

No. 4-22-0090
(Consolidated with 4-22-0092, 4-22-0093, and 4-22-0094)
IN THE APPELLATE COURT OF ILLINOIS
FOR THE FOURTH DISTRICT

JULIEANNE AUSTIN, et al.,
 Plaintiff-Appellees

v.

THE BOARD OF EDUCATION OF
 COMMUNITY UNIT SCHOOL DISTRICT
 #300, et al.,

Defendants, and

ILLINOIS DEPARTMENT OF PUBLIC
 HEALTH, DR. NGOZI EZIKE, in her official
 capacity as Director of the Illinois Department
 of Public Health; ILLINOIS STATE BOARD
 OF EDUCATION; DR. CARMEN I.

AYALA, in her official capacity as State
 Superintendent of Education; Governor JAY
 ROBERT PRITZKER, in his official capacity,
 Defendants-Appellants; and

THE BOARD OF EDUCATION OF THE
 CITY OF CHICAGO, SCHOOL DISTRICT #
 299,

Defendant-Appellant.

Appeal from the Circuit Court of
 Sangamon County

Hon. Raylene DeWitte Grischow, Circuit
 Judge

Case No: 2021-CH-500002 and
 Case No. 2021-CH-500007

Circuit Court Order Date: February 4, 2022

Notice of Appeal Date: February 7, 2022

Supreme Court Rule 307(d)

**DEFENDANT BOARD OF EDUCATION OF THE CITY OF CHICAGO,
 SCHOOL DISTRICT #299'S MOTION FOR LEAVE TO FILE
 PLEADINGS IN SUPPORT OF INTERLOCUTORY APPEAL AS OF RIGHT
PURSUANT TO ILLINOIS SUPREME COURT RULE 307(D)**

Pursuant to this Court's Order of February 8, 2022, the Board of Education of the City of Chicago, School District No. 299, (the "Board") respectfully asks the Court to grant it leave to file its Memorandum of Law in Support of the Petition for Review of Order Granting Plaintiffs' Motion for Temporary Restraining Order Pursuant to Illinois Supreme Court Rule 307(D) in Appeal No. 4-22-0092 (Exhibit A), and its Memorandum of Law in Support of the Petition for Review of Order Granting Plaintiffs' Motion for Temporary Restraining Order, Pursuant to Illinois

Supreme Court Rule 307(D) in Appeal No. 4-22-0094 (Exhibit B), and the respective Supporting Records referenced in each Memorandum (not attached due to volume). The Board states the following in support of its Motion:

1. On February 7, 2022, the Board joined the Interlocutory Appeal as of Right filed by the State Parties pursuant to Illinois Supreme Court Rule 307(d) and filed the attached Memoranda of Law (Exhibits A and B) in Appeals 4-22-0092 and 4-22-0094, respectively.

2. In its Order of February 8, 2022, the Court directs “Any party other than the original Petitioner in this matter who submits pleadings or has already submitted pleading(s) to the court in this appeal of the Temporary Restraining Order issued February 4, 2022 by the Honorable Raylene Grischow shall first file a motion for leave to file the pleadings explaining to the appellate court how their request for relief is distinguished from that requested by the State in the instant matter.”

3. Both the Board and the State Defendants ask the Court to vacate the TRO entered by the circuit court in its entirety.

4. The Board contends that, *even if the Court finds that the TRO was properly entered against the State Parties*, the TRO should be vacated as to the Board, for at least three reasons particular to the Board that are not addressed in the State Defendants’ memoranda.

5. First, as to the Board, the TRO does not comply with 735 ILCS 5/11-101, in that it is not “specific in its terms” and does not “describe in reasonable detail” the specific conduct of the Board that is to be enjoined. *See Ex. A at 5; Ex. B at 5.*

6. Second, even if the TRO was properly entered against the State Parties, it should not have been entered against the Board (or other school board defendants) because school boards have authority under Illinois law independent of the State Parties to require students and staff to

wear masks, to temporarily exclude “close contacts” of individuals known or suspected of having COVID-19 from school, and to require unvaccinated staff members to be tested for COVID-19. *See* Ex. A at 5-11, Ex. B at 5-11. The State Defendants’ arguments with respect to the Plaintiffs’ likelihood of success on the merits focus on the State Defendants’ authority to adopt the Executive Orders, Illinois Department of Public Health Emergency Rules, and Illinois State Board of Education guidance. The State Defendants do not present argument regarding the Plaintiffs’ likelihood of success on the merits of their claims regarding the independent authority of local school boards to adopt and enforce COVID-19 safety measures.

