

Before the Board of Commissioners of Monroe County, Indiana

In the Matter Of: The Appeal of Seven Oaks Classical Schools, Inc from an Emergency Health Order Violation

## **DECISION**

### **Authority**

Pursuant to Indiana Code 16-20-5.5-2, a recipient may appeal an enforcement action issued or taken by the local board of health or local health officer under an emergency health order to the legislative body. In Monroe County the legislative body is the Monroe County Commissioners.

Pursuant to Indiana Code 16-20-5.5-3 (b), the legislative body shall develop procedures for the review, consideration, and hearing of an appeal filed under chapter 5.5.

The Monroe County Board of Commissioners, by Ordinance 2021-20, prescribed the manner for appeal and procedures for review, consideration, and hearing of an appeal filed.

Pursuant to Indiana Code 16-20-5.5-5, the County Commissioners shall issue a written decision for any appeal that receives a hearing under this chapter. This Decision satisfies that requirement.

### **Timeline**

On 8/19/21, the Health Department issued citation number 1879 on the basis of violation of the Emergency Health Order's mask requirements to Seven Oaks Classical School, Inc.

On 8/26/21, Dr. Stephen Shipp, on behalf of Seven Oaks Classical Schools, Inc. (hereafter, "School") filed an appeal of the ticket. The appeal had three basis which are summarized as follows:

1. That enforcing the citation would have impact on students experiencing disability and that those impacts outweigh the risks contemplated by the Emergency Health Order.
2. That enforcing the citation would materially impact a compelling interest that justifies deviation from the Emergency Health order and that the School has taken measures that ensures the public health.
3. The Emergency Health Order does not apply to Seven Oaks Classical Schools, Inc.

On 9/8/21, the Commissioners voted unanimously to hear the appeal.

On 9/20/21, the hearing was convened at 3:00 p.m. by Julie Thomas, President of the Board of Commissioners. Lee Jones, Vice President of the Monroe County Board of Commissioners and Penny Githens, Commissioner were present as hearing officers. Appellant Seven Oaks Classical School, Inc. ("School"), was represented by Stephen Shipp. The Health

Department, by its Administrator, Penny Caudill was present along with County Attorney Margie Rice, who is assigned to the Health Department. The hearing was conducted via zoom.

### **Basis of Decision**

Count 1. That enforcing the citation would have impact on students experiencing disability and that those impacts outweigh the risks contemplated by the Emergency Health Order.

The School presented that roughly 13% of student body qualifies for special education services, and that a somewhat smaller number of those who have speech and hearing difficulties. For the special educational services qualified population, mask wearing has a negative impact on learning.

The Health Department indicated that the majority of students and staff observed on August 19<sup>th</sup> were unmasked. The School was provided with information regarding mask alternatives, including clear masks and face shields.

Conclusion. The School did not show that exemptions b and c in the Health Order (effective August 5<sup>th</sup>, 2021) , were inadequate to address the concerns from the student perspective. In addition, the School made no showing that exemption e was inadequate for the purpose of teacher presentation.

Count 2. That enforcing the citation would materially impact a compelling interest that justifies deviation from the Emergency Health order and that the School has taken measures that ensures the public health.

The School presented evidence of a three different compelling interests: 1) education of students, 2) total well-being of the Students, and 3) healthy partnership with parents. The school presented that the wearing of masks made it difficult in educating individuals in English and French Classes. The School indicated an importance of both the teacher and student to be able to see the mouth when words are formed. In addition, the School explained that it used a phonetically based reading program.

The Health Department indicated that the majority of students and staff observed on August 19<sup>th</sup> were unmasked. The School had been provided with information regarding mask alternatives, including clear masks and face shields.

Conclusion: While we agree that the education and total well-being of the students is a compelling interest, outside of the disability exemptions discussed in Count 1, evidence was focused on language and foreign language learning. The School's policy did not distinguish between types of learning. Therefore, the School did not present evidence that the enforcement of the citation would have a material impact on a compelling interest.

Count 3. The Emergency Health Order does not apply to Seven Oaks Classical Schools, Inc.

While both parties presented various documents that demonstrate the reasoning, the clear language in the order is: "schools in Monroe County shall follow the guidelines of the Centers for Disease Control". It was undisputed that the Centers for Disease Control guidelines

recommended masks for schools. With that being said, the confusion was understandable, and the Health Order was later revised to clarify this issue.

The Commissioners expect the School to comply with the most recent Health Order.

**Final Order**

IT IS THEREFORE ORDERED, that the enforcement action represented by citation number 1879 stands. However, given that Health Order was later amended to clarify the applicability of the Order to School, the Board of Commissioners hereby waive the \$250 fine.

This order is affective upon approval by the Board of Commissioners. The parties are advised that they have a right to judicial review of this decision by filing an appeal in the Monroe Circuit Court.

**Adopted this \_\_\_\_ day of September, 2021.**

**MONROE COUNTY BOARD OF COMMISSIONERS**

**“YEAS”**

Not Present

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**Julie Thomas, President**

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**Lee Jones, Vice President**

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**Penny Githens, Commissioner**

**“NAYS”**

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**Julie Thomas, President**

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**Lee Jones, Vice President**

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**Penny Githens, Commissioner**

**ATTEST:**

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**Catherine Smith, Monroe County Auditor**