

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. \_\_\_\_\_

Defendants. )  
\_\_\_\_\_ )

**COMPLAINT FOR VIOLATION OF FLORIDA CONSTITUTION: PUBLIC SCHOOLS  
MUST BE REOPENED SAFELY FOR ON-SITE INSTRUCTIONAL OPERATIONS**

Plaintiffs the FLORIDA EDUCATION ASSOCIATION, STEFANIE BETH MILLER, LADARA ROYAL, MINDY FESTGE, VICTORIA DUBLINO-HENJES, and ANDRES HENJES sue Defendants RON DESANTIS, in his official capacity of Governor of the State of Florida; RICHARD CORCORAN, in his official capacity of Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; FLORIDA BOARD OF EDUCATION (COLLECTIVELY “THE STATE GOVERNMENT DEFENDANTS”); CARLOS GIMENEZ in his official capacity as Mayor of Miami-Dade County, and allege as follows:

1. Tragically, Florida, is now an international epicenter of the lethal and unforgiving novel coronavirus. The virus has no boundaries—including impacting our state’s public schools, a centerpiece of our society and democracy. The Florida Constitution is clear: public school on-site instruction and operations must be opened safely. The Florida Constitution mandates

“[a]dequate provision shall be made by law for a uniform, efficient, **safe, secure**, and high quality system of free public schools.” Fla. Const. Art. IX, § 1. The Defendants’ unconstitutional handling of their duties has infringed upon this mandate and requires the courts to issue necessary and appropriate relief. Florida students, parents, teachers, and the public deserve and are constitutionally entitled to the protections needed to assure a lawful and safe reopening.

2. Plaintiffs bring this suit to safeguard the health and welfare of Florida public school students, educators, staff, parents, and the general public, including residents of Miami-Dade County, following the failure to take the necessary steps to mitigate community spread of the Coronavirus Disease 2019 (COVID-19), as set forth in the Centers for Disease Control (“CDC”) guidelines. The CDC guidelines provide the most authoritative criteria for the safe reopening of a broad range of facilities, operations, and activities, including schools. Even so, without a rational basis for ignoring the CDC guidelines, the State Government Defendants are requiring millions of public school employees and students to physically return to brick and mortar schools in August amidst a drastic resurgence of COVID-19 cases. Defendants, Governor DeSantis, Commissioner Corcoran, Department of Education, and Board of Education’s arbitrary, dangerous, and unconstitutional actions in the midst of the pandemic create an imminent threat to the public health, safety and welfare.

3. An actual controversy currently exists between the Plaintiffs and the Defendants.

4. Absent the requested relief, schools across the state will continue their current planning and actions to unsafely reopen face-to-face operations in the next weeks to the injury and detriment of all Florida citizens. Emergency relief is needed from this Court to protect the community from Defendants’ arbitrary and unconstitutional actions and omissions.

## **JURISDICTION AND VENUE**

5. This Court has jurisdiction pursuant to Fla. Stat. §§ 26.012(2)(c) and § 86.011.

6. Venue is proper in Miami-Dade County, Florida, as causes of action accrued in Miami-Dade County. Fla. Stat. §§ 47.011 and 47.021.

## **PARTIES**

7. Plaintiff FLORIDA EDUCATION ASSOCIATION (“FEA”) is an organization comprised of more than 140,000 education employees including teachers, educational support professionals, psychologists, counselors, social workers, registered nurses, speech therapists, media specialists, deans, custodial employees, food service employees, technical support professionals, and occupational therapists in the public-school districts through the State of Florida. The FEA advocates on behalf of its members including their right pursuant to Article I, Section 6 of the Florida Constitution to bargain collectively over wages, hours, and other terms and conditions of employment. The FEA, as the leading voice of educators and school staff in Florida, is affiliated with the largest national teachers’ unions in America, the American Federation of Teachers (“AFT”) and the National Education Association (“NEA”). As a result of these bargaining rights, local teacher organizations throughout Florida have collective bargaining agreements with local school boards.

8. Plaintiff Stefanie Beth Miller is a second-grade teacher at Fox Trail Elementary, a public school in Broward County, Florida. Plaintiff Miller relied on the trial COVID-19 drug to stay alive after she spent two months in the hospital, and 21 days on a ventilator in a medically induced coma, upon contracting COVID-19. She has continued with occupation and speech therapy ever since.

9. Plaintiff Ladara Royal is an African American resident of Orange County who has been employed by Orange County Public Schools for two years and is currently an educator at South West Middle School. Prior to that, he was a teacher in North Carolina. Plaintiff Royal has asthma and suffers from an auto immune disease that puts him at an increased risk of experiencing serious complication from COVID-19. Further, the CDC has advised that, due to long-standing systemic health and social inequities, African Americans and other minorities are at increased risk of getting COVID-19 or experiencing severe illness or death from the disease.

10. Plaintiff Mindy Festge is a parent, educator, and resident of Miami-Dade County. Her husband, Don Festge, is also a Miami-Dade public school teacher and they have both been employed by Miami-Dade County Public Schools for over 28 years. Her son is an incoming senior attending a Miami-Dade high school; he was diagnosed with a chronic digestive disorder and has a compromised immune system—it is not safe for him to return to school amid the spike of COVID-19.

11. Plaintiffs Victoria Dublino-Henjjes and Andres Henjjes are the parents of two elementary public-school students in Pinellas County. Both of their children suffer from respiratory issues and are at higher risk of serious complications if exposed to this deadly virus.

12. Defendant Ron DeSantis is the duly elected Governor of the State of Florida in which the supreme executive power is vested and “is responsible for meeting the dangers presented to this state and its people by emergencies.” Const. Art. IV, § 1; Fla. Stat. § 252.36(1)(a). He is the chief public official overseeing Florida’s coronavirus response, including during the current crisis which has witnessed an unprecedented re-emergence of the pandemic.

13. Defendant Richard Corcoran is Florida Commissioner of Education appointed by the State Board of Education to serve as the Executive Director of the Department of Education.

Const. Art. IX, § 1; Fla. Stat. § 20.15(1). Along with the State Board of Education, the Commissioner is charged with assigning the divisions of the Department of Education with “such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination, efficiency, and effectiveness of education for students in K-20 education.” Fla. Stat. § 20.15(5). He is the education official who is acting to direct local school boards to decide to reopen schools without adherence to the constitutional mandate of maintaining safe and secure public schools.

14. Defendant, Florida Department of Education is the administrative agency responsible for implementing the education policies and programs promulgated by the State of Florida. *See* Fla. Stat. § 20.15.

15. Defendant State Board of Education is the head of the Department of Education and the government body charged with supervision of the state’s public education system. Fla. Const. Art. IX, § 1; Fla. Stat. § 20.15(1).

