

STATE OF RHODE ISLAND
 PROVIDENCE, SC

SUPERIOR COURT

RICHARD SOUTHWELL, et al.

:
:
:
:
:
:
:
:
:
:

Plaintiffs

vs.

C.A. No. PC2021-05915

DANIEL J. MCKEE, et al.

Defendants

PLAINTIFFS' MOTION FOR DISCOVERY

After the State Defendants filed their Motion for Judgment on the Pleadings, and during oral argument on May 2, 2022, this Court stayed further discovery pending its decision. Since that stay, Plaintiffs have uncovered evidence that these State Defendants misled the Court to believe the case was moot because there would be no more mask mandates. In accordance with the Rule 26(b)(1) and Rule 30(a)(2), of the RI Superior Court Rules of Civil Procedure, Plaintiffs seek the following:

As Plaintiffs previously notified this Court, they discovered that an unsigned May 19 RIDOH memo had been sent to School Administrators recommending that they reinstitute a "universal mask policy". Despite repeated requests by the Plaintiffs for the identity of the authors of this memo, the State has refused to do so, stating instead "Any further inquiries or issues can be dealt with during the pending litigation and in accord with the Rules of Civil Procedure." Given no other choice, Plaintiffs seek a Rule 30(b)(6) deposition of RIDOH.

Moreover, Plaintiffs pointed this Court to public statements made by Dr. Philip Chan, that since Rhode Island is no longer in a pandemic due to COVID-19, mask mandates are no longer needed in Rhode Island, and that the decision to mask should be a personal one.

“We certainly agree with it, that when our community levels are high like they are now, that people should mask when they’re indoors,” he said. “But we’re not going to be mandating it. We strongly recommend it, but at this point in the pandemic, certainly as we learn to live with the virus, it’s really up to people to make their own personal decisions.” *See attached*, <https://www.wpri.com/health/coronavirus/school-updates/central-falls-schools-reinstate-mask-mandate/>

The State Defendants have refused to provide Plaintiffs with access to Dr. Chan, and therefore we asked that he be compelled to appear for a deposition regarding these public remarks.

Plaintiffs have also discovered the existence of a “K-12 Working Group, which includes RIDE’s Deputy Commissioner Kelvin Roldan and Associate Chief of Staff Maureen Dizon, meets at least once a week and includes representatives from both RIDOH as well as the Governor’s Office.” Confronted with the State Defendant’s assertion to this Court that neither the Governor nor RIDOH are mandating masks, yet they are secretly meeting with education officials and apparently telling them something to the contrary, Plaintiffs should be entitled to discovery including depositions of the members of this “K-12 Working Group”.

Next, Plaintiffs discovered that “Jaime Comella, MPH, Director, Epidemiological Operations at RIDO’s Covid-19 Unit [was] most responsible for communicating to RIDE that the May 19, 2022 RIDOH memo should be interpreted as recommending that school districts located in “high” tier communities mandate the wearing of face masks while in school.”

Plaintiffs seek to take the deposition of Ms. Comella.

Finally, Plaintiffs seek the deposition of Dr. James McDonald. Just yesterday, Plaintiffs discovered another memo dated May 20 from Dr. McDonald telling parents and school officials that masks are mandated (see attached):

“Dear Rhode Island Pre K-12 Families,

We are writing to remind you of the Centers for Disease Control and Prevention’s (CDC) isolation protocol for those who test positive for COVID-19. Please see the specifics of the isolation protocol for school-based settings below:

- Anyone who tests positive for COVID-19, even if they are vaccinated, must stay home and isolate for at least 5 days.
- They may return to school on day 6, if they don't have symptoms or their symptoms are improving, and they've been fever-free for 24 hours (without the use of fever reducing medication), and
- On days 6-10 of their isolation period, **they must wear a well-fitting mask on the bus, in school, and at all school-associated events.** They should also wear a mask outside of school when they are around others, especially when indoors.
- If students and staff are unable to wear a mask at school, they must isolate at home for the full 10 days following the positive test. They can then return to school if their symptoms have improved and they've been fever-free for 24 hours (without the use of fever-reducing medication).
- The CDC recommends an isolation period of at least 10, and up to 20 days, for people who were severely ill with COVID-19 and for people with weakened immune systems.
- **Everyone must follow these isolation protocols**, even if they receive a negative test result (i.e. antigen or PCR) during their 10-day isolation period.

Additionally, please ensure that all self-test positive test results are reported to the RIDOH at portal.ri.gov/s/selftest. This information helps the Department of Health monitor the spread of COVID-19.

Sincerely,
James V. McDonald MD, MPH
Interim Director of Health"

This memo speaks in mandate language: "must". It has been interpreted as such by school officials who are telling parents they must mask their children in these circumstances. But there is no citation to the authority that Dr. McDonald claims he has to be making this mandate. There previously was a Governor's Executive Order, which contained this exact language (See attached EO 22-06, paragraph No.5). This order expired on March 12, 2022, and was not renewed. (See attached EO 22-15)

Plaintiffs assert that such discovery is necessary to rebut the assertions made to this Court by the Attorney Generals' office on behalf of the State Defendants that mask mandates are "unlikely - if not impossible" to return.

Given the actions of the State, Plaintiffs ask that this discovery be expedited, and any 30-day notice requirement be waived. Also, given the egregious conduct of the State Attorneys and their clients, Plaintiffs ask this Court to order that the costs of said depositions be borne solely by the State.

Respectfully submitted
Plaintiffs,
By their Attorneys,

/s/Gregory P. Piccirilli, Esquire #4582
148 Atwood Avenue, #302
Cranston, RI 02920
(401) 578-3340
gregory@splawri.com

CERTIFICATION

I hereby certify that I served this document through the electronic filing system on the following attorneys of record:

Michael W. Field, Assistant Attorney General
150 South Main Street
Providence, Rhode Island 02903
mfield@riag.ri.gov

Chrisanne Wyrzykowski, Assistant Attorney General
150 South Main Street
Providence, Rhode Island 02903
cwyrzykowski@riag.ri.gov

Charles A. Ruggerio, Esq.
127 Dorrance Street, 4th Floor
Providence, RI 02903
crlaw@yahoo.com

Anthony Cottone
RIDE's Chief Legal Counsel
255 Westminster Street, 4th Floor
Providence, R.I. 02903
Anthony.Cottone@ride.ri.gov

Michael J. Polak
HENNEOUS CARROLL
LOMBARDO, LLC
155 South Main Street, Suite 406
mpolak@hcllawri.com

/s/Gregory P. Piccirilli, Esquire #4582