

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

JULIEANNE AUSTIN, *et al.*,)
)
Plaintiffs,)
)
v.)
)
THE BOARD OF EDUCATION OF)
COMMUNITY UNIT SCHOOL DISTRICT)
#300, *et al.*,)
)
Defendants.)

Case No: 2021-CH-500002

FILED
FEB 04 2022
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Clerk of the
Circuit Court

ORDER ON MOTION TO CERTIFY THE CLASS

This matter is before the Court on Plaintiffs' Motion to Certify the Class filed on December 9, 2021 with the *Murray, et al v. Pritzker et al.* caption and case number. The motion was refiled on December 16, 2021 in this matter with the correct caption. This Court, having jurisdiction, heard arguments on January 5, 2022 and took the matter under advisement. The Court having considered the record, including arguments of counsel, all filed pleadings and applicable case law, finds as follows:

JURISDICTION

An initial matter is a question of jurisdiction. It is essential to the validity of a judgment that a court have both jurisdiction of the subject matter of the litigation and jurisdiction over the parties. *State Bank of Lake Zurich v. Thill*, 113 Ill. 2d 294 (1986). Personal jurisdiction may be acquired by the parties making a general appearance or by service of process in the manner directed by statute. *In re Marriage of Verdung*, 126 Ill. 2d 542, 547 (1989). The purpose of service of process is twofold. *Bell Federal Savings & Loan Ass'n v. Horton*, 59 Ill. App. 3d 923, 926 (1st Dist. 1978). First, it serves the purpose of giving notice to those whose rights are about to be

affected by the plaintiff's actions. *Id.* Second, it vests jurisdiction in the court over the person whose rights are affected by the litigation. *Id.* The Court has received many entries of appearances filed by several attorneys representing named Defendants. In light of those Defendants who have filed an entry of appearance, answer or otherwise appeared, the Court has jurisdiction over those parties.¹

APPLICABLE LAW

An action may be maintained as a class action in any court of this State and a party may sue or be sued as a representative party of the class only if the court finds:

- (1) The class is so numerous that joinder of all members is impracticable.
- (2) There are questions of fact or law common to the class, which common questions predominate over any questions affecting only individual members.
- (3) The representative parties will fairly and adequately protect the interest of the class.
- (4) The class action is an appropriate method for the fair and efficient adjudication of the controversy.

735 ILCS 5/2-801. The party seeking class certification bears the burden of establishing all four elements and the failure to do so precludes class certification. *Gridley v. State Farm Mutual Automobile Insurance Co.*, 217 Ill. 2d 158, 167 (2005).

CLASS ACTION CONSIDERATIONS

(1) NUMEROSITY – Plaintiffs seek to serve as the class representatives of parents and legal guardians who have children attending school within the Defendant school districts. Counsel has demonstrated to the Court that the class is so numerous that joinder is impracticable in that the

¹ As of the date of the filing of this Order, the following defendants had not been served or had an attorney file an entry of appearance on their behalf: The Board of Education of Warsaw Community School District #136, The Board of Education of Lisbon CCSD #90.

proposed class would include 711 parents and legal guardian whose almost 900,000 children attend school within the 145 school districts named as Defendants.

(2) COMMONALITY/TYPICALITY - The second requirement for class certification can be met if there is a common nucleus. The Court must find common questions of fact or law predominate over individual issues. Under the predominance or commonality requirement, Plaintiffs must show “(1) there are questions of fact or law common to the class; and (2) the common questions predominate over any questions affecting only individual members.” *Walczak v. Onyx Acceptance Corp.*, 365 Ill. App. 3d 664, 673, 850 N.E. 2d 357, 366 (2d Dist. 2006).

