

STATE OF RHODE ISLAND

PROVIDENCE, Sc.

SUPERIOR COURT

RICHARD SOUTHWELL, et al.)	
)	
VS.)	NO: PC-2021-05915
)	
DANIEL J. MCKEE, et al.)	

HEARD BEFORE THE HONORABLE
MR. JUSTICE JEFFREY LANPHEAR

Volume 2

October 1, 2021

APPEARANCES:

GREGORY PICCIRILLI, ESQUIRE
FOR THE PLAINTIFFS

MICHAEL FIELD, ESQUIRE
CHRISANNE WYRZYKOWSKI, ESQUIRE
FOR THE DEFENDANTS

Andrea Iacobellis, CSR
Certified Shorthand Reporter

I N D E X

<u>WITNESSES</u>	DIRECT	CROSS
MADDALENA CIRIGNOTTA	4	
ORLANDO BRAXTON	22	
JULIE MCKENNEY	37	

C E R T I F I C A T I O N

I, Andrea Iacobellis, CSR, hereby
certify that the succeeding pages, 1 through 58
inclusive, are a true and accurate transcript
of my stenographic notes.

ANDREA IACOBELLIS, CSR
Court Reporter

1 **Friday, October 1, 2021**

2 **(Afternoon Session)**

14:01:24 3 THE CLERK: The case before this court is

14:01:26 4 **Richard Southwell, et al vs. Daniel McKee, PC-2021-05915.**

14:01:33 5 THE COURT: Mr. Southwell, you can come back
14:01:36 6 up, please.

14:01:48 7 THE CLERK: Mr. Southwell, I'll just remind you
14:01:51 8 you're still under oath, okay?

14:01:53 9 THE WITNESS: Okay.

14:01:56 10 MS. WYRZYKOWSKI: Your Honor, the State has no
14:01:58 11 questions for this witness.

14:02:00 12 THE COURT: Sorry I made you come back then.
14:02:04 13 You're all set. Thank you, sir.

14:02:07 14 MR. PICCIRILLI: Your Honor, the next witness
14:02:13 15 is Maddalena Cirignotta. I think I pronounced that
14:02:15 16 right.

14:02:17 17 MS. WYRZYKOWSKI: Can you say that
14:02:17 18 pronunciation one more time, Greg?

14:02:19 19 MR. PICCIRILLI: I'd rather have her do it.

14:02:25 20 **MADDALENA CIRIGNOTTA, (SWORN)**

14:02:25 21 THE CLERK: Please state your full name for the
14:02:37 22 record and spell your first and last name.

14:02:40 23 THE WITNESS: It's Maddalena, M-a-d-d-a-l-e-n-a
14:02:48 24 Cirignotta, C-i-r-i-g-n-o-t-t-a.

14:02:53 25 THE CLERK: Thank you.

14:02:53 1 THE COURT: All set.

14:02:53 2 MR. PICCIRILLI: Thank you, your Honor.

14:02:56 3 **DIRECT EXAMINATION BY MR. PICCIRILLI.**

14:02:56 4 Q Ms. Cirignotta --

14:03:04 5 THE COURT: I'm sorry, one moment, please.

14:03:06 6 Could I speak to the Clerk?

14:03:07 7 THE CLERK: Sure.

14:03:07 8 (Pause taken)

14:03:15 9 THE COURT: I'm sorry, go ahead.

14:03:15 10 Q Thank you. Ms. Cirignotta?

14:03:19 11 A Perfect.

14:03:21 12 Q Where do you currently reside, what town?

14:03:24 13 A I live in South Kingstown.

14:03:26 14 Q And how long have you lived there?

14:03:28 15 A I moved there in 2014 with my family.

14:03:30 16 Q And who do you live there with?

14:03:32 17 A I live there with my three children who are ages 5, 7 and
14:03:36 18 9 and my husband.

14:03:37 19 Q Where did you move from?

14:03:41 20 A From Brooklyn, New York.

14:03:43 21 Q How long did you live in Brooklyn?

14:03:45 22 A Nine years -- ten years, I'm sorry.

14:03:47 23 Q Where do you currently work?

14:03:50 24 A I work at South Kingstown High School. I'm a public
14:03:53 25 school teacher. I teach Spanish, world language.

14:03:57 1 Q And how long have you worked in South Kingstown?

14:03:59 2 A Since 2014 as well.

14:04:01 3 Q Always at the high school in Spanish?

14:04:03 4 A Yes. Always at the high school in the same position.

14:04:06 5 Q What is your educational background?

14:04:08 6 A I have a degree. I have a bachelor's in English. I have
14:04:10 7 a bachelor's in Spanish and a master's in education.

14:04:13 8 Q And your three children, can you -- boys, girls, their
14:04:24 9 ages?

14:04:24 10 A My 9 year is old, who is in third grade, is a girl. I
14:04:28 11 have a 7 year old in first grade, whose a boy, and a
14:04:32 12 5 year old whose not in school yet, whose also a girl.

14:04:36 13 Q Okay. Prior to March of 2020, when the schools were
14:04:43 14 closed, were all three of your children, well, your two
14:04:47 15 children who are school age, were they enrolled in
14:04:51 16 school?

14:04:51 17 A So I only had one child in school in 2021 when the
14:04:54 18 closures happened. I had a first grader.

14:04:56 19 Q Okay. And that's your oldest daughter?

14:05:00 20 A My daughter, yes.

14:05:00 21 Q And she went to regular school? She wasn't home
14:05:02 22 schooled?

14:05:02 23 A No. She went to a dual language emergent program in
14:05:07 24 South Kingstown in the district at West Kingstown
14:05:09 25 Elementary School.

14:05:11 1 Q And then, I imagine your testimony is the same as
14:05:14 2 Mr. Southwell during the closure in March of last year,
14:05:19 3 distance learning for the remainder of the school year;
14:05:23 4 correct?

14:05:23 5 A Yes.

14:05:23 6 Q In September of 2020, when schools went back in session,
14:05:28 7 do you recall did they go back in person in South
14:05:31 8 Kingstown right away?

14:05:32 9 A South Kingstown went back in person, yes. And in fact,
14:05:35 10 we were one of the very few schools that remained in
14:05:38 11 person during the entire school year last year.

14:05:40 12 Q And did your daughter attend school in person?

14:05:44 13 A My son and daughter attended school in person. I had a
14:05:47 14 second grader and a kindergartner.

14:05:50 15 Q And they attended the whole year?

14:05:52 16 A They did, yes.

14:05:53 17 Q And, again, well, let me ask you this, after the summer
14:06:03 18 of this year, schools were back in session in South
14:06:07 19 Kingstown; correct?

14:06:07 20 A Yes.

14:06:08 21 Q Okay. You have two children still enrolled in South
14:06:13 22 Kingstown?

14:06:13 23 A They are indeed, yes. However, they're not actually
14:06:16 24 attending, they're being barred from attending.

14:06:18 25 Q And why are they being barred?

14:06:20 1 A Because my family felt physical symptoms in both of my
14:06:24 2 children, particularly in my younger one, my son, that we
14:06:28 3 were not willing to subject my children to masking again
14:06:31 4 due to the symptoms that we saw both emotional and
14:06:34 5 physical, and we never received answers from the school
14:06:37 6 or from the Department of Health or from the Governor in
14:06:40 7 regards to our concerns.

14:06:42 8 So we decided that we would not comply with the mask
14:06:45 9 mandate and we sent them to school without masks. They
14:06:49 10 were accepted for the first four days of school;
14:06:52 11 September 9 and 10, and then again that was a Thursday to
14:06:56 12 Friday, as well as the following Monday and Tuesday.

14:06:59 13 On that Wednesday we were called and told to pick up
14:07:03 14 our children, because they did not have masks on. They
14:07:06 15 did not wear a mask for those four and a half days of
14:07:09 16 school. My husband picked up our children and they were
14:07:12 17 barred from entering again and they have not been to
14:07:15 18 school since.

14:07:15 19 Q Okay. Has the school given you any materials, any type
14:07:23 20 of books to assist you in having your children learn at
14:07:29 21 home while they're not in school?

14:07:30 22 A They have not. In fact we have numerous requests in
14:07:34 23 writing, as well as numerous phone calls to the
14:07:37 24 superintendent, to the curriculum coordinator, to the
14:07:41 25 vice principal and we have received no response.

14:07:44 1 The school committee voted last Tuesday on a policy
14:07:48 2 that would actually exclude my children from receiving
14:07:52 3 books. In their policy if a child is quarantined they
14:07:56 4 have access to the educational materials necessary to
14:07:59 5 continue with school at home.

14:08:00 6 However, if a family is non compliant with the mask
14:08:04 7 mandate they are not eligible for those materials.

14:08:08 8 Q Let's go back to last year, when your children were in
14:08:14 9 school. You testified just now briefly about some
14:08:18 10 concerns you had. Could you elaborate on that?

14:08:21 11 A So my children kept coming home complaining of headaches,
14:08:24 12 that was one of the most consistent things that began to
14:08:27 13 really concern me. Especially my son, just on a regular
14:08:32 14 basis, nearly every day they would complain of having a
14:08:35 15 headache when they get home from school.

14:08:38 16 On numerous occasions, again my son in particular,
14:08:41 17 but both children would complain of nausea. Previous to
14:08:46 18 last year they always want to eat a snack in the
14:08:50 19 afternoon and they would often times turn it down because
14:08:54 20 their stomachs were upset. They were nauseous.

14:08:54 21 I also, it was so apparent that they were grumpy and
14:09:00 22 lethargic, especially as compared to previous years. And
14:09:04 23 my daughter, actually she had been in school for two
14:09:08 24 years she had enormous, there was an enormous difference
14:09:09 25 between how she behaved coming home from school last year

14:09:13 1 in a mask then how she previously ever had. And my son,
14:09:17 2 neither of them ever wanted to talk about how their day
14:09:20 3 went. They didn't like me asking them questions. The
14:09:23 4 lethargy and the grumpiness was very marked in my home,
14:09:28 5 yes.

14:09:28 6 Q When, I'm sorry, are you finished?

14:09:31 7 A I believe so, yes.