16. Defendant Carlos Gimenez is the Chief Executive Officer of Miami-Dade County. Miami-Dade County Code, Subchapter A, Art. 4, Section 4(g). As county mayor, just as the equivalent lead administrators of all 67 Florida counties, he has the primary responsibility for local government efforts to control community spread of the lethal virus. The Office of the County Mayor has issued multiple emergency orders to restrict potentially dangerous activities based on manifest perils of COVID-19. Accordingly, this position embodies the highest level of local authority with respect to public health determinations concerning the pandemic. Additionally, the Office of the Mayor is responsible for providing real-time data on the metrics to the local school board and superintendent so that they may be best informed on the manner in which to safely reopen schools. Such data includes, but is not limited to, rates of spread, rates of new cases,

available ICU beds, location and availability of personal protective equipment (“PPE”), rates of public safety violations, and access to timely testing including results and positivity rates. In each Florida county there exists a public official that performs these functions so as to assist school boards and superintendents in reaching local decisions regarding the physical re-opening of public schools.

## **FACTUAL ALLEGATIONS**

### i. Background

17. Florida is facing an unprecedented surge of COVID-19, a severe acute respiratory illness caused by SARS-CoV-2, that can spread among humans through respiratory transmission and spreads easily from person to person, even when an infected person shows no symptoms of the virus. People of all ages with chronic medical conditions like heart disease, lung disease and diabetes, and adults who are 65 years old and older, are at higher risk of developing severe illness resulting in death. However, this virus has not discriminated and has resulted in serious illness and death to people of all ages, including those without underlying medical conditions and children.

18. According to the Centers for Disease Control and Prevention (“CDC”), the virus is thought to spread mainly from person-to-person “between people who are in close contact with one another (within about 6 feet)[, and t]hrough respiratory droplets produced when an infected person coughs, sneezes or talks.”<sup>1</sup> It is understood that the virus can be spread by human contact with surfaces contaminated with droplets containing the virus.

19. The threat of COVID-19, and the response of the federal government, as well as local and state governments throughout the country, is well-documented. Since March 1, 2020 the

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<sup>1</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/bus-transit-operator.html>

number of reported COVID-19 cases in the United States has increased from 85 to almost 3.7 million cases and 139,659 deaths.<sup>2</sup> These numbers increase daily.

ii. Florida COVID-19 Resurgence is Remarkable and Out of Control

20. As of the morning of July 14, 2020, there were 291,629 Florida residents who tested positive for COVID-19.<sup>3</sup> These numbers only include individuals who have been tested for the novel COVID-19, and the actual level of infection is expected to be much higher. Over 77,000 of those cases were reported just last week, including the July 12 nationwide record of over 15,000 cases in a single day.<sup>4</sup>

21. On the week ending July 12, 2020, Florida reported 511 additional deaths. The previous highest weekly number of deaths was 342 in early May.<sup>5</sup> The average number of COVID-19 related deaths in Florida has soared to 81 people a day and is expected to increase as health experts have repeatedly cautioned that there is a lag between infection rate increases and hospitalizations and deaths.<sup>6</sup>

22. Contrary to initial suggestions, children are at risk of contracting and spreading the virus, and of **developing severe illness resulting in death**. As of July 9, 2020, the Florida Department of Health reported over 17,000 cases in children under 18 years old, 213 hospitalizations, and 4 deaths.<sup>7</sup> The harsh reality is that Florida had a 31% positivity test rate among children as of last week.<sup>8</sup> The adverse medical impact on our children is currently being studied and observed.

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<sup>2</sup> <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>

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

<sup>4</sup> <https://www.nbcmiami.com/news/local/florida-sets-single-day-record-for-coronavirus-deaths-with-132-adds-9100-new-cases/2261956/>

<sup>5</sup> <https://www.orlandosentinel.com/coronavirus/os-ne-florida-coronavirus-monday-july-13-20200713-g7hrr2fjqvdyvpvkyxzyrbfzmi-story.html>

<sup>6</sup> <https://www.nbcmiami.com/news/local/florida-sets-single-day-record-for-coronavirus-deaths-with-132-adds-9100-new-cases/2261956/>

<sup>7</sup> [http://ww11.doh.state.fl.us/comm/\\_partners/covid19\\_report\\_archive/pediatric\\_report\\_latest.pdf](http://ww11.doh.state.fl.us/comm/_partners/covid19_report_archive/pediatric_report_latest.pdf)

<sup>8</sup> *Id.*

23. These numbers continue to climb daily. Medical and public health experts predict and model an increased prevalence of the disease and resulting hospitalizations and deaths. Further, the long-term effects of COVID-19 are currently unknown.<sup>9</sup>

iii. Urgent Federal, State and Public Health Authority Life Saving Directives on the Pandemic—We Must Get This Right as There are No “Do-Overs”

24. On January 31, 2020, the Secretary of Health and Human Services (HHS) declared a public health emergency in response to the COVID-19 outbreak.

25. On March 1, 2020, Florida Governor Ron DeSantis issued Executive Order 20-51 directing the State Surgeon General to declare a Public Health Emergency. On that same date, the State Surgeon General Dr. Scott Rivkees declared a Public Health Emergency for COVID-19 in Florida.

26. On March 9, 2020, Governor Ron DeSantis issued Executive Order 20-52, as extended on July 7, 2020, declaring a State of Emergency for COVID-19 throughout the State of Florida.

27. On March 11, 2020, the World Health Organization (WHO) characterized the outbreak as a pandemic.

28. On March 13, 2020, a national emergency was declared as a result of this pandemic.

29. As the State of Florida’s Division of Emergency Management stated in an Emergency Order dated March 13, 2020, **well before the recent surge in cases**, “COVID-19 poses a severe threat to the entire State of Florida and requires that timely precautions are taken to protect the communities and general welfare of the State of Florida.”<sup>10</sup> **The Emergency Order**

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<sup>9</sup> <https://www.miamidade.gov/information/library/07.07.20-amendment-2-to-26-20.pdf>

<sup>10</sup> <https://www.flgov.com/wp-content/uploads/covid19/DEM%20ORDER%20NO.%2020-004.pdf>

underscored that “[p]romoting the health and safety of each person connected with the State’s education system is of paramount importance.”<sup>11</sup>

30. In light of this undisputed public emergency, school systems throughout the country have been forced to take drastic measures to respond to and mitigate this public health crisis. School safety is a critical public health and constitutional imperative. The State Constitution guarantees safe schools.

