



## INTRODUCTION

1. At common law, strikes by public employees are illegal as against the public interest. *Sch. Dist. v. Oneida Educ. Ass'n*, 98 Idaho 486, 567 P.2d 830 (1977). In the particular case of schools, strikes are incredibly disruptive, damaging students' academic achievement and emotional wellbeing and creating substantial chaos for parents and caregivers. They treat students like pawns to be manipulated or leveraged in a disagreement over appropriate public policy, and they prioritize the political goals of adults over the needs of children.
2. A sickout is a form of strike; it is a concerted work stoppage that interrupts normal business operations. *See Totorica v. W. Equip. Co.*, 88 Idaho 534, 538, 401 P.2d 817, 818 (1965).
3. The West Ada Education Association has organized a "sick out" to protest the West Ada School District's decision to move forward with partial in-person education. Over 700 classroom teachers out of a workforce of 2,145 called in sick for Monday, October 19, 2020, as part of an organized effort by the union. This forced the district to cancel in-person school. The sickout is continuing today, Tuesday, October 20, as over 500 teachers called in sick at the union's urging, again forcing all schools to close. Katija Stjepovic, "More than 500 West Ada teachers call in sick again for Tuesday," KTVB-7 (Oct. 19, 2020).<sup>1</sup>
4. Plaintiffs are taxpayers and parents of children in the District. This sick-out has been a tremendous disruption to their lives and those of their children. They look to this Court to issue an injunction so the schools can reopen and their children's education can continue.

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<sup>1</sup> Available at <https://www.ktvb.com/article/news/education/west-ada-schools-meridian-eagle-sick-out-tuesday-coronavirus/277-22da2a2e-7de1-4cda-ad10-48c7918e34c8>.

## **PARTIES**<sup>2</sup>

5. Plaintiffs Roy Ratliff and K.S. are residents of and taxpayers in Ada County, Idaho. Their children M.S., C.S., and R.S. are enrolled in the West Ada School District.
6. Plaintiff M.A. is a resident of and taxpayer in Ada County, Idaho. Her child B.A. is enrolled in the West Adam School District.
7. Plaintiff P.P. is a resident of and taxpayer in Ada County, Idaho. Her child B.P. is enrolled in the West Ada School District.
8. Plaintiff A.R. is a resident of and taxpayer in Ada County, Idaho. Her children D.R., A.R., D.R., A.R., and J.R. are enrolled in the West Ada School District.
9. The West Ada Education Association is a labor union and “local education organization,” Idaho Code § 33-1272 (2), that represents classroom teachers employed by the West Ada School District. It is the union recognized by the School District for collective bargaining. *See* “Negotiated Agreement between the Board of Trustees of Joint School District No. 2 (West Ada School District) and the West Ada Education Association,” Art. XI.<sup>3</sup> Its business address for service of process is 620 N. 6th St., Boise, Idaho 83702.

## **FACTUAL ALLEGATIONS**

10. The West Ada School District serves nearly 40,000 students across 33 elementary schools, 11 middle schools, and 11 high schools in Ada County. WASD, “Who we serve.”<sup>4</sup> It is Idaho’s largest school district.

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<sup>2</sup> Some parents and all children are identified by their initials pursuant to the attached Motion to Proceed Anonymously.

<sup>3</sup> Available at

<https://www.westada.org/site/handlers/filedownload.ashx?moduleinstanceid=58528&dataid=252906&FileName=2019-20%20Negotiated%20Agreement%20Final.pdf>.

<sup>4</sup> Available at <https://www.westada.org/domain/6088>.

11. According to the contract between the West Ada School District and the West Ada Education Association, sick leave may only be used “for absences caused by illness or physical disability, including childbearing of the Employee or the Employee’s spouse, as well as the illness or physical disability of a resident of the Employee’s immediate household, such as a dependent, minor children, or parents.” “Negotiated Agreement,” *supra* ¶ 6, Art. IV(C).
12. At its meeting last Thursday, the West Ada School District’s board of trustees voted 3 to 1 to continue with in-person education based on a hybrid model with two teams alternating in-person versus remote learning. “West Ada School Board votes in favor of an alternating school schedule while in red category,” KTVB-7 (Oct. 15, 2020).<sup>5</sup>
13. In response, the West Ada Education Association organized its members for a coordinated “sick out” to begin Monday. According to news reports, union president Eric Thies told his members, “The only approach that’s left is this level of work action.” Clark Corbin, “Hundreds of West Ada teachers calling in sick to protest reopening in COVID ‘red’ category,” Idaho Statesman (Oct. 15, 2020).<sup>6</sup>
14. In response to the sick out, more than 700 teachers called in sick for Monday, October 19. Clark Corbin, “West Ada Education Association Urges Teachers to Call In Sick En Masse,” Idaho Ed. News (Oct. 15, 2020).<sup>7</sup>

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<sup>5</sup> 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>.