14:09:32 8 Q When your children are not, or were not in school last
14:09:39 9 year, did they exhibit the same moods?

14:09:42 10 A They did not. They seemed perfectly normal on the days
14:09:45 11 that I didn't send them to school. And in fact, it
14:09:49 12 actually prompted my husband and I, because last year we
14:09:52 13 had the option of online learning. We would sometimes
14:09:55 14 just give them breaks from the masks by keeping them home
14:09:59 15 with online learning, which is sub par education, but it
14:10:01 16 was clearly benefiting them physically because they
14:10:03 17 didn't exhibit the symptoms on the days I didn't send
14:10:07 18 them to school and on weekends as well.

14:10:09 19 Q Last year, how was the mask mandate enforced in the
14:10:17 20 school?

14:10:18 21 A Very strictly. I really struggled with how strict it was
14:10:25 22 for my kindergartner in particular. He had a student --
14:10:29 23 he was in a dual language emergent program, so he had two
14:10:33 24 separate classrooms that he was in, and the teacher's
14:10:35 25 aide in particular had a zero tolerance for my very, very

14:10:40 1 young kindergartner to just even give himself a moment, I
14:10:44 2 kept trying to encourage him, just pull it down for a
14:10:48 3 second and take a breath and put it back up, and he had a
14:10:51 4 teacher -- an aide in particular that was so strict that
14:10:54 5 he began to exhibit anxiety and --

14:10:59 6 MS. WYRZYKOWSKI: Objection, your Honor.

14:11:00 7 That's a medical conclusion. That's a medical diagnosis.

14:11:04 8 THE COURT: Sustained.

14:11:09 9 MR. PICCIRILLI: Can she finish her answer or
14:11:11 10 is it just stricken from anxiety or?

14:11:12 11 THE COURT: Why don't you ask new question
14:11:16 12 without leading her.

14:11:17 13 MR. PICCIRILLI: Okay. Thank you, your Honor.

14:11:18 14 Q To get back to the enforcement of the masks, did
14:11:25 15 something change during the year in terms of mask breaks?

14:11:29 16 A Yes. So initially we were reassured that the children
14:11:35 17 would receive -- would be taken outside a great deal,
14:11:37 18 would get breaks. We were promised breaks from our
14:11:40 19 superintendant and in November those were taken away
14:11:43 20 entirely. They got absolutely no breaks indoors or
14:11:46 21 outdoor, and it was just as the weather was getting too
14:11:50 22 cold to take them outside as well.

14:11:52 23 Until they would go rather the entire school day
14:11:55 24 only getting a break for lunch and snacks, which was
14:12:00 25 silent. They were not allowed to speak in the duration

14:12:03 1 of the time they were eating. So as soon as they were
14:12:06 2 done eating they were required to put their masks back
14:12:06 3 up.

14:12:09 4 My daughter repeatedly described how she would ask
14:12:12 5 to use the bathroom so she could get take her mask down
14:12:16 6 for a moment, and so the freshest air she was getting was
14:12:19 7 in a bathroom. And my daughter also described to me how
14:12:23 8 in the cafeteria --

14:12:24 9 MS. WYRZYKOWSKI: Objection, your Honor. We're
14:12:26 10 talking about hearsay now.

14:12:28 11 THE COURT: That is sustained.

14:12:32 12 Q Let me ask you this, Ms. Cirignotta, did you make
14:12:46 13 inquiries to any government agencies to try and get
14:12:51 14 information regarding masks?

14:12:53 15 A I did. I had a great deal of concern over what I
14:12:56 16 witnessed in my children. In fact, to the point that it
14:13:00 17 was keeping me awake at night. I kept finding myself
14:13:03 18 waking up at odd hours of the night and being unable to
14:13:07 19 fall asleep just worrying because I wasn't happy with
14:13:07 20 what was happening with my children. Naturally, the most
14:13:10 21 noted to their physical bodies.

14:13:12 22 And I was very concerned about the emotional aspect
14:13:14 23 as well. But again with my school, and I started with my
14:13:18 24 principal and very quickly realized that she didn't have
14:13:22 25 any safety date that I was looking for for reassurance.

14:13:26 1 So I went to my superintendent, who also didn't.
14:13:29 2 And as the year progressed and cases were declining and
14:13:36 3 everywhere was starting to relieve -- people were
14:13:41 4 becoming increasingly relieved of mask mandates
14:13:44 5 everywhere except schools. I began to wonder why schools
14:13:48 6 in particular had all of these mandates.

14:13:51 7 And I decided, especially as the weather got warmer
14:13:55 8 and I was in an un air conditioned classroom as well as
14:13:59 9 my children, because I'm a teacher, as it got hotter and
14:14:02 10 hotter and I see the children suffer, as I perceived it.
14:14:05 11 I decided that I would go to first the Governor. I made
14:14:10 12 daily phone calls to the Governor and his constituent
14:14:15 13 services office, and I got nowhere with that. I left
14:14:18 14 message after message after message to no avail
14:14:21 15 whatsoever.

14:14:22 16 So in my quest for answers and in my desperation for
14:14:26 17 some information, I decided to submit requests for public
14:14:29 18 record, APRA request, and I submit the same request to
14:14:34 19 the Department of Health, to RIDE and to the Governor's
14:14:38 20 office.

14:14:39 21 MS. WYRZYKOWSKI: Objection, your Honor. This
14:14:41 22 is a narrative answer and the relevancy.

14:14:48 23 THE COURT: I lost the question, so I'm not
14:14:51 24 sure if it's responsive. Can you ask another one,
14:14:51 25 please?

14:14:52 1 MR. PICCIRILLI: Certainly.

14:14:52 2 Q Let's get to your testimony about contacting, you said

14:14:59 3 three different agencies or?

14:15:00 4 A Yes, I asked them for the safety data.

14:15:02 5 Q Let's start with this. Who did you, again, who did you

14:15:06 6 ask information of?

14:15:07 7 A So I submitted an APRA request to the Governor's Office

14:15:11 8 to DOH and to RIDE.

14:15:13 9 Q And what did that APRA request -- when you say APRA, you

14:15:18 10 mean public records request?

14:15:18 11 A A request for public records, yes.

14:15:20 12 Q And what specifically were you looking for?

14:15:22 13 A So I asked them for the safety data that they used to

14:15:26 14 mandate to determine if it was safe to mandate masks for

14:15:31 15 children in schools.

14:15:32 16 Q Okay. So that was the nature of your request?

14:15:35 17 A Yes, it was.

14:15:35 18 Q And then you said -- so did you get a response let's

14:15:39 19 start from the Governor's Office. Did you get a response

14:15:41 20 from the Governor's Office?

14:15:42 21 A I did. The Governor's office first extended their time

14:15:47 22 in which they could respond to me from I believe there

14:15:51 23 was ten business days, they doubled it.

14:15:53 24 And then when they did respond their response was

14:15:55 25 that they required \$550 to answer my question and they

14:16:00 1 reserved the right to redact any information at their
14:16:03 2 discretion. So that's what I got from the Governor's
14:16:06 3 Office.

14:16:06 4 Q What did you get from Rhode Island Department of Ed, the
14:16:09 5 Rhode Island Department of Education is often referred to
14:16:12 6 as RIDE?

14:16:13 7 A Yes. So the Rhode Island Department of Education was the
14:16:15 8 first to respond to me within days. They acknowledged in
14:16:19 9 writing that they had absolutely no safety data and they
14:16:22 10 were relying entirely on the DOH guidelines and
14:16:26 11 recommendations.

14:16:26 12 Q Okay. And then you said you asked for that from the
14:16:31 13 Rhode Island Department of Health as well?

14:16:33 14 A Yes.

14:16:34 15 Q And what was the response from that agency?

14:16:36 16 A So I had asked them for the safety data and they provided
14:16:40 17 me with a total of three studies, two were completely
14:16:45 18 irrelevant because they were about efficacy and had
14:16:48 19 nothing to do with safety of any kind.

14:16:50 20 And the third study was an Italian study of 47
14:16:54 21 children who wore a mask for 30 minutes total, and within
14:16:59 22 that study the children were required to walk for 15
14:17:04 23 minutes while wearing a mask. And what I found to be
14:17:07 24 extremely interesting was that their heart rates actually
14:17:10 25 raised. They had physiological affects --

14:17:12 1 MS. WYRZYKOWSKI: Objection, your Honor. We
14:17:14 2 don't even know what study she's referencing, nor is she
14:17:16 3 a medical expert.

14:17:18 4 THE COURT: Sustained. Next question.

14:17:20 5 THE WITNESS: I also --

14:17:20 6 MR. PICCIRILLI: No, no.

14:17:20 7 THE WITNESS: Okay.

14:17:27 8 Q So after the school year ended last year, during the
14:17:34 9 summer of this year before school started, did you attend
14:17:37 10 school committee meetings to determine whether or not
14:17:40 11 there was going to be a mask policy?

14:17:42 12 A I did. I attended every single one. I didn't miss a
14:17:46 13 single one since June 28th.

14:17:47 14 Q Before August 19th, when the Governor signed his
14:17:50 15 executive order, did the South Kingstown School Committee
14:17:53 16 issue any type of mask policy?

14:17:56 17 A They had not, no.

14:17:57 18 Q After August 19th, did they issue a policy?

14:18:01 19 A They did not issue a policy until after the mandate went
14:18:06 20 into affect on the 23rd.

14:18:07 21 Q And what was that policy?

14:18:09 22 A The policy was that they were going to follow the
14:18:12 23 Governor's mandate, his executive order.

14:18:14 24 Q Did the policy indicate that if that executive order went
14:18:17 25 away that the policy would change?

14:18:20 1 A Yes, it does. It currently does.

14:18:25 2 MS. WYRZYKOWSKI: Objection, your Honor. I'm
14:18:26 3 going to move to strike that as hearsay. It's a public
14:18:30 4 record. We can bring that in if you want that. We have
14:18:32 5 no actual documentation of that. It's just publication
14:18:35 6 of the order itself.

14:18:36 7 MR. PICCIRILLI: Your Honor, I asked --

14:18:38 8 THE COURT: Well, you asked and it was answered
14:18:39 9 and then there was an objection.