31. On March 17, 2020, when the state had reported just 314 total COVID-19 cases, the Florida Department of Education (DOE) issued Executive Order 2020-EO-01 closing schools and providing measures for local school districts to establish additional remote learning opportunities.<sup>12</sup>

32. On May 28, 2020, when the total number of positive cases was less than 20% of what they are now, the DOE released a plan for “Reopening Florida’s Schools and the CARES Act” in which it stated that “reopening is a locally driven decision,” and referenced the CDC guidelines throughout.<sup>13</sup> This locally driven control is the bedrock of our state governmental structure, including our public schools.

33. In its May 2020 Guidance,<sup>14</sup> the CDC recommends a 3-step gradual scale up of opening schools for brick and mortar operations. Pursuant to that guidance, schools should not physically open until Phase 2 is reached. In fact, Step 1 of the CDC “scale up” states “[s]chools that are currently closed, remain closed. E-learning or distance learning opportunities should be provided for all students.”<sup>15</sup> In the same document, the CDC outlines a 3-phased approach for

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<sup>11</sup> *Id.*

<sup>12</sup> <https://www.flgov.com/wp-content/uploads/covid19/DOE%20ORDER%20NO%202020-EO-01.pdf>

<sup>13</sup> <http://www.fldoe.org/core/fileparse.php/19861/urlt/FLDOEReopeningCARESAct.pdf>

<sup>14</sup> “Activities and Initiatives Supporting the COVID-19 Response and the President’s Plan for Opening American Up Again,”

<sup>15</sup> <https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/CDC-Activities-Initiatives-for-COVID-19-Response.pdf>

reducing community mitigation measures and lays out gating criteria for reopening.<sup>16</sup> The threshold for entering Phase 1 includes, among other factors, a **downward** trajectory of COVID-19 cases over a 14-day period, ICU beds at less than 80% capacity, and no ICU staff shortages for at least a week.<sup>17</sup> Indeed, the White House has released analogous guidelines recommending that schools **should remain closed during Phase 1**.<sup>18</sup> Many counties, including Miami-Dade County, are not even at Step 1 of the reopening process under CDC guidelines.

34. In May, the CDC cautioned that “full sized, in-person classes,” present the “highest risk.”<sup>19</sup> An internal CDC document, that was leaked on July 8, 2020, reiterates this position.<sup>20</sup>

35. On July 6, 2020, as Florida continued to experience a dramatic **upward** trajectory in COVID-19 cases, hospitalization, and deaths, Florida’s Commissioner of Education, Defendant Richard Corcoran, issued startling top down Emergency Order No. 2020-EO-06, **disregarding CDC recommendations**, and instead mandating that: “[u]pon reopening in August, all school boards and charter school governing bodies must open brick and mortar schools at least five days per week for all students, subject to advice and orders of the Florida Department of Health, local departments of health, Executive Order 20-149 and subsequent executive orders,”<sup>21</sup> and further, that all school districts “must provide the full array of services required by law so that families who wish to educate their children in a brick and mortar school full time have the opportunity to do so.”<sup>22</sup> The Emergency Order also directed school districts to “submit to the Department a reopening plan that satisfies the requirements of this Order.” That submission process has been reported to be one in which school

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> <https://www.whitehouse.gov/openingamerica/>

<sup>19</sup> <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>

<sup>20</sup> <https://int.nyt.com/data/documenthelper/7072-school-reopening-packet/b70172f2cc13c9cf0e6a/optimized/full.pdf#page=1>

<sup>21</sup> See <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOE-2020-EO-06.pdf>

<sup>22</sup> See <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOE-2020-EO-06.pdf>

districts are pushed to reopen in-person instruction, and promised beneficial treatment for so doing, even when reopening for in-person instruction is not safe. In contradiction of the DOE's own pronouncements, on May 28 and other times, this Order bypassed local school boards—and was imposed on parents, staff, and students without the necessary and appropriate consideration of all relevant safety factors.

36. The CDC has released several guidelines regarding the safe reopening of schools, including, but not limited to:<sup>23</sup>

- a. conducting daily health checks of staff and students;
- b. use of PPE;
- c. providing adequate hygiene supplies (including soap, hand sanitizer with at least 60% alcohol, paper towels, tissues, disinfectant wipes, and no touch/foot-pedal trash cans);
- d. increased and routine cleaning and disinfection;
- e. sanitation of frequently touched surfaces (e.g., playground equipment, door handles, sink handles, drinking fountains) between use;
- f. limiting use of shared objects;
- g. staggered arrivals and multiple arrival locations;
- h. spacing students' desks at least 6 feet apart;
- i. use of flexible work sites (e.g., telework) and flexible work hours (e.g., staggered shifts);
- j. identifying an isolation room or area to separate symptomatic individuals;

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<sup>23</sup> <https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/CDC-Activities-Initiatives-for-COVID-19-Response.pdf>; <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>; <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html>; [https://www.google.com/search?q=What+to+Do+If+You+Are+Sick+%7C+CDC&rlz=1C1CHBF\\_enUS897US897&oq=What+to+Do+If+You+Are+Sick+%7C+CDC&aqs=chrome..69i57.2030j0j4&sourceid=chrome&ie=UTF-8](https://www.google.com/search?q=What+to+Do+If+You+Are+Sick+%7C+CDC&rlz=1C1CHBF_enUS897US897&oq=What+to+Do+If+You+Are+Sick+%7C+CDC&aqs=chrome..69i57.2030j0j4&sourceid=chrome&ie=UTF-8); <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/end-home-isolation.html>

- k. limiting the number of school visitors;
- l. implementing flexible leave policies and practices that enable staff to stay home when they are sick, have been exposed, or are caring for someone who is sick; and
- m. offering telework and virtual learning opportunities for staff and students who are at higher risk of severe illness.

37. The safety of our public-school students, staff, visitors—and their family with whom they come in contact—is a centerpiece of the CDC guidelines.

38. Emergency Order No. 2020-EO-06 defies CDC recommendations on both when, and how, to safely reopen schools’ on-site operations. The Order imposes mandates that make it impossible to comply with CDC guidelines on physical distancing, hygiene, and sanitation if schools are operating at full capacity. Further, the order fails to provide adequate funding for the necessary increase in custodians, teachers, physical space, buses, PPE, and hygiene and disinfectant products needed for a safe reopening. Unfunded mandates are the hallmark of top down government.

