

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD
Plaintiff

and

NEWTON TEACHERS ASSOCIATION
Plaintiff-Intervenor

v.

NEWTON TEACHERS ASSOCIATION and
MICHAEL ZILLES, in his official capacity,
Defendants.

CIVIL ACTION NO. 2481CV00148

RECEIVED 2/1/2024

MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION FOR
RECONSIDERATION OF SANCTIONS AND FOR IMMEDIATE HEARING

Intervenor-Plaintiff Newton School Committee (the “School Committee”) submits this memorandum of law in support of its Emergency Motion for Reconsideration of Sanctions. The Defendants’ manifest contempt of and for the Court’s January 19, 2024 Preliminary Injunction (“Injunction”) by contumaciously continuing their open-ended strike and defiance of the Injunction requires: (1) immediate supplemental action on Plaintiffs’ Verified Complaint for Civil Contempt; and (2) immediate imposition of further coercive fines at a level sufficient to coerce the NTA and Zilles to compliance, given that the court’s reduction of the sanctions in its order entered on January 26, 2024 have clearly had the opposite of the intended effect on Defendants.

A. Immediate Action is Required on To Coerce Compliance

This Court has already determined, by issuing the Injunction, that the Plaintiffs have

demonstrated irreparable harm. As addressed below, in the context of determining appropriate fines for contempt a public school strike is uniquely harmful to the public interest and the community that G.L. c. 150E, § 9A is intended to protect. Notably, proceedings for civil contempt in these educator strike cases are generally and fundamentally different than other civil contempt proceedings because the question of whether there is clear disobedience of the Court's injunction is rarely open to dispute. In this case, the NTA and its employees have made no effort to disguise their unmitigated refusal to comply with the Injunction for what is now twelve consecutive days, including eight school days, with no end in sight.

The School Committee requests that the Court hold a hearing and issue an order this motion for reconsideration as rapidly as possible and no later than Thursday, February 1, 2024.

B. Materially Increased Coercive Financial Sanctions are Warranted

After the Court held a contempt hearing on January 22, 2024 because Defendants were refusing to abandon their unlawful strike, the Court issued a Contempt Order with escalating fines that started at \$25,000 and doubled each day thereafter ("January 22nd Order"). The last day of fines stated in the order was January 25, 2024 at 8:00 p.m., cumulatively amounting to \$375,000.

Because Defendants' unvarnished defiance of the Injunction was continuing, Plaintiffs requested, and the Court held, a hearing on January 26, 2024. At the contempt hearing on January 26, 2024, Plaintiffs requested that this Court continue to escalate fines consistent with the January 22nd Order and that such fines continue to be assessed over the weekend to coerce compliance with the Injunction. Specifically, Plaintiffs requested that the Court require the NTA to pay a coercive fine of, at minimum, \$400,000 by Sunday, January 28, 2024 at 8:00 p.m. if the NTA and Zilles fail to comply with the Court's Injunction. Following that hearing, this Court issued an order ("January

26th Order”), entering a 48-hour hiatus on additional fines and then reducing the coercive fine to a flat \$50,000 per day beginning on the evening of Sunday, January 28, 2024. The court’s stated rationale was a possible “risk that such large, escalating fines would undermine effective and fair collective bargaining.”

Unfortunately, Defendants clearly have seen the reduced sanctions in the January 26th Order as an opportunity to persist in their defiance of the Injunction. Materially increased coercive fines are necessary, reasonable and appropriate under the standards articulated by the Supreme Judicial Court in *Labor Relations Commission v. Fall River Educators Association*, 382 Mass. 465 (1981) as set forth in *United States v. United Mine Workers*, 330 U.S. 258 (1947). Accordingly, the School Committee requests that this Court immediately reinstate the doubling of daily fines to coerce compliance with the Injunction and G.L. c. 150E, § 9A. Moreover, the NTA must: (1) immediately pay its accrued coercive fines to date, presently in the amount of \$475,000 to the general fund of the Commonwealth of Massachusetts; (2) make daily payment of its accrued fines to the Commonwealth of Massachusetts; and (3) report its amount of received donations when making such daily payments. Lastly, the School Committee requests that all determinations of good faith bargaining as it relates to the Injunction be made solely by the Board for the Court’s consideration.