14:18:45 10 MR. PICCIRILLI: Do you have a policy? So,
14:18:46 11 your Honor, I asked the Rhode Island Department of
14:18:48 12 Education's legal counsel, over a month ago, to provide
14:18:54 13 me with all the school committees in the State who had
14:18:57 14 policies regarding mask mandates, prior to the Governor's
14:19:03 15 executive order.

14:19:04 16 Because in the Governor's executive order he states
14:19:08 17 many schools districts, or most school districts have
14:19:12 18 passed the mandatory mask policy.

14:19:15 19 I do school committee work. I represent school
14:19:18 20 committees. I didn't think that was true because I knew
14:19:20 21 a number of committees that did not pass any policy.

14:19:25 22 MS. WYRZYKOWSKI: Objection, your Honor. Now
14:19:25 23 he's testifying as a witness.

14:19:27 24 THE COURT: Well, you're objecting. He's
14:19:28 25 giving me an answer. Go ahead.

14:19:29 1 MR. PICCIRILLI: So I asked RIDE, and I
14:19:33 2 followed that up with an e-mail to every single attorney
14:19:36 3 from the Department of Health, the Governor's office and
14:19:41 4 the Department of Education, asking for that information
14:19:44 5 and I never got an answer. I still don't have an answer.

14:19:49 6 Instead of me going to every school committee in the
14:19:54 7 State to try and find out what those policies are, the
14:19:57 8 State made an affirmative statement in their executive
14:20:01 9 order that they knew which districts had passed policies.
14:20:04 10 They should have the burden of producing that to me.
14:20:07 11 I'll be happy to introduce it if they will produce it to
14:20:10 12 me.

14:20:10 13 THE COURT: But do you have it?

14:20:11 14 MR. PICCIRILLI: No, because they haven't given
14:20:13 15 it to me. They refused -- as with Ms. Cirignotta, they
14:20:17 16 completely ignored my request.

14:20:18 17 MS. WYRZYKOWSKI: Your Honor, right now as I
14:20:21 18 stand here I represent the defendant named in this
14:20:23 19 lawsuit, not the Rhode Island Department of Education.

14:20:26 20 I've never received requests from opposing counsel
14:20:29 21 for that information, nor has my co counsel. It's the
14:20:34 22 best evidence rule at stake here, not for interpretation
14:20:37 23 of what was said, the actual document itself. That is
14:20:40 24 the best evidence to what occurred at the South County
14:20:44 25 meeting that they're talking about right now. It's sound

14:20:47 1 legal principle relied upon, there are other means that
14:20:49 2 could have been taken.

14:20:53 3 THE COURT: Did South Kingstown issue an
14:20:56 4 apology? Yes. What was the policy? Objection after the
14:21:01 5 answer on best evidence. It was too late. The answer
14:21:08 6 stays. The objection is overruled.

14:21:11 7 MR. PICCIRILLI: Thank you, your Honor.

14:21:17 8 THE COURT: You still looking for those
14:21:17 9 policies?

14:21:19 10 MR. PICCIRILLI: I'm sorry, your Honor?

14:21:20 11 THE COURT: Are you still looking for those
14:21:21 12 policies?

14:21:22 13 MR. PICCIRILLI: Absolutely, your Honor. I
14:21:24 14 asked Claire Richards, the Governor's legal counsel.

14:21:27 15 THE COURT: I got it. Can we get him those?
14:21:30 16 Is there a summary of them somewhere?

14:21:32 17 MS. WYRZYKOWSKI: Your Honor, I don't have the
14:21:34 18 information. We don't have -- the State does not have
14:21:35 19 control over every individual state. I'm sorry,
14:21:37 20 individual municipalities. I don't have access to that
14:21:40 21 information.

14:21:41 22 THE COURT: The Department of Education does.
14:21:43 23 School committees have to report and get approvals from
14:21:43 24 them, right?

14:21:46 25 MS. WYRZYKOWSKI: I'm assuming that's accurate,

14:21:48 1 your Honor. But I'm just telling you at this moment I
14:21:51 2 don't have them. We can attempt to reach out to the
14:21:53 3 Rhode Island Department of Education. But as I stand
14:21:56 4 here now, I don't have access to that information to give
14:21:59 5 to you.

14:22:02 6 THE COURT: I'd appreciate you reaching out and
14:22:04 7 getting a summary of what Mr. Piccirilli has asked for;
14:22:09 8 who has mask mandates for schools?

14:22:13 9 MS. WYRZYKOWSKI: Thank you, your Honor.

14:22:15 10 MR. PICCIRILLI: And I would not -- maybe I
14:22:20 11 should quit while I'm ahead. I do want to read this in
14:22:23 12 the record. Executive Order 2187, August 19, 2021, the
14:22:34 13 second page, the third where as, "the majority --

14:22:40 14 MS. WYRZYKOWSKI: Excuse me. Can I just get a
14:22:41 15 copy of the exhibit if you're going to refer to it. Do
14:22:45 16 you have a copy, Greg?

14:22:45 17 THE COURT: Where are we going? The witness is
14:22:48 18 on the stand and I asked him to get you a copy of
14:22:50 19 whatever you want. Quit while you're ahead, as you said.
14:22:54 20 I don't know what you want. You want to give her a copy
14:22:57 21 of the request for access to public records or whatever
14:22:59 22 you asked for? You want a summary?

14:23:02 23 MR. PICCIRILLI: I will resend my request to
14:23:08 24 this group of attorneys.

14:23:09 25 MS. WYRZYKOWSKI: I just want to be abundantly

14:23:11 1 clear, that's not an official APRA request because it's a
14:23:14 2 different agency, but we're going to try to get the
14:23:17 3 information for the Court. That's all I'm saying. We'll
14:23:19 4 do our best to reach out to RIDE and try to get access to
14:23:22 5 that information and hopefully have it when we meet next
14:23:25 6 week.

14:23:26 7 THE COURT: Although it would be recognized
14:23:26 8 that you represent both the Department of Health as well
14:23:29 9 the Governor.

14:23:29 10 MS. WYRZYKOWSKI: Yes.

14:23:34 11 THE COURT: So you represent the State?

14:23:35 12 MS. WYRZYKOWSKI: Yes. But I thought we were
14:23:37 13 talking about the South Kingstown policy, I'm sorry, that
14:23:39 14 was my mistake.

14:23:41 15 THE COURT: We did start with the South
14:23:43 16 Kingstown policy, but I thought that the Department of
14:23:45 17 Education would have a summary of all policy procedures.

14:23:48 18 MR. PICCIRILLI: Forgive me, your Honor. The
14:23:50 19 Governor has it. He has it in his executive order, the
14:23:52 20 affirmative statement that many school districts have
14:23:56 21 enacted policy.

14:23:58 22 THE COURT: Okay.

14:23:59 23 MR. PICCIRILLI: So he had to have that
14:24:00 24 information when he wrote that sentence in his executive
14:24:02 25 order. That's all I'm asking for. It should be a public

14:24:07 1 records request, a report. It should be a discovery
14:24:10 2 report on an expedited basis for preliminary injunction.

14:24:12 3 THE COURT: I'm asking them to get that for you
14:24:14 4 on Monday.

14:24:15 5 MR. PICCIRILLI: Thank you, your Honor. I have
14:24:27 6 nothing further. Thank you.

14:24:32 7 MS. WYRZYKOWSKI: Your Honor, the State has no
14:24:34 8 questions of this witness.

14:24:36 9 THE COURT: Okay. Thank you. You're all set.
14:24:52 10 Next witness.

14:24:53 11 MR. PICCIRILLI: I call Orlando Braxton.

14:25:04 12 THE CLERK: Please raise your right hand.

14:25:04 13 **ORLANDO BRAXTON, (SWORN)**

14:25:15 14 THE CLERK: Please state your name for the
14:25:17 15 record and spell your first and last name.

14:25:19 16 THE WITNESS: Orlando, O-r-l-a-n-d-o, Braxton,
14:25:23 17 B-r-a-x-t-o-n.

14:25:26 18 THE CLERK: Thank you.

14:25:26 19 **DIRECT EXAMINATION BY MR. PICCIRILLI.**

14:25:30 20 Q MR. PICCIRILLI: Good afternoon, Mr. Braxton. What town
14:25:33 21 do you reside in?

14:25:34 22 A I reside in Glocester, Rhode Island.

14:25:36 23 Q And how long have you resided there?

14:25:38 24 A I believe since 2007. We moved from Cranston to
14:25:46 25 Glocester, Rhode Island.

14:25:47 1 Q And who do you live there with?

14:25:49 2 A I'm sorry?

14:25:50 3 Q Who lives there with you?

14:25:52 4 A I live with my wife Marie and my four children; Chase,
14:25:58 5 Jordan, Kayla and Mason.

14:25:59 6 Q And can you give us their ages and grades?

14:26:01 7 A Chase is 14, currently in the 9th grade. Jordan is in
14:26:07 8 the 5th grade, she is 11. Kayla is in the 4th grade, she
14:26:12 9 is 10, and Mason is in 2nd grade and he is 7.

14:26:15 10 Q Okay. Mr. Braxton, what do you do for a living?

14:26:20 11 A I'm a police officer employed by the Town of Smithfield
14:26:23 12 as a police officer.

14:26:23 13 Q How long have you been employed that way?

14:26:25 14 A Since August 23, 1999. I went to the police academy and
14:26:31 15 graduated December 3rd, 1999.

14:26:33 16 Q So 22 years or so?

14:26:35 17 A Correct.

14:26:36 18 Q What is your educational background?

14:26:38 19 A I received a bachelor's in criminal justice from Anna
14:26:44 20 Maria in 1998, and I graduated with a master's in
14:26:48 21 criminal justice from Roger Williams University in 2007.

14:26:52 22 Q Are your kids currently in Gloucester the school system?

14:26:59 23 A We are home schooling our children this year. They were
14:27:05 24 previously were enrolled at the start, initially going
14:27:10 25 into this school year. They were enrolled in the

14:27:13 1 district. We pulled them out of the district. They're
14:27:18 2 home schooling for certain reasons.

