

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

BRISTOL-WARREN EDUCATION	:	
ASSOCIATION, NEARI/NEA; MICHELLE	:	
WAY DaSILVA and SARAH STRINGER, in	:	
their capacities as Teachers and Co-Presidents	:	
of the Bristol-Warren Education Association,	:	
 <i>Plaintiffs,</i>	:	
 v.	:	
 BRISTOL WARREN REGIONAL SCHOOL	:	
DISTRICT, ERIN SCHOFIELD, ADAM M.	:	
RAMOS, BRIAN BRADSHAW, JOHN	:	
SAVIANO, JOHN C. BENTO, VICTOR	:	
CABRAL, SHEILA O. ELLSWORTH,	:	
MARJORIE J. McBRIDE, and CARLY N.	:	
REICH in their official capacities as members of :		
the Bristol Warren Regional School Committee, :		
JONATHAN T. BRICE, Ed.D., in his official	:	
capacity as Superintendent of the Bristol Warren:		
Regional School District, MICHAEL	:	
DeMELLO, in his capacity as Fire Chief of the	:	
Town of Bristol, JAMES A. SOUSA, in his	:	
capacity as Fire Chief of the Town of Warren,	:	
STEPHEN GREENLEAF, in his capacity as	:	
Building Official of the Town of Bristol, TONY	:	
CARVALHO, in his capacity as Building/Zoning	:	
Official of the Town of Warren, NICOLE	:	
ALEXANDER-SCOTT, MD, MPH, in her	:	
capacity as Director of the Rhode Island	:	
Department of Health, SCOTT R. JENSEN, in	:	
his capacity as Director of the Department of	:	
Labor and Training,	:	
 <i>Defendants</i>	:	
	:	

AMENDED VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF
AND PETITION FOR WRIT OF MANDAMUS

Plaintiffs Bristol-Warren Education Association by and through their undersigned
counsel, file this Amended Verified Complaint seeking a declaration that R.I.G.L. §16-21-3.1

prohibits the Bristol Warren Regional School District from opening its schools (“the Schools”) for in-person learning absent notification from the local fire chiefs, building inspectors, Director of the State Department of Health and the Director of the State Department of Labor and Training that the schools are in compliance with health and safety codes. Plaintiffs further seek an injunction prohibiting the Schools from reopening until such time as the appropriate health and safety inspections have been performed, and the local building officials have certified that each school building conforms to appropriate state law and regulation.

Finally, Plaintiffs seek a writ of mandamus from this Court requiring the local fire chief, building inspectors, Director of the State Department of Health and the Director of the State Department of Labor and Training to conduct the statutorily required inspections and notify the superintendents as to whether the schools conform to appropriate state law and regulation.

PARTIES

1. Plaintiff Bristol Warren Education Association/NEARI/NEA (“BWEA”) is a labor organization and the exclusive bargaining representative for teachers and other personnel employed by the Bristol Warren Regional School District. BWEA brings this action on behalf of all teachers employed by the Bristol Warren Regional School District.

2. Plaintiffs Michelle Way DaSilva and Sarah Stringer are teachers in the Bristol Warren Regional School District and Co-Presidents of the BWEA.

3. Bristol Warren Regional School District is a School District established under the provisions of R.I. Gen. Laws § 16-3-10. It may be sued in its official capacity pursuant to R.I. Gen. Laws § 16-3-11(a)(2).

4. Erin Schofield, Adam M. Ramos, Brian Bradshaw, John Saviano, John C. Bento, Victor Cabral, Sheila O. Ellsworth, Marjorie J. McBride, and Carly N. Reich are members of the Bristol Warren Regional School Committee and are sued in their official capacities.

5. Jonathan T. Brice, Ed.D., is the Superintendent of the Bristol Warren Regional School Committee and the chief administrative agent of the Bristol Warren Regional School Committee. He is sued in his official capacity.

6. Michael DeMello is the Fire Chief of the Town of Bristol. He is sued in his official capacity.

7. James A. Sousa is the Fire Chief of the Town of Warren. He is sued in his official capacity.

8. Stephen Greenleaf is the Building Official of the Town of Bristol. He is sued in his official capacity.

9. Tony Carvalho is the Building/Zoning Official of the Town of Warren. He is sued in his official capacity.

10. Nicole Alexander-Scott, MD, MPH is the Director of the Rhode Island Department of Health. She is sued in her official capacity.

11. Scott R. Jensen is the Director of the Department of Labor and Training. He is sued in his official capacity.

JURISDICTION

12. Jurisdiction over the Complaint for Declaratory Judgment is vested in the Superior Court pursuant to R.I. Gen. Laws § 9-30-1 et. seq.

13. Jurisdiction over the Request for Injunctive Relief is vested in the Superior Court pursuant to R.I. Gen. Laws § 8-2-13.