A civil contempt order is intended to be remedial and for the benefit of an aggrieved party, to vindicate the authority of the court. *Fall River Educators Association*, 382 Mass. at 475. This aim is served both by compensatory sanctions, which seek to compensate the plaintiff for damages caused by past acts, and coercive sanctions, which are designed to provide relief to plaintiff by bringing the defiant party into compliance with a court order. *Id.* Accordingly, per-diem fines are appropriate and effective in cases of civil contempt. *Id.* In determining the amount of a fine imposed

as a means of securing future compliance, a judge should properly consider four factors: (1) the character and magnitude of the threatened harm; (2) probable effectiveness of any suggested sanction; (3) the defendant's financial resources; and (4) the seriousness of the burden on the defendant. *United Mine Workers*, 330 U.S. at 304. As outlined below, each of these factors supports the School Committee's position.

1. The Character and Magnitude of the Harm Being Caused by this Strike is Substantial and Irreparable

When measuring the character and magnitude of the harm caused by a public school teachers' strike, it is appropriate to consider the following factors: the blatant nature of the violation, the direct financial harm to the municipality, and the non-economic detriment to the public.¹

First, the character of the harm caused by the NTA's and its members' strike is affected by the willful and blatantly illegal nature of the strike.

M.G.L.c.150E, Section 9A(a) is clear and unambiguous. It states:

No public employee or employee organization shall engage in a strike, and no public employee or employee organization shall induce, encourage or condone any strike, work stoppage, slowdown or withholding of services by such public employees.

There is no dispute in this matter that public school teacher strikes violate the law in Massachusetts. Yet, the NTA, by and through its officers, and Zilles, in his official capacity, has shown a clear intent to disregard the law.

More difficult to establish with specificity, but becoming widely apparent, are the issues of

¹ This part of the *Mine Workers* test has been interpreted to mean only that the coercive fine be reasonably set in relation to the facts, that it not be arbitrary. *International Business Machines Corp. v. United States*, 493 F.2d 112, 117 (2d Cir. 1973).

non-economic harm or unknown economic detriment to the public. The record in this case establishes, however, that almost 12,000 students in the district are not receiving an education during this strike and the strike is affecting vulnerable populations of students. *See Exhibits 1, 2 and 3 of Memorandum of Law in Support of Motion for Civil Contempt Order and Immediate Hearing on Sanctions dated January 22, 2024.* Students in the City of Newton are being inappropriately denied their constitutionally guaranteed right to a public education under State Constitution Part II, c. 5, Section 2 for nine (9) days as direct result of NTA and its members' illegal job action. *See McDuffy v. Secretary of the Executive Office of Educ.*, 415 Mass. 545, 621 (1993). That denial is not due to any actions by the School Committee – it is directly and solely caused by Defendants' unmitigated and blatant refusal to obey the lawful order issued by this court. Students and their families are suffering from the impacts of the strike and have been compelled to speak out about the harm caused to them, including to this court. The public interest protected in all cases by the unequivocal bar on strikes by public employees in § 9A is especially compelling when teachers decide to unlawfully withhold their services in order to leverage advantage at the bargaining table.

Parents and families are suffering substantial and material harm from this ongoing strike. *See Exhibit 1 – Affidavit of Anna Nolin*, ¶ 7. Direct evidence of materially relevant harms, as set forth by these parents and students, are as follows but do not represent the entirety of communications received from families:

- Letter to this Court dated January 28, 2024 from Parent L.A.D. (see docket)
 - “My [child], who requires Individualized Education Program (IEP) support, is facing setbacks in [child’s] critical high school year. Missing regular assistance in reading, writing, and math could jeopardize [child’s] chances of college

acceptance.”