14:27:19 3 Q And that's this year?

14:27:21 4 A That is this year, correct. Yes, they were in school
14:27:23 5 last year.

14:27:24 6 Q So last year all four of your children were in school in
14:27:29 7 person?

14:27:30 8 A That is correct.

14:27:30 9 Q And just for the record, so one of the them would have
14:27:34 10 been at the middle school?

14:27:35 11 A Correct. My son was in 8th grade middle school.

14:27:40 12 Q And the others were all in elementary school?

14:27:42 13 A The youngest three were at Colby Memorial in Glocester,
14:27:46 14 Rhode Island, enrolled, yes. Correct.

14:27:48 15 Q Okay. Why did you decide to take your children out of
14:28:01 16 school this year and home school them?

14:28:03 17 A So it was, it was a really difficult decision. So last
14:28:09 18 year we had been enrolled in the school, and I as a
14:28:16 19 parent and my wife as a parent, it was really difficult
14:28:24 20 as they would come home.

14:28:26 21 It was difficult for us to see what I observed, with
14:28:30 22 the dirty, wet masks, when we talked to them and were
14:28:36 23 able to -- when we asked them, you know, what was wrong
14:28:40 24 and their complaints about the masks and how they -- how
14:28:45 25 it was a miserable school experience.

14:28:48 1 MS. WYRZYKOWSKI: Objection, your Honor. Move
14:28:49 2 to strike. Hearsay.

14:28:56 3 MR. PICCIRILLI: Your Honor, the statements are
14:28:58 4 made to -- the statements the children are making to
14:29:02 5 their parents form the mental impression of what the
14:29:07 6 parents are making a decision on. You know, these are
14:29:11 7 children. Do you want me to bring in the children and
14:29:13 8 testify about what they said to their parents?

14:29:19 9 THE COURT: Let's do a side bar. I ask for
14:29:22 10 only two attorneys from the State.

14:29:22 11 (Side bar)

14:30:02 12 THE COURT: I wanted this on the record because
14:30:03 13 I want it clear that even though the parents aren't
14:30:07 14 allowed to speak about their children's mental thoughts
14:30:14 15 or complaints, it's obviously important for it to come in
14:30:21 16 with this parent. We have everybody from 6 years old to
14:30:26 17 about 12 years old, if I recall correctly.

14:30:29 18 MS. WYRZYKOWSKI: Fourteen.

14:30:31 19 THE COURT: We'll get this over and over again,
14:30:33 20 so there's a choice here as to how we do this, and I sort
14:30:38 21 of knew this was coming. We can just let them talk
14:30:43 22 without objections, which you have every right to object.
14:30:48 23 We can also let the children come in, such as that may
14:30:54 24 look and how difficult that would be. We probably have
14:30:59 25 to take some out of school. I would be willing to try

14:31:02 1 and change the schedule as much as possible to take them
14:31:05 2 after school, but they have every right to be heard in
14:31:10 3 this case, and if the Court needs to hear directly from
14:31:15 4 the children, it will.

14:31:16 5 Perhaps there's another way to do it. Perhaps we
14:31:22 6 can simply accept for purposes of this case, whatever
14:31:32 7 Mr. Piccirilli has suggested in his complaint or what he
14:31:36 8 suggests otherwise for purposes of this case, simply to
14:31:40 9 get through the 3 or 4 elements, perhaps we can segregate
14:31:44 10 the elements, but if he needs to bring the children in,
14:31:49 11 he's going to and that will be fair, or perhaps we can
14:31:55 12 just sit down and stipulate to facts about how bad things
14:32:01 13 are for the children. It's not fun for any of us.

14:32:04 14 So I've gone through not every single allegation in
14:32:09 15 the complaint but enough of them to know that you're
14:32:12 16 alleging it's aggravating for them; mentally stressful,
14:32:18 17 physically stressful, skin, lips, blush, overheating,
14:32:27 18 thirsty, fatigue. Perhaps we can just accept those for
14:32:35 19 purposes of this hearing. Something to think about over
14:32:40 20 the weekend but something Mr. Piccirilli has to know
14:32:44 21 beforehand in his case. And off the record.

14:32:44 22 (Discussion off the record)

14:46:38 23 MR. PICCIRILLI: Your Honor, I believe we have
14:46:39 24 an agreement. The State has agreed to allow the
14:46:45 25 witnesses to testify, stop me if I get this wrong. Allow

14:46:50 1 the witnesses to testify as to statements made to them by
14:46:53 2 their children for the truth of the matter they made
14:46:58 3 those statements.

14:47:00 4 THE COURT: Okay.

14:47:01 5 MR. PICCIRILLI: And we're going to limit the
14:47:04 6 testimony.

14:47:05 7 THE COURT: Great. Sounds good. Thank you.

14:47:08 8 MR. PICCIRILLI: So I'll recall Mr. Braxton,
14:47:10 9 and also the State has agreed to allow me to recall
14:47:14 10 Maddalena Cirignotta to complete her answers as well.

14:47:14 11 THE COURT: So who do you want first?

14:47:17 12 MR. PICCIRILLI: Okay. I'll finish with
14:47:18 13 Mr. Braxton first.

14:47:20 14 THE COURT: Okay. Thank you. Thanks for
14:47:23 15 resolving it.

14:47:24 16 THE CLERK: Mr. Braxton, I'm just going to
14:47:28 17 remind you that you're still under oath. Thank you.

14:47:30 18 **CONTINUED DIRECT EXAMINATION BY MR. PICCIRILLI**

14:47:31 19 Q So, Mr. Braxton, we'll start again with the question. I
14:47:39 20 had asked you why you chose to remove your children from
14:47:45 21 school this year, and I believe you started answering
14:47:49 22 about things that you witnessed in your children and also
14:47:52 23 things that your children told you. I have the agreement
14:47:56 24 that you can complete that answer. So if you want to
14:47:59 25 pick up a good point and start again.

14:48:00 1 A Yes. So it was both what I saw physically undertaking,
14:48:06 2 looking at their masks. What I saw with my own eyes, and
14:48:10 3 I saw dirty, wet masks at the end of the day. And as a
14:48:14 4 parent of four, it just killed me to know that they were
14:48:18 5 sitting in -- whether it be going outside for recess, all
14:48:25 6 the things they were doing in this masks and it was
14:48:28 7 killing me that they had gone through the whole school
14:48:33 8 day.

14:48:33 9 So at the time my wife basically, and I don't why
14:48:38 10 she did it because I would have told them to suck it up.
14:48:41 11 My wife drove them to school, picked them up every day
14:48:45 12 because there was just one less hour in the morning and
14:48:48 13 then another hour in the afternoon that they didn't have
14:48:51 14 to wear a mask.

14:48:52 15 Q So because they would have to wear a mask on the school
14:48:52 16 bus?

14:48:56 17 A Correct. So yes, you had to wear a mask on the school
14:49:00 18 bus, you had to wear a mask in school and a mask on the
14:49:02 19 way home. So by her picking them up, dropping them off,
14:49:05 20 picking them up, it was just one less hour we can get
14:49:09 21 them out of the mask and that's why she did it.

14:49:12 22 And I wouldn't have done it, because that's a huge
14:49:15 23 inconvenience but she's willing to do that and I'm
14:49:18 24 grateful for that.

14:49:18 25 Q So, now if we can get to what your children told you

14:49:22 1 about their experience in school in relation to the masks
14:49:22 2 mask?

14:49:25 3 A Correct. So I would say I'm the type of parent that I
14:49:32 4 don't like to hear complaints. I don't -- if you're
14:49:35 5 bleeding, as long as you're not going to bleed out,
14:49:38 6 you're fine. But -- and it was an every day thing with
14:49:44 7 these kids where they were just telling me how brutal the
14:49:49 8 school day was wearing a mask.

14:49:51 9 And that lead to me to start asking questions of
14:49:57 10 what their school day is like, and that's part of the
14:49:59 11 reason I'm here is because there were certain teachers
14:50:03 12 that were good and allowing them to have mask breaks but
14:50:08 13 most of the teachers and most of the time they were in
14:50:09 14 their masks the entire day and they -- I could see, and I
14:50:16 15 asked them what was causing them the discomfort, and they
14:50:24 16 were basically telling me that they were nervous about if
14:50:28 17 the mask hung at school they got in trouble. If it
14:50:32 18 wasn't on properly. That's what they were telling me.
14:50:34 19 They were telling me they weren't -- it was really
14:50:37 20 difficult for them to go through the school day with the
14:50:40 21 mask on and they weren't allowed to take breaks, and if
14:50:43 22 the mask was improper they in some way or form they were
14:50:50 23 spoken to.

14:50:51 24 For at least my girls that was embarrassing. They
14:50:54 25 don't like to get in trouble. They don't like any

14:50:57 1 attention whatsoever, and for a teacher or anyone at the
14:51:01 2 school to admonish them because their mask wasn't on
14:51:05 3 properly, as a father it just broke my heart.

14:51:08 4 Q In your statement that was included in the complaint you
14:51:11 5 swore to; correct?

14:51:12 6 A I did.

14:51:13 7 Q You mention that your 9 year old loved soccer?

14:51:17 8 A Yes.

14:51:17 9 Q Can you tell us what happened with soccer at school?
14:51:22 10 Were they allowed not to wear masks when they were
14:51:25 11 outside playing soccer?

14:51:26 12 A No, the day was, was, was a mask all day, whether it be
14:51:32 13 playing a sport, playing soccer. She's an avid soccer
14:51:37 14 player, you know, and I would tell her, you know, when
14:51:40 15 you can, try to take a break, try to get some fresh air.
14:51:44 16 But she's a rule follower. She does not like to break a
14:51:47 17 rule, and I appreciate that, but having -- getting the
14:51:50 18 mask from sweating all day, because she goes and plays
14:51:54 19 hard, and for her just to be in that mask and for her to
14:51:59 20 come home and for me to see what the mask looked like.

14:52:02 21 And I did certainly ask her what she was doing, and
14:52:07 22 one of the activities was whether it be outside or in the
14:52:09 23 classroom, playing soccer, running around or just talking
14:52:13 24 to her friends, the mask was on all day.

