

Return Date: No return date scheduled  
Hearing Date: 5/20/2021 10:00 AM - 10:00 AM  
Courtroom Number: 2601  
Location: District 1 Court  
Cook County, IL

FILED  
1/15/2021 3:23 PM  
IRIS Y. MARTINEZ  
CIRCUIT CLERK  
COOK COUNTY, IL  
2021CH00222

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
CHANCERY DIVISION

CICERO SCHOOL DISTRICT NO. 99, )  
Plaintiff, )  
 )  
v. ) 2021CH00222  
 )  
CICERO COUNCIL, WEST SUBURBAN )  
TEACHERS UNION, LOCAL 571, )  
IFT-AFT, AFL-CIO, )  
Defendant. )

11856855

**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF  
FOR VIOLATION OF ILLINOIS EDUCATION LABOR RELATIONS ACT**

NOW COMES the Plaintiff, CICERO SCHOOL DISTRICT NO. 99

("District"), by and through its attorney Cynthia S. Grandfield of Del Galdo Law Group, LLC and complains against Defendant as follows:

*Introduction*

1. Cicero Public School District No. 99 is a preK-8 district that serves over 11,000 students ranging in age from 3-14 years old. Approximately 95% of the District's students are low-income students and 95% come from bilingual or English-learning households. Additionally, the District has a significant percentage of ESL/ELL learners, a large number of special education students on IEP and 504 plans, and many pre-K learners that are ages 3-4.

2. The District's students have been out of school since March of 2020. In addition to the many challenges faced by the District, many of the special education students as well as the pre-K learners struggle to learn remotely at all. Thus, these students have not had any or extremely limited instruction for nearly a year.

FILED DATE: 1/15/2021 3:23 PM 2021CH00222

3. Despite the District's implementation of extensive safety measures and numerous walkthroughs and good faith union negotiations a large number of employees are simply refusing to come to work in an unlawful walk-off that puts the health and safety of the District's students, some as young as 3 years old, at risk.

*Jurisdiction*

4. This court has jurisdiction over the parties and venue is proper as all parties reside in and all substantive events complained of occurred in Cook County, Illinois.

5. Further, Illinois courts are courts of general jurisdiction and this matter falls under the Illinois Education Labor Relations Act as a "clear and present danger to the health and safety of the public." Thus, this action may be filed directly in circuit court. See 115 ILCS 5/13.

*Parties*

6. CICERO SCHOOL DISTRICT NO. 99 is a public school district for grades preK-8 located in Cook County, Illinois. The District has over eleven thousand students, 14 elementary schools, an alternative school, an early childhood center, and a junior high.

7. CICERO COUNCIL, WEST SUBURBAN TEACHERS UNION, LOCAL 571, IFT-AFT, AFL-CIO, is a union that bargains on behalf of over one thousand employees in the District. Specifically, the Union bargains on behalf of the following three groups of employees: (a) teachers; (b) PSRPs (paraprofessionals such as teacher aides); and (c) office staff.

*School Code Revisions and Executive Orders in Response to COVID-19 Pandemic*

8. On March 17, 2020, Governor J.B. Pritzker (“Governor Pritzker”) issued an Executive Order, ordering the closure of all schools in response to worldwide outbreak of the novel coronavirus known as COVID-19 (the “pandemic”).

9. On June 18, 2020, the Illinois Legislature enacted School Code Section 5/10-30 in response to the pandemic; Section 5/10-30 governs the implementation of remote learning procedures when the Governor has declared a public health emergency.

10. Section 5/10-30 grants the superintendent of each school district the power to “periodically review and amend” a district’s remote learning plan “to ensure that it meets the needs of all students.” 105 ILCS 5/10-30(5).

11. On June 4, 2020, Governor Pritzker issued Executive Order No. 2020-40, which specifically allowed for school to reopen for limited in-person instruction, subject to compliance with certain public health guidance such as observing social distancing requirements as well as a limitation on the number of individuals gathered in one physical space.

12. On August 20, 2020, the State Superintendent issued a guidance letter stating that schools should ensure that they have, among other things, appropriate PPE, cleaning/disinfecting equipment and procedures, procedures for the observance of social distancing requirements, limitations on physical gatherings of students and faculty to no more than 50 individuals in one space, symptom screenings/temperature checks, and options for remote learning.

13. Importantly, this guidance letter made clear that it was intended to be a “supplemental recommendation,” not a mandate or requirement.

