

STATE OF RHODE ISLAND  
PROVIDENCE, SC.

SUPERIOR COURT

BRISTOL-WARREN EDUCATION :  
ASSOCIATION, NEARI/NEA, et. al. :

*Plaintiffs,* :

v. :

C.A. No.

BRISTOL WARREN REGIONAL SCHOOL :  
DISTRICT, et. al. :

**PLAINTIFFS’ MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR A TEMPORARY RESTRAINING ORDER  
AND A PRELIMINARY INJUNCTION**

Plaintiff Bristol-Warren Education Association (“the Union”) respectfully requests that this Court temporarily and preliminarily enjoin the Bristol-Warren Regional School Committee from opening its schools for in-person learning until each school is certified as safe pursuant to the statutorily required inspections.

**INTRODUCTION**

State law prohibits schools from opening “until notification is received from the agencies mentioned in § 16-21-[3] that the schools are in compliance with their respective codes.” See R.I.G.L. § 16-21-3.1. Bristol Warren Regional School Committee has *not* received notification that the schools in its District comply with health and safety codes because *the statutory required inspections have not occurred*. Further, the “walk-throughs” that have been performed in the District’s schools reveal that it would be unsafe for those schools to reopen during a global pandemic without appropriate safeguards.

Nonetheless, the Bristol Warren Regional School Committee has ordered that most schools must open for in-person learning on September 14, 2020. The re-opening of those schools is in direct violation of Rhode Island law. Further, if students and teachers are required

to report on September 14, 2020, knowing that the appropriate safeguards have not been implemented that would reduce the spread of COVID-19, teachers and students will suffer irreparable harm, including illness or death.

## FACTS

Plaintiffs incorporate the facts contained in their Verified Complaint for Declaratory and Injunctive Relief, filed contemporaneously herewith.

## ARGUMENT

Plaintiffs' motion for injunctive relief to prevent the schools in the Bristol Warren Regional School District ("the District") from opening until they pass inspection should be granted. Under the Rhode Island Supreme Court's "traditional" criteria for injunctive relief, a plaintiff is entitled to temporary injunctive relief if the plaintiff establishes: (1) "a reasonable likelihood of [success]", (2) "irreparable harm that is presently threatened or imminent," and (3) that the balance of the equities between the parties, including the public interest, favors granting the injunction. *The Fund for Community Progress v. United Way of Southeastern New England*, 695 A.2d 517, 521 (R.I. 1997). *See also In re State Employees' Union*, 587 A.2d 919 (R.I. 1991); *Paramount Office Supply Co. v. D.A. MacIsaac, Inc.*, 524 A.2d 1099 (R.I. 1987). The purpose of a temporary restraining order or a preliminary injunction "is not ordinarily to achieve a final and formal determination of the rights of the parties or of the merits of the controversy, **but is merely to hold matters approximately in status quo, and in the meantime to prevent the doing of any acts whereby the rights in question may be irreparably injured or endangered.**" *Fund for Community Progress*, 695 A.2d at 521.

Temporary injunctive relief should be granted in this case because the Plaintiffs can establish all the requirements for equitable relief. *See id.*

**I. PLAINTIFFS HAVE A REASONABLE LIKELIHOOD OF SUCCESS ON THE MERITS**

State law is clear. Schools “shall” not open until the appropriate safety and health inspections are performed, and the schools are certified to comply with state law.

R.I. Gen. Laws § 16-21-3 provides

it **shall** be the responsibility of each local fire chief, local building inspector, the director of the state department of health, and the director of the state department of labor and training to determine and notify each local school superintendent or private school official by August 1 of each year **as to whether the public and private nursery and elementary and secondary school buildings conform to appropriate state law and regulation**. In the case of those schools on state property, it shall be the responsibility of the state building commissioner, the state fire marshal, the director of the department of health, and the department of labor and training to notify the department director responsible for the operation of the school as to whether these schools conform to appropriate state law and regulation.

(Emphasis added). The local fire chiefs, local building inspectors, and directors of the state departments of health and labor and training did *not* notify the District by August 1, 2020 (or to this day) that their Schools comply with appropriate state law and regulations. Upon information and belief, *that is because those inspections have not occurred*.

Pursuant to R.I. Gen. Laws § 16-21-3.1

(a) It shall be the duty of the superintendent of schools, private school official, or in the case of state operated schools, the responsibility of the director of the state operated school, **to ensure that schools are not opened until notification is received** from the agencies mentioned in § 16-21-[3] that the schools are in compliance with their respective codes.

Defendants will be in clear violation of State law if they re-open their schools on September 14, 2020.

**II. PLAINTIFFS WILL SUFFER IRREPARABLE WITHOUT INJUNCTIVE RELIEF**

The clear purpose of R.I. Gen. Laws § 16-21-3 is to ensure that schools are safe for teachers and students and, if they are not, to give all parties time to rectify any safety and health

issues *before* school starts. Those extremely important safety inspections have not been performed this year *at all*. Instead, parties (unaffiliated with the relevant state agencies that must perform those inspections) have conducted minimal walkthroughs of the schools for the sole purpose of completing a “COVID-19... Checklist.” Those walkthroughs are certainly welcome by the Unions and teachers, as some of them have revealed safety and health issues in the Districts’ schools. However, they do not and cannot take the place of the statutorily required safety and health inspections that must be completed by the fire chiefs, department of health, department of labor and training and the building inspectors. Because none of the entities responsible for certifying the safety of school buildings have done so, there is a presumption that the school buildings are not safe.

However, the walk-through checklists provide additional evidence that the School Buildings are not safe. Although the transmission of COVID-19 will never be contained in buildings with hundreds of people, and the only way to protect teachers and students from the virus would be to continue distance learning, the school buildings in Bristol-Warren, in particular, lack the safeguards that could minimize the spread of this deadly disease. Requiring teachers and students to report to these buildings, *after the walkthroughs reveal serious safety issues*, will likely cause exposure to COVID-19. The instant situation presents the “classic” case for a preliminary injunction, as affected employees cannot “undo” exposure to and illness or death from COVID-19.

### **III. THE BALANCE OF THE EQUITIES AND THE PUBLIC INTEREST SUPPORT TEMPORARY INJUNCTIVE RELIEF**

The balance of the equities in this case strongly weighs in favor of granting injunctive relief. After finding a likelihood of success and an immediate irreparable injury, a trial justice should next consider the equities of the case by examining 1) the hardship to the moving party if

the injunction is denied, 2) the hardship to the opposing party if the injunction is granted and 3) the public interest in denying or granting the requested relief. *Fund for Cmty. Progress*, 695 A.2d at 521.

Clearly, if teachers and students are required to report to a school building that lacks the necessary safeguards to limit the spread of a deadly disease, all parties will suffer hardship. Conversely, the hardship to Defendants in postponing the opening of school buildings until the necessary safety inspections are complete causes limited hardship. The District is already set up for remote learning.

Finally, preventing the return to in-person learning in schools that are not (currently) equipped to contain the spread of coronavirus is in the public interest. Granting the injunction will limit community spread of a deadly disease.

### CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that temporary injunctive relief be granted.

Respectfully submitted,

Plaintiff,  
By their attorney,

/s/ Elizabeth Wiens  
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Dated: September 11, 2020

CERTIFICATION

I hereby certify that on the 11<sup>th</sup> day of September, 2020, I filed and served this document through the electronic filing system. This document is electronically filed and served and is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System. I also forwarded the document to opposing counsel via electronic mail.

/s/ Janine Durand