

Dear Board of Education and Superintendent,

SOMEA finds itself in the repeated and forlorn position of having to advise you of the necessity of SOMEA members to return to all-virtual instruction effective Tuesday, February 16, 2021 through March 15, 2021. Indeed, SOMEA members were excited by the prospect of seeing their students in person again under the belief that they would do so under the terms of the Agreement and with strict safety protocols enforced. Their hopes were sorely dashed by the district. Despite its extensive good-faith efforts to deliver hybrid instruction to targeted student populations while mitigating the real dangers to the safety and well-being of members and students, as most recently evidenced by hours its representatives spent with district counsel, the Superintendent, and the President of the Board of Education to reach the January 27th Agreement and its attempts to return to in-person instruction since February 1st, the district's obfuscation – and in some cases outright malfeasance – in disregarding the terms under which it agreed to proceed with hybrid instruction have made clear that the district is not capable of and not willing to comply with the terms of the Agreement.

Indeed, that the district never intended to comply with the Agreement is perhaps best evidenced by the clear directive central administration sent to its building administrators to disregard the express terms of Paragraphs 1 and 2 of the Agreement. As you are aware, a consistent concern of SOMEA has been the lack of adequate ventilation in the district's antiquated and dilapidated buildings. It bears repeating that the district's ventilation systems, by its own admission, are outdated and inadequate to mitigate student and staff exposure to COVID particles. Further, the district has long been aware that its overtaxed and poorly designed heating systems have been inadequate to deliver consistent heating throughout its buildings. Accordingly, the district agreed that classrooms needed to be more clearly defined as fit for use in the midst of an airborne contagion pandemic. More specifically, the district agreed under Paragraph 1:

“there are a number of heating/ventilation units, both identified by the Board during its review and others by SOMEA, that are not working as intended, such that those worksites are deemed unfit for use. Functioning units are those with a working motor\blower which are capable of maintaining adequate ventilation **and** room temperature in compliance with N.J.A.C 12:100-13:3(a)1 et. seq. (68-79 degrees) with open windows, which may be opened at the discretion of the employee.”

Despite the clear requirement that both conditions be met for a room to be used, *i.e.*, a room have a functioning unit **and**, with windows open, maintain a room temperature consistent with state-mandated temperatures, central office administration directed building administrators to declare rooms fit if the temperature scale could be reached with open windows but without mechanical ventilation **or** mechanical ventilation existed (no matter its output) but with windows closed. For example, in response to members' requests to be moved to a fit room, on February 3rd, Tuscan's principal advised:

“As a follow up to my previous email, the district has confirmed that the classroom to which you are assigned has been reviewed by maintenance and\or our vendor. The classroom has an operating heater and working mechanical ventilation **or** alternative fresh air component and appropriate temperature ranges can be maintained as per the District's maintenance department and\or vendor. As such, the room is ready for use as per the Agreement with SOMEA and New Jersey and Federal guidance.”

This same language was mirrored by South Orange Middle School's principal in a February 8th communication regarding the placement of teachers in classrooms which did not have working blowers. Similarly, in a February 8th communication from Maplewood Middle School's principal, she reported, “The guidance we have received from the district states that as long as there is a fresh air component (working windows), the room is fit to use.” Likewise, in a February 10th communication from Columbia

High School's principal, he advised, "The architects have cleared your room and we even brought in Carl and Pete Romain to ensure the safety of the room. **Windows are not necessary for ventilation when you have mechanical ventilation in the room.**" contrary to the Agreement. Given the consistent message of these administrators across different schools, as well as the reference by CHS' and Tuscan's principals in separate emails to consultation with Paul Roth and Peter Romain, the origin of this directive is central office administration. In addition to the clear intention to subvert the terms of the Agreement, it is also significant to note the district's architectural report does not include an inspection of all rooms to determine adequate ventilation to mitigate COVID exposure and that it was Mr. Romain's false representation on which the Superintendent relied during the October 19th Board meeting in representing the district's "univents (unit-ventilation boxes in each classroom) had been updated with filters with a Merv 16 rating." (See Superintendent's October 27th Letter to the Community.) No adverse action was taken against Mr. Romain, and inexplicably, he remains the advisor to the district on matters of safety and compliance.

Notably, the CDC's February 12th "Operational Strategy for K-12 Schools through Phased Mitigation" expressly provides for both mechanical ventilation and fresh air, as it calls for districts to "open[] windows and doors to **increase** circulation of outdoor air to **increase** the delivery of clean air and dilute potential contaminants." Such language assumes both mechanical ventilation and a fresh air component consistent with the Agreement. Given that SOMEA did not require as a condition to returning to the buildings that the district upgrade its systems to provide for MERV 16 or HEPA filters, as science dictates is required to catch COVID particles, it is entirely reasonable for its members to demand for the benefit of students alike that rooms have functioning mechanical systems as well as open windows while maintaining state-mandated temperatures for schools. Significantly, SOMEA members agreed to return to buildings prior without any representation of access to vaccines in another show of good faith in obtaining these minimum environmental conditions.