- “The strike has isolated [my child] from [child’s] main social circle, leading to growing depression and concern for [child’s] mental health.”
- “As full-time working parents, my husband and I are unable to supervise our children adequately during this break.”
- Letter to this Court dated January 28, 2024 from Student L.D. (See docket)
 - “The setback in my preparation for subjects like Math and Chemistry is compounded. This year I will have MCAS test[s]...which are required for graduation, and I am worried that my outcomes will be impact by the strike.”
- Letter to this Court dated January 28, 2024 from Parents E.F., A.Y, O.Y. (see docket)
 - “...many children, still dealing with the aftermath of the COVID-19 pandemic, find solace and routine in the school setting, making the prolonged absence even more traumatic.”
 - “The NTA’s refusal to bargain in good faith exacerbates the situation, setting a troubling example for our children...[l]eading an unlawful strike not only disrupts the education system but also sends a damaging message to the very students they are meant to guide and inspire.”
- Letter to this Court dated January 28, 2024 from Parent M.S. (see docket)
 - “...one of our children is a high school junior. [Child’s] AP chemistry teacher has told the students all year that they would have to learn a tremendous amount of content to be ready for the AP test. Now with the teacher strike, my [child] has

missed six days of this class. Every passing day reduces how well she is going to be set up for success on this important test where science is the major she wants to pursue in college.”

- Letter to this Court dated January 28, 2024 from Parent P.T. (see docket)
 - “The past 6 days (and counting) of missed school have had a harsh impact on their mood, mental health and faith in the schools that have always been open and welcoming to them.”
 - “My husband and I work from home and cannot afford to take time off or to pay for childcare.”
 - “[My child] is anxious, impatient and misses [child’s] friends and school setting. Extended screen time, nobody to play with and boredom are making for a miserable child.”
 - “The household is on edge, everyday waiting for 7pm to know what tomorrow will bring.”
- Letter to this Court dated January 28, 2024 from Parent E.N. (see docket)
 - “[My child] is currently taking AP US History. The AP Exam is scheduled for May and cannot be changed, whether the kids have been taught the material or not. This will have real impact on these kids’ applications and acceptance to college, despite the kids having no ability to intervene in any way. [Child] was also scheduled to perform in a Newton South play this past weekend. That is now indefinitely postponed. [Child] is scheduled to begin a summer job on June 16; at this rate [child] will still be in school well past that date. [Child’s] friend was supposed to participate

in the indoor track state meet last weekend. They did not participate and will not have that opportunity again.”

- “To punish the kids in this way is cruel.”
- “The NTA has also been posting unprofessional, mocking videos which is a terrible example to set when we spend so much time trying to teach our kids about how to use social media responsibly. It is incredibly upsetting and disappointing.”
- Letter to this Court dated January 28, 2024 from Parent S.K. (see docket)
 - “I am a parent of...Newton Public School students, and also a psychiatrist who works...with adolescents and adults. By several years post-pandemic, we have ample local, national, and international peer-reviewed published evidence to show that being out of school is harmful for adolescent mental health including but not limited to a major increase in suicide attempts by 10-14 year olds during the pandemic...students need to return to school as soon as possible.”
 - “Parents like me are afraid to make a public negative statement about the strike, for fear that a teacher will see it and it will negatively affect their relationship with our children.”
- Letter to this Court dated January 28, 2024 from Parent M.R. (see docket)
 - “I am a single working mom, and having a child home from school has been very difficult for me to manage. I have had to ask for time off from work and work late into the evenings to keep up with my professional responsibilities. My [child] is clamoring to go back to school. [Child] misses her friends, her teachers, the structure and the learning. At this point, with tomorrow’s classes being canceled, my [child]

and all the students in Newton will have missed 7 days of school, or close to 4% of the school year's learning time. This is NOT OK. Even my [child] and friends are complaining that they need to be learning."

- "...the NTA is completely undermining the rule of law. I believe your decision on Friday to lower the fines imposed on the NTA did not take into account the full picture and did not consider the implications to families and students."
- Letter to this Court dated January 28, 2024 from Parent L.F. (see docket)
 - "I do not believe the children's educational and social-emotional needs are being taken into nearly enough account while the teachers wage this strike. The irony is that our children are being used as pawns and – I do not say this lightly in the world context in which we live today – having their education held hostage by the very grown ups outside of their families that we entrust to take care of their well-being outside of the home: the teachers and the public representatives of Newton."
- Letter to this Court dated January 28, 2024 from Paren G.S. (see docket)
 - "...the absence of in-person schooling is affecting families like mine, where both parents work, and external support, such as my parents who are currently assisting during my [spouse]'s business trop, will soon be unavailable. This situation not only adds to our family's stress but also creates a significant financial burden.