14. On November 18, 2020, Governor Pritzker issued Executive Order No. 2020-73, which instituted “Tier 3” mitigation procedures throughout the State, but, notably, specifically excluded “instructional activities at K-12 institutions, colleges, or universities” from mandatory compliance with these procedures.

*District’s Safety Procedures and Practices and Negotiations with the Union*

15. Throughout the pandemic, the District has successfully implemented the necessary procedures and practices, in compliance with all applicable public health guidelines, to allow its students and staff to safely return to onsite and in-person instruction.

16. In fact, the District has had over fifteen separate negotiation meetings with the Union since the start of the pandemic, including meetings on July 29, 2020, August 4, 2020, August 6, 2020, August 28, 2020, September 11, 2020, September 15, 2020, September 25, 2020, October 5, 2020, October 9, 2020, October 22, 2020, October 30, 2020, November 2, 2020, November 11, 2020, November 17, 2020, December 1, 2020, December 9, 2020, December 10, 2020, December 17, 2020, and January 8, 2021. The Union has never declared an impasse.

17. These meeting topics ranged from discussions over the District’s HVAC systems to Union walk throughs at each District building to observe the public health measures taken to ensure the safety of students and faculty upon a return to in-person instruction.

18. During these numerous negotiation meetings, the District and the Union exchanged numerous counterproposals and countless correspondences relating to and discussing the return of faculty and staff to onsite learning.

19. The District, at the Union's request, even upgraded its HVAC systems at all of its locations, incurring approximately \$64,000.00 in expenses to its already limited and strained financial resources. The District also provided the Union with over 1,000 pages of documentation relating to its upgrading of its HVAC systems for the purpose of protecting its students and faculty from airborne infection while on site.

20. The District has also communicated to the Union that, on November 11, 2020, it was selected by the State to be a pilot school for the State's implementation of onsite COVID-19 testing, which will function as an additional layer of public health protection to ensure the safety of faculty and students while on site.

21. On July 29, 2020, Union and District representatives performed a walk through of the "Unity" school building to assess the District's progress and implementation of health safety measures for the eventual return of students and faculty for in-person instruction and learning.

22. After this July 29, 2020 walk through, the Union made several official requests and recommendations, such as the removal or spacing out of social distancing markers on the floors to prevent congestion in certain areas as well as the installation of additional hand sanitizing stations and dispensers and barriers in certain offices.

23. In response, the District agreed with the Union's requests and installed protective barriers in the main offices and high traffic areas of every building as well as installed hand sanitizing stations with at least 60% alcohol in each classroom or office that did not have access to a sink.

24. On October 30, 2020, the Union performed a walkthrough of the District's buildings in order to again inspect the public health and safety measures implemented by the District.

25. On December 17, 2020, the District again invited the Union's representatives to walk through and inspect the District's buildings, but the Union declined to do so.

26. On December 9, 2020, the School Board approved the District's plan to transition from all remote learning and instruction to the following "blended hybrid model":

- Monday, January 11, 2021: All staff members return to work in person;
- Tuesday, January 19, 2021: Select Special Education students transition to the blended hybrid model; and
- Monday, January 25, 2021: All students transition to the blended hybrid model.

27. On December 11, 2020, Superintendent Rodolfo Hernandez sent an email to all District staff to update them on the District's blended hybrid model transition plan as outlined above.

28. The District's plan to begin the implementation of on-site learning has been

approved by the Town of Cicero Emergency Team, which consists of the Town's Director of Health, the Fire Chief, and the Building Commissioner, as well as the Cook County Department of Health.

29. The District has issued official guidance to faculty and staff (the "District 99 Transition Guidelines to Faculty & Staff 2020-2021"), outlining the District's plan and anticipated safety protocols for ensuring the faculty and staff's safe return to onsite instruction.

30. The District has issued official guidance to parents (the "District 99 Parent Transition Guide 2020-2021"), outlining the District's plan and anticipated safety protocols for ensuring students' safe return to onsite learning.

31. On January 10, 2021, the District sent an email communication to all faculty and staff reminding them of their obligation to report to work on January 11, 2021 as originally communicated in Superintendent Hernandez's December 11, 2020 email.