In hindsight, SOMEA's good faith efforts were in vain from the start. The district's intention to ignore the Agreement was first evident during the walkthroughs conducted consistent with Paragraph 2 of the Agreement, which provides:

"the Parties will meet and confer and conduct walkthroughs regarding worksites to be occupied by members prior to such occupation to determine and verify whether the rooms are fit for use or require repair. If a worksite is determined not to be fit for use, the Board will relocate the member to a worksite that is fit for use. If such a room is not available, the member will work remotely until such time as an appropriate worksite becomes available."

Yet, SOMEA representatives were met with building administrators who purposefully shut windows after they were opened by representatives to obtain accurate temperature readings. When SOMEA demanded that administrators act in good faith consistent with the terms of the Agreement which provides for windows to be opened by staff for ventilation, CHS's principal responded that would mean that the entire D wing of the building would be unfit for use. This statement evidences a clear intent to circumvent the agreement. And still he placed teachers and students in these rooms knowing full well the wing's unfitness during the winter months. Indeed, temperatures in these rooms registered far below the minimum 68 degrees. Other building administrators advised maintenance staff to close windows prior to SOMEA walkthroughs so accurate temperature readings could not occur.

Notwithstanding these obvious signs of the district's intention not to comply with the Agreement, SOMEA staff returned to the buildings as promised on Monday, February 1st. While we uniformly expressed joy at seeing our students in person, from this first day through this Thursday, we have had to address dozens of instances across buildings of staff and students being placed in unfit rooms and administration failing to remedy these violations under the Agreement either by feigning repeated ignorance to the conditions of rooms, claiming outright they were not bound by the results of

SOMEA's walkthroughs as noted above, and in even more egregious cases, directing staff to shut windows to preclude adequate ventilation to increase freezing room temperatures. Even with SOMEA representatives exhausting hours of personal time to resolve these individual disputes, still 34 grievances regarding these working conditions over ten days remain active. While certainly not inclusive, specific examples of the ways in which the district has not acted in good faith under the Agreement with respect to the unfitness of the rooms to which students and staff have been assigned include:

- Teachers and students assigned to classrooms where there existed a lack of mechanical ventilation as a result of uni-vents functioning improperly, not functioning at all, or missing a motor in contradiction of Paragraph 1 of the Agreement;
- Teachers and students forced to remain in rooms with temperatures outside Paragraph 1 of the Agreement pursuant to state-mandates;
- Teachers and students relocated to cafeterias where the temperatures were well below state mandates, and/or the space was likewise being used by cafeteria staff members, YMCA staff members, other teachers displaced during prep periods;
- Teachers directed to teach in the same space as other classes (due to temperatures in their own rooms) so that cohorts were not kept separate and teachers were forced to try to teach over one another and students made to filter out other teachers teaching right next to them;
- Members directed to close windows across buildings in violation of Paragraph 1 of the Agreement to increase temperatures below state mandates without any consideration of the need for a fresh air component;
- Teachers and students being left in rooms deemed unfit despite immediate requests for relocation upon arrival;
- Teachers and students assigned to portables deemed to be unfit for use because of the lack of a univent and no proof of filtration in the HVAC in the classrooms. These rooms also share air with other portables through a grate on the wall, as explained to the teachers per a district vendor, and
- Secretaries put into offices without mechanical ventilation, lacking an odorox machine

More importantly, the chaos which is resulting hourly due to boilers breaking down, teachers being placed in unfit rooms and then being made to move across buildings from period to period with no advance notice, and staff having to communicate repeatedly with unresponsive administration results in significant losses of preparation time to deliver instruction to the best of our ability, as we have been doing since the first day in September. Perhaps most egregious is the fact that when the district could not repair its broken univent at Marshall School nor find a substitute fit room for use, it blamed SOMEA for having to revert to remote learning, claiming, "while [the district] has overwhelmingly met this criteria, some rooms are either pending maintenance or a disagreement exists regarding their readiness." A non-functioning univent should not constitute a "disagreement regarding their readiness." Such disparagement when it is the district's buildings which are at fault cannot be said to be an action taken in the best interests of these young students and their parents.

Further, the district's failure to comply with the Agreement has not been limited to its obdurate refusal to comply with Paragraphs 1 and 2 of the Agreement, but also Paragraph 3 of the Agreement, which provides:

SOMEA shall inform its members of the availability of 504 accommodations to the extent members may have preexisting conditions or illnesses, including those identified by the CDC, that place them at heightened risk of severe illness from COVID-19.