39. The Emergency Order comes with severe pressure by the State Government Defendants to physically reopen schools or face the loss of critical funding for public education. This threat pits students and safety against vitally needed funds for schools. Pursuant to the Order, only districts “with an approved reopening plan will receive reporting flexibility that is designed to provide financial continuity for the 2020 fall semester,” including “funding based on pre-COVID FTE student membership forecasts.” Florida superintendents have expressed fear of losing funding as they make decisions to keep students and employees safe.<sup>24</sup>

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<sup>24</sup> <https://www.orlandosentinel.com/news/education/os-ne-orange-schools-reopening-plan-vote-20200717-4a32krlhsre5rj64a3qfehjl6a-story.html>; <http://cbs12.com/news/local/doe-sets-deadline-for-florida-school-districts-to-submit-innovative-learning-plan>

40. While the Emergency Order specifies that the August reopening of schools is subject to “advice and orders of the Florida Department of Health, local departments of health, Executive Order 20-149 and subsequent executive orders,” local health officials who have cautioned against reopening amid the resurgence of COVID-19 have seemingly been silenced. The Palm Beach County Health Director who cautioned about the risk to children “got a call from the surgeon general of the State of Florida that told her to keep her mouth shut and not speak about it. . . Not only did she get the call, but other health directors from around the state got the same call that they should not get involved with the school districts’ decisions on whether or not to reopen schools.”<sup>25</sup> Silencing medical experts who advocate for the safety of our children is unconscionable. That the Emergency Order pays lip service to local health authorities, who are elsewhere being undermined by the executive branch of the State of Florida, underscores its irrational and unconstitutional character.

iv. Miami-Dade is Ground Zero

41. While all 67 counties face the horrors of Covid-19, Miami-Dade County has become the new epicenter of the global pandemic.<sup>26</sup>

42. South Florida alone accounts for approximately 43% of Florida cases.<sup>27</sup> As of June 18, 2020, the number of positive cases in Miami-Dade was 23,391. By July 14, 2020, Miami-Dade’s case total had risen to 69,803, with 4,443 hospitalizations and 1,175 deaths, including an 11-year old child.<sup>28</sup> As of the same day, Broward County had 32,814 cases and Palm Beach County had 22,279.<sup>29</sup>

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<sup>25</sup> [wptv.com/news/region-c-palm-beach-county/was-palm-beach-countys-health-director-politically-silenced-in-recommendation-to-keep-schools-closed](https://www.wptv.com/news/region-c-palm-beach-county/was-palm-beach-countys-health-director-politically-silenced-in-recommendation-to-keep-schools-closed).

<sup>26</sup> <https://www.nbcmiami.com/news/local/florida-sets-single-day-record-for-coronavirus-deaths-with-132-adds-9100-new-cases/2261956/>

<sup>27</sup> <https://www.orlandosentinel.com/coronavirus/os-ne-florida-coronavirus-monday-july-13-20200713-g7hrr2fjqvdyvpkyxzyrbfzmi-story.html>

<sup>28</sup> <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>;  
<https://www.miamidade.gov/information/library/07.07.20-amendment-2-to-26-20.pdf>

<sup>29</sup> <https://experience.arcgis.com/experience/96dd742462124fa0b38ddedb9b25e429>

43. No public-school system within the 67 Florida counties should open its doors, unless safety can be assured, based on the authoritative criteria and data, driven by local facts on the ground.

44. The WHO has advised governments that, before reopening, rates of positivity in testing should remain at 5% or lower for at least 14 days.<sup>30</sup> In Miami-Dade, the average positivity rate over the last two weeks is above 27%.<sup>31</sup>

45. On March 12, 2020, Miami-Dade County Mayor Carlos Gimenez declared a local state of emergency. Since that time, the Mayor has issued dozens of orders relating to COVID-19.

46. The Mayor, like his counterparts in 66 other government administrators, is relied upon to provide real time key COVID-19 data, to coordinate governmental COVID-19 response with the various local key governmental agencies—from municipalities to schools—and for vital information, supplies and community enforcement to address community spread.

47. On May 18, 2020, Mayor Gimenez, who is in charge of controlling and monitoring community spread, reopened restaurants and nonessential businesses. Less than two months later, the County's ICU bed capacity was over 118.91%.<sup>32</sup>

48. On July 2, 2020, Mayor Gimenez issued Emergency Order No. 27-20 implementing a county-wide 10 p.m. curfew, excluding essential workers. On the same day, Emergency Order No. 26-20 closed movie theaters, concert house, auditoriums, playhouses, bowling alleys, arcades, indoor

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<sup>30</sup> <https://coronavirus.jhu.edu/testing/testing-positivity>

<sup>31</sup> [https://www.miamidade.gov/information/library/2020-07-17-new-normal-dashboard.pdf?adobe\\_mc=TS%3D1595119928%7CMCMID%3D64113543012189942741524402806959000306%7CMCAID%3D65A36744B18A44B8-04F1ABE79C33F566%7CMCORGID%3D3B6E35F15A82BBB00A495D91%40AdobeOrg&adobe\\_aa\\_vid=386F2EC00B78D04B8F0802309C8F9323ACB4](https://www.miamidade.gov/information/library/2020-07-17-new-normal-dashboard.pdf?adobe_mc=TS%3D1595119928%7CMCMID%3D64113543012189942741524402806959000306%7CMCAID%3D65A36744B18A44B8-04F1ABE79C33F566%7CMCORGID%3D3B6E35F15A82BBB00A495D91%40AdobeOrg&adobe_aa_vid=386F2EC00B78D04B8F0802309C8F9323ACB4)

<sup>32</sup> [https://www.miamidade.gov/information/library/2020-07-17-new-normal-dashboard.pdf?adobe\\_mc=TS%3D1595119928%7CMCMID%3D64113543012189942741524402806959000306%7CMCAID%3D65A36744B18A44B804F1ABE79C33F566%7CMCORGID%3D3B6E35F15A82BBB00A495D91%40AdobeOrg&adobe\\_aa\\_vid=386F2EC00B78D04B8F0802309C8F9323ACB4](https://www.miamidade.gov/information/library/2020-07-17-new-normal-dashboard.pdf?adobe_mc=TS%3D1595119928%7CMCMID%3D64113543012189942741524402806959000306%7CMCAID%3D65A36744B18A44B804F1ABE79C33F566%7CMCORGID%3D3B6E35F15A82BBB00A495D91%40AdobeOrg&adobe_aa_vid=386F2EC00B78D04B8F0802309C8F9323ACB4); <https://www.nbcmiami.com/news/local/governor-miami-dade-mayors-say-county-at-critical-moment-in-coronavirus-fight/2262154/>; <https://www.miamiherald.com/news/coronavirus/article244190287.html>

and outdoor amusement facilities and attractions. Further, Mayor Gimenez amended Emergency Order No. 20-20 requiring facial coverings to be worn in all public spaces.

49. On July 3, 2020, Mayor Gimenez amended Emergency Order No. 26-20 to implement the closure of adult theaters, special cabarets, and non-medical massage establishments.

