

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 (24)

Defendants. )

**PLAINTIFFS’ MOTION TO COMPEL EXPEDITED MEDIATION**

Pursuant to Rules 1.700(a) and 1.710(b) of the Florida Rules of Civil Procedure, 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, move this Court to compel the parties to expedited mediation.

**INTRODUCTION**

The urgent issues in this suit have an impact on the entire community, and time is of the essence. As of July 25, 2020, Florida had almost 400,000 confirmed positive cases of COVID-19, over 5,700 deaths, and ICU beds were at 82% capacity, with many hospitals already over 100%

capacity.<sup>1</sup> As of July 24, 2020, the state had a total of 31,150 children ages 17 and under who had tested positive since the beginning of the pandemic.<sup>2</sup> From July 16<sup>th</sup> to July 24<sup>th</sup>, there was a 23% increase in child COVID-19 hospitalizations.<sup>3</sup> Florida currently has substantial, uncontrolled, transmission of the virus and is considered the epicenter of the global pandemic. Despite the seriousness of the problem, Defendants are pushing schools to reopen brick and mortar locations in August. The local school boards are uncertain of how to proceed under the State’s mandate. Teachers, parents, and students fear for their health and safety.

Given the urgency of the issues in this case, the public would benefit from the potential resolution of this matter through expedited mediation. Now is the time for the parties to come together and resolve their differences for our educators, support staff, public school personnel, children, parents, and community.

### **ARGUMENT**

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.” Given the public health crisis in Florida and the reality that reopening schools will gravely compound that crisis by further increasing community transmission rates, expedited mediation of this matter may resolve the key issues in dispute to the great benefit of Floridians across the state.

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<sup>1</sup> State of Florida, *Agency for Health Care Administration, Hospital Beds Census and Staffed Availability* [https://bi.ahca.myflorida.com/t/ABICC/views/Public/HospitalBedsHospital?%3AshowAppBanner=false&%3Adisplay\\_count=n&%3AshowVizHome=n&%3Aorigin=viz\\_share\\_link&%3AisGuestRedirectFromVizportal=y&%3Aembed=y](https://bi.ahca.myflorida.com/t/ABICC/views/Public/HospitalBedsHospital?%3AshowAppBanner=false&%3Adisplay_count=n&%3AshowVizHome=n&%3Aorigin=viz_share_link&%3AisGuestRedirectFromVizportal=y&%3Aembed=y).

<sup>2</sup> Child hospitalizations from COVID-19 surge 23% in Florida as schools statewide must reopen, July 27, 2020, <https://www.cnn.com/2020/07/27/health/florida-covid-children-hospitalizations/index.html>.

<sup>3</sup> *Id.*

Emergency Order 2020-EO-06 (the “Order”), issued on July 6, 2020, 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.<sup>4</sup> 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.

Count I of the Complaint seeks a declaration from the Court that Governor DeSantis, Commissioner Corcoran, the Department of Education, and the Florida Board of Education are violating the Florida Constitution by mandating the reopening of brick and mortar schools through Emergency Order 2020-20-06. The Defendants are tasked with providing our children with a safe education, *see* Article IX, Section 1(a), and are thus, according to the Complaint, violating their constitutional duty. Count II of the complaint seeks a declaration from the Court that the Order is arbitrary and capricious and therefore violates due process. The Order is arbitrary and capricious because it is confusing, inconsistent, and creates confusion among school districts across the state. The Order does not clearly lay out how schools are to reopen, who is responsible for this decision, and what health guidelines, if any, should be considered in

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<sup>4</sup> 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>.

this process. Moreover, the Order, as alleged in the Complaint, is not appropriately based on objective criteria, is inconsistent with prior positions, and does not sufficiently account for local decision-making. Count III seeks injunctive relief against all Defendants.

An order compelling mediation would greatly assist the parties and this Court in resolving the claims asserted in the Complaint. Most importantly, it 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 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, at a reasonable time prior to school opening dates, due to the urgency of the issues involved herein.

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**WHEREFORE**, Plaintiffs respectfully ask this Court to compel expedited mediation on this matter, no later than **August 5, 2020**.

Dated: July 27, 2020

Respectfully submitted,

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**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 27<sup>th</sup> day of July, 2020, to the following:

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