

# Educators seeking their legal rights are sandbagged, compelled to return to unsafe buildings

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*“I am beyond frustrated that our unions are not protecting us. If I get COVID, it is likely I will die. I never chose a profession where that would be an outcome. We should all be virtual until this is over. Our students are asymptomatic super spreaders.”* – New York teacher

*“Those of us with disabilities were immediately treated like liars. You needed to have multiple doctors notes, and fight at a tribunal of three administrators and an attorney, who ultimately chose if you get accommodations.”* – New York teacher

*“A teacher got COVID and they didn’t tell us for 5 days. I had to get tested and was made to use my personal sick days. My principal was not transparent or helpful either.”* – West Virginia teacher

Forty-three percent of American teachers live with preexisting conditions, such as asthma or diabetes, which make them at high risk of severe effects from COVID-19, according to the journal *Education Week*. As states and districts controlled by both Democrats and Republicans have reopened schools for face-to-face instruction since late July, tens of thousands of education workers have attempted to secure workplace accommodations or all-remote work, citing protections ostensibly guaranteed by the law.

As the weeks have passed, it has become clear that school workers have been largely left to fend for themselves, unprotected by their employers, federal statutes or their unions. As of this writing, at least 50 educators and students have died since schools reopened. The COVID Monitor reports over 121,728 cases tied to K-12 schools, including approximately 35,000 staff.

In line with the demands of big business that schools must open so that parents can return to work, US Education Secretary Betsy DeVos has said the government has “no role” in compiling the rates of COVID-19 infections or deaths tied to school reopenings. Both overt and covert censorship of cases is rampant in districts across the US. The word “transparency” is spoken over and over, while lies and cover-ups are ubiquitous.

The National Workplace Bullying Coalition (NWBC) recently conducted a survey of school workers. Respondents from Pennsylvania, New York, West Virginia and 14 other states addressed their workplace safety and attempts to secure accommodations. The results expose districts’ wholesale violation of COVID-19 safety measures recommended by the Occupational Safety and Health Administration (OSHA), the Centers for Disease Control and Prevention (CDC), and the World Health Organization.

The NWBC as an organization is primarily oriented to union lobbyists and directed to legislative reform. It appeals for the passage of the Dignity at Work Act and anti-bullying clauses in union contracts. Nonetheless, the results of the survey highlight the joint hostility by government and the teachers unions to the demands of educators for a safe workplace.

Commenting on their report’s findings, Jerry Carbo, president of the NWBC and a professor of Labor Relations, Employment Law and Social Issues, told the WSWS, “What we were hearing was terrible and devastating. Educators were being denied their legal rights, which are already so ridiculously slim in the United States. Educators with some terrible health conditions were being denied ADA [American with Disabilities Act] rights. They were being threatened and intimidated, and union leaders were not standing up for them. In many cases union leaders were working against them.”

Carbo added, “In terms of the FFCRA [Families First Coronavirus Response Act] leave, school districts were taking any measure they could to deny this leave. It was really shocking.”

Speaking on the data collection methods of the NWBC report, Carbo stated, “We used a snowball, self-selection sampling technique and do not suggest that our results are representative of the population as a whole. We sent the survey out to a number of teacher groups and worker organizations. We asked those who completed the survey to share with others. We received close to 180 responses within about two weeks. The results from those responses were much more troubling than I expected.”

School workers were asked about their medical conditions, if they had been informed of their rights, if they had received clear instructions to access accommodations, and the status of their requests and outcomes. Asked about employer failure to provide a safe working environment, school workers said:

- “They failed to keep us remote in an outbreak” (Pennsylvania)
- “Not enforced masking and social distancing in staff during non-instructional time. Being evasive re: positive cases in district.” (New York)
- “No extra masks, students sit together at lunch for 30 min without masks, sports teams sit in common area after school without masks.” (Indiana)
- “The ventilation system is horrible, not enough room to socially distance students in my classroom, no window.” (West Virginia)
- “No PPE was provided. We have no plexiglass. Some teachers received masks.” (Pennsylvania)
- “Has not been transparent with positive cases in district; rescinded medical waivers.” (New Jersey)
- “Failed to inform staff that the wipes are very toxic and we needed to wear gloves and not use in food areas.” (Anonymous)
- “No ventilation in my room, AC is broken, desks too big and class too small size for 6 feet social distancing.” (Texas)
- “Many classes still have over 20 in them, the district provided us with cheap face shields rather than masks.” (Mississippi)

The survey report notes that 65 percent of respondents indicated their employers did not assure adequate ventilation. Additionally, 74 percent of

respondents requesting an accommodation said their Human Resources departments were not helpful, 54 percent said their union was not helpful, and half of those who contacted an attorney found the attorney to be unhelpful.

Carbo stated, “The US has the lowest level of protection for workers of any industrialized country in the world.”