14:52:17 25 Q Did your children relay to you what would happen during

14:52:21 1 lunch?

14:52:21 2 A They did. They did. Most of the time the administrators
14:52:27 3 or teachers, whoever they were, were basically on top of
14:52:30 4 them to constantly put their mask on. They obviously
14:52:34 5 were able to eat but if they weren't like actively eating
14:52:39 6 or drinking, it was one of those things were somebody, an
14:52:42 7 adult, was telling them, you know, whether it was talking
14:52:47 8 -- they didn't want them talking to their friends.

14:52:49 9 Q During lunch?

14:52:50 10 A During lunch or even in the hallways or any time they
14:52:54 11 weren't in the classroom. They couldn't -- they didn't
14:52:57 12 want them close together. I know that's a separate issue
14:53:00 13 but they didn't want -- the masks were to be worn the
14:53:05 14 entire day.

14:53:05 15 Q And your statement, you mentioned something about
14:53:07 16 watching a movie during lunch. Is that what was done for
14:53:10 17 your children that they were -- instead of being able to
14:53:14 18 talk to their friends, they were sitting in masks and
14:53:17 19 watching a movie during lunch?

14:53:19 20 A Yeah, I don't know if that occurred every day during
14:53:22 21 lunch, but there was many days during lunch that, yes,
14:53:25 22 they would watch a movie, or watching a movie you're
14:53:29 23 silent. You're not talking and you're just sitting there
14:53:32 24 eating your lunch and watching a movie instead of
14:53:35 25 actually being able to talk to your friends and

14:53:38 1 socialize.

14:53:39 2 Q And lastly, you mentioned the story about a teacher with
14:53:43 3 a noodle, like a pool noodle?

14:53:46 4 A Apparently, the pool noodle was used because, I don't
14:53:50 5 know if the pool noodle is 6 feet. But basically the
14:53:53 6 teacher was using a pool noodle to measure and keep the
14:53:56 7 kids away with a pool noodle, and I was astonished that
14:54:01 8 this was going on in a public education setting, where a
14:54:05 9 pool noodle was being used to separate the kids, to the
14:54:08 10 point where my son is, I don't even enjoy the school day.
14:54:13 11 I can't -- there's nothing about it -- and I'm not saying
14:54:16 12 that the school needs to be an entertaining place, but it
14:54:19 13 should be a place where kids can learn in a friendly
14:54:23 14 environment and not be nervous or get in trouble.

14:54:26 15 I don't want my kids getting in trouble but I don't
14:54:29 16 think they should be constantly in fear of either the
14:54:31 17 mask is not on properly or if they're using a pool noodle
14:54:34 18 to separate my kid from another kid.

14:54:36 19 And that was one of the decisions, my wife and I got
14:54:39 20 together, like I don't think we can send them back to
14:54:42 21 school like this. Like I know I couldn't -- I couldn't
14:54:45 22 have survived in a school setting like that. I
14:54:49 23 struggled, as much as most kids with some type of
14:54:54 24 learning disability. I wasn't as smart as other kids.
14:54:58 25 To me school was a struggle, but at least I had the other

14:55:02 1 components of school to get me through the school day.

14:55:04 2 MR. PICCIRILLI: Okay. I have nothing further.

14:55:06 3 Thank you, Mr. Braxton.

14:55:09 4 MS. WYRZYKOWSKI: The State has no questions.

14:55:11 5 THE COURT: Okay. Thank you, sir.

14:55:12 6 THE WITNESS: Thank you.

14:55:14 7 MR. PICCIRILLI: I'll re call Maddalena
14:55:17 8 Cirignotta.

14:55:27 9 THE CLERK: I'm going to remind you you're
14:55:30 10 still under oath. Okay?

14:55:30 11 THE WITNESS: Okay.

14:55:32 12 THE CLERK: Thank you. Could you state your
14:55:33 13 name for the record.

14:55:33 14 THE WITNESS: Maddalena Cirignotta.

14:55:35 15 THE CLERK: Thank you.

14:55:36 16 **FURTHER DIRECT EXAMINATION BY MR. PICCIRILLI**

14:55:36 17 Q Maddalena, we recalled you solely to let you finish
14:55:42 18 testifying, as Mr. Braxton just did, about what your
14:55:48 19 children related to you about their experience in school
14:55:52 20 with masks.

14:55:53 21 A Yes.

14:55:54 22 Q Okay. So I forget where we left off when we were talking
14:56:00 23 about that. We talked about them being grumpy and
14:56:03 24 lethargic. If you want to continue with your answer.
14:56:06 25 What others signs did they exhibit? What other things

14:56:09 1 did they tell you?

14:56:10 2 A Several things that I witnessed that really alarmed me
14:56:13 3 about my son were that as the year progressed, he
14:56:17 4 exhibited signs of fear over what adults would say to him
14:56:21 5 if he didn't have a mask on, even outside a school
14:56:25 6 setting. It started exclusively in schools and it became
14:56:29 7 something that started happening everywhere. So I would
14:56:32 8 go to a restaurant with my kid and at the time he had to
14:56:36 9 wear the mask to the table and then you could take your
14:56:39 10 mask off, he was very reluctant to take his mask off if
14:56:44 11 he was eating, even though he was allowed to take his
14:56:45 12 mask off. He was fearful.

14:56:47 13 If I didn't give him a mask immediately when we
14:56:50 14 would stand up, for instance if he went to the bathroom,
14:56:53 15 he would grab his shirt and try to cover his face or take
14:56:57 16 his hands and try to cover his face and look around
14:57:01 17 fearfully.

14:57:02 18 My daughter told me an incident that happened at
14:57:06 19 lunch, with the teacher's aide that was actually my son's
14:57:10 20 -- in my son's class who -- my daughter would pull her
14:57:13 21 mask down at lunch and put it under her nose and keep her
14:57:18 22 head low in hopes of not being seen so she could take
14:57:22 23 breaks. And there was a teacher's aide who would walk
14:57:25 24 over to her and get down very low at the table and put
14:57:29 25 her head down like this to check her face. She had to

14:57:34 1 get down and look in order to see what my daughter was
14:57:38 2 doing. She had her eyes on her and gave -- both my
14:57:42 3 children described a fear of getting in trouble,
14:57:44 4 especially my son, every day. And I would try to
14:57:48 5 encourage him to give himself breaks and his response was
14:57:52 6 I'll get in trouble. They'll make me go to the
14:57:54 7 principal's office. And what's interesting was that it
14:57:57 8 was hard to blame them because I'm a teacher and I was in
14:58:01 9 that setting and I have the same feeling. I had a
14:58:07 10 constant sense of looking over my shoulder for fear that
14:58:10 11 I would do something that would get me in trouble. It
14:58:13 12 was constant and I still feel it today in school. It's
14:58:16 13 not as bad as it was last year but I still have that
14:58:19 14 feeling that I may do something that's going to get me in
14:58:22 15 trouble. I may be standing too close to one of my
14:58:25 16 students who need help.

14:58:26 17 Last year I wasn't even allowed to approach their
14:58:28 18 desk, so they would ask me for help and I was supposed to
14:58:31 19 be a certain distance from them but I can't help them
14:58:34 20 with what they're working on if I can't see what they're
14:58:37 21 working on, and I felt like I was going to get in trouble
14:58:41 22 for something all of the time. So of course my young
14:58:44 23 children were going to feel that way as well.

14:58:47 24 I also personally, because I was experiencing what
14:58:50 25 they were experiencing simultaneously with them, it was

14:58:54 1 very hard to disbelieve my children when I was having
14:58:57 2 the same experience. I also had a wet mask. I also had
14:59:01 3 trouble breathing in school. I felt the 95 degree heat
14:59:05 4 wave in June. I felt the beads of sweat dripping down my
14:59:10 5 face, having to change out my face covering because it
14:59:13 6 was wet. I saw students, you know, it was actually the
14:59:17 7 humidity was even worse than the heat. I honestly
14:59:23 8 struggle with what I experienced. It felt like nothing
14:59:27 9 --

14:59:27 10 MS. WYRZYKOWSKI: Objection, your Honor. Move
14:59:29 11 to strike. Getting a little afield here.

14:59:32 12 THE COURT: The last sentence is stricken. We
14:59:34 13 can move on.

14:59:35 14 Q BY MR. PICCIRILLI: Did you have any other stories that
14:59:37 15 your children told you specifically about their
14:59:41 16 experiences in school with masks that you haven't already
14:59:44 17 told us?

14:59:44 18 A I think I relayed the general stories, yes, sir.

14:59:47 19 MR. PICCIRILLI: All right. With that I have
14:59:48 20 no further questions.

14:59:50 21 THE COURT: Thank you.

14:59:51 22 MS. WYRZYKOWSKI: No questions, your Honor.

14:59:52 23 THE COURT: Thank you.

14:59:54 24 MR. PICCIRILLI: Your Honor, I have one last
14:59:55 25 witness that's a parent. Julie McKenney. I'd like to do

15:00:01 1 that now, your Honor.

15:00:01 2 THE COURT: Yes.

15:00:14 3 THE CLERK: Please raise your right hand.

15:00:14 4 **JULIE MCKENNEY (SWORN)**

15:00:28 5 THE CLERK: Please state your name for the
15:00:28 6 record and spell your first and last name.

15:00:31 7 THE WITNESS: Julie McKenney. Julie, J-u-l-i-e
15:00:31 8 McKenney, M-c-K-e-n-n-e-y.

15:00:41 9 THE CLERK: Thank you.

15:00:43 10 MS. WYRZYKOWSKI: Your Honor, if I may, before
15:00:44 11 we begin, I notice that the witness brought a piece of
15:00:47 12 paper up to the witness stand with her. I just ask that
15:00:50 13 she identify what that is.

15:00:52 14 MR PICCIRILLI: Certainly. So Ms. McKenney,
15:00:55 15 did you bring up something with you?

15:00:58 16 THE WITNESS: Yes.

15:00:58 17 MR. PICCIRILLI: Okay. What is it?

