

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

FLORIDA EDUCATION ASSOCIATION;)
STEFANIE BETH MILLER; LADARA)
ROYAL; MINDY FESTGE; VICTORIA)
DUBLINO-HENJES; and, ANDRES HENJES,)

Plaintiffs,)

vs.)

RON DESANTIS, in his official capacity as)
Governor of the State of Florida; RICHARD)
CORCORAN, in his official capacity as Florida)
Commissioner of Education; FLORIDA)
DEPARTMENT OF EDUCATION; FLORIDA)
BOARD OF EDUCATION; CARLOS)
GIMENEZ, in his official capacity)
as Mayor of Miami-Dade County,)

Case No. 2020-015211 CA (31)

Defendants.)

PLAINTIFFS’ RENEWED MOTION FOR EXPEDITED MEDIATION

Plaintiffs the FLORIDA EDUCATION ASSOCIATION, STEPHANIE BETH MILLER, LADARA ROYAL, MINDY FESTGE, VICTORIA DUBLINO-HENJES, and ANDRES HENJES (hereinafter “Plaintiffs”), by and through undersigned counsel, renew their Motion to Compel Expedited Mediation, filed on July 27, 2020.

On July 27, 2020, the Plaintiffs filed a Motion to Compel Expedited Mediation (the “Motion”). On July 30, 2020, all Defendants filed oppositions to the Plaintiffs’ Motion. On July 30, 2020, the predecessor judge, Judge Arzola, held a status conference. During the status conference, Judge Arzola orally denied the Plaintiffs’ motion for mediation. (Hr’g Tr. 26:12-15.) A written order denying the Motion was never entered. Later that day, Judge Arzola recused himself from this case and the case was reassigned to Your Honor. The parties are scheduled to argue the State Defendants’

motion to dismiss or transfer venue on August 6, 2020. The State Defendants have already stated on the record that if the motion is denied, they will seek appellate review and invoke the automatic stay of the underlying proceedings under Florida Rule of Appellate Procedure 9.310(b)(2). This will further delay the case and prevent the Court from ruling on the merits of the Plaintiffs' claims. Thus, an expedited mediation may be the only way to address the issues in this lawsuit before thousands of students and hundreds of teachers return to school next week.

Ten school districts will open brick and mortar locations the week of August 10, 2020. While these schools are reopening and hundreds of teachers are reporting to work, Florida has 500,000 confirmed positive cases of COVID-19, over 7,625 deaths, and ICU beds are at 85% capacity.¹ Florida's positivity rate is at about 18%.² **Recently, Dr. Deborah Birx, the White House coronavirus response coordinator, said that she agreed with the CDC Director's recommendation that schools in areas with a 5% positivity rate or higher need to use distance learning. Dr. Birx said,**

I certainly would endorse what Dr. Redfield is saying. In the areas where we have this widespread case increase, we need to stop the cases, and then we can talk about safely reopening.³

Given the public health crisis in Florida and the reality that school reopening is imminent, expedited mediation of this matter may resolve the key issues in dispute to the great benefit of Floridians across the state.

¹ *Hospital ICU Beds Census and Staff Availability as Reported*, last visited August 5, 2020, https://bi.ahca.myflorida.com/t/ABICC/views/Public/ICUBedsCounty?%3AshowAppBanner=false&%3Adisplay_count=n&%3AshowVizHome=n&%3Aorigin=viz_share_link&%3AisGuestRedirectFromVizportal=y&%3Aembed=y.

² *Johns Hopkins Coronavirus Resources Center*, last visited August 5, 2020, <https://coronavirus.jhu.edu/testing/individual-states/florida>.

³ *Dr. Birx: Before schools can reopen, coronavirus outbreaks must get under control*, August 2, 2020, <https://www.businessinsider.com/reopening-schools-covid-19-cases-caution-birx-2020-8>.

“A successor judge properly assigned to a case may vacate or vary interlocutory orders made earlier by another judge.” *Karn v. Coldwell Bank Residential Real Estate, Inc.*, 705 So. 2d 680, 680 (Fla. 4th DCA 1998); *Akins v. State*, 694 So. 2d 847, 849 (Fla. 4th DCA 1997) (“The rulings of a predecessor judge were not binding on the trial court.”). Florida Rule of Civil Procedure 1.710(b) provides that a “civil action may be ordered to mediation or mediation in conjunction with arbitration upon motion of any party or by the court, if the judge determines the action to be of such a nature that mediation could be of benefit to the litigants or the court.”