<sup>6</sup> Available at <https://www.idahostatesman.com/news/local/education/article246486025.html>.

<sup>7</sup> Available at <https://www.idahoednews.org/news/west-ada-education-association-urges-teachers-to-call-in-sick-en-masse/>.

15. Despite valiant efforts by administrators, not enough certified substitutes were available to bear such a massive loss of workers. As a result, schools were closed, and all students were forced to remain at home. No remote learning took place.
16. When the board refused to cave to the union's pressure tactics, again at the union's urging, over 500 teachers called in sick for Tuesday, October 20. Katija Stjepovic, "More than 500 West Ada teachers call in sick again for Tuesday," KTVB-7 (Oct. 19, 2020).<sup>8</sup>
17. Again, as a result, schools were closed, and all students were forced to remain at home.
18. The children of plaintiffs, like all their classmates, were among those who could not go to school. As a result, they missed time with teachers, fell behind on important schoolwork, and lost two days of education (so far). The sudden cancellation of school also forced plaintiffs into a scramble to arrange child care, disrupting work and family plans.

### **JURISDICTION**

19. The district courts have jurisdiction over common-law claims. Idaho Const. Art. V, § 20.

### **CLAIM**

*Count 1: Violation of the Common Law Prohibition on Strikes by Public Employees.*

20. At common law, 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

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<sup>8</sup> Available at <https://www.ktvb.com/article/news/education/west-ada-schools-meridian-eagle-sick-out-tuesday-coronavirus/277-22da2a2e-7de1-4cda-ad10-48c7918e34c8>.

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.”).

21. Idaho follows the common-law rule that strikes by public employees, including teachers, are illegal. *Sch. Dist. v. Oneida Educ. Ass’n*, 98 Idaho 486, 567 P.2d 830 (1977); see Idaho Code § 73-116 (“The common law of England . . . in all cases not provided for in these compiled laws, is the rule of decision in all courts of this state.”). No statute preempts this common law rule in Idaho.
22. At common law, when an illegal public-employee strike occurs outside the collective bargaining process, the proper remedy is an injunction. See 98 Idaho at 491.
23. Parents have standing at common law to sue to stop an illegal teacher strike. See, e.g., *Dade Cty. Classroom Teachers’ Assn. v. Rubin*, 238 So. 2d 284, 285 (Fla. 1970); *Reiman v. Eugene Educ. Assn.*, 92 Or. App. 504, 506, 759 P.2d 295, 296 (1988).
24. A “sick out” is a type of strike. *Cal. Trucking Assn. 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) (“Section 501(2) of the Labor Management Relations Act, 29 U.S.C. section 142(2), defines ‘strike’ to include any ‘concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.’ The statute’s characterization of a ‘concerted stoppage of work’ or a ‘concerted interruption of operations’ as a strike is in full accord with the generally accepted definition of that term. [Citing cases]. These cases have uniformly asserted substance over formality in considering whether or not a particular activity, such as a ‘sick out, constitutes a strike.”).

*See Totorica v. W. Equip. Co.*, 88 Idaho 534, 538, 401 P.2d 817, 818 (1965) (strike or work stoppage is when a union action prevents an employer’s normal business operations).

25. The current “sick out” by the West Ada Education Association is an illegal strike.

**PRAYER FOR RELIEF**

Plaintiffs respectfully ask this Court to:

26. Declare the current “sick out” a strike by the West Ada Education Association.

27. Declare that this strike is in violation of the legal prohibition on strikes by public employees embodied in the common law and recognized by the Idaho Supreme Court.

28. Enjoin the West Ada Education Association, its officers and agents, from any effort or coordination to continue this sick out beyond Tuesday, October 20, 2020.

29. Award attorneys’ fees or costs and any other relief as may be appropriate and authorized.

DATED this 20<sup>th</sup> day of October, 2020.

LIBERTY JUSTICE CENTER

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