

Edward W. Dindinger, Esq. (ISB #10144)
Dindinger & Kohler, PLLC
6710 W. Fairview Ave.
Boise, ID 83704
P.O. Box 5555
Boise, ID 83705
TEL: (208) 616-5459
Email: service@dklawboise.com

Daniel R. Suhr, Esq.
Brian K. Kelsey, Esq.
Liberty Justice Center
190 S. LaSalle St., Suite 1500
Chicago, IL 60603
TEL: (312) 263-7668
Email: dsuhr@libertyjusticecenter.org

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF ADA

Roy Ratliff and K.S., M.A., P.P., and A.R.,)	
Individually and as parents and next friends)	
of their minor children.)	
)	Case No.
Plaintiffs,)	
)	MOTION FOR
vs.)	PRELIMINARY
)	INJUNCTION
West Ada Education Association)	
Incorporated,)	
)	
Defendant.)	

MOTION

Pursuant to this Court’s authority in equity and Idaho R. Civ. Pro. 65(e)(1), Plaintiffs request an expedited hearing on this motion for immediate injunctive relief barring Defendant from continuing to organize, encourage, facilitate, or otherwise perpetuate an illegal strike.

INTRODUCTION

Schools exist, first and foremost, to educate students. That is their reasoning for being. Students show up to school each day to learn, grow, and belong to a class community. Their education is made possible by teachers, who come to the classroom every day to share their knowledge and love for learning. A substantial majority of West Ada School District’s teachers were ready to report to school this week. Unfortunately, however, a sufficient minority of the district’s workforce joined a union-organized “work action” to force the cancellation of school by calling in sick. This “work action” is a strike, it is illegal under Idaho law, and it must be immediately enjoined so school can resume.

STATEMENT OF FACTS

The West Ada School District (WASD) serves 39,300 students through 33 elementary schools, 11 middle schools, and 11 high schools. WASD, “Who we serve.”¹ As with many districts, in the spring of 2020 WASD was forced to move to remote learning to cope with COVID-19. Rachel Roberts, “With schools closed by Coronavirus, West Ada announces start date for online learning,” Idaho Statesman (March 29, 2020).²

Through fits and starts, WASD safely reopened for in-person school this fall. WASD, “West Ada’s Fall Reopening Plan, 1st Day of School will be Tuesday September 8th.”³ In mid-October, as COVID-19 case numbers fluctuated upward, the union and others pressed WASD to go entirely remote. *See* Clark Corbin, “Health officials move West Ada, Boise, and Kuna schools

¹ Available at <https://www.westada.org/domain/6088>.

² Available at <https://www.kivitv.com/news/with-schools-closed-by-coronavirus-west-ada-announces-start-date-for-online-learning>.

³ Available at

<https://www.westada.org/site/default.aspx?PageType=3&DomainID=25&ModuleInstanceID=18643&ViewID=6446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=290183&PageID=43>.

to red COVID-19 risk classification,” Idaho Ed. News (Oct. 13, 2020).⁴ When the WASD board of trustees received this information, they formulated a plan to move forward on a hybrid model blending in-person and remote learning, which prompted a sick-out threat from the West Ada Education Association (union). “West Ada School Board votes in favor of an alternating school schedule while in red category,” KTVB-7 (Oct. 15, 2020).⁵

The union then organized a “work action” wherein over 700 union members called in sick, paralyzing the school and forcing its closure on Monday, October 19, 2020. Clark Corbin, “West Ada Education Association Urges Teachers to Call In Sick En Masse,” Idaho Ed. News (Oct. 15, 2020).⁶ Again through the union’s organizing, over 500 teachers called in sick for Tuesday, October 20, 2020, forcing complete closure of the district. Katija Stjepovic, “More than 500 West Ada teachers call in sick again for Tuesday,” KTVB-7 (Oct. 19, 2020).⁷

These two days of closures have a substantial impact on parents and students. The attached affidavits detail the emotional and academic impact on children and the financial and logistical hardships created for parents. These experiences are typical of many families across WASD negatively impacted by this strike.

ARGUMENT

1. Public employee strikes are illegal in Idaho.

Public employees’ job is to serve the public. Residents of a community rely on essential workers like police officers, fire fighters, bus drivers, and teachers to provide core services that

⁴ Available at <https://www.idahoednews.org/news/health-officials-move-west-ada-boise-and-kuna-schools-to-red-covid-19-risk-classification/>.

