



January 13, 2021

Chandler Education Association
Katie Nash, President
president@chandlereaa.org

Chandler Unified School District
Superintendent Dr. Camille Casteel
casteel.camille@cusd80.com

Dear Ms. Nash and Dr. Casteel,

Liberty Justice Center (LJC) is a public-interest legal center that litigates education-law cases across the country. LJC represents a Chandler Unified School District (CUSD) family which is deeply concerned by recent actions of CUSD employees to stage a protest “sick out.”

We write because approximately 100 CUSD employees decided to take a coordinated “sick day” on Friday, December 11, to demand a particular policy outcome from the school board.¹ See Nicole Grigg, “Nearly 150 Chandler Unified teachers to stage ‘sick out’ Friday, demanding virtual learning,” ABC-15 (Dec. 9, 2020).² This was a sick-out, a sick-out is a form of strike, and a teacher strike is illegal in the State of Arizona. If teachers repeat it, LJC will move expeditiously on behalf of our clients to seek appropriate sanctions against the CUSD employees who organized and led this sick-out and any future sick-out or work stoppage.

It has been established law in Arizona for fifty years that teacher strikes are illegal. In 1972, the Arizona Court of Appeals recognized that public employees do not have a right to strike. *Comm’ns Workers of Am. v. Ariz. Bd. of Regents*, 17 Ariz. App. 398, 400, 498 P.2d 472, 474 (1972). That conclusion is confirmed by two official opinions of the Attorney General of Arizona. Op. Atty. Gen. I71-12, 1971 Ariz. AG LEXIS 43, *2-3; Op. Atty. Gen. I80-039, 1980 Ariz. AG LEXIS 194, *10. The more recent opinion warns that the consequences of participating in such a strike can be severe: “It would be a breach of contract which can properly result in district imposed penalties, job forfeiture, and even revocation of the teaching certificate.” *Id.* We further note that “protesting board policy” is not one of the acceptable reasons for an employee to use a sick-day according to CUSD’s handbook.³

¹ We understand that this action was undertaken by teachers without formal coordination by the union. See Chandler Educ. Ass’n, Statement (Dec. 10, 2020), available at https://docs.google.com/document/d/1fbGHZNaAo0g0xkwcbQHPz52fvFL9_ljASF6qE1HeoxU/preview. A wildcat strike (i.e., one not organized by the union) is no less a strike in the eyes of the law. See *Sidney v. MacDonald*, 536 F. Supp. 420, 424-25 (D. Ariz. 1982). See also *Emp’t Sec. Comm’n v. Acosta*, 93 Ariz. 120, 123, 378 P.2d 929, 931 (1963). The remedies available against striking employees are not dependent on union approval or disapproval, and the union can become legally obligated to help end a wildcat strike.

² Available at <https://www.abc15.com/news/state-of-education/100-chandler-unified-school-district-teachers-to-stage-sick-out-friday-demanding-virtual-learning>.

³ Available at <https://go.boarddocs.com/az/chandler/Board.nsf/Public#>, Policy GCCA (“Use of Earned Paid Sick Leave”). See David L. Roberts, Chief HR Officer, “RE: Sick Leave,” West Ada School District (Oct. 23, 2020), available at <https://www.idahoednews.org/wp-content/uploads/2020/10/West-Ada-Sick-Leave-Letter.pdf> (after sick-out in West Ada, Idaho, school district reminds teachers that protesting is not an acceptable use of sick leave, and that inappropriate sick-leave use is a contract violation and an ethics code violation).

And teacher strikes are illegal for a reason: they negatively impact the academic achievement and emotional well-being of students. *See* Dylan Matthews, “How teacher strikes hurt student achievement,” Washington Post (Sept. 10, 2012) (detailing, in plain English, studies from professors at the Univ. of Toronto, Wilfrid Laurer Univ., and the Universities of Edinburgh and Rotterdam all showing student achievement suffers from a teacher strike).⁴ LJC recently represented four families suing to end an illegal union strike in the largest school district in Idaho, and the affidavits in that case detailed the substantial academic disruption, emotional strain, and logistical nightmare caused by a sick-out that shut down school for two days.⁵ We would expect similar emotional and compelling testimony from CUSD students and parents in any future legal action.

Given that teacher strikes are illegal in Arizona, a court would next have to determine whether the “sick out” is a strike under the common law. A judge would almost certainly join the numerous courts and administrative bodies that all recognize that a sick-out is the functional equivalent of or type of strike. *See, e.g., 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); *Chi. Bd. of Educ. v. Chi. Teachers Union*, 33 2017 IL ERB LEXIS 50, *12 (Illinois Public Employee Relations Bd. 2017).

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 Ass’n. v. Bd. 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 there can be no doubt as to the substance: these employees used a sick-out as a negotiating tactic, hoping to disrupt the district’s operations and interrupt normal business operations, which in the district’s case is the education of Maricopa County’s children. That was both illegal and wrong.

If in the future the leaders of this sick-out choose to again use children like pawns as a negotiating tactic, LJC stands ready to vindicate the rights of parents to ensure students’ needs are put first through all available legal remedies.

Very truly yours,



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⁴ Available at <https://www.washingtonpost.com/news/wonk/wp/2012/09/10/how-teacher-strikes-hurt-student-achievement/>.

⁵ *Ratliff v. West Ada Education Ass’n*, <https://libertyjusticecenter.org/cases/ratliff-v-west-ada-education-association/>.