Members who have conditions which place them at increased risk should they develop COVID-19 as determined by a licensed physician must submit documentation describing the condition and should set forth the recommended accommodation. Members at risk or that might be at increased risk of severe illness that provide appropriate medical documentation from a licensed physician documenting the medical necessity of a work from home accommodation shall be granted a work from home accommodation consistent with the requirements of Section 504, the ADA, and the New Jersey Law Against Discrimination.

Notwithstanding the district's representation that it would process these requests expeditiously and its acknowledgment that working from home is a reasonable accommodation for such high-risk individuals, several members' requests have not been processed or denied despite members providing the specified medical documentation. These individuals have been made to take sick days, as in many cases, building administrators have refused to allow them to work remotely while such requests are pending due to the district's delay in processing them or outright refusal to acknowledge a medical condition which puts such members at an increased risk of severe illness. As of February 13, 2021, SOMEA has been forced to file 15 grievances related to the unfair treatment of these individuals pursuant to the Agreement. Thus, the district has prioritized punishing members for having such medical conditions by forcing them to exhaust sick leave and not teach when they desperately desire to do so over remote delivery of instruction to our students. By working remotely as a membership, SOMEA seeks to prioritize instruction for each and every student.

Finally, SOMEA has witnessed safety hazards and violations of the district's plan for returning to school which warrant its return to remote instruction. Significantly, SOMEA has provided visual evidence of the district's failure to adhere to cleaning protocols. By example, visual evidence was furnished to the district that toilets were not being cleaned daily, sending pictures of urine which remained on toilets for days until a teacher, in frustration over the district's failure to remedy the situation for days, wiped away the days-old urine stains to relieve himself. Additionally, students who are not part of a cohort have reported to school, and when the teacher contacted building administration regarding this violation of protocol, CHS' administration acknowledged it had not noticed this student enter the building despite alleged inspection of each and every student to confirm they are a part of a given day's cohort. Further, its principal directed the teacher to allow the student to remain in the room, thereby not keeping strict cohort protocols. (It is significant to note that the secondary cohorts do mean the definition of this term under CDC guidelines as they do not remain with the same population throughout the day but rather are interspersed from period to period.) Moreover, despite representations that the Dashboard is being updated weekly and accurately, a February 4th communication to Applecore parents reveals the district is withholding data from its Dashboard as it lists Applecore as having zero cases, a clear misrepresentation given the admitted positive case and need for quarantining of the pre-school program.

Administration's recent comments to the membership evidence no likelihood of compliance in the future. When speaking with the SOMEA's Health and Safety Representative about the need to review again the results of the walkthrough with CHS' principal after placing teachers in unfit rooms, including the school's library and perimeter rooms, even though the rooftop system had been declared inadequate during walkthroughs, as well as freezing conditions in the B wing, he responded, "classrooms according to the architect or classrooms according to SOMEA?"

Based on the foregoing reasons, SOMEA will continue to educate students passionately but remotely through March 15, 2021. This date recognizes the anticipated severe weather predicted over the ensuing weeks, rendering significant parts of buildings unfit for use under the Agreement, and allows the district the opportunity once again to conduct necessary repairs and upgrades to its buildings' systems as well as remedy its processing of 504 requests so that it is ready to operate on March 15th as

promised to provide students and staff with a safe environment conducive to learning. SOMEA stands at the ready to assist administration in this endeavor. As always, SOMEA will deliver quality instruction while also addressing the emotional needs of its students. We have been sensitive to the pandemic fatigue with which we are all struggling by inviting students to process their feelings, often coordinating with the Guidance Department and Student Assistance Counselors to assist individual students, as well as providing creative and dynamic lessons and assignments to engage our students in learning that matters. We would like nothing more than to be able to return to school with our students, but we need the district to uphold its obligations to implement a return to school which remediates its serious deficiencies thus far and collaborates with SOMEA on how best to proceed with in-person instruction based on science and the varying needs and risks associated with each cohort of students. In that vein, SOMEA recognizes the greater need for certain at-risk groups within our student population for in-person instruction as soon as possible. Accordingly, we offer to meet with district administration immediately to develop a specific plan with agreed upon room usage and cohort schedules to allow those students to continue hybrid instruction during this remote instructional period consistent with the Agreement.

SOMEA'S goal is never to be adversarial, but instead always to advocate for our staff, educators, and students. We all know our school buildings are in a state of disrepair because of their age and years of neglect. While this state of district affairs is frustrating to all parties, it is nevertheless the current district administration's duty to provide a safe working and learning environment for its staff and students by immediately remediating these unfit conditions and providing SOMEA proof of the same or acknowledging it currently cannot do so given limited resources and temperatures beyond its control. In closing, as we have asked our members, we would also like to ask all community stakeholders to request in writing from our elected officials that they expedite the approval of funds from the bond to upgrade the ventilation of all our buildings.

The South Orange and Maplewood Education Association