Furthermore, the extended absence from work due to the strike is putting my own employment at risk, which would further exacerbate our family's situation."
- Letter to this Court dated January 28, 2024 from Parents R.Z. and T.M. (see docket)

- “It appears that our [child] had previous knowledge of the strike from [child’s] teachers, before it was made public. We also learned that [child’s] teachers they personally know are actively calling students to show support in their cause and join them in rallies. We are concerned about the example provided to our students when soliciting minors to support illegal activity. Moreover, these students are positioned in an unreasonable situation; How could they refused such calls, knowing that the very same teachers will be grading them?”
- Letter to this Court dated January 27, 2024 from Parent S.S. (see docket)
 - “There are seniors who are in the throes of applying to college whose college and guidance counselors have gone dark for more than a week. Transcripts cannot be sent; students cannot get advise for time-sensitive deadlines. This is a very high-stakes time for them.”
- Letter to this Court dated January 28, 2024 from Parent T.T. (see docket)
 - “Safety is another concern. Without the structure and strictures of school every day, I have heard from a number of [parents with teenagers] that children are either/both falling back into habits of apathy driven by lack of daily social stimulus, or engaging in risk late-night forays and behaviors...every weeknight. The opportunities for harm are only increasing exponentially.”

Administrators also have firsthand insight into the plight parents and students are facing, especially more vulnerable student populations. Parents of students enrolled in the METCO program are struggling in managing childcare. *See Exhibit 2 – Affidavit of Lisa Gilbert-Smith*, ¶ 6. Those parents without extended family are relying on middle school age children to supervise

their younger siblings, exhausting leave time to stay home and supervise their children, draining financial resources to arrange external childcare, and even making the difficult choice to leave a child home without supervision. *Id.* One parent in particular just received housing which requires gainful and steady employment as a condition of her residency – this is now jeopardized due to the amount of time she needs to take off from work. *Id.*

Students who receive services through an individualized education program (“IEP”) are not receiving their required services. *See Exhibit 2, ¶ 8.* A disproportionate number of students in the METCO program have academic challenges and each day of the strike, fall further and further behind. *Id.* In particular, students whose literacy levels are below grade level by more than one year are running out of much needed time to bring their skills to grade level. *Id.* Moreover, METCO Counselors act as direct supports to students and families, but are unavailable to be accessed at this time. *Id. at ¶ 10.* This has a devastating impact, as students and families truly need culturally responses services from METCO counselors in a crisis time such as now. *Id. at ¶ 10.* The METCO program also employs bus monitors for vehicles that transport students – these monitors are presently earning no pay and cannot pay for necessities such as rent, food and bills. *Id. at ¶ 9.*

In addition, METCO families have children who are prospective college students, and they would be first generation college students. *See Exhibit 2, ¶ 7.* As a result of their first generation status, these students are reliant on guidance department support to complete college, financial aid and scholarship applications. *Id.* At this time, the students cannot access their transcripts for applications and are fearful that they will not be able to submit their applications for the deadline. *Id.*

Moreover, the District has received more than ten (10) complaints to the Department of Elementary and Secondary Education’s Problem Resolution System (“PRS”) regarding students not receiving entitled special education services. *See Exhibit 1 at ¶ 9*. These complaints speak to the regression and disruption experienced by students each and every day of the strike. *See Exhibit 3 – Affidavit of Casey Ngo-Miller at ¶ 4*. Parents are also directly expressing to administrators the dysregulation and mental health deterioration that their children are experiencing. *See Exhibit 1 at ¶ 9*.

Quite plainly, the non-economic harm to students is potentially life-altering. High school students are facing risks that affect their post-graduation opportunities, younger students are regressing, and all students are facing similar mental health affects as the COVID-19 pandemic. At this junction, it is not only appropriate, but rather a requirement that this Court find that the character and magnitude of the harm has become so exponential that the NTA must face materially increased fines to coerce compliance.

2. Doubling Daily Fines is Reasonable and Effective

There are two facets to the concept of “probable effectiveness” in setting a coercive contempt fine. In *Mine Workers*, the civil contempt fine was based upon the seriousness of the continuing coal strike. “A fine of substantial size is required in order to emphasize the gravity of the offense of which the union was found guilty.” *Id.*, 330 U.S. at 258.

It is plain that the revised coercive fine schedule has been ineffective in coercing compliance by Defendants, who are relying in part on outside resources to relieve them of their responsibility to make payment of the coercive fines.

