERENCES:

- I.** Agenda for the Aug. 4 Special Meeting
- II.** Draft of the Lawsuit
- III.** Survey Results on LRSD Ready for Learning

Date submitted _____

Submitted by _____