15:01:00 18 THE WITNESS: I'm very nervous. This is not
15:01:02 19 something I've ever done before. I hope I never have to
15:01:04 20 do it again, and I just jotted down a few notes. If you
15:01:08 21 don't want me to have it, that's okay.

15:01:10 22 MR. PICCIRILLI: She can share if I can share
15:01:11 23 it with you afterwards.

15:01:13 24 MS. WYRZYKOWSKI: Can we have a copy?

15:01:15 25 MR. PICCIRILLI: You want to see it before?

15:01:17 1 MS. WYRZYKOWSKI: Yes.

15:01:18 2 MR. PICCIRILLI: Oh sure. Is this everything
15:01:27 3 that you have?

15:01:28 4 THE WITNESS: (Nodding).

15:01:56 5 MR. PICCIRILLI: Ms. McKenney, I'm going to ask
15:02:00 6 you not to refer to these.

15:02:01 7 THE WITNESS: You can keep it.

15:02:03 8 MR. PICCIRILLI: No, you can keep it, just
15:02:05 9 don't refer to them. Unless it appears that you can't
15:02:08 10 recall.

15:02:11 11 THE WITNESS: What?

15:02:11 12 MR. PICCIRILLI: What you want to testify to
15:02:13 13 without the need to refer to that. Can you do that?

15:02:16 14 THE WITNESS: I can do that. I don't need it.

15:02:17 15 **DIRECT EXAMINATION BY MR. PICCIRILLI**

15:02:17 16 Q Okay. Ms. McKenney, where do you live?

15:02:22 17 A Gloucester, Rhode Island.

15:02:25 18 Q And who do you live with?

15:02:27 19 A I live with my husband and my two children; my daughter
15:02:31 20 who is 11 and my son who is 9.

15:02:34 21 Q And how long have you lived in Gloucester?

15:02:37 22 A Well, I was born in Gloucester, and then I moved away in
15:02:44 23 2001, and we recently built a house and we have been
15:02:49 24 there, I think this February will be 6 years.

15:02:53 25 Q And what do you currently do for a living? Do you work?

15:02:58 1 A I do not work. I -- when my husband and I got married we
15:03:04 2 used to work in hotel management, and when I got married
15:03:08 3 and had a child, we decided that schedule wasn't --
15:03:12 4 wouldn't work for raising children, so I've been home
15:03:17 5 taking care of our kids.

15:03:19 6 Q So your job is raising your kids?

15:03:21 7 A I would say yes.

15:03:23 8 Q Nothing to be ashamed about.

15:03:26 9 A It's very low pay.

15:03:28 10 Q What's your educational background?

15:03:35 11 A My education, I went to college for a year and then,
15:03:41 12 unfortunately, I decided that wasn't for me, and that's
15:03:44 13 when I started working in hotels and worked my way up
15:03:48 14 into management.

15:03:48 15 Q So how long did you work in hotel management?

15:03:50 16 A How long did I work in hotel management?

15:03:51 17 Q How long did you work in hotel management?

15:03:54 18 A Fifteen years probably or fourteen.

15:04:00 19 Q Your children, both elementary grade level?

15:04:10 20 A My son is in 4th grade and my daughter just started
15:04:14 21 middle school this year.

15:04:15 22 Q Are they currently in school?

15:04:18 23 A Yes, they are.

15:04:19 24 Q And were there in school last year?

15:04:21 25 A Yes, they were.

15:04:22 1 Q Are you active at all in the school system?

15:04:33 2 A I am. I have been very much. Last year they wouldn't
15:04:39 3 allow us to be in the school but I've always been
15:04:43 4 involved in the PTO, every time the school committee
15:04:46 5 meetings this past summer and the previous summer, the
15:04:51 6 principal and the superintendent asked me to be a part of
15:04:54 7 the -- that's what in my notes. I think it was the
15:04:57 8 Reopening Task Force Committee. It was a document we had
15:05:00 9 to fill out for RIDE as to --

15:05:03 10 Q Let's, if we can, clarify what that is. So you're
15:05:08 11 testifying about a group of people involving the
15:05:13 12 superintendent, school principals, anybody else in that
15:05:17 13 group, yourself? Any other staff or parents?

15:05:22 14 A I had always volunteered with the schools probably two or
15:05:26 15 three days a week.

15:05:26 16 Q No, I'm talking about -- you called it reopen Rhode
15:05:30 17 Island or back to school Rhode Island task force,
15:05:32 18 something like that.

15:05:32 19 A Yes, the superintendent, the principal, the school
15:05:35 20 psychologist, school nurse, yes. We had two elementary
15:05:38 21 schools, so it was a combination from both schools.
15:05:42 22 Two parents volunteered, one of which was me. I believe
15:05:46 23 the Union reps were there for both teachers. There was
15:05:50 24 various other people.

15:05:51 25 Q And the function of this reopen school team was to do

15:05:57 1 what?

15:05:58 2 A Well, the last -- the first summer we experienced this
15:06:03 3 which would have been 2020, it was a lengthy list and it
15:06:10 4 was a lot. We had many meetings and it was really to go
15:06:14 5 through how we would handle things, from soup to nuts
15:06:18 6 busing to at that point we had never been through it
15:06:21 7 before.

15:06:21 8 So we went through the checklist and revised it a
15:06:25 9 couple of times, but it had to be eventually submitted.
15:06:30 10 This year it was the same type of thing, go through the
15:06:33 11 checklist, you ask questions and it had to be submitted
15:06:40 12 to RIDE by a certain date.

15:06:42 13 Q Okay. Do you recall did that group meet, the team, meet
15:06:49 14 prior to the Governor's executive order on August 19?

15:06:53 15 A Yes, we did.

15:06:54 16 Q And as part of that team and this document that you had
15:06:59 17 to fill out and submit to the Department of Education,
15:07:02 18 was there anything about masks in that policy?

15:07:05 19 A Yes, I believe.

15:07:05 20 Q Okay. What was the determination of that school team, in
15:07:10 21 terms of the requirement to wear masks in school?

15:07:16 22 A It was optional. Highly recommended but optional.

15:07:21 23 Q In fact, were you in attendance at a school committee
15:07:25 24 meeting where the school committee adopted such a policy
15:07:31 25 to make it optional?

15:07:32 1 A Yes, I was.

15:07:33 2 Q Okay. Has that policy, to your knowledge, changed?

15:07:37 3 A No, it has not.

15:07:39 4 Q Except for the fact that there's an emergency order that
15:07:43 5 supercedes the policy. But the policy, and again you
15:07:46 6 know in your function as working on this team that the
15:07:48 7 policy has not changed?

15:07:50 8 A Correct.

15:07:50 9 Q As with the other witnesses I've asked you to relate your
15:08:10 10 observations of your children, discussions with your
15:08:13 11 children about their experience in school wearing masks.

15:08:16 12 A Sure. I have, because like I said I have two children.
15:08:21 13 My daughter is in 6th grade and my son is in 4th grade.
15:08:28 14 They have completely different personalities and my
15:08:31 15 husband and I have two completely different parenting
15:08:36 16 techniques with them. For us, it's not one type of
15:08:41 17 parenting fits both kids.

15:08:43 18 My daughter is very confident and she is very
15:08:49 19 bright. She makes friends easily. My son works hard to
15:08:57 20 get good grades but it's more of an effort for him, and
15:09:01 21 he is not as confident as we would like him to be.

15:09:06 22 Q Does your son have any issue with his speech?

15:09:09 23 A Speech, yes. So he always received speech services since
15:09:14 24 before kindergarten. I used to bring him in. And in
15:09:17 25 second grade he was I guess graduated with speech

15:09:22 1 probably call it, but he didn't need services any more
15:09:26 2 they had said. But he still has a slight speech
15:09:30 3 impediment. He'll say things with r's and he replaces
15:09:35 4 them with w's, so it's fwiends instead of friends.

15:09:39 5 And in school I talked to the speech pathologist a
15:09:43 6 couple of times, because my daughter had speech as well,
15:09:47 7 but we got finally to go through the school, just asking
15:09:50 8 her for new ways, even though she wasn't servicing him
15:09:54 9 any more to help him pre Covid.

15:09:57 10 But she would always tell me. She would give me
15:10:00 11 books and purse your lips or pull your lips back to make
15:10:04 12 different sounds, and seeing people do this, it was
15:10:08 13 always expressed to me as being quite important.

15:10:11 14 And I think now it's concerning to me because his
15:10:16 15 speech is not getting better and he's in 4th grade, which
15:10:20 16 is he's getting older and I don't want him ever made fun
15:10:24 17 of because of it, and he will answer a question in class
15:10:28 18 he's told me, and math, he's excellent in math. But he
15:10:35 19 will answer a question, say he said 55 and the teacher
15:10:40 20 said no, Cabe, that's wrong, and he said he was very
15:10:44 21 embarrassed because he did answer it correctly and I said
15:10:48 22 why didn't you let her know --

15:10:48 23 Q Just to be clear, so we're all clear about this. So your
15:10:53 24 son related to you a story about him being in school?

15:10:56 25 A Right. He was in a school.

15:10:58 1 Q And he was in class and it was a math class?

15:10:59 2 A Well, yes, elementary.

15:11:02 3 Q Elementary math. But it was math in the elementary

15:11:06 4 class. And it was a math problem, raised his hand,

15:11:12 5 answered, answered the right answer but the teacher heard

15:11:16 6 the wrong answer. Is that what you said?

15:11:16 7 A Yes.

15:11:17 8 Q And so she told him wrong, you got the wrong answer. And

15:11:20 9 how did he feel about that?

15:11:22 10 A So he felt embarrassed. He said the other kids -- I said

15:11:27 11 why didn't you let her know you got it right? He said,

15:11:29 12 well, all the other kids already thought I got it wrong

15:11:32 13 and I was too embarrassed, plus she had moved onto

15:11:36 14 someone else.

15:11:37 15 And since he's told me that's happened a couple of

15:11:40 16 times and the teacher will tell him in the class,

15:11:44 17 actually she tells the whole class. I can't hear any of

15:11:47 18 you with these masks on.