7. Third, the record before the circuit court demonstrates that the TRO does not preserve the *status quo* as to the Board, because the Board has longstanding policies relating to exclusion of students and staff to prevent the spread of infectious disease and has required students and staff to wear masks since the 2020-2021 school year. *See* Ex. A at 12, Ex. B at 12.

8. In addition to the foregoing, the Board’s memoranda include recitation of facts that are specific to the Board and not directly addressed in the State Defendants in their memoranda.

WHEREFORE, the Board of Education of the City of Chicago, School District No. 299, (the “Board”) respectfully asks the Court to grant it leave to file its Memorandum of Law in Support of the Petition for Review of Order Granting Plaintiffs’ Motion for Temporary Restraining Order Pursuant to Illinois Supreme Court Rule 307(D) in Appeal No. 4-22-0092 (Exhibit A), and its Memorandum of Law in Support of the Petition for Review of Order Granting Plaintiffs’ Motion for Temporary Restraining Order, Pursuant to Illinois Supreme Court Rule 307(D) in Appeal No. 4-22-0094 (Exhibit B), and the respective Supporting Records referenced in each memorandum (not attached due to volume).

Dated: February 9, 2022

Respectfully submitted,

THE BOARD OF EDUCATION OF THE
CITY OF CHICAGO, SCHOOL DISTRICT
#299, Defendant-Appellant.

By: /s/ William R. Pokorny
One of its Attorneys

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**NOTICE OF FILING DEFENDANT BOARD OF EDUCATION OF THE CITY OF
CHICAGO, SCHOOL DISTRICT #299'S MOTION FOR LEAVE TO FILE
PLEADINGS IN SUPPORT OF INTERLOCUTORY APPEAL**

To: *See Certificate of Service – Certificate of Filing*

PLEASE TAKE NOTICE that on February 9, 2022, I electronically filed with the Clerk of the Appellate Court of Illinois, Fourth District, **DEFENDANT BOARD OF EDUCATION OF THE CITY OF CHICAGO, SCHOOL DISTRICT #299'S MOTION FOR LEAVE TO FILE PLEADINGS IN SUPPORT OF INTERLOCUTORY APPEAL**, a copy of which is attached hereto and herewith served upon you.

Respectfully submitted,

BOARD OF EDUCATION OF THE CITY
OF CHICAGO DISTRICT #299,
Defendant- Appellant.

By: /s/ William R. Pokorny
One of its Attorneys

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CERTIFICATE OF SERVICE - CERTIFICATE OF FILING

I certify that on February 9, 2022, I electronically filed the foregoing **DEFENDANT BOARD OF EDUCATION OF THE CITY OF CHICAGO, SCHOOL DISTRICT #299'S MOTION FOR LEAVE TO FILE PLEADINGS IN SUPPORT OF INTERLOCUTORY APPEAL** with the Clerk of Court for the Appellant Court of Illinois, Fourth Judicial District, by using the Odyssey eFileIL system.

I further certify that the other participants in this case, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system. As a courtesy, the other participants also will be served via e-mail.

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PROPOSED ORDER

THIS CAUSE coming to be heard on the Motion of Defendants-Appellees' Board of Education of the City of Chicago, School District #299 for Leave to File Pleadings in Support of Interlocutory Appeal as of Right Pursuant to Illinois Supreme Court Rule 307(D), due notice having been given and the Court being fully advised in the premises,

IT IS HEREBY ORDERED that the Motion of Defendants-Appellees' Board of Education of the City of Chicago, School District #299 for Leave to File Pleadings in Support of Interlocutory Appeal as of Right Pursuant to Illinois Supreme Court Rule 307(D) is:

ALLOWED / DENIED

DATED:

Judge