14. Jurisdiction over the Petition for Writ of Mandamus is vested in the Superior Court pursuant to R.I. Gen. Laws § 8-2-16.

FACTS

15. According to the Centers for Disease Control and Prevention, as of September 9, 2020, the Coronavirus Disease 2019 (COVID-19) has infected 6,310,663 people in the United States, leading to 189,147 deaths. *See* <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

16. COVID-19 is a respiratory illness. According to the CDC, the severity of the illness can range from mild/moderate (mild symptoms up to mild pneumonia) to severe in 14% of cases (including dyspnea, hypoxia, or more than 50% lung involvement on imaging) to critical in 5% of cases (respiratory failure, shock, or multiorgan system dysfunction). *See* <https://www.cdc.gov/coronavirus/2019ncov/hcp/clinicalguidancemanagement-patients.html>.

17. COVID-19, like most respiratory illnesses, is spread most easily through close person-to-person contact. It can also be spread through respiratory droplets on surfaces. *See* <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Spread>.

18. Rhode Island has seen 22,676 COVID-19 cases, leading to 1,062 deaths. <https://ri-department-of-health-covid-19-data-rihealth.hub.arcgis.com>.

19. On or about March 9, 2020, Gina Raimondo, the Governor of Rhode Island, (“the Governor” or “Raimondo”) issued an Executive Order declaring a state of emergency due to the danger to health and life posed by COVID-19.

20. On or about March 13, 2020, the Governor ordered schools to close. For the remainder of the 2019-2020 school year, all Rhode Island Schools, including those in the Bristol

Warren Regional School District, operated remotely, their instructors teaching students through “distance-learning.”

21. On June 19, 2020, the Governor released detailed guidelines for the reopening of schools on August 31, 2020, and asked each school district to develop three scenarios for returning to class, from full in-person learning to a greater reliance on distance learning.

22. Bristol Warren Regional School District developed plans for reopening that included full in-person instruction, limited in-person instruction, hybrid instruction and distance learning.

23. Bristol Warren Regional School District is prepared to reopen with full distance learning.

24. On August 12, 2020, Raimondo announced that the start of school in Rhode Island would be delayed to September 14, 2020 to give administrators and families more time to prepare amid the coronavirus pandemic.

25. Among the reasons cited by the Governor for delaying the reopening of schools were concerns with whether schools have proper ventilation, what transportation plans are in place for students, whether stable groups can be maintained, and how mask-wearing will be enforced.

26. On August 24, 2020, the State of Rhode Island published guidance for the physical reopening of Rhode Island’s elementary and secondary schools. See https://reopeningri.com/wp-content/uploads/2020/08/Facilities-Physical-Plant-Guidance_AUG24_Final.pdf?189db0&189db0.

27. The guidance provides that School Districts should conduct “full audits of the mechanical systems, air filtration and ventilation, and space availability... to provide the

information needed to identify gaps, remedies, and opportunities to make spaces safer for students, teachers and staff for reopening.”

28. On August 24, 2020, Raimondo announced that the State, through a “Facilities Readiness Team,” would inspect all schools to “assess their compliance with the Department of Health’s facilities guidelines, all prior to any student entering those facilities for the first time.”

29. To facilitate the inspections, the Rhode Island Department of Health and the Rhode Island Department of Education created a “COVID-19 Facilities and Physical Plant School Checklist.”

30. Although Raimondo originally characterized the assessments as “inspections,” she has since asserted that they are merely “walkthroughs.”

31. On or about August 31, 2020, Raimondo declared that all school districts, except Central Falls School District and Providence Public School District, are cleared for in-person learning.

32. At the time of Raimondo’s declaration, no “walkthroughs” had been conducted in the Districts.

33. On September 9, 2020, the Bristol Warren Regional School Committee voted to open nearly all the schools in its District on September 14, 2020.

34. R.I. Gen. Laws § 16-21-3 provides,

The state building codes standards committee, the state fire marshal, the state health department, and the department of labor and training - division of occupational health and safety shall determine whether the school buildings in the several cities and towns or on state property conform to appropriate state law and regulation.

35. Upon information and belief, there has been no determination by the state building codes standards committee, the state fire marshal, the state health department, and the department of labor and training - division of occupational health and safety that the school

buildings in the Bristol Warren Regional School District conform to the appropriate state law and regulations, including “Facilities and Physical Plant School Checklist.”

36. R.I. Gen. Laws 16-21-3 further 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.

37. Upon information and belief, 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 that its Schools comply with appropriate state law and regulation.

38. Upon information and belief, the local fire chiefs, local building inspectors, and directors of the state departments of health and labor and training have not notified the District at any point this year that its Schools comply with appropriate state law and regulations.

39. 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.

(b) Neglect by any superintendent, private school official, or the director of any state operated school to comply with the provisions of this section shall be a misdemeanor punishable by a fine of not exceeding five hundred dollars (\$500).