15:11:49 19 And its, as a parent that's very concerning because

15:11:52 20 he needs, specifically him, again, different parenting

15:11:56 21 styles. I probably won't speak much about my daughter

15:12:01 22 because she's not as affected by masks. But he needs to

15:12:05 23 see mouths. He needs to be heard. He is shy in a

15:12:11 24 classroom setting and respectful, as children should be.

15:12:14 25 So sometimes I think the outspoken children get more

15:12:19 1 attention. But he needs to be heard and now he's saying
15:12:22 2 he doesn't want to answer, be involved in class
15:12:26 3 discussion any more because he couldn't see a point to
15:12:31 4 it.

15:12:32 5 So that's as a parent is concerning, as far as his
15:12:36 6 education goes and his confidence. Emotionally I think
15:12:41 7 he's been affected.

15:12:43 8 Q Does your son have any physical issues with allergies?

15:12:49 9 A He does have allergies, yes.

15:12:51 10 Q And how has that impacted school for him?

15:12:54 11 A Well, its been -- he's been, last year he was sent home a
15:13:03 12 lot because he had allergy symptoms in which I ended up
15:13:08 13 getting a doctor's note for but...

15:13:09 14 Q So let me be clear, so he would cough, for example?

15:13:14 15 A He coughed.

15:13:14 16 Q And they would send him home if he coughed?

15:13:18 17 A Yes --

15:13:18 18 Q Because?

15:13:19 19 A -- because coughing is one symptom.

15:13:21 20 Q So why would they send him home?

15:13:23 21 A Because the Department of Health's policy is one symptom
15:13:29 22 of a cough and you have to go home --

15:13:32 23 MS. WYRZYKOWSKI: Objection, your Honor. We
15:13:33 24 are now talking about RIDH policy? That's the best
15:13:37 25 evidence rule.

15:13:38 1 MR. PICCIRILLI: She's relating what was told
15:13:40 2 to her why her son was sent --

15:13:43 3 THE COURT: Well, if you can, the son is
15:13:45 4 talking about the Department of Health policy?

15:13:47 5 MR. PICCIRILLI: No. I'll try to explain it
15:13:50 6 better.

15:13:50 7 Q Were you told by anyone in the school department why your
15:13:54 8 son was being sent home?

15:13:56 9 A Um, yes, yes.

15:14:03 10 Q Who was it that told you the reason your son was being
15:14:06 11 sent home?

15:14:07 12 A The school nurse.

15:14:08 13 Q The school nurse. So the school nurse would tell you to
15:14:12 14 come pick him up?

15:14:14 15 A So this specific incident, we had many incidents last
15:14:18 16 year, but in this specific instance I e-mailed the school
15:14:23 17 and I said, he has a cough. I don't know if I need to
15:14:29 18 get into -- he has a cough. I had him tested and I was
15:14:34 19 driving him to the school, in which she asked me for the
15:14:38 20 test. I just went to the store and bought one of the
15:14:41 21 rapid tests and it was negative. So I took a picture and
15:14:45 22 sent it to her and when I got there she called me again
15:14:48 23 and said he was not allowed in school because he needs
15:14:51 24 the PCR test. So he was not allowed in school.

15:14:56 25 Hours later she called me back and said you need to

15:15:01 1 come get your daughter now. I made a mistake. She's not
15:15:04 2 allowed to be here either because she's a household
15:15:08 3 member.

15:15:09 4 Q And did they say anything about why the issue of the
15:15:14 5 cough was the reason why they had to be sent home?

15:15:19 6 A Because it's one symptom. There's a list of symptoms.

15:15:24 7 Q So, again, the nurse was relating to you the reason?

15:15:29 8 A Yes, the policy. She sent me a picture. I actually
15:15:33 9 demanded it. She sent me a picture of the page to my
15:15:40 10 e-mail.

15:15:40 11 Q During this past summer, what experience did your
15:15:52 12 children have wearing masks, if there were any?

15:15:56 13 A My children don't wear masks, except for in school.

15:15:59 14 Q So during this past summer, what types of activities did
15:16:03 15 they engage in without masks?

15:16:05 16 A We went on vacation. They had sleep overs. Each of my
15:16:10 17 children are on -- my daughter is on two softball teams.
15:16:13 18 One is a travel team. One is a rec team. My son is on
15:16:17 19 travel baseball. All summer we had tournaments. Playing
15:16:22 20 with friends, swimming, I mean all your normal summer
15:16:25 21 activities.

15:16:27 22 Q Since the school department has changed their policy to
15:16:35 23 mandate masks in accordance with the executive order,
15:16:40 24 what have you done for yourself to look into that, which
15:16:48 25 lead you to this lawsuit?

15:16:49 1 A Well, I did work all summer with -- I started speaking to
15:16:56 2 friends and neighbors about what we could do. So we
15:17:01 3 really worked hard with our town if you have an optional
15:17:07 4 mask policy.

15:17:08 5 And when it got changed by the Governor's Executive
15:17:11 6 Order, I really started looking into what I could do
15:17:16 7 because to me it was not acceptable. I had promised my
15:17:20 8 kids, broke my promise, that they would not be wearing
15:17:23 9 masks this year, one way or another. Either you're not
15:17:26 10 going to school or mom is going to get it so you don't
15:17:30 11 have to wear them in school.

15:17:34 12 So we -- I had a group of people I met. I'm not on
15:17:39 13 social media but they had a Facebook page where --

15:17:42 14 MS. WYRZYKOWSKI: Objection, your Honor. We're
15:17:43 15 now talking about somebody else's Facebook page and what
15:17:47 16 somebody else was doing.

15:17:47 17 Q From your own direct knowledge?

15:17:50 18 A Okay.

15:17:50 19 Q What did you do?

15:17:53 20 A Okay. So I had my group of friends, everyone in
15:17:59 21 Gloucester, and we started meeting, and it grew and grew
15:18:04 22 and people started calling. So it became many towns,
15:18:09 23 which I have the list of towns and I can't remember them
15:18:11 24 all.

15:18:12 25 And I have been -- it became so big I started giving

15:18:17 1 my e-mail address out to people and my phone number, and
15:18:20 2 we start getting hundreds of people calling. You know
15:18:24 3 maybe our meeting would be 50 or 70 people, but there
15:18:28 4 would be some new people. So I started taking, we
15:18:31 5 couldn't handle getting information back to people. So I
15:18:34 6 kind of took it upon myself, with discussions a few other
15:18:38 7 parents, that were leading it to kind of play the
15:18:41 8 secretary role and get information out to people and let
15:18:45 9 them know what we wanted to do, that we get advice from
15:18:50 10 an attorney and to move on from there.

15:18:53 11 And, you know, they were Unmask Rhode Island.
15:18:56 12 That's a group that presently has 3 or 4,000 --

15:19:00 13 MS. WYRZYKOWSKI: Objection, your Honor. Move
15:19:01 14 to strike.

15:19:02 15 THE COURT: Next question.

15:19:03 16 Q So did you get -- you testified that you got hundreds of
15:19:09 17 e-mails from people?

15:19:09 18 A Right.

15:19:10 19 Q Okay. Where? What towns in the state were these people?

15:19:15 20 A They were from everywhere.

15:19:17 21 Q Did you have a list there that you wanted to refer to
15:19:20 22 that would help refresh your recollection?

15:19:20 23 A Sure.

15:19:21 24 MR. PICCIRILLI: Is that okay if she does that?

15:19:24 25 MS. WYRZYKOWSKI: No objection.

15:19:26 1 Q Can you look at that list, Ms. McKenney. Tell me all the
15:19:30 2 towns that people contacted you from?

15:19:32 3 A Glocester, Smithfield, North Smithfield, Warwick.

15:19:36 4 Q Go slowly.

15:19:37 5 A I'm sorry. Coventry, Wakefield, Barrington, South
15:19:46 6 Kingstown, North Kingstown, Hopkinton, Johnston, Bristol,
15:19:52 7 Central Falls, Pawtucket, Portsmouth, Tiverton, West
15:19:59 8 Warwick, Warwick, Burrillville, Westerly and Cranston.

15:20:07 9 Q And there are currently about 38 towns, we've amended our
15:20:15 10 complaint. It was originally 14 parents now we're up to
15:20:19 11 about 38?

15:20:20 12 A Thirty-five

15:20:21 13 Q Thirty-five, I'm sorry. Are there additional parents
15:20:24 14 that wish to join this lawsuit?

15:20:26 15 MS. WYRZYKOWSKI: Objection, your Honor. It's
15:20:28 16 hearsay.

15:20:28 17 THE COURT: Sustained.

15:20:30 18 Q Is there any other stories from your children that you
15:20:57 19 want to relate to us that we didn't get to?

15:21:00 20 MS. WYRZYKOWSKI: Objection, your Honor. That
15:21:02 21 just calls for a narrative.

15:21:03 22 MR. PICCIRILLI: Okay.

15:21:04 23 THE COURT: Overruled. Anything else?

15:21:07 24 THE WITNESS: Just one quick story from my
15:21:13 25 daughter, so I can speak on her behalf as well and it's

15:21:15 1 not all about my son. But she, as I said is very
15:21:19 2 confident and I would almost say, besides the lack of her
15:21:27 3 inability to breathe properly in the masks --

15:21:30 4 MS. WYRZYKOWSKI: Objection, your Honor.

15:21:33 5 MR. PICCIRILLI: I'm sorry, what was the
15:21:34 6 objection?

15:21:34 7 MS. WYRZYKOWSKI: She provided her testimony
15:21:39 8 with respect to that, the inability to breath through a
15:21:42 9 mask. That has not been discussed.

15:21:45 10 MR. PICCIRILLI: She -- the child, I'm sorry.
15:21:47 11 The child was relating the story that she felt that she
15:21:52 12 couldn't breath through the mask.

15:21:54 13 MS. WYRZYKOWSKI: That she can't say anything
15:21:54 14 unless it happened to her.

15:21:56 15 MR. PICCIRILLI: I'm sorry, I misunderstood
15:21:58 16 your testimony. Can you start again.

15:22:00 17 THE COURT: Strike that. If you can continue.