⁵ Available at <https://www.ktvb.com/article/news/education/west-ada-school-district-special-board-meeting-thursday-hybrid-learning-remote-in-person-plan-vote/277-0cc78bc7-edec-4ccf-893f-2fd934d75b97>.

⁶ Available at <https://www.idahoednews.org/news/west-ada-education-association-urges-teachers-to-call-in-sick-en-masse/>.

⁷ Available at <https://www.ktvb.com/article/news/education/west-ada-schools-meridian-eagle-sick-out-tuesday-coronavirus/277-22da2a2e-7de1-4cda-ad10-48c7918e34c8>.

keep the city safe and running. Public employment comes with many benefits, like good pensions, long-term stability, and immunity to market trends. It also comes with a limitation: because we all pay for and rely on public employees, they do not have the ability to go on strike like employees of a private-sector employer.

In 35 states and the District of Columbia, teacher strikes are illegal. Milla Sanes and John Schmitt, “Regulation of Public Sector Collective Bargaining in the States,” Center for Economic and Policy Research (March 2014).⁸ Idaho is one of those states. *Id.* at 8.

Teacher strikes have been illegal in Idaho since 1977, when the state’s Supreme Court definitively declared, “we find no constitutionally guaranteed right to strike in public employees and no such right existed at common law. The common law is in effect in Idaho unless otherwise expressly abrogated by statute.” *Sch. Dist. v. Oneida Educ. Ass’n (OEA)*, 98 Idaho 486, 489, 567 P.2d 830, 833 (1977) (citing, inter alia, I.C. § 73-116).

And the common law is clear on this point: strikes by public employees are illegal unless authorized by statute. *Goldberg v. Cincinnati*, 26 Ohio St. 2d 228, 233, 271 N.E.2d 284, 288 (1971) (“At common law, strikes by public employees are uniformly illegal.”); *State v. Del. State Educ. Assn.*, 326 A.2d 868, 875 (Del. Ch. 1974) (“the rule against strikes by public employees is deeply embedded in the common law.”); *Jefferson Cty. Teachers Assn. v. Bd. of Educ.*, 463 S.W.2d 627, 628 (Ky. 1970) (“Under the common law it is recognized that public employees do not have the right to strike or to engage in concerted work stoppages.”). Idaho has no such statute authorizing teacher strikes.

When a teachers union engages in a strike, the *OEA* Court detailed the appropriate response: “common law remedies available against strikes by teachers were adequate and that

⁸ Available at <https://cepr.net/documents/state-public-cb-2014-03.pdf>.

strikes by teachers could be prohibited [by injunction] but only following adequate hearings.” 98 Idaho at 489. In *OEA*, the Court said that a hearing was necessary to determine whether an injunction was appropriate based on whether the school district was refusing to engage in the statutory collective bargaining process in good faith.

Here, two facts make it easy for this Court to grant an injunction at such a hearing. First, this sick-out is happening outside the process of collective bargaining that was at issue in *OEA*. It is happening because the union does not like a policy decision of the district’s board which affects teachers but is not part of the collective bargaining process. The union’s president testified at the meeting where the board reached its decision. “West Ada School Board votes in favor of alternating school schedule,” CBS2 (Oct. 15, 2020).⁹ After his testimony, one trustee said to staff, “We are listening to your concerns, we are hearing you, we are taking steps to make sure that our safety protocols are working and they are being addressed.” *Id.* However, because the board reached a different policy judgment than the union as to whether the schools could safely partially reopen, the union organized this “work action.” Clark Corbin, “Hundreds of West Ada teachers calling in sick to protest reopening in COVID ‘red’ category,” Idaho Statesman (Oct. 15, 2020).¹⁰ The school board has acted in good faith through a tough circumstance, listened to community testimony including from the union, and come to an honest policy judgment the union dislikes. That is not grounds for an illegal strike; it is grounds for an injunction.

Second, this suit is brought on behalf of the parents and students who are directly impacted by the strike. “[O]ne who seeks equitable relief must enter the court with clean hands.” *OEA*, 98 Idaho at 491. This is certainly true of the parent plaintiffs here, who have not been part of any

⁹ Available at <https://idahonews.com/news/local/west-ada-votes-in-favor-of-alternating-school-schedule>.

¹⁰ Available at <https://www.idahostatesman.com/news/local/education/article246486025.html>.

policy dispute between the union and the district. They only ask for that which Idaho law guarantees them: that teachers not go on strike.