50. On July 7, 2020, Mayor Gimenez further amended Emergency Order No. 26-20 to, among other things, close all banquet halls and ballrooms, require the use face coverings in gyms, and limit restaurants to outdoor service, delivery, and pick-up only.<sup>33</sup> The Amendment reiterates that **“establishments in which prolonged close contact between individuals occurs create higher risk of COVID-19 transmission.”**<sup>34</sup> Although there is a Florida Department of Health in Miami-Dade County, it is a component of the State of Florida Department of Health and not a local authority. Based on the powers, responsibilities and public action taken to address the crisis, the Office of the County Mayor represents the foremost local authority concerning public health in Miami-Dade County. As a result, his advice and orders with respect to health conditions should be considered with respect to potential implementation of Emergency Order No. 2020-20-06.

51. There has been great discrepancy between the data reported by the county and state, making it even more difficult for leaders to make determinations about school reopening and safety. For instance, Miami-Dade’s “New Normal Dashboard,” reports an average positivity rate of 27.05%, almost 7% higher than the average reported by the state.<sup>35</sup> While both numbers are significantly higher than the 5% threshold articulated by the WHO and the 3% threshold that epidemiologists say would indicate that the virus is being quelled, decisionmakers must be able to look at accurate and uniform information when making these tough decisions.<sup>36</sup>

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<sup>33</sup> <https://www.miamidade.gov/information/library/07.07.20-amendment-2-to-26-20.pdf>

<sup>34</sup> *Id.*

<sup>35</sup> <https://www.miamiherald.com/news/coronavirus/article244296902.html>

<sup>36</sup> *Id.*

v. Serious Risks of Unsafe On-site School Reopening—Educators and Health Officials Weigh in to Protect Children and Public Schools

52. AFT, which represents 1.7 million teachers, school personnel, and healthcare workers among others, published “A Plan to Safely Reopen America’s Schools and Communities” that provides a roadmap for navigating the reopening of schools and emphasizes the CDC guidelines throughout. As noted by the AFT, a premature reopening risks a second surge of infections and second lockdown, and “[e]ven once public officials deem it is safe to reopen, doing so without the necessary precautions could be deadly.”<sup>37</sup>

53. NEA, the nation’s largest professional employee organization representing more than 3 million public school employees, issued guidance on the reopening of schools emphasizing that “[w]hile physically opening schools at the beginning of the 2020-2021 school year is the goal of most districts, the decisions of when to reopen school buildings must be rooted in health and not based on an arbitrary date or any other priority.”<sup>38</sup>

54. On July 10, 2020 the AFT, American Academy of Pediatrics (“AAP”), NEA, and the School Superintendents Associations (“AASA”) issued a joint statement affirming the value of in-person learning, but calling for science and community circumstances to guide decision making and emphasizing the critical need for funding.

55. In a letter to Defendant DeSantis dated April 14, 2020, Plaintiff FEA’s President, Fedrick Ingram, outlined the position of Florida’s educators— “[a]s much as our students and educators want the opportunity to be back at our schools, returning [to in-person instruction]

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<sup>37</sup> [https://www.aft.org/sites/default/files/covid19\\_reopen-america-schools.pdf](https://www.aft.org/sites/default/files/covid19_reopen-america-schools.pdf)

<sup>38</sup> [https://educatingthroughcrisis.org/wp-content/uploads/2020/06/27178-Initial-Guidance-for-Reopening-Schools\\_Final-1.pdf](https://educatingthroughcrisis.org/wp-content/uploads/2020/06/27178-Initial-Guidance-for-Reopening-Schools_Final-1.pdf)

prematurely will threaten the safety and wellbeing of all on campus.”<sup>39</sup> His letter to the Governor came long before the recent resurgence that makes his message even more pressing.

56. AFT President, Randi Weingarten, underscored the importance of a safe reopening stating that “teachers want to get back to classrooms with their students. We know the limits of remote instruction and the harm of prolonged isolation for students. We know that children best connect, learn and thrive when they’re in school in person. But as Coronavirus cases surge across the country, school districts like those in Los Angeles, San Diego, Atlanta, and Houston have been forced to make the difficult decision to start school remotely this year. If Governor DeSantis does anything less, it is unacceptable and a complete betrayal to teachers, students, staff and the families who send their children to public schools in Florida.”

57. As NEA president Lily Eskelsen García rightfully pointed out, “the global crisis caused by the coronavirus pandemic evolves by the hour, and as the days go by, we will continue to learn more about the full impact on students, educators and schools but we cannot recklessly gamble with the lives of our students and educators. Until the health experts based on the data say it is safe to re-open school buildings, and the protections are in place to ensure that it remains safe, reopening in-person instruction is too great a risk.”

58. On July 13, 2020, the National Association of School Psychologists (“NASP”) released a statement declaring that “[t]he decision to return to in-person instruction in our nation’s schools must be driven by a principle of least harm, guided by reliable public health data, and it must consider the needs of students, families, and staff. . . . If we are serious about returning to in-person instruction, we first must prioritize lowering rates of community spread.”<sup>40</sup>

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<sup>39</sup> <https://news.wfsu.org/state-news/2020-07-07/statewide-teachers-union-president-doe-order-to-reopen-schools-in-fall-politically-motivated>

<sup>40</sup> <https://www.nasponline.org/about-school-psychology/media-room/press-releases/nasp-statement-on-reopening-schools-for-in-person-learning>

59. Reopening schools in the middle of a COVID-19 resurgence, and without the proper plan, resources, and safety precautions will inevitably exacerbate the spread of the virus, jeopardize public health, and ultimately cause longer closures.

60. California and Texas, two states also experiencing unprecedented COVID-19 surges, have recognized the safety issues regarding face-to-face instruction at this time. On July 17, 2020, the Texas Education Agency gave districts discretion to delay the start of on-campus instruction.<sup>41</sup> On the same day, California Governor Gavin Newsom announced that schools in over 30 counties who have the highest rates of COVID-19 infections in California would not physically reopen at the beginning of the school year and will instead offer full-time distance learning.<sup>42</sup> This governmental action underscores the local nature of community spread, provides clarity, and safeguards that schools will not physically reopen unless it is safe for students and employees.