Plaintiffs’ Complaint challenges the constitutionality of Emergency Order 2020-EO-06 (the “Order”), issued on July 6, 2020. The Order contains language directing the reopening of in-person instruction in all Florida schools, as well as language that appears to recognize that school districts may make a different choice based on the health and safety needs of their community. (See Compl. at ¶¶ 87-98.) Far from clarifying matters, subsequent statements from the Defendants regarding the scope and effect of the Order have only confused the issue further. (*Id.*) The result has been to leave school boards, communities, and educators with inconsistent and ambiguous guidance as they wrestle with what experts have rightly called the most “complex and consequential” decisions in the pandemic.⁴ That the stakes of guessing wrong as to what the Order may mean may include jeopardizing a school district’s state funding to some degree, *see* Compl. at ¶ 39, only compounds the difficulty in which school districts find themselves.

Mediation will give the Defendants an opportunity to clarify or reformulate the requirements of the Order in a manner that comports with the Florida Constitution and provides clear guidance to local school authorities, communities, and educators. Such action could narrow

⁴ Nat’l Academies of Sciences, Eng’g & Med., *Reopening K-12 Schools During the COVID-19 Pandemic* (2020), <https://www.nap.edu/catalog/25858/reopening-k-12-schools-during-the-covid-19-pandemic-prioritizing>.

the issues to be decided by this Court, allay the need for emergency injunctive relief, or even resolve the dispute altogether.

Indeed, the immediate needs and interests of the parties and the constituencies they represent, as well as Floridians statewide, argue for every effort to be made to resolve this dispute as quickly as possible. Now is the time for the parties to come together to resolve these differences for our educators, support staff, public school personnel, children, parents, and community. There is no other way to address the extreme public health crisis we all confront than by mediating and achieving a resolution, through agreement, that works for all of our educators, children, and our community.

Plaintiffs are willing and ready to proceed to mediation, which should be ordered on an expedited basis due to the urgency of the issues involved herein.

WHEREFORE, Plaintiffs respectfully ask this Court to compel expedited mediation on this matter.

Dated: August 5, 2020

Respectfully submitted,

COFFEY BURLINGTON, P.L.
2601 South Bayshore Drive, Penthouse
Miami, FL 33133
Telephone: (305) 858-2900

By: s/Kendall B. Coffey

Kendall B. Coffey, FBN 259861
Josefina M. Aguila, FBN 0119719
Scott A. Hiaasen, FBN 103318
kcoffey@coffeyburlington.com
jaguila@coffeyburlington.com
shiaasen@coffeyburlington.com
yvb@coffeyburlington.com
lperez@coffeyburlington.com
service@coffeyburlington.com

MEYER, BROOKS, BLOHM & HEARN, P.A.
131 North Gadsden Street
Tallahassee, FL 32301
Telephone: (850) 878-5212

By: s/Ronald G. Meyer

Ronald G. Meyer, FBN 148248
rmeyer@meyerbrookslaw.com

Kimberly C. Menchion, General Counsel
FLORIDA EDUCATION ASSOCIATION
213 South Adams Street
Tallahassee, FL 32301
Telephone: (850) 224-7818

By: s/Kimberly C. Menchion

Kimberly C. Menchion, FBN 425613
kimberly.menchion@floridaea.org

PHILLIPS, RICHARD & RIND, P.A.
9360 S.W. 72nd Street, Suite 283
Miami FL 33173-3283
Telephone: (305) 412-8322

By: s/Lucia Piva

Lucia Piva, FBN 119340
Mark Richard, FBN 305979
Kathleen M. Phillips, FBN 287873
lpiva@phillipsrichard.com
mrichard@phillipsrichard.com
kphillips@phillipsrichard.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished by the Florida Courts e-filing Portal pursuant to Fla. R. Jud. Admin. 2.516(b)(1), this 5th day of August, 2020, to the following:

Angel A. Cortiñas, Esq.
acortinas@gunster.com
nsalazar@gunster.com
eservice@gunster.com

Jonathan H. Kaskel, Esq.
jkaskel@gunster.com
nsalazar@gunster.com

GUNSTER
The DuPont Building
600 Brickell Avenue, Suite 3500
Miami, Florida 33131
Telephone: (305) 376-6000

Counsel for Defendants:

- *Ron DeSantis, in his official capacity as Governor of the State of Florida;*
- *Richard Corcoran, in his official capacity as Florida Commissioner of Education;*
- *Florida Department of Education; and*
- *Florida Board of Education*

David M. Murray
Assistant County Attorney
DMurray@miami-airport.com
RMartin@miami-airport.com

Lauren Morse
Assistant County Attorney
LaurenM@miamidade.gov
Olga.Appeland@miamidade.gov

Angela F. Benjamin
Assistant County Attorney
Angela.Benjamin@miamidade.gov
Jeane.Neal@miamidade.gov
Stephen P. Clark Center, Suite 2810
111 Northwest First Street
Miami, Florida 33128-1993
Telephone: (305) 375-1381

Counsel for Defendant Mayor Carlos Gimenez

By: /s/ Kendall B. Coffey