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July 1, 2020

Dr. Carmen I. Ayala  
Illinois State Board of Education  
100 N. 1st Street  
Springfield, IL 62777

Dr. Ngozi Ezike  
Illinois Department of Health  
525-535 West Jefferson Street  
Springfield, IL 62761

**IN RE: HUTSONVILLE CUSD #1**

Dear Dr. Ayala & Dr. Ezike,

Please be advised I represent Hutsonville CUSD #1 which is a public school district located in Crawford County. My client is in receipt of the 63-page “Part 3-Transition Joint Guidance” which was released by your respective agencies on June 23, 2020. For the following reasons, my client is respectfully advising your agencies it is declining to implement the health and safety protocols as outlined in the guidance document.

- 1) I have reviewed the six pages of resources you cite as substantive authority supporting the basis for promulgating these guidelines. Nowhere in those six pages do I see any citation to the United States Constitution, Illinois Constitution, Illinois Department of Health Act, Illinois School Code, or any legitimate legal source for that matter, which purports to delegate your administrative agencies any lawful authority to mandate such rules upon private or public schools, or more directly, the parents and school children of our state.
- 2) While on page 3 of your promulgated guidance document you declare all public and non-public schools serving pre-kindergarten through 12th grade students must follow these guidelines, you again fail to reference any legislative act which delegated to each

of your agencies the authority to place such demands upon schools, parents or our children.

While recent events within the executive branch might have emboldened you to believe otherwise, your administrative authority is limited to that which has been delegated to you by the people's branch of government, being the legislature. To that end, I would direct your attention to the Illinois School Code and would respectfully ask that you read every page of it if you have not already. In the 1,359 pages of the Illinois School Code, the Department of Public Health is mentioned exactly 29 times; however, in none of those references can it be found where the legislature requires any school, private or public, to enforce these health and safety protocols without question.

- 3) In numerous places within the guidelines your agencies make it clear the purpose is to allegedly "prevent the spread of COVID-19". A noble concept no doubt, but notwithstanding the questionable efficacy of the proposed guidelines, such generalized health regulations have for almost a century been deemed beyond your authority by our Illinois Supreme Court. "Health authorities cannot promulgate and enforce rules which merely have a tendency to prevent the spread of contagious and infectious diseases." See *Barmore v. Robertson*, 134 N.E. 815, 819 (Ill. 1922).
- 4) In *Barmore*, the Illinois Supreme Court also acknowledged health regulations cannot be arbitrary and unreasonable. To that end, a school building is no different than a church building as it relates to these health and safety protocols. Within the past few weeks, the Illinois Department of Health promulgated recommendations wherein a variety of similar health and safety protocols were merely recommended within church buildings. It defies all bounds of reason as to how recommendations are sufficient inside a church building but somehow the same recommendations would be ineffective inside a school building, especially when the latter is filled with children who are far less at risk than older individuals according to your suggested facts and science. Such inconsistencies by your agencies meet the very definition of arbitrary and unreasonable.
- 5) The Governor in his most recent press conference acknowledged the dubious nature of these guidelines wherein he all but admitted to a reporter that no enforcement mechanism exists. To that extent, I agree with the Governor. As such, reasonable and

intelligent people must conclude that a purported “rule”, which has no cognizable enforcement mechanism, is in fact not a rule, but merely a recommendation.

For these reasons, my client will respectfully consider the recommendations your agencies have provided but cannot in good conscious, given their legal and moral obligations to those they serve, blindly acquiesce to them. After thoughtful consideration, and upon discussion with local agencies, school administrators, teachers and parents, my client alone will determine what, if any, additional health and safety protocols it might choose to add to its current guidelines for the upcoming year. With all due respect to your recommendations, my client is inclined to advise your agencies they are reasonably certain such additional protocols, if any, will not include a mandate that staff, parents or children be required to wear any type face coverings.

Should you have any questions or need further information, please do not hesitate to contact my office directly at (618)-664-9439.

Very truly yours,

**Silver Lake Group, Ltd.**



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Thomas G. DeVore

Attorney at Law

Copy: Ms. Julie L. Kramer, Superintendent (*via email*)