

**TRANSCRIPT OF AUGUST 3, 2021
ORANGE COUNTY BOARD OF EDUCATION SPECIAL MEETING**

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**[PRESIDENT BARKE STRIKES THE GAVEL TO SIGNAL THE BEGINNING OF THE
SPECIAL BOARD MEETING]**

BARKE: Welcome to our special meeting. Roll call, please.

BOYD: Trustee Sparks?

SPARKS: Here.

BOYD: Trustee Shaw?

SHAW: Here.

BOYD: Trustee Gomez?

GOMEZ: Present.

BOYD: Vice President Williams?

WILLIAMS: Here.

BOYD: President Barke?

BARKE: Here. Okay.

WILLIAMS: Want me to do a real quick invocation?

BARKE: Sure.

WILLIAMS: Lord, we thank you for your goodness and mercies and for today. Bless the words that are said. Amen.

SPARKS: Amen. I pledge allegiance to the flag of the United States of America, and to the republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

BARKE: Okay. And we have one public comment.

WILLIAMS: Oh, wait. We have to adopt the Agenda. I'll make a motion to adopt today's Agenda.

SPARKS: Second.

BARKE: All in favor.

SPARKS, WILLIAMS, BARKE, SHAW, GOMEZ: Aye.

BARKE: Okay.

WILLIAMS: We do have one public comment from the good Judge Lynne Riddle.

RIDDLE: Good afternoon. I'm going to address, I think the only matter that's on the Agenda that I can address. That's number one. I'm going to ask a series of questions with respect to this matter. I have then, a few comments. My first question is, and I'm not sure about the answer to this. I understand you're not under any obligation to answer my questions, but I do have them. I understand that there is presently a lawsuit pending wherein the Orange County Board of Education is a plaintiff against the governor of the state of California and other defendants with respect to the masking mandates that have been placed previously. My first question is, wouldn't it be just easier and less expensive perhaps for everyone to amend the complaint? That's just a question. Wouldn't that be a more reasonable thing to do?

Second, I'm curious really about the 24-hour notice. That makes it very difficult for those of us who really do want to support the Board and the Department and public schools. To get the notice, to read it, and to try to then properly understand; and to do our role in the community, which is, as I see it, is to supervise what you do. You supervise what the Department does and we elect you, but we have an ongoing duty as well to participate and that makes it more difficult. I would hope that you would limit these short notice hearings. I'm not sure why one is necessary today.

Third, I'll just read to you from part of what is a part of what's attached to the Agenda. It says, by this Agenda item, the Orange County Board of Education shall enter into a contractual agreement with the law firm of Tyler and Bursch. The purpose of this retention is to obtain representation regarding potential litigation against California Governor Gavin Newsom relating, and it says here, to ongoing face covering mandates. That relates back to your pending lawsuit in

any case. Then, it continues - Tyler and Bursch has advised the Executive Committee that the Board shall not be responsible for any legal fees payable to Tyler and Bursch.

SPARKS: Thirty seconds.

RIDDLE: I'm sorry. I hope that you will forgive me if I go a little longer and permit me to finish. If not, I will accept your ruling, but I do think this is an important point. As a bankruptcy judge, you're required to review all the applications for all attorney's fees in all matters. That's because you have trustees in cases in their fiduciary's, and you must be assured that all of the fees that are being charged and paid are to benefit the estate.

SPARKS: Time.

BARKE: Thank you.

RIDDLE: You will not permit me to finish?

BARKE: You can finish your sentence. That's what we always allow.

RIDDLE: Alright. Thank you.

BARKE: Thank you.

WILLIAMS: Okay. That's the only one for closed session?

BARKE: Okay. We will now be recessing to closed session.

**[PRESIDENT BARKE STRIKES THE GAVEL, AND THE BOARD GOES INTO
CLOSED SESSION.]**

BARKE: We are now back in session. We'll have a report out from our Council Gregory Rolen.

ROLEN: This is the report out from closed session number one. The Board by a vote of 4-0, Trustees Sparks, Williams, Barke, and Shaw approving; and Trustee Gomez had to depart the meeting at 4:30 PM. The Board took two actions. The first action was to approve the action as summarized in the Agenda item of August 3rd, 2021. The second action was to approve a press release. The press release is as follows: The Orange County Board of Education approves a suit challenging Governor Newsom's authority to suspend normal administrative rule making and mandate masking of children in public schools.

The Governor and his executive agencies, by emergency fiat that violates state constitutional and statutory law, threaten to extend and compound the harm to California's children previously caused by prior school closures and unwarranted masking requirements.

The Orange County Board of Education, in a special meeting today, approved a legal challenge to Governor Newsom's ongoing assertion of emergency rule making powers due to COVID-19, the latest exercise of which has resulted in an edict of approximately two weeks ago, and updated yesterday, requiring K-12 children to wear masks indoors at school for the upcoming school year.

Part of the Board's role is to promote and facilitate the quality of public education for the students and families of Orange County. In keeping with this, the Board recognizes the importance of parental involvement in our education system, of school choice, and of putting the interests of the child first. Above all, the Board also recognizes the importance of keeping our children safe at school and free from policies and practices that will cause them harm. When necessary, the Board will fight to protect the health, safety, and welfare of our county's kids at school. Unfortunately, with the Governor's most recent action to force Orange County's children, even those as young as 5 and 6 years old, to endure an academic year to cover their faces for hours on end, the time has come to fight again.

Putting aside for the moment the lack of a sound medical or scientific basis of the Governor's requirement to mask school children (who in general are neither at risk from COVID-19 nor likely to spread it), and also putting aside the lack of any thoughtful, well-considered transparent balancing of substantial harms of forced masking of juveniles against the purported benefits, the Governor and his state-level administrative agencies do not have the power to continue the state of emergency indefinitely, and to continue to suspend the Administrative Procedure Act to circumvent normal agency rule making requirements. Instead and indeed, the California Emergency Services Act (Cal. Gov't Code Sec. 8629) requires the Governor to "proclaim the termination of a state of emergency at the earliest possible date that conditions warrant."

On June 11, the Governor announced that the actions of Californians over the prior 15 months "had successfully curbed the spread of COVID-19," and he rescinded his "stay-at-home" order. But while conditions clearly warrant the end of the state of emergency, and the Governor has effectively announced as much, the Governor has refused to give up his emergency powers. And now, has misused that power in a way that threatens to harm the children of Orange County.

The Board has approved this challenge to protect our kids, to uphold the rule of law and our constitutional framework of the government and separation of powers. The Board has approved the retention of counsel on a pro bono basis to bring this legal challenge. As a result, the Board's efforts in this litigation will not incur legal fees to Orange County's taxpayers. That is the conclusion of the press release. That is the report out from closed session on August 3rd, 2021.

WILLIAMS: I make a motion to adjourn the meeting.

BARKE: Thank you.

SPARKS: Second.

BARKE: The meeting is so adjourned.