3. The Union’s Resources Are Sufficient to Justify the Requested

Coercive Fines

The NTA has the continued resources to justify increased coercive fines. The Court has already found, as set forth in the January 22nd Order, that the NTA has \$422,000 cash on hand, and more than \$200,000 in “investments.” The NTA received \$1,590,062.44 in union dues in or about 2023, and according to the NTA’s representation in court on January 26, 2024 approximately \$430,000 of the dues go directly to the NTA. *See Exhibit 19 of Memorandum of Law in Support of Motion for Civil Contempt Order and Immediate Hearing on Sanctions dated January 22, 2024.* Further, according to the NTA’s representation in court, the NTA had accumulated \$60,000 in donations as of January 26, 2024 and has continued to accept donations for the express purpose of raising funds to pay for the costs of the strike. *See Exhibit 1 of Memorandum of Law in Support of Motion for Civil Contempt Order and Immediate Hearing on Sanctions dated January 22, 2024 (attaching the donations page as Exhibit 2 to the Affidavit).* The coercive fines to date have barely exhausted the NTA’s cash on hand, including the donations. There are clearly many other monetary resources available to the NTA to pay the coercive fines, including any offsets by outside donations.

4. The Coercive Fine Should Be a Financial Burden on the NTA But It Is Not An Excessive One.

The final factor in the *Mine Workers* balancing formula is the financial burden of the coercive fine upon the defendant. In order to be coercive, a fine must obviously be large enough to deter further illegal activity, and since it is prospective only, the fine takes on no punitive aspects, regardless of its severity. The fines assessed to date have been ineffective in deterring the strike and not in excess of the NTA’s resources. Accordingly, this Court must modify the coercive fines to serve as a financial, but not punitive, burden on the NTA.

5. The Court Should Now Consider Imposing Coercive Fines to Individual Defendants and Compensatory Fines

In *Fall River Educators Association, supra*, 382 Mass. at 484, the court ruled that civil contempt sanctions for willful violation of a § 9A injunction may properly also include coercive fines to individuals and compensatory fines that recognize those costs incurred by the public employer that directly result from the unlawful disobedience of the injunction. In order to obtain compliance this court should now consider adding additional coercive fines and the daily costs that are being imposed on the public fisc that are directly caused by Defendants' contempt and that would not be imposed but for that contempt. The School Committee is prepared to submit substantiation of those costs.

Conclusion

For all of the above reasons, this Court must reinstate the doubling of coercive fines, require immediate payment of fines to date, require that any prospective fines be paid daily along with a statement of accepted donations, and consider the use of compensatory sanctions.

NEWTON SCHOOL COMMITTEE
By its attorney,

/s/Jennifer King

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Dated: February 1, 2024

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the above document on counsel for Plaintiff, Lan Kantany and the Defendants, Laurie Houle and Richard Mullane, in the above-captioned matter on February 1, 2024 by e-mail at lan.kantany@mass.gov, lhoule@massteacher.org and rmullane@massteacher.org.

/s/ Jennifer F. King

Jennifer F. King, Esq.

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD
Plaintiff

and

NEWTON SCHOOL COMMITTEE
Plaintiff-Intervenor

v.

NEWTON TEACHERS ASSOCIATION and
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Defendants.

CIVIL ACTION NO. 2481CV00148

AFFIDAVIT OF ANNA NOLIN

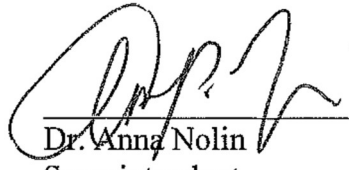
I, Dr. Anna Nolin, hereby propose the statements as follows:

1. My name is Dr. Anna Nolin. I make this affidavit on my personal knowledge and facts.
2. I am the Superintendent of the Newton Public Schools and an agent of the Newton School Committee (“Committee”). I have held this position since July 1, 2023.
3. In my role, I serve as a member of the bargaining team that is negotiating successor collective bargaining agreements for the five units represented by the Newton Teachers Association (“NTA”).
4. The Committee and its bargaining team have been and continue to bargain in good faith with the NTA.
5. We have been mediating on a daily basis with the NTA since Friday, January 19, 2024.
6. As of the date of this affidavit, the NTA continues to engage in an illegal strike. The NTA has not stated any end date to the strike.