*Employees Unlawful Refusal to Return to Work*

32. On January 9, 2021, the Union held a virtual meeting using the Zoom and YouTube platforms. A recording of the meeting was subsequently posted to the Cicero Council Local 571's YouTube page and available to the public. The purpose of the meeting was to inform its membership about the ongoing negotiations between the District and Union as well as answer any questions that were submitted. One such question sought clarification regarding "the plan for Monday if the directive continues to be we are to return to buildings." In response, Union President Rachel

Esposito instructed members that they could continue to work from home. Ms. Esposito went on to say that members should send a letter to administrators that they would be continuing to work remotely and told the members that the Union would be providing a form letter that they could chose to use.

33. Despite the numerous steps taken by the District to ensure the safety of both students and faculty upon their return to onsite learning, numerous teachers communicated their intention to refuse to report to school on January 11, 2021 for onsite instruction and that they will instead continue to work remotely, despite the fact that some students were set to begin showing up to the school on January 19, 2021 for in-person instruction.

34. Over 500 teachers, faculty, and staff did not report to work on January 11, 2021.

35. On January 11, 2021, Howard Coleman, the District's Director of Human Resources, sent an email communication to all of the District's Principals notifying them to officially warn their employees via email that their failure to report for work in-person on January 12, 2021 would subject them to the District's formal disciplinary process.

36. All applicable CBAs have "no strike" provisions for teachers, PSRPs, and office staff that state: "the Union agrees not to strike or engage in or support or encourage any concerted refusal to render full and complete services to the District, or engage in or support any activity whatsoever which would disrupt in any manner the operation of the schools during the term of this Agreement." Teachers CBA,



Article XI – No-strike Provision; Secretary CBA, Article II – General Provisions of Agreement, Section 9 – No Strike; PSRP CBA, Article II – General Provisions of Agreement, Section A – No Strike.

37. On January 12, 2021, the Union held a virtual meeting using the Zoom and YouTube platforms. A recording of the meeting was subsequently posted to the Cicero Council Local 571's YouTube page and available to the public. At the meeting Union President Rachel Esposito again encouraged employees to stay home, continue to refuse to go to work, and continue to participate in this unlawful walk-off. The Union President also falsely indicated that the employees could not be disciplined for their failure to report and all but admitted that they were engaging in an unlawful walk-off stating that what they were doing was "A strike if we were in a strike."

38. On January 13, 2021, the Board of Education for the District moved the date to return select special education students to January 25, 2021 and for all students to return to the blended hybrid model to February 1, 2021.

39. The District has granted accommodations to employees when requested and the requirements are met. Specifically, as of January 14, 2021, the District has received 244 employee requests for accommodation in the form of being permitted to continue to work remotely. Of those requests, the District has granted 154 of them.

40. However, the District has received 476 notifications of employees simply refusing to return to work.

41. As of January 14, 2021, the District has 629 teachers not returning, 89

PSRPs (paraprofessionals such as teacher's aides), and 7 office staff not returning.

42. This causes an obvious massive deficiency.

43. In the Early Childhood Center, which serves pre-K children 3-5 years old, the District currently only has 1 teacher out of 18 reporting in person. The Early Childhood Center has 90 children.

44. At McKinley, the District's alternative school, there is only 1 out of 10 reporting in person.

*Immediate threat of imminent harm to health and safety*

45. The Union and its members continued refusal to report for in-person and onsite instruction represents an immediate threat of imminent harm to health and safety of the District's students and therefore the public at large.

46. Should the Union and its members fail to report for in-person and onsite instruction, many special education students between the ages of 3 and 14 years of age will be unsupervised and otherwise neglected upon their return to school.

47. Should the Union and its members fail to report for in-person and onsite instruction on January 25, 2021, even more students between the ages of 3 and 14 years old, in addition to the special education students referenced above, will be unsupervised and otherwise neglected upon their return to school.

48. It is self-evident and certain that special needs as well as ordinary children as young as three years old will be harmed if left unsupervised for even one day, much less for multiple and consecutive days.

49. The District's administration's decision to convert to this blended hybrid

model was made after careful consideration by an administration of educational administration professionals with advanced graduate degrees of the unique challenges presented by the District's student body.

50. As has been widely reported, students that come from less advantaged backgrounds are more likely to fall behind in their learning in a remote learning setting.

51. Students are performing far below grade level and there is a lack of access to hands-on curriculum and specialized equipment.

52. In addition to academic issues, there is a wide variety of social emotional and functional behavioral skills that will be regressed, delayed, or simply not established.

