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VIA ELECTRONIC MAIL

Dr. Pete Hannigan
Superintendent
Hawthorn School District 73
841 West End Ct.
Vernon Hills, IL 60061
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Re: Social Distancing Requirements in Schools

Dear Dr. Hannigan:

You requested our legal opinion regarding the District’s social distancing obligations. Specifically, you asked whether the phrase “to the extent possible,” used in the Illinois Department of Public Health (“IDPH”) and Illinois State Board of Education’s (“ISBE”) return to school guidance, related to requiring six (6) feet of social distance, provides leeway to employ less social distancing particularly with respect to the placement of student seating.

In short, it is our opinion that the “to the extent possible” language does not permit a district to purposely maintain less than six (6) feet between the placement of student seating, but rather is designed to provide school districts with the flexibility needed to address the reality that six (6) feet cannot always be maintained in certain activities that occur in a school.

First, the phrase “to the extent possible” is not new to the guidance. The currently effective COVID-19 Executive Order (Executive Order 2021-04) reissued the Executive Order regarding in-person instruction at Pre-K–12 schools (Executive Order 2020-47) in its entirety. Executive Order 2020-47 requires schools to follow IDPH and ISBE guidance including, “[e]nsuring compliance with social distancing requirements to the greatest extent possible.” That Executive Order also notes, “social distancing includes maintaining at least six-foot distance from other individuals.” Similarly, the most recent comprehensive return-to-school guidance issued by IDPH and ISBE, the “Fall 2020 Learning Recommendations,” states that “six feet” is the appropriate interval for social distancing.

There is no guidance or directives indicating that “to the extent possible” allows for a willful or intentional use of a lesser amount of social distance. Specifically, we have found no support for an interpretation of this phrase to mean that a school district can maintain 3 to 6 feet in the placement of desks. Rather, we believe that the “to the extent possible” language is intended for situations when maintaining six (6) feet of social distance cannot reasonably be controlled by a school (e.g., students passing each other to enter or exit a classroom).

Therefore, to abide by the language of the applicable Executive Orders and guidance—as well as the apparent spirit of those Orders and guidance—we recommend the District continue to observe six (6) feet of social distancing in the positioning of student desks and other fixed locations as well as activities which the District can reasonably control within its facilities.

If you have any questions regarding our legal opinion or recommendations related to social distancing obligations, please let us know.

Very truly yours,

ROBBINS SCHWARTZ



By: Joseph J. Perkoski

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By: John “Jack” Klinker