II. The West Ada Education Association’s sick-out “work action” is a strike.

The president of the West Ada Education Association has described this as a “work action,” saying that this was “[t]he only approach that’s left” to bend the board to the union’s will. Clark Corbin, “Hundreds of West Ada teachers calling in sick to protest reopening in COVID ‘red’ category,” Idaho Statesman (Oct. 15, 2020).¹¹ The union held a series of video conference calls with its members urging them to call in sick. *Id.* Over 700 of them did for Monday, and over 500 of them did for Tuesday. Katija Stjepovic, “More than 500 West Ada teachers call in sick again for Tuesday,” KTVB-7 (Oct. 19, 2020).¹² Though this represents a minority of West Ada teachers, it was sufficient both days to overwhelm the district, forcing a total shutdown of school.

A sick-out is a strike because it is a work stoppage that prevents normal business operations. Numerous courts and administrative bodies have recognized that a sick-out is the functional equivalent of or a substitute for or a type of strike. *Ky. ex rel. Beshear v. Dickerson*, Civil Action No. 3: 19-033-DCR, 2019 U.S. Dist. LEXIS 78524, at *14 (E.D. Ky. May 9, 2019); *City of Santa Ana v. Santa Ana Police Benevolent Ass’n*, 207 Cal. App. 3d 1568, 1573, 255 Cal. Rptr. 688, 691 (1989); *Manchester v. Manchester Firefighters Ass’n*, 120 N.H. 230, 234, 413 A.2d 577, 579 (1980); *Air Transp. Assn. v. Prof’l Air Traffic Controllers Org. (‘PATCO’)*, 453 F. Supp. 1287, 1289 (E.D.N.Y. 1978); *Foam & Plastics Div., Tenneco Chems., Inc. v. Gen. Drivers & Helpers Local Union 401, etc.*, 520 F.2d 945, 947 (3d Cir. 1975); *Johnson v. Hertz Corp.*, 387 F. Supp. 208, 211 (D.N.J. 1974). *See Am. Airlines, Inc. v. Allied Pilots Ass’n*, 53 F. Supp. 2d 909,

¹¹ Available at <https://www.idahostatesman.com/news/local/education/article246486025.html>.

¹² Available at <https://www.ktvb.com/article/news/education/west-ada-schools-meridian-eagle-sick-out-tuesday-coronavirus/277-22da2a2e-7de1-4cda-ad10-48c7918e34c8>.

940 (N.D. Tex. 1999); *Air Line Pilots Ass'n, Int'l v. United Air Lines, Inc.*, 802 F.2d 886, 905 (7th Cir. 1986); *Cty. of Cook v. Ill. Dep't of Labor*, 123 Ill. App. 3d 68, 72, 78 Ill. Dec. 457, 460, 462 N.E.2d 576, 579 (1984); *Tygrett v. Barry*, 201 U.S. App. D.C. 293 n.7, 627 F.2d 1279, 1286 (1980) (“the ‘blue flu’ has grown to be a strike-substitute”). *See also Chi. Bd. of Educ. v. Chi. Teachers Union*, 33 2017 IL ERB LEXIS 50, *12, 33 PERI P124; *Matter of Alyson R. Allen, et al. v. Trotwood City School Dist. Bd. of Educ.*, 27 OPER 177 (Ohio State Employment Relations Board 2010); *In re City of Youngstown*, Ohio SERB 87-002, 1987 OH SERB LEXIS 4.

The cases “have uniformly asserted substance over formality in considering whether or not a particular activity, such as a ‘sick out,’ constitutes a strike.” *Cal. Trucking Asso. v. Bhd. of Teamsters & Auto Truck Drivers, Local 70*, Nos. C-70-883 AJZ and C-70-1057 AJZ., 1977 U.S. Dist. LEXIS 17179, at *27-28 (N.D. Cal. Feb. 25, 1977), *rev'd on other grounds*, 679 F.2d 1275 (9th Cir. 1981). Here the substance is clear: school is canceled because the union has organized so that it will be so. This is a strike, plain and simple: the union has engaged in a concerted organizing effort to prevent normal business operations. *See Totorica v. W. Equip. Co.*, 88 Idaho 534, 543, 401 P.2d 817, 822 (1965) (“A work stoppage is deemed to have ended when the employer resumed substantially normal operations.”).

III. The parents have standing to seek an injunction to end the strike.

When teachers strike, the primary impact is on students. Numerous studies have documented that teacher strikes affect both the emotional wellbeing and academic performance of students. Dylan Matthews, “How teacher strikes hurt student achievement,” *Washington Post* (Sept. 10, 2012)¹³ (detailing, in plain English, studies from professors at the University of Toronto,

¹³ Available at <https://www.washingtonpost.com/news/wonk/wp/2012/09/10/how-teacher-strikes-hurt-student-achievement/>.