Carbo noted that the Equal Employment Opportunity Commission, which enforces workplace anti-discrimination laws, has a 2 percent success rate for any type of settlement, commenting, “Even if a teacher filed with EEOC, the soonest they would get a judgment would be two months out—too late, the harm’s already done. Districts are fighting each case individually. And the most common outcome of filing an EEOC complaint is to get fired from your job.”

He added, “Many people think that the OSHA will protect them. No. OSHA specifically doesn’t apply to schools. There is no meaningful place to turn.”

“The only real success in my experience was where every single teacher filed to leave simultaneously, forcing them to go entirely virtual. The fact is that the majority of people in our survey who wanted and who legally qualified for an accommodation were not granted it. So many workers who are entitled to rights have been coerced or intimidated into foregoing those rights.”

Carbo reflected, “I hope that workers will understand that if they really want their human rights to be upheld in the workplace, they are going to have to turn to each other. Employers are not going to protect them, the laws even if they were enforced, are not enough, and the current union leadership across the country is not going to do much, if anything.”

Indeed, the unanimity between administrations’ and unions’ callous attitude was strikingly apparent across survey results. When asked, “Please explain why the above steps (what steps did you take after being denied accommodation) were or were not helpful,” teachers reported:

- “Admin response is always something like ‘keep a positive attitude, we are all doing the best we can.’ Union seems uninterested in pushing safety concerns—wouldn’t even put out a survey to members as requested, even though they said they would.” (West Virginia)

- “The union did not want to push admin too much for fear of disrupting the relationship or admin refusing to work with us through this. They discouraged collective action of any kind. I asked several times during membership meetings.” (Pennsylvania)

- “When I mentioned my concern about work environment during COVID, I was invited to quit if I felt unsafe.” (Pennsylvania)

- “Our admin said research shows plexiglass isn’t effective. Our union hasn’t ensured that we had PPE or pushed the district to get it.” (Pennsylvania)

- “Nothing changed. Accommodation was not granted. Union leadership in my local does not believe any of this is a ‘real’ issue and is therefore doing nothing.” (Indiana)

- “Administration did not care, and my union is doing nothing to advocate for its members.” (West Virginia)

- “We have major budget cuts—our salary was cut—we are in charge of getting protective masks etc. on our own.” (Virginia)

- “My union doesn’t have a plan for us—taking matters in our own hands.” (Virginia)

- “At-risk staff are having their rights ignored, even by those that are meant to protect them, like unions and lawyers. There is rampant disability discrimination, with ‘undue hardship’ given.” (New York)

- “We have no rights.” (Pennsylvania)

Educators must draw the appropriate conclusions from these experiences and the total collapse of workers’ democratic rights. In the drive to maximize profits, purported “legal protections” have been long eviscerated by both big business parties at every level of government.

This decades-long process has been qualitatively deepened amid the

COVID-19 pandemic, with Democrats and Republicans implementing the homicidal back-to-work and back-to-school policies demanded by Wall Street. The use of systematic workplace abuse arises from the need to wring as much surplus value as possible from workers before they are sick or dying.

Democratic state governors such as New York’s Andrew Cuomo, Pennsylvania’s Tom Wolf and Michigan’s Gretchen Whitmer are enforcing Trump’s demand to “open the schools now.” In this process, they have been fully supported by the American Federation of Teachers (AFT), the National Education Association (NEA), the Teamsters, the Service Employees International Union (SEIU), and their state and local affiliates, which have actively suppressed both individual rights and collective opposition.

The hope, as outlined by the NWBC, that unions will “step up” is shown to be a futile and lethal pipe-dream. Instead, the unions have repudiated their phony pledge for “safety strikes” and facilitated the return to deadly schools.

To the extent that workers have illusions in labor law reform or the hope that unions can be transformed into fighting organizations, they should take a hard look at the present state of affairs.

Public sector collective bargaining rights were always extremely limited, and from the outset, union leaders accepted anti-strike laws in exchange for government recognition and dues check-off systems. The unions are organically pro-capitalist and hostile to the interest of the working class, and survive today only at the behest of the financial oligarchy, the government and employers. “Collective bargaining” has become collective betrayal and the suppression of the class struggle.

The profit system, visibly rotting on its feet, has embraced the murderous policy of “herd immunity” and is hurtling towards dictatorship across the globe. With workers’ very lives at stake, it is essential to break with all forms of bourgeois ideology—from “lesser of two evilsism” to the pro-capitalist trade unions.

To protect their lives, stop the spread of the pandemic, and ensure the provision of high quality remote learning until the pandemic is contained, educators must build new forms of organization, completely independent of the unions and both big business parties. At the national level, the Educators Rank-and-File Safety Committee was built to coordinate the struggles of local and statewide committees, which have now been formed across the US and internationally. We urge all educators to join and build these committees, or contact us to found a new committee in your district or state.



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