61. New York, which early on became the hardest hit by COVID-19 but has since managed to stave off the virus, has not yet announced its decision regarding the reopening of schools but has released clear guidance that accounts for the health and safety of students and teachers.<sup>43</sup> Governor Cuomo promised that decisions will take local data into consideration and will depend on whether a district is in a community with a daily infection rate of 5% or lower over 14 days.<sup>44</sup> The interim Education Commissioner Shannon Tahoe assured that “[t]he guidance encourages community involvement and allows for flexibility so that districts and schools in every corner of the state can assess their unique situation and develop a plan that best meets the needs of their students.”<sup>45</sup>

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<sup>41</sup> <https://tea.texas.gov/sites/default/files/covid/SY%202020-21%20Attendance%20and%20Enrollment%20FAQ%207.17.20.pdf>

<sup>42</sup> <https://www.latimes.com/california/story/2020-07-17/california-imposes-statewide-coronavirus-standard-for-reopening-schools>

<sup>43</sup> <https://www.timesunion.com/news/article/State-releases-school-reopening-guidance-15414080.php>

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

62. The impact of the arbitrary brick and mortar reopening of schools in areas experiencing surges is evident. After fully reopening schools in Israel, public officials were forced to again close schools as they quickly began experiencing COVID-19 outbreaks in the schools and community.<sup>46</sup> It is important to note that before reopening, Israel had fewer than 300 deaths (compared to nearly 5,000 deaths in Florida to date).

63. A new study reported by the New York Times highlights that physical school reopening will likely trigger more outbreaks, “the findings suggest that as schools reopen, communities will see clusters of infection take root that include children of all ages.”<sup>47</sup> The study reveals that middle and high school students may be even more likely to spread the virus than adults.<sup>48</sup>

64. There is no rational basis for ignoring science and evidence-based data. Health experts have rejected Governor DeSantis’ claims that the risk for students is “incredibly low.”<sup>49</sup> Further, they caution that the long-term health effects for children who contract the virus are largely unknown, and that even asymptomatic children have experienced lung damage from the virus.<sup>50</sup>

65. At a July 14, 2020 Palm Beach Board of County Commissioner meeting, before she was told to “keep her mouth shut” the Palm Beach County Health Department Director, Alina Alonso, testified “*when you take X-rays of their lungs . . . they are seeing that there is damage to the lungs in these asymptomatic children. That is very important, we don’t know how that is going to manifest a year from now. This is not the virus that you bring everyone together to make sure you catch and*

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<sup>46</sup> <https://www.npr.org/sections/coronavirus-live-updates/2020/06/03/868507524/israel-orders-schools-to-close-when-covid-19-cases-are-discovered>

<sup>47</sup> <https://www.nytimes.com/2020/07/18/health/coronavirus-children-schools.html?referringSource=articleShare>

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> <https://www.sun-sentinel.com/coronavirus/fl-ne-pbc-health-director-covid-children-20200714-xcdall2tsrd4riim2nwokvmsxm-story.html>

*get it over with. This is something serious and we are learning new information about this virus every day. . . this is real, and the kids can get sick and they can die.”*<sup>51</sup>

66. Florida public school programs are illustrative of the risks ahead given the current surge. During the summer months, some Florida school districts have had limited on-site openings with a restricted number of students and employees reporting to school sites. Upon information and belief, many schools did not implement or enforce the necessary safety guidelines during that time. Countless school employees have already tested positive for COVID-19 over the summer.

67. In Arizona, one teacher died, and two others became sick, after sharing a classroom for two hours a day during the summer to teach online classes.<sup>52</sup>

68. The opening of summer camps has also underscored the likely effects of the unsafe reopening of schools. In Miami-Dade, COVID-19 cases—including a 7-year old child—have also been identified in 16 of the County’s 36 school summer camps, in spite of limited enrollment, imposed mask and temperature rules, and keeping children in small groups.<sup>53</sup>

vi. The Real-Life Impact on Public School Teachers, Staff, and Students is Unconscionable

69. Numerous teachers and other public school employees across Florida are at increased risk for severe illness if they contract COVID-19, due to various medical conditions like heart conditions, diabetes, obesity, and weakened immune systems. Adults 65 or older, like numerous public-school employees, are also at higher-risk. Indeed, the White House has urged older Americans and citizens with underlying health conditions to stay home and to avoid other people.<sup>54</sup>

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<sup>51</sup> <http://discover.pbcbgov.org/countycommissioners/Pages/bcc-meeting-videos.aspx?videoid=bcc/2020/20200714-bcc-mtg> (at 44:53).

<sup>52</sup> <https://www.cnn.com/2020/07/14/us/arizona-teachers-coronavirus-survivors/index.html>

<sup>53</sup> [miamiherald.com/article244138847.html](https://www.miamiherald.com/article244138847.html)

<sup>54</sup> [https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20\\_coronavirus-guidance\\_8.5x11\\_315PM.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf)

70. Upon information and belief, teachers across the state are preparing wills and living wills ahead of possible in person learning that can expose their health and lives to serious threats. Upon information and belief, teachers and other school professionals have rushed resignations and retirements—even with early retirement penalties.

71. The enforcement of Emergency Order No. 2020-EO-06 as a one-size-fits-all and top down decision to require millions of students and employees within Florida to report to schools without providing the adequate resources to safely do so—and at a time when cases continue to increase at an alarming rate—puts the health and safety of employees, students, and their families at risk. Students and staff go home at the end of the school day. They go home to parents, grandparents, and siblings—all of whom are then at increased risk of transmission. Further, in putting the health and safety of the entire state at risk, the actions at issue here directly contradict the CDC recommendations.

72. When students and employees return to the school site, they will be indoors with each other for 7 hours a day in derogation of CDC guidelines and executive orders issued across the state, including in Miami-Dade County and other counties in the state. They will be sharing common areas including buses, hallways, classrooms, clinics, locker rooms, and bathrooms. They will be touching door handles and sharing equipment along with potentially hundreds of other people. These millions of individuals will return to their families and to the community to continue to accelerate the spread of COVID-19.

73. With a surge in COVID-19 patients across the state, hospitals are already experiencing shortages in staff, medicines, beds, PPE, equipment, and treatment and testing supplies.<sup>55</sup> The increased community spread that would inevitably be caused by physical school

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<sup>55</sup><https://www.sun-sentinel.com/coronavirus/fl-ne-covid-hospital-shortages-20200714-vltkdacngfhurj6wele5bvg75q-story.html>

openings would push hospitals even further beyond capacity and likely result in more deaths. The fiscal impact on the public health system further threatens our schools' viability.

74. Defendants are risking public health and preventing effective community mitigation, which is “especially important before a vaccine or drug becomes widely available” according to the CDC. There is currently no vaccine to prevent COVID-19.

75. Instruction never ends. Teachers keep teaching. There are multiple modalities to deliver instruction prior to a safe on-site reopening. Teachers and students have the ability to engage in online instruction. While in-person learning is optimal, there is currently no safe way to do so, amidst a drastic resurgence, in compliance with CDC recommendations for physical distancing, PPE, self-quarantining, and sanitation.

