

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

**Evan Caruso, Carol DeLong, Sandra Ellen,
Manuel Levine, Annette Levine, Steven
Silberberg, Daniel Hepworth and Greg Launel**

Plaintiffs.

vs.

**The School District of Palm Beach County,
(a/k/a The Palm Beach County School Board)**

Defendant

_____ /

MOTION FOR TEMPORARY EMERGENCY INJUNCTIVE RELIEF

COME NOW the Plaintiffs, by and through undersigned counsel and hereby seek emergency temporary injunctive relief and as grounds therefor allege:

1. Defendant has ordered all teachers, including the Plaintiffs or a spouse, to return to brick and mortar schools beginning on September 21, 2020. Defendant had previously assured teachers that safeguards would be enacted to protect them from the virus if they returned to school and also advised that those over 65 or those with health issues would not have to return since they are at much greater risk of contracting and dying from COVID-19 and could teach remotely.
2. All of these assurances proved false and effective safeguards have not been enacted to ensure the safety of the Plaintiffs or anyone else. Almost all requests for exemptions have been denied regardless of the susceptibility to COVID-19 due to mismanagement, insensitivity and/or extremely late planning leaving the principals who are tasked to make these life and death decisions, no time or guidelines to use and they are denying almost everyone including the Plaintiffs.

3. The COVID-19 pandemic is still raging across Florida and no one is safe when large numbers of people are gathered indoors which is what happens every day, all day at school.

Thus, if school resumes now while the pandemic is still causing many deaths across south Florida our schools will turn into breeding grounds for this deadly virus and Plaintiffs and everyone else will be at great risk.

4. Plaintiffs seek an emergency, temporary injunction pursuant to Fla. Stat. § 86.011 which gives the circuit courts of this state jurisdiction and power “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”

5. Plaintiff claims that the actions of the Defendant violate Article IX, Section 1(a) of the Florida Constitution which provides:

(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.)

6. Plaintiffs also claim that the actions of the Defendant violate Article I, Section 9 of the Florida Constitution which 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).

7. Judge Charles Dodson ruled in favor of teachers in a similar case in Leon County, striking down an order from the State requiring teachers to return to school, where he ruled after several days of

hearing argument and evaluating evidence that this rule violated Article 9, Section 1, which requires that the government has an enforceable obligation to ensure that schools are safe

8; On August 24, 2020 Judge Dodson ruled that it would be dangerous to open the schools at this time. So insistent was he in the urgency of his ruling, that when the State appealed and was granted an automatic stay, Judge Dodson vacated the stay, opining that it was of great importance to the health of the plaintiffs as well as the people of Florida that schools not open at this time. *FEA et al. vs. DESANTIS et al. In The 2nd Circuit of Florida Case No. 2020 CA 001467*

9. He further opined that “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 ...Accordingly, our Florida Constitution requires the State to ensure our schools operate safely.”

10. Judge Dodson found that the Defendants had no adequate remedy in law and demonstrated that they and the public would suffer irreparable harm if their requested relief was not granted.

11. In the similar case cited above, Judge Dodson found all these requirements for injunctive relief were met by the teachers and opined “Plaintiffs have also shown that a temporary injunction will serve the public interest. An injunction in this case will allow local school boards to make safety determinations for the reopening of schools without financial penalty. This is what the local school boards were elected to do. Every witness testified that any decision to reopen schools should be based on local conditions. Reasoned and data-driven decisions based on local conditions will minimize further community spread of CO VID-19, severe illness, and

possible death of children, teachers and school staff, their families, and the community at large. Such local decisions unequivocally serve the public interest.”

12. The Plaintiffs in the case at bar seek nothing more than to maintain the status quo until it is safe to return to the classroom. Then the Defendant can take its time in making sure it is safe to return. For instance medical records could be examined for exemptions and adequate safety measures could be put in place, or, those teachers who want to return could do so and those who wanted to stay home or were advised to do so because of their age and/or health could do so.

13. The Defendant readily admits that it does not like this situation and regrets their decision to resume brick and mortar schools at this time before it is safe to return.

14. An emergency temporary injunction could thus satisfy all sides and could give both parties a chance to try to amicably resolve this issue while the status quo and the safety of thousand is maintained,

15. Plaintiffs have no adequate remedy at law, will suffer irreparable harm if the relief sought is not granted right away has a strong likelihood of success as seen in a similar case in Leon County and it would serve the best interests of the community and save many lives and our public school system if the relief requested herein is granted.

16. Plaintiffs and thousands of other teachers are required to return to their respective schools in three days, (one business day) and without the requested relief they could be returning to their death and without his requested relief many excellent teachers will leave stop teaching and our students in Palm Beach County will suffer great harm.

15. Plaintiff incorporates the allegations of the complaint in this case.

WHEREFORE, the Plaintiffs seek an emergency and immediate temporary injunction granting the following relief:

- (a) Entering an order maintaining the status quo and not permitting the brick and mortar schools to open until the Defendant can do so safely as determined by qualified medical personnel.
- (b) Entering an order permitting the Plaintiffs and all teachers in Palm Beach County to continue teaching remotely as they have been doing since the beginning of this semester.
- (b) Entering an order enjoining the Defendant from unnecessarily and unconstitutionally forcing Plaintiffs and thousands of others to return to brick and mortar schools at this time and postponing their return until it is safe to do so.
- (c) Entering an order requiring Defendant to design and implement policies and procedures to ensure that our schools are safe and the guidelines of the CDC and other health care professionals are being followed prior to their requiring Plaintiffs or anyone else to return to the schools.
- (d) Entering 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; and take all necessary measures to protect students and staff and minimize COVID-19 transmission.
- (e) Any additional relief this Court deems just and proper.

Dated: September 18, 2020

Respectfully submitted,

Barry Silver

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By: /s/ Barry Silver