53. As just a few examples, there is a lack of peer role models and interactions, students often experience social withdrawal leading to isolation, regression of learned skills, delayed recoupment of lost skills, decrease of social interactions with peers and adults often resorts to an increase in behavioral concerns, isolation from peers leading to depression and suicidal fixations, lack of access to daily routines, and parents do not have the resources or training to implement functional behavior plans with fidelity.

54. In addition, the District has some specific categories of students that will particularly suffer.

*Early Childhood Learners*

55. The District has nearly 400 Early Childhood learners that are 3, 4 and 5

years old. These are programs for both students identified as having an educational risk and for students identified with special needs. All classes offer an academic curriculum as well as related service groups including Social Work, Speech Therapy, Occupational Therapy, and Physical Therapy. Children receive English and or Spanish language support as needed.

56. Many of the Early Childhood learners have been identified as at risk for academic failure.

57. Many of the Early Childhood families have hardships or lack of resources to provide their children with the rigorous and continuous engagement and activities that are developmentally stimulating.

58. During remote learning, Early Childhood students have only received education through asynchronous learning activities, with no peer and teacher interactions. Students have no access to technology and Chromebooks. Their families, already with hardships and lack of resources, are providing the only instruction.

59. Many of these students have special needs and require therapies, academic assistance to close the developmental gap and prepare for kindergarten.

#### *Special Education Students*

60. In addition, the District has approximately 134 special education students that require advanced and specialized instruction or assistance. Unlike some districts, the District does not send students with particularly challenging needs to

a regional center. Instead, the District serves them all and provides door to door transportation.

61. These students have significantly struggled to learn remotely without the support of highly trained staff including but not limited to: Occupational Therapists, Physical Therapists, School Health Practitioners, Social Workers, etc.

62. These students also need access to low and high-tech assistive technology Devices followed by proper training.

63. They further may require sensory materials and physical therapy equipment that is not available in the home.

64. In school, trained occupational therapists and physical therapists also assist with stretching and positioning (essential to maintain strength).

65. In school there is access to School Health Professionals with a unique set of skills to safely attend to feeding tube, catheters, monitoring routine delivery of medication and seizure protocols.

*Count I – Violation of Illinois Education Labor Relations Act*

66. The District incorporates by reference Paragraphs 1 - 65 as if fully stated herein.

67. The Illinois Educational Labor Relations Act, 115 ILCS 5/13, provides jurisdiction and provides that injunctive relief, as well as other relief, can be sought directly in circuit court if there is a “threat to the public health or safety.”

68. In this instance, the unlawful walk off of the Union employees, as admitted

by and, in fact, encouraged by their Union President, is a strike that violates the no-strike provision of the District's CBA and further poses a "threat to the public health or safety" for all of the reasons stated in the verified allegations of this complaint.

69. For all the reasons stated in the preceding paragraphs, the District has clean hands and has repeatedly negotiated in good faith with respect to heightened safety standards and the return to work. Not only has the District negotiated in good faith, but the District has implemented additional measures, at substantial cost, beyond what is mandated. The District has also sought and obtained special state assistance and funding for testing.

70. There is an actionable controversy in that the District has been prevented and will be prevented with proceeding with its blended hybrid learning model because of this unlawful walk off that is, for all intents and purposes, a strike.

71. Further, the District has a protectable right and interest in protecting the health, safety and learning of its students as well.

72. If this unlawful walk off is not enjoined, the District's students will suffer irreparably injury for the reasons described above which do not have an adequate remedy at law.

73. For all of the reasons alleged in this Complaint, there is a likelihood of success on the merits.

WHEREFORE, the Plaintiff, CICERO SCHOOL DISTRICT NO. 99, respectfully requests that: (a) the court enter judgment declaring that the walk-off

is unlawful; (b) order the employees not granted an accommodation to return to work; (c) further declare that any failure to return to work is unlawful, a violation of the Illinois Education Labor Relations Act, and that the employees be further enjoined from doing so.

Respectfully submitted,  
CICERO SCHOOL DISTRICT NO. 99

By: /s/ Cynthia S. Grandfield  
Cynthia S. Grandfield

Cynthia S. Grandfield  
Michael A. Albert  
DEL GALDO LAW GROUP, LLC  
grandfield@dlglawgroup.com  
(312) 222-7000 (t)  
*Please direct all mailings to:*  
1441 S. Harlem Avenue  
Berwyn, Illinois 60402  
Cook County ID No. 44047