76. Schools are being destabilized. Defendants have the duty to take the necessary steps to protect the health and safety of public-school employees and students, and to protect them equally. Defendants have not only failed to fulfill that duty, but by their actions, they have prevented school districts from taking the steps necessary to protect student, staff and community health and safety. Those protections are not being effectuated. As a result, our schools are currently trying to plan around the chaos brought by this dangerous and illegal order.

**COUNT I:  
DECLARATORY JUDGMENT AGAINST GOVERNOR DESANTIS,  
COMMISSIONER CORCORAN, FLORIDA DEPARTMENT OF EDUCATION,  
AND FLORIDA BOARD OF EDUCATION – VIOLATION OF FLORIDA  
CONSTITUTION FOR UNSAFE OPENING OF BRICK AND MORTAR SCHOOLS**

77. The allegations in paragraphs 1 through 76 are incorporated herein by reference.

78. Fla. Stat. § 86.011 gives the circuit courts of this state jurisdiction and the power “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”

79. Article IX, Section 1(a) of the Florida Constitution provides:

Section 1. Public education.--

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. **Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education . . .**

(Emphasis added.)

80. **The Florida Constitution requires that state entities and public officials, who are charged with overseeing the funding and operations of public education, ensure that our schools operate safely.** Protecting the health and safety of each person connected with the state's education system is undisputedly a matter of paramount importance. Defendants cannot legally deny students, public school staff, their family members, and the public with whom they come in contact within the public-school system their basic human needs for health and safety.

81. Plaintiffs seek a declaratory judgment determining that the State Government Defendants have failed to abide by the requirements of the Florida Constitution by directing, in Emergency Order No. 2020-EO-06, that beginning in August, 2020, "all school boards...must open brick and mortar schools at least five days per week for all students, subject to the advice and orders of the Florida Department of Health, local departments of health, Executive Order 20-149 and subsequent executive orders" and finding that such directive fails to recognize the authority of local elected school boards to "operate, control and supervise all free public schools within the school district." Fla. Const. Art. IX, § 4(b).

82. The Emergency Order and efforts by the State Government Defendants to pressure premature physical reopening of brick and mortar schools no matter the health costs, will cause further spread of the virus to Plaintiffs, their families, and the general public. Despite the public

statements that the decision is up to the local school boards, their current actions and threats indicate otherwise. Many superintendents fear the loss of millions of dollars in state funding if they do not follow the Emergency Order's mandate. Some school board members fear removal if they do not follow the Emergency Order's mandate.

83. Importantly, the Emergency Order fails to consider unique local circumstances, resources, and health data, as required by health experts. While it might be safe to reopen in some districts across the state, it is not safe to physically open schools in others, including Miami-Dade County and other crisis areas of Florida including counties like Broward, Palm Beach, and Orange County. Science and data must drive those decisions. The order mandating in-person instruction without consideration of the sweeping community spread of COVID-19 in school districts across the state goes entirely against the recommendations of all public health experts, the CDC, and the federal government's "Guidelines for Opening up America Again."

84. Further, the mandate does not allow for effective planning and for ensuring that the proper safety protocols are in place. As many districts were preparing to implement hybrid education models and online instruction initiatives, just weeks before the start of the school calendar, they now find themselves forced to crowd millions of students into schools where physical distancing, although critical, becomes virtually impossible. In a matter of weeks, schools will reopen without nearly enough time to develop and implement safety protocols that comply with CDC guidelines that are intended to contain the virus and keep our communities safe. Current school planning has been sabotaged by this fist from afar.

85. An actual controversy currently exists between the Plaintiffs and the Defendants. Absent the requested relief, schools across the state will unsafely reopen on-site instruction and

operating in August to the injury and detriment of all Florida citizens. A declaration is needed from this Court to protect the community from Emergency Order No. 2020-EO-06.

**WHEREFORE**, the Plaintiffs seek a declaration from this Court that the Department of Education Emergency Order No. 2020-EO-06, and related actions or threatened actions to enforce it, violate the Florida Constitution and any additional relief the Court deems just and proper.

**COUNT II:**  
**DECLARATORY JUDGMENT AGAINST GOVERNOR DESANTIS, COMMISSIONER CORCORAN, FLORIDA DEPARTMENT OF EDUCATION, AND FLORIDA BOARD OF EDUCATION – EMERGENCY ORDER NO. 2020-EO-06 UNDERMINES SCHOOLS SAFETY AND MAKES ARBITRARY AND CAPRICIOUS DEMANDS ON PUBLIC SCHOOLS IN VIOLATION OF THE FLORIDA CONSTITUTION**

86. The allegations in paragraphs 1 through 76 are incorporated herein by reference.

87. Fla. Stat. § 86.011 gives the circuit courts of this state jurisdiction and the power “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”

88. Article I, Section 9 of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law[.]” If a statute or government order is arbitrary and capricious, it violates due process rights guaranteed by the Florida Constitution. *See State v. Saiez*, 489 So. 2d 1125, 1128 (Fla. 4th DCA 1986).

89. Plaintiffs seek a declaration that Emergency Order No. 2020-EO-06 is arbitrary and capricious.

90. The Emergency Order requires all school boards to open brick and mortar schools, at least five days a week, beginning in August, while simultaneously recognizing that “[a]bsent these directives, the day-to-day decision to open or close a school **must always** rest locally with the board or executive most closely associated with a school[.]” (Emphasis added.) Defendants cannot have it both ways.

91. This Order is unreasonable, inconsistent, and arbitrary and capricious.

92. Although, after the order was issued, the Department of Education reportedly said it is intended to apply only “when” schools reopen, the Order has not been amended accordingly and conflicting directives have since been given to the school districts. Other than clearly requiring the physical reopening of schools in August, the Order has created ambiguity and left school boards scrambling to comply with its ill-defined requirements in a way that will keep their communities safe while avoiding drastic budget cuts.

93. Public statements from Defendant DeSantis and Defendant Department of Education are just as perplexing. In addressing the Order, Defendant DeSantis has said “if you actually look at the way it’s structured, it’s not exactly mandatory.”<sup>56</sup> Similarly, while local departments of health are reportedly being silenced, Defendant Department of Education says the Order “encourages school boards and charter school governing boards to seek the advice of public health experts of the Florida Department of Health and local department of health when making decisions.”<sup>57</sup>

94. The Emergency Order is confusing and ambiguous, and its implementation is unpredictable. This is creating fear and anxiety among Plaintiffs, including teachers and parents, and confusion among school boards as they plan for the upcoming school year which begins next month.

95. The Emergency Order fails to provide the constitutional and clear logical guidance that Floridians so desperately need during this state of emergency, especially when it relates to their children’s safety and education.