Counsel claims the common question is whether students can be required to utilize a mask or be excluded from school, to allegedly prevent the spread of an infectious disease, in a manner not authorized by law. The Board of Education Defendants claim that this element cannot be met as the Court will be required to assess many individual issues including which school district policies or procedures are applicable to each Plaintiff and how each of these policies have been applied to a particular plaintiff. Some Board of Education Defendants claim there is the possibility of violating the rights of certain individuals under the American with Disabilities Act and the Rehabilitation Act of 1973.² The State Defendants assert Plaintiffs’ bare bone allegations are merely conclusions and not specific allegations of fact and that Plaintiffs have failed to present any evidence to support the allegations.

The Court is also aware of educators on both sides of these issues, especially in light of the Verified Petition to Intervene, which has been denied. The Verified Petition to Intervene asserted that other local associations are likely to seek intervention in the future. The Intervenors all hold positions in direct contrast to those of the named Plaintiffs. Thus, in light of the various positions

² The Court is aware of this claim, however; if parents are going to assert this claim, then they would need to intervene in the instant matter.

outlined above, and without the aid of any discovery, it has not been demonstrated that this action meets the commonality and predominance requirement set forth in the statute.

(3) ADEQUENCY OF REPRESENTATION – The purpose of the adequate representation requirement is to ensure that all class members will receive proper, efficient and appropriate protection of their interests in the presentation of the claim. *Avery v. State Farm Mutual Automobile Insurance Co.*, 321 Ill. App. 3d 269, 285 (5th Dist. 2001)(reversed on other grounds). The test to determine the adequacy of representation is whether the interests of those who are parties are the same as those who are not joined. *Miner v. Gillette Co.*, 87 Ill. 2d 7, 14 (1981). Based on the representation of Plaintiffs’ counsel it appears that the Plaintiffs’ interests are aligned with those of the proposed class, but there is nothing in the record to support this.

In addition, the representative’s lawyer must be qualified, experienced, and generally able to conduct the proposed litigation, and representative cannot seek relief antagonistic to the interest of other potential class members. *Bueker v. Madison County*, 2016 IL App (5th) 150282, ¶ 40, 61 N.E.3d 237, 253. The information provided to the Court is found in paragraph 7 of the motion which asserts, “The parents and guardians have retained qualified counsel to pursue their rights and interests under the laws of this State.” When certifying a class, the Court must be satisfied that the proposed class counsel is “qualified, experienced and generally able to conduct the proposed litigation.” *Lee v. Buth-Na-Bodhaige, Inc.*, 2019 IL App (5th) 180033 ¶63. While it has been alleged that counsel can adequately represent the proposed class, there is no evidence before the Court other than this simple statement. This Court is unaware if counsel has handled any prior class action litigation or if he has any experience in this particular area. The Court also does not know if counsel can undertake the financial responsibility of paying for and executing direct

individual notice to each of the individuals he seeks to represent. This element has not been satisfied.


(4) APPROPRIATENESS OF ADJUDICATION BY CLASS ACTION – Plaintiffs claim a class action is an appropriate method for the fair and efficient adjudication of the controversy. There is a stark division of opinions among the members of the proposed class as reflected in the motions opposing class certification; specifically, the conflicting interests among those class members who seek mask requirements for students and teachers. At this juncture, the Court is not aware of any parents seeking to intervene on behalf of their children who have opposing views. However, this Court is left to speculate on this element since there is merely a blanket statement set forth in the motion. This element has not been satisfied.

Counsel also suggested to the Court that it had the ability to conditionally certify the class action. While this is true, in certifying the conditional class, the Court must consider the requirements of a class action and not divert from the requirements set forth under statute. As set forth in the analysis above, the four elements necessary for a class action have not been met. Hence, the Court refrains from conditionally certifying a class action at this time.

Plaintiffs have failed to sustain their burden in establishing the four elements necessary to maintain a class action. The Motion to Certify the Class is premature and is denied. Plaintiffs will be given leave to file an amended motion to certify in accordance with any deadlines established in any case management order.

IT IS SO ORDERED.

Date: February 4, 2022


Raylene DeWitte Grischow, *Circuit Court Judge*