15:22:04 18 THE WITNESS: She had reported, as I said
15:22:06 19 started middle school, and I can't remember exactly if it
15:22:09 20 was day two or day three, came home very upset because
15:22:14 21 the English teacher had inspected the childrens' masks
15:22:18 22 and a girl who she didn't know her name, because you have
15:22:23 23 West Gloucester and Foster. They all go together. So she
15:22:26 24 was told that her mask was inadequate and she had to go
15:22:30 25 to the nurse and get a new mask, and my daughter Ella was

15:22:34 1 very upset saying the girl looked like she was going to
15:22:38 2 cry, mom. How can they do this to her?

15:22:41 3 So I think that's important because children are
15:22:43 4 being singled out and it's really effecting them
15:22:51 5 emotionally and overall --

15:22:54 6 MS. WYRZYKOWSKI: Objection, your Honor. She's
15:22:55 7 not even talking about her child at this point.

15:22:57 8 THE COURT: Sustained. I understand your
15:22:59 9 point.

15:23:00 10 Q BY MR. PICCIRILLI: One last thing about this group of
15:23:03 11 parents that you have been in communication with. Have
15:23:07 12 any of the parents -- we alleged in our complaint that
15:23:11 13 some of these parents have requested to remained
15:23:11 14 anonymous. Do you know why?

15:23:17 15 MS. WYRZYKOWSKI: Objection, your Honor, that
15:23:18 16 question calls for hearsay.

15:23:20 17 THE COURT: Sustained.

15:23:24 18 MR. PICCIRILLI: How do I bring in a parent
15:23:25 19 that wants to remain anonymous?

15:23:29 20 THE COURT: You don't have any anonymous
15:23:32 21 plaintiffs here.

15:23:33 22 MR. PICCIRILLI: I did not do a Jane Doe or
15:23:35 23 John Doe.

15:23:36 24 THE COURT: Mr. Piccirilli, I think you have
15:23:41 25 36 plaintiffs. I get the message.

15:23:45 1 MR. PICCIRILLI: Nothing further.

15:23:52 2 THE COURT: Thank you.

15:23:54 3 MS. WYRZYKOWSKI: The State has no questions.

15:23:56 4 THE COURT: Thank you. You're all set.

15:23:58 5 Thanks.

15:23:59 6 MR. PICCIRILLI: Your Honor, I think we're done
15:24:00 7 for today, I guess.

15:24:02 8 MS. WYRZYKOWSKI: The one thing I ask is before
15:24:04 9 we adjourn is that we have a side bar so I fully
15:24:07 10 understand what we're looking for in the information.

15:24:10 11 THE COURT: Okay. Is there an agreement on
15:24:16 12 what information we're going to get? We can put it on
15:24:20 13 the record right now. We can do it in open court.

15:24:20 14 MR. PICCIRILLI: That's fine.

15:24:23 15 MS. WYRZYKOWSKI: I was just a little bit
15:24:24 16 confused as to what Greg was talking about.

15:24:28 17 THE COURT: I thought that Mr. Piccirilli was
15:24:29 18 asking for a list of the schools that had mandates
15:24:37 19 before. What the condition of the schools were before.

15:24:38 20 MR. PICCIRILLI: So as I indicated in the
15:24:42 21 Governor's Executive Order of August 19, the second order
15:24:46 22 2187, with regard to the masking in schools, 2186 was the
15:24:52 23 emergency order, 2187 was the mask order.

15:24:56 24 In that order the Governor states that many school
15:25:01 25 districts have enacted policies mandating masks. What I

15:25:07 1 am looking for is on August 19, not after because after
15:25:12 2 that every district had it, so that's not going to help.

15:25:15 3 I want to know before August 19, what school
15:25:19 4 district had mask policies. Were they optional? Were
15:25:24 5 they mandatory. When were they enacted? I have got to
15:25:29 6 imagine the Governor had that information when someone
15:25:34 7 wrote that sentence.

15:25:38 8 THE COURT: You want copies of all the
15:25:40 9 policies?

15:25:41 10 MR. PICCIRILLI: Just a summary. I don't think
15:25:45 11 South Kingstown had a policy. I know Gloucester had a
15:25:48 12 policy. I wrote it. It was optional.

15:25:52 13 THE COURT: What dates? Do you want the dates
15:25:55 14 that they were enacted?

15:25:56 15 MR. PICCIRILLI: Yes. In other words, on
15:25:59 16 August 12th, Johnston enacted an option policy. On
15:26:04 17 August 13th, Cranston enacted a mandatory policy.

15:26:08 18 THE COURT: So that requires somebody going
15:26:09 19 through the whole list of policies and getting a date. I
15:26:13 20 mean what difference does a date make?

15:26:15 21 MR. PICCIRILLI: Again, how about -- I
15:26:16 22 apologize. I don't mean to interrupt. But about this,
15:26:19 23 just give me what was given to the Governor to justify
15:26:23 24 writing that. Because if they didn't give him anything
15:26:28 25 then how did he write the sentence? So they had to have

15:26:31 1 given him something. It should have been attached to the
15:26:34 2 executive order, it wasn't. So that's all I'm asking.

15:26:41 3 MR. FIELD: Judge, we'll make the inquiry to
15:26:43 4 the Governor's office. I just want to make clear, and
15:26:46 5 first of all this is the first time we are hearing this,
15:26:48 6 so we don't know what the Governor's Office has. Just
15:26:51 7 because it's in the executive order doesn't mean there
15:26:54 8 are documents in the Governor's Office possession to
15:26:56 9 justify that sentence.

15:26:57 10 I'm fairly certain, even though I've never been
15:27:00 11 involved in the process, that the Governor takes oral
15:27:03 12 advice. He relies on oral commitment. So I don't know
15:27:08 13 if that was done in this case or supported by documents
15:27:10 14 that the Governor's Office has. We'll make the inquiry.
15:27:13 15 I just want to make that clear right now.

15:27:16 16 THE COURT: So if you're asking only for what
15:27:19 17 the Governor has, you may not get any. You recall
15:27:21 18 Dr. McDonald describing a commission.

15:27:23 19 MR. PICCIRILLI: Whoever in state government.
15:27:25 20 There must be someone in state government that has this
15:27:29 21 information to compile this information.

15:27:33 22 THE COURT: What the Department of Education
15:27:35 23 may have is different from the executive office.

15:27:38 24 MR. PICCIRILLI: I'm having a hard time
15:27:43 25 understanding why this would be what they propose.

15:27:43 1 THE COURT: I just don't want them to have to
15:27:47 2 go -- you may know better than me, am I correct that the
15:27:50 3 Department of Education has to keep a copy of all of
15:27:52 4 these policies?

15:27:53 5 MR. PICCIRILLI: Not necessarily. I think they
15:27:57 6 don't. There may be a statute somewhere that says that,
15:28:00 7 but school committees don't regularly send their
15:28:04 8 policies.

15:28:04 9 Unless, however, as part of the back to school
15:28:07 10 reopening plan, even before, even before the executive
15:28:13 11 order, RIDE did have, and that's what Ms. McKenney was
15:28:17 12 testifying to, they had sent out a template to all the
15:28:22 13 school districts and you had to pick from three;
15:28:24 14 mandatory, optional or no policy. And you had to fill
15:28:27 15 that in, send it to the State by a certain date to be
15:28:30 16 eligible for certain funding. They call it ESRA, the
15:28:35 17 federal money.

15:28:36 18 THE COURT: This is summer 2021?

15:28:38 19 MR. PICCIRILLI: Just before the Governor's
15:28:40 20 order. So --

15:28:41 21 THE COURT: How about we get that?

15:28:43 22 MR. PICCIRILLI: So there had to be a
15:28:47 23 compilation, I would think, that went to the Department
15:28:48 24 of Ed and the Department of Ed then provided it to the
15:28:48 25 Governor.

15:28:51 1 Now, maybe they provided it orally. That's why I
15:28:55 2 initially after the Department of Ed, I'm kind of
15:28:59 3 surprised to hear that the Governor would issue an
15:29:03 4 executive order on oral advice and not keep a written
15:29:04 5 record of that.

15:29:05 6 MR. FIELD: Judge, I got to tell you, I'm
15:29:07 7 getting tired of hearing about the Governor relying on
15:29:10 8 oral advice and not documents.

15:29:14 9 THE COURT: He's trying to find out what
15:29:16 10 documents you want, Mr. Piccirilli. I understand your
15:29:18 11 argument about what the Governor did or didn't do, but
15:29:20 12 this isn't the time for argument. We're just trying to
15:29:23 13 get the documents you want.

15:29:24 14 MR. PICCIRILLI: I'm just looking for the
15:29:26 15 documents that had to have been created by --

15:29:30 16 THE COURT: How about this, any document
15:29:32 17 created during July and August 2021 by the Department of
15:29:36 18 Education regarding mandates by cities and towns for
15:29:41 19 school masks. Any town, not the individual regulation.
15:29:44 20 The individual regulation --

15:29:46 21 MR. PICCIRILLI: And just a simple indication,
15:29:48 22 was it mandatory? Was it optional. And I don't think
15:29:53 23 they called it optional. It was either mandatory or
15:29:56 24 strongly recommend.

15:29:57 25 THE COURT: Okay. Good.

15:30:00 1 MR. FIELD: I just want to know what I'm
15:30:02 2 getting.

15:30:02 3 THE COURT: Any town in July or August 2021 by
15:30:07 4 the Department of Education of whether the masks -- what
15:30:11 5 the mandates were in the cities and towns, whether or not
15:30:15 6 they were required, mandatory or optional.

15:30:22 7 If there's not, you must produce all the individual,
15:30:26 8 okay.

15:30:28 9 MR. PICCIRILLI: Thank you, your Honor.

15:30:29 10 THE COURT: Thank you.

15:30:29 11 MR. FIELD: Thank you.

15:30:31 12 MR. PICCIRILLI: Did your Honor want to meet?

15:30:33 13 THE COURT: Well, let's talk about the
15:30:34 14 schedule. Why don't we go off the record. We're at
15:30:37 15 recess.

15:30:37 16 **A-D-J-O-U-R-N-E-D**

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