40. On or about September 1 and 8, 2020, the “Facilities Readiness Team” conducted walk-throughs of the schools in the Bristol Warren Regional School District. The walk-throughs revealed numerous safety issues with the school buildings.

41. As of the filing of this Complaint, COVID 19 remains a serious threat in Rhode Island.

CAUSES OF ACTION

COUNT I

**Uniform Declaratory Judgment Act, R.I.G.L. § 9-30-1 et. seq.
(R.I.G.L. § 16-21-3)**

42. Plaintiffs hereby incorporate Paragraphs 1 through 41 as though fully set forth herein.

43. R.I. Gen. Law § 16-21-3 prohibits schools from opening for in-person learning until and unless the appropriate inspections have been conducted, and the school buildings have been certified as safe.

44. None of the school buildings in the District have been inspected pursuant to § 16-21-3, and none have been certified as safe.

45. Until and unless the inspections are completed and the school buildings are certified as complying with state law and regulations, § 16-21-3 and § 16-21-3.1 prohibit teachers and students from occupying those buildings.

WHEREFORE, Plaintiffs request relief as hereinafter set forth.

COUNT II

Injunctive Relief

46. Plaintiffs hereby incorporate Paragraphs 1 through 45 as though fully set forth herein.

47. As a direct and proximate result of Defendants' violation of R.I.G.L. § 16-21-3, Plaintiffs will suffer irreparable harm.

48. The employees represented by Plaintiffs will suffer irreparable harm if they are forced to come to work, possibly exposing themselves to the novel corona virus and COVID 19.

49. Defendants would suffer no harm from an injunction prohibiting them from opening unsafe buildings until the statutory required inspections are performed. As noted, both Districts have plans in place to provide distance-learning.

50. An injunction prohibiting the District from reopening unsafe schools for in-person learning while teachers and students work remotely is not contrary to the public interest. Rather, the injunction would protect the public from the spread of COVID 19.

51. Plaintiffs have a likelihood of success on the merits.

52. Plaintiffs have no adequate remedy at law.

53. The balancing of equities requires that the requested relief be granted.

WHEREFORE, Plaintiffs pray as hereinafter set forth.

COUNT III

Writ of Mandamus

54. Plaintiff hereby incorporates Paragraphs 1 through 53 as though fully set forth herein.

55. The agencies and parties identified in R.I. Gen. Laws § 16-21-3 are required to determine whether the school buildings in the several cities and towns or on state property conform to appropriate state law and regulation.

56. The agencies and parties identified in R.I. Gen. Laws § 16-21-3 do not have the discretion to avoid their responsibilities under the statute.

57. Plaintiffs and the thousands of students that attend Rhode Island schools have an incontrovertible right to know that the school buildings they spend their days in comply with state health and safety regulations.

58. Plaintiffs have no other adequate remedy at law, warranting this Court's issuance of a writ of mandamus.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Honorable Court:

1. Issue a Declaratory Judgment that the R.I.G.L. §16-21-3.1 prohibits the Bristol Warren Regional School District from opening its schools for in-person learning unless and until the schools pass safety and health inspections;

2. Temporarily enjoin the District from reopening for in-person learning unless and until the schools pass safety and health inspections;

3. Issue a Writ of Mandamus ordering the agencies and parties identified in R.I.G.L. §16-21-3 to perform the appropriate safety inspections and certify to the school superintendent that the school buildings conform to appropriate state law and regulation.

4. Award Plaintiffs their costs and attorney's fees; and

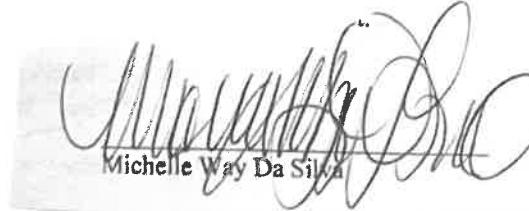
5. Award such other relief as the Court deems just and proper.

VERIFICATIONS

I, Michelle Way Da Silva, a competent person of the full age of majority, declare:

I have personal knowledge of the facts set forth in the Verified Complaint, and if called as a witness in this matter, I could and would testify competently to those facts under oath.

I declare under penalty of perjury that the foregoing is true and correct.

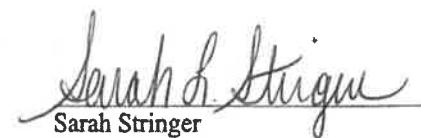


Michelle Way Da Silva

I, Sarah Stringer, a competent person of the full age of majority, declare:

I have personal knowledge of the facts set forth in the Verified Complaint, and if called as a witness in this matter, I could and would testify competently to those facts under oath.

I declare under penalty of perjury that the foregoing is true and correct.



Sarah Stringer

Plaintiffs,
By their attorney,

/s/ Elizabeth Wiens
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