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<sup>56</sup> <https://www.wptv.com/news/region-c-palm-beach-county/was-palm-beach-countys-health-director-politically-silenced-in-recommendation-to-keep-schools-closed>

<sup>57</sup> *Id.*

96. Moreover, Plaintiffs are being denied the right to rely on their locally elected school board officials because the State Government Defendants are usurping their constitutional function. Parents and public-school employees have a right to rely on their elected officials to make decisions safeguarding their health and the health and safety of their families. Underscoring the arbitrary and capricious nature of the State Government Defendants' efforts to displace local judgment and experience is the reality that as recently as May 28, when conditions were less dire, they took a contrary position.

97. An actual controversy currently exists between the Plaintiffs and the Defendants. The Defendants' mandate wrongfully assumes that state authorities can better determine the local health risks and educational needs of students and teachers than the local officials that were elected for that purpose. This is arbitrary and capricious government action and violates due process.

98. The decisions as to how and when to safely reopen schools are subject to the school boards and should be based on current and accurate information and in cooperation with each counties' public health authorities, including the Defendant Mayor Gimenez in Miami-Dade County.

**WHEREFORE**, the Plaintiffs seek a declaration from this Court that the Department of Education Emergency Order No. 2020-EO-06 is arbitrary and capricious and therefore violates the Florida Constitution and any additional relief the Court deems just and proper.

**COUNT III:**  
**INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS**

99. The allegations in paragraphs 1 through 76 are incorporated herein by reference.

100. Fla. Stat. § 26.012(3) gives the circuit courts of this state jurisdiction and the power to issue injunctions.

101. Plaintiffs have a clear legal right to be free from significant threats to public health, including outbreaks of infectious diseases.

102. The Plaintiffs seek an injunction to prohibit all named Defendants from taking actions to unconstitutionally force millions of public school students and employees to report to brick and mortar schools that should remain closed during the resurgence of COVID-19 cases pursuant to the CDC and other federal guidelines as well as the overwhelming opinion of medical and epidemiological experts. It is particularly arbitrary and harmful when reasonable alternatives exist under these extraordinary circumstances for remote online instruction allowing for the protection of children, teachers and other education professionals, family members, and the community generally.

103. In-person instruction requires prolonged close indoor contact between students and school employees. There is currently no ability to provide for adequate physical distancing, PPE use, hygiene practices, contact tracing, and other safety measure required by the federal, state, county, and CDC guidelines to prevent the transmission of COVID-19. Indeed, in Miami Dade and several other counties there are inadequate supplies for testing, for the timely provision of testing results, and now for the provision of COVID-19 treatment in hospitals already over capacity with COVID-19 patients as the pandemic rages on.

104. The spread of COVID-19 that will result from the unsafe reopening of schools during the surge is not limited to students, teachers, school administrators, or school staff and will undoubtedly spread to their families and communities.

105. Instead of controlling the community spread, as they have a legal duty to do, Defendants' threatened actions will increase positivity rates, hospitalizations, and deaths and put

added stress on healthcare resources that are already running dangerously low because of the current surge in COVID-19.

106. Defendants' actions would unreasonably interfere with Floridians' right to public health and safety, and will cause special harm and endangerment to Plaintiffs and their families as they will be directly exposed to the virus on a daily basis if all brick and mortar schools are reopened in August.

107. Absent an injunction from this Court, the mandated physical reopening of schools in just a few short weeks will create an unsafe and unsecure environment for students, employees, and the community at large. The community spread that will inevitably result from the premature reopening of schools will yield unfortunate and avoidable increases in disease, long-term health complications, and deaths across Miami-Dade and the State of Florida.

108. Miami-Dade students, teachers, and other school employees and their families are at a particularly high risk if schools reopen in August, as the County is now the global epicenter of the pandemic. Students, school employees, and other communities across the state are also extremely vulnerable to this disease as its spread continues to increase throughout Florida.

109. Mayor Gimenez, in his capacity as the public official charged with setting County standards and operating procedures and maintaining the safety and welfare of Miami-Dade residents, is tasked with alerting the community of the latest data regarding COVID-19 and taking steps to minimize community spread. It is his responsibility to alert the community and decision makers when, like now, it is unsafe and irresponsible to reopen on-site operations at schools. He has a duty to provide this data so local schools, the School Board, and other authorities have the latest real time data and community enforcement so they can take all the necessary steps to prevent a premature reopening and ensure that a genuinely safe reopening can happen as soon as possible.

Each day that Mayor Gimenez fails to take a definitive stance against the reopening of schools is a day lost in preparing schools, teachers, students, and parents for a safe new school year.

110. Plaintiffs have a substantial likelihood of success on the merits. Without an injunction, Plaintiffs and millions of students, and the over 140,000 FEA members, their families, and the community at large will be put at an unnecessarily increased risk of physical injury, illness, and potentially death from the COVID-19 virus. Employees and students should not have to risk injury or death by being required to report to school. Indeed, the Florida Constitution guarantees their safety and condemns needless harm.

111. If Defendants are not enjoined from their actions and omissions, including mandating the physical reopening of schools, the Plaintiffs face irreparable harm in the form of unquantifiable emotional and physical injuries. The virus will continue to spread and result in severe illness, long-term and unpredictable health complications, and, in some cases, death.

112. The threatened injury to the lives of Plaintiffs and to Florida residents outweighs any possible harm to Defendants. Defendants Governor DeSantis, Commissioner Corcoran, Department of Education, and Board of Education can still achieve their objective through online instruction capabilities until it is safe to return to face-to-face learning.

113. The Plaintiffs' injuries cannot be compensated adequately by damages or otherwise remedied at law. This is not an issue that can be cured with money. Lives—and the health and safety of our State—are on the line.

**WHEREFORE**, the Plaintiffs seek the following relief:

(a) An order enjoining all named Defendants from unnecessarily and unconstitutionally forcing millions of public-school students and employees to report to unsafe

brick and mortar schools that should remain physically closed during the resurgence of COVID-19 in Florida.

(b) An order requiring Defendants to develop and implement an online instruction plan aimed at all children and to make internet connectivity and computer devices available to all students, as many districts have already done, so that they can meaningfully engage in virtual instruction until it is safe to reopen brick and mortar schools.

(c) An order requiring that, before the physical reopening of brick and mortar schools, each school must have adequate personal protective equipment and other necessary supplies for all employees and students; reduce class sizes to comply with physical distancing requirements; install sufficient hand-sanitizing stations; add plexiglass shields where necessary; increase staffing; increase school clinic capabilities; and take all necessary measures to protect students and staff and minimize COVID-19 transmission.

(d) And any additional relief this Court deems just and proper.

Dated: July 20, 2020.

Respectfully submitted,

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