

Fiction vs. Fact

FICTION

District Claim #1: *“With the limited number of students in the buildings during Phase 3, there are excess unused rooms that passed the walkthroughs and could have accommodated classes while grievances and disputes are worked out prior to our next Phase of hybrid instruction scheduled for April 19. Unfortunately, SOMEA refused to return to these rooms that had passed their walkthroughs. Although we had come to a Sidebar Agreement that defined criteria for rooms with univents, SOMEA repudiated that criteria and refused to identify any new criteria that would make them feel the facilities are safe for K-2, 6, and 9th grade classes leaving little to discuss.”*

FACTS: The district took the position during mediation that the Sidebar Agreement does not require the district to place staff and students in rooms with working mechanical ventilation if the room was previously identified as having a non-functioning system and assigned staff and students to rooms previously identified as unfit.

- Paragraph 1 of the Sidebar Agreement provides for mechanical ventilation as well as fresh air as a condition of a fit room: “The Board and SOMEA (collectively referred to as the Parties) agree that 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.”
- School administration has previously acknowledged that the Sidebar Agreement requires both functioning mechanical ventilation and natural air flow via open windows. For example, CHS Principal wrote to the staff:
 - “You may see some new additions like A221 and A225 that weren’t on the list before and you may be wondering why they are there now, if they were used last week. That is because the agreement between the BOE-SOMEA requires mechanical air flow, not just windows (since it will be too cold to just rely on open windows). These rooms don’t have univents, so they have been added to the list. The rest of these rooms have no univent motors or motors with issues.”
- Staff and students of the cohort which returned to school on March 1, 2021 were placed in a total of 5 rooms at Columbia High School, South Orange Middle School, and Montrose School which were unfit based on SOMEA’s January 2021 walkthroughs. Key examples include:
 - Despite scheduling a walkthrough of Montrose School on January 27, 2021, when SOMEA arrived, the building was not occupied, and Montrose could not be inspected to deem rooms fit or unfit. On Friday, February 26, 2021, following the district’s representation at mediation that Montrose was fit for use despite the lack of a walkthrough, SOMEA’s rescheduled walkthrough revealed only two of the rooms were fit. The mechanical ventilation was not fully functioning in most rooms and a belt on the rooftop unit needed to be replaced. Administration contacted SOMEA later that day to advise that mechanical ventilation was fully functioning; however, SOMEA’s second walkthrough revealed ongoing issues in the building, to which administration suggested open windows suffice contrary to the Sidebar Agreement. A third walkthrough still revealed functioning issues, with SOMEA determining dampers in need of adjustment and a control board had a bad relay. It took four walkthroughs by SOMEA over the course of the weekend to remediate these rooms.
 - On February 27, 2021, SOMEA alerted a supervisor that a self-contained special education teacher had been placed in an unfit room and needed to be reassigned. Upon arriving in the new room, the Special Education teacher saw that it was a Science classroom with high stools, high tables, sinks and gas taps. The teacher and 2 paras were concerned because the students were agitated with the new surroundings and generally unable to adjust to the space. After being assured by administration (CHS principal replied that “the blowers were improved since that NJEA tour.”), that the “old” room had a working ventilation unit, the teacher returned. The room had an ant infestation near the teacher’s desk so the students were moved toward the rear of the classroom. After school was finished the teacher emailed administration with information that the blower was never on and the room was cold.