7. I am aware of and in receipt of communications from parents and students speaking to the material harm they are suffering. This includes, but is not limited to:
- a. High school seniors being unable to complete college applications by deadlines due to lack of guidance counseling staff;
 - b. High school students lacking instruction in Advanced Placement (“AP”) courses, of which the exams are controlled by an outside entity and cannot be rescheduled to accommodate make-up learning. These students are experiencing anxiety in losing essential instruction to perform well on these exams.
 - c. High school students scheduled to begin summer jobs in June with hard start dates may now be in classes through those start date, and therefore risk losing that summer employment.
 - d. Students engaged in athletics, musical arts and other extracurricular activities are missing out on personal enrichment and social opportunities. Additionally, students are not able to participate in athletic competitions that could otherwise qualify them for post-season participation.
 - e. Students who are scheduled to take MCAS exams this year are being deprived of the necessary instruction and preparation to pass those exams. At the high school level, this is especially crucial as passing the MCAS is a graduation requirement.
 - f. The lack of daily interaction is severely affecting the mental health of students of all ages.
 - g. In lieu of instruction, students are spending extended periods of time on screens which is harmful to child development.
 - h. Parents are fearful of speaking publicly.

- i. Parents are not able to supervise this children at home. Some parents are using accrued leave time, and are coming close to exhausting that time and face job loss.
 - j. Students were made aware of the strike by teachers before it occurred. In addition, student are being directly contacted by teachers to show support for the strike. These communications could violate District policies on permissible staff-student communications.
8. As of the date of this affidavit, the NTA continues to accept donations through this page:
<https://www.newteach.org/donate-to-the-nta>
9. Since the beginning of the strike, the District has received at least ten (10) complaints to the Department of Elementary and Secondary Education’s Problem Resolution System (“PRS”) regarding students not receiving entitled special education services.

Signed under the penalties of perjury on this 1st day of February 2024.



Dr. Anna Nolin
Superintendent
Newton Public Schools

EXHIBIT 2

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD

Plaintiff

and

NEWTON SCHOOL COMMITTEE

Plaintiff-Intervenor

v.

NEWTON TEACHERS ASSOCIATION and
MICHAEL J. ZILLES in his official capacity,
Defendants.

CIVIL ACTION NO. 2481CV00148

AFFIDAVIT OF LISA GILBERT-SMITH

I, Lisa Gilbert-Smith, hereby propose the statements as follows:

1. My name is Lisa Gilbert Smith. I make this affidavit on my personal knowledge and facts.
2. I am the METCO¹ Director for the Newton Public Schools and am employed by the Newton School Committee (“Committee”). I have held this position since July 2019.
3. METCO is a state-operated educational program open to all children of African American, Latino, Asian and Native American descent who reside in the City of Boston. The program is designed to eliminate racial imbalance through transporting Boston residents to suburban communities like Newton.
4. Newton maintains the largest METCO program in the state of Massachusetts, enrolling approximately 415 students in 21 different schools in grades K-12. Additionally, Newton

¹ METCO stands for Metropolitan Council for Education Opportunity.

was a founding member of the METCO program when it began in 1966 and has been committed to expanding and strengthening the program since its initiation.

5. Since the Newton Teachers Association (“NTA”) began its unlawful strike on January 19, 2024, I have been in direct contact with families, students and employees about the harm being caused to them on a daily basis due to the strike.
6. Families are struggling to manage childcare. Those who do not have extensive family supports systems have limited to no options, with many relying on children as young as middle school age to supervise their siblings during the day so parents can work. Other parents are using accrued time to remain home, while some are making the difficult choice of leaving their child home without adult supervision when they were not yet ready to put their child in that situation. Some families need to use external childcare to be able to work, but are exhausting their financial resources to do so and making very difficult decisions. One family in particular just received housing which requires, as a condition of her residency, that she maintain gainful and steady employment. She is unable to work due to childcare obligations, and is deeply concerned that it will jeopardize her family’s housing situation. These families feel that the stress of the strike is compounding the daily stress they already experience as families of color. While we are coordinating with METCO Headquarters to distribute grab and go meals, this distribution is limited in time and location and many families cannot access this meal distribution. For families facing food insecurity, this is especially devastating.
7. Many METCO families have children who are prospective college students, and they would be first generation college students. As a result of their first generation status, these students are reliant on guidance department support to complete college, financial

aid and scholarship applications. At this time, the students cannot access their transcripts for applications and are fearful that they will not be able to submit their applications for the deadline.