Wilfrid Laurer University, and the Universities of Edinburgh and Rotterdam all showing student academic achievement suffers from a teacher strike); Samantha Garrett, “How a teacher strike could affect students who have experienced trauma,” Colo. Dep’t of Human Services (Jan. 25, 2019).¹⁴ See Esther Greenglass, et al., *Stressful Effects of a University Faculty Strike on Students: Implications for Coping*, 33 *Interchange* 261 (2002).

The declarationos submitted by plaintiffs in this case bear out this impact. Plaintiff M.A. says this is causing “emotional stress for my 1st grader.” M.A. Decl. ¶ 8. Another parent reports “mental anxiety where two of the children started crying” because they were “concern[ed about] falling behind in school.” Ratliff Decl. ¶ 8. Plaintiff A.R. says one child has been in tears due to anxiety over whether she can return to school, while another is struggling to keep up with his classes because of missed days. In her words, “cancelled school days only makes it more difficult.” A.R. Decl. ¶ 8.

Parents are also impacted from a childcare standpoint. When school is canceled, parents with full-time jobs have to engage in a mad scramble to arrange alternate care, calling neighbors, and grandparents trying to find someone to watch the kids, or taking a vacation day themselves. In the case of one family of plaintiffs, she is an essential employee who has had to start paying for daycare for her student so she can keep working, causing unanticipated financial hardship. M.A. Decl. ¶¶ 8-9. In another family, “The cancellation of school has created a situation of chaos at our home,” with older siblings babysitting and tutoring younger ones while also doing their own school work. A.R. Decl. ¶ 9.

¹⁴ Available at <https://co4kids.org/community/how-teacher-strike-could-affect-students-who-have-experienced-trauma>.

All of this meets Idaho's test for standing: it is an (1) injury in fact, which is (2) distinct and palpable, and (3) caused by the strike, and (4) which can be redressed by a judicial order. *See Valencia v. Saint Alphonsus Med. Ctr. - Nampa, Inc.*, 167 Idaho 397, 470 P.3d 1206, 1211 (2020). The parents have been injured, including financially having to pay for daycare or use worktime to provide childcare. The students have been injured through the impact on their emotional wellbeing and academic advancement. These are distinct injuries specific to these families. They were caused by the strike. And they can be redressed by a judicial order ending the strike.

Moreover, Idaho law recognizes parents' standing in themselves and on behalf of their children to bring legal actions to protect their educational rights. *See Idaho Sch. for Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 584, 850 P.2d 724, 728 (1993) (recognizing students and parents of students alongside school administrators in educational adequacy lawsuit). *See also* Idaho Code § 6-2205 (1); *Selkirk-Priest Basin Ass'n v. State ex rel. Andrus*, 127 Idaho 239, 246, 899 P.2d 949, 956 (1995) (Johnson, J., dissenting) (schools exist to benefit the students who enroll there, and who may be represented in litigation by their parents).

Additionally, courts in other states have recognized that parents have a right to seek an order ending a teacher strike. *See, e.g., Dade Cty. Classroom Teachers' Asso. v. Rubin*, 238 So. 2d 284, 285 (Fla. 1970); *Reiman v. Eugene Educ. Asso.*, 92 Or. App. 504, 506, 759 P.2d 295, 296 (1988). *Accord Air Transp. Asso. v. Prof'l Air Traffic Controllers Org.*, 313 F. Supp. 181, 184 (E.D.N.Y. 1970) (right of airlines to sue to stop strike by air traffic controllers, who are federal employees); *Boyle v. Anderson Fire Fighters Asso. Local 1262*, 497 N.E.2d 1073, 1081 (Ind. Ct. App. 1986) (right of private property owners to recover for damage to property during a firefighter strike). Because students, as represented by their parents, are the beneficiaries of the school system, a strike to close the schools grants them standing.

CONCLUSION

For these reasons, the Plaintiffs respectfully request that this Court grant their motion for a preliminary injunction.

DATED this 20th day of October, 2020.

LIBERTY JUSTICE CENTER

By: /s/ Daniel R. Suhr
Daniel R. Suhr, Esq.
Attorney for Plaintiff, *pro hac vice*

DINDINGER & KOHLER, PLLC

By: /s/ Edward W. Dindinger
Edward William Dindinger, Esq.
Attorney for Plaintiff, local counsel