8. Students who receive services through an individualized education program (“IEP”) are not receiving their required services. A disproportionate number of students in the METCO program have academic challenges and each day of the strike, fall further and further behind. In particular, students whose literacy levels are below grade level by more than one year are running out of much needed time to bring their skills to grade level.
9. We employ hourly bus monitors for vehicles that transport our METCO students. At this time, these monitors are earning no pay and cannot pay for necessities such as rent, food and bills.
10. METCO Counselors act as direct supports to students and families but are unavailable to be accessed at this time. This has a devastating impact, as students and families truly need culturally responses services from METCO counselors in a crisis time such as now.

Signed under the penalties of perjury on this __1st__ day of February 2024.

Lisa Gilbert-Smith

Lisa Gilbert-Smith
METCO Director
Newton Public Schools

EXHIBIT 3

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT

COMMONWEALTH EMPLOYMENT
RELATIONS BOARD

Plaintiff

and

NEWTON SCHOOL COMMITTEE

Plaintiff-Intervenor

v.

NEWTON TEACHERS ASSOCIATION and
MICHAEL J. ZILLES in his official capacity,
Defendants.

CIVIL ACTION NO. 2481CV00148

AFFIDAVIT OF CASEY NGO-MILLER

I, Casey Ngo-Miller, hereby propose the statements as follows:

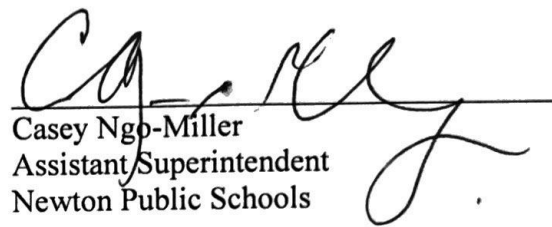
1. My name is Casey Ngo-Miller. I make this affidavit on my personal knowledge and facts.
2. I am the Assistant Superintendent of Student Services for the Newton Public Schools and am employed by the Newton School Committee (“Committee”). I have held this position since July 1, 2022 and have previously held other administrative positions related to student services in other school districts.
3. The Office of Student Services is dedicated to providing specialized services and instruction to the more than 2000 students between the ages of 3 and 22 who receive educational services through the Committee and are identified as having an educational disability.
4. As of the date of this affidavit, the District has received twelve (12) complaints to the Department of Elementary and Secondary Education’s Problem

Resolution System (“PRS”) regarding students not receiving entitled special education services. I have personally reviewed these complaints, which address current family situations as follows due to the strike:

- a. “My [child] has Autism Spectrum Disorder. [Child] is on an IEP and receives special education. He has been deprived of his education and all of his services since the Newton teachers' strike began on Friday, January 19th, 2023. [Child’s] behavior has deteriorated every day of the strike and it is now at a very low point. We believe he will need significant remedial help when he eventually returns to school. We also do not know when that return will be and the uncertainty has created significant stress for him, worsening his behavior.”
- b. “I am extremely concerned that my autistic [child] has been locked out of his school for 7 days now, with no end in sight due to the teacher strike. Given the fact that NTA's requests cannot be reasonably accommodated by the current city budget, and with NTA setting goals that will not be attained (just by simple math), I have a hard time understanding what purpose this strike serves. NTA seems to be getting further and further entrenched into its position, with no desire to reasonably compromise. I strongly urge the DOE to get involved to ensure that Newton's students right to an education are not being violated. The most vulnerable, like my [child], are being hurt the most. It is past due the time for the DOE to intervene and make sure that our students are back in school.”
- c. “Due to the strike in NPS, my [child] has not been receiving her IEP services for the last 10 days. This has been causing regression and anxiety for [child]. While

we sympathize with the teachers, if the strikes continues, there should be some solution to children with special needs under such extreme circumstances.”

Signed under the penalties of perjury on this 1 day of February 2024.


Casey Ngp-Miller
Assistant Superintendent
Newton Public Schools