

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. )

\_\_\_\_\_ )

**EXPEDITED MOTION FOR TEMPORARY INJUNCTION**

Plaintiffs the FLORIDA EDUCATION ASSOCIATION, STEFANIE BETH MILLER, LADARA ROYAL, MINDY FESTGE, VICTORIA DUBLINO-HENJES, and ANDRES HENJES, by and through undersigned counsel, and pursuant to Fla. R. Civ. P. 1.610 moves this Court, on an expedited basis, for a temporary injunction, and in support, states as follows:

**I. INTRODUCTION**

This lawsuit arises from Emergency Order 2020-E0-06 (the “Order”), which was issued by Florida’s Commissioner of Education, Defendant Richard Corcoran (“Commissioner Corcoran”), on July 6, 2020. That Order, issued in the midst of a dramatic surge in COVID-19 infections throughout the State of Florida, has the express purpose of “reopening brick and mortar schools with the full

panoply of services”<sup>1</sup> in the month of August. As set forth in the Complaint and explained below, the Order, as well as subsequent acts and omissions by Defendant Corcoran and Florida’s Governor, Defendant Ron DeSantis, violate the “paramount duty” imposed on the state by Article IX, Section 1(a) of the Florida Constitution “to make adequate provision for the education of all children residing within its borders”—a duty that explicitly includes providing for a “safe” and “secure ... system of free public schools that allows students to obtain a high quality education.” Moreover, Commissioner Corcoran’s Order is arbitrary and capricious because it fails to account for data and science as well as local guidance and perspectives and therefore violates the due process guarantees of the Florida Constitution. Governor DeSantis is either directly or indirectly participating in the violations of Florida’s Constitution by lending the legal and moral authority of the office of Governor to Commissioner Corcoran’s ill-conceived and possibly deadly plan to compel re-openings. Mayor Gimenez, like his counterparts in Florida’s 66 other counties, is the public official charged with establishing rules and procedures to minimize community spread of COVID-19 in Miami-Dade County and is responsible for alerting the community and decision makers when, like now, it is unsafe and irresponsible to reopen on-site operations at schools.

With this disregard of the constitutional imperative for safety, Florida is well on its way to reopening brick and mortar public schools in many Florida communities within days. Thus, Plaintiffs move for a temporary injunction to stop the reopening of schools until it is safe to do so.

## **II. RELEVANT FACTS**

Florida is currently experiencing substantial, uncontrolled, transmission of the COVID-19 virus. As of August 3, 2020, Florida had more than 497,330 confirmed positive cases and 7,402

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<sup>1</sup> See Emergency Order No. 2020-EO-06, dated July 6, 2020, <http://www.fldoe.org/core/fileparse.php/19861/urlt/DOE-2020-EO-06.pdf>.

deaths.<sup>2</sup> At the same time, adult ICU beds are at 84% capacity, with several hospitals already at or over 100% capacity.<sup>3</sup> Since July 21, Florida’s daily new cases have averaged more 9,000 per day.<sup>4</sup> Indeed, if Florida were a country, the 15,000 new cases it experienced on July 12 would make it rank fourth in the world for most new cases in a single day, behind the United States, Brazil, and India.<sup>5</sup>

Of particular relevance here, as of August 3, 2020, *more than 38,000 Floridians under the age of 18* tested positive for the virus.<sup>6</sup> From July 16<sup>th</sup> to July 24<sup>th</sup>, there was a 23% increase in child COVID-19 hospitalizations.<sup>7</sup> (**Exhibit 1**, Declaration of Dr. Moline, hereinafter “Dr. Moline Decl.”, ¶ 12.) And contrary to suggestions by Defendant DeSantis,<sup>8</sup> school-age children are *not* immune from illness—including serious and life-threatening illness—arising from COVID-19 infection. And school-age children, whether symptomatic or not, *are* capable of transmitting the virus and thus spurring further pandemic growth at school and at home in their families. (Dr. Moline ¶ 10.)

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<sup>2</sup> See Florida Dep’t of Health COVID-19 Report, Aug. 3, 2020, [http://ww11.doh.state.fl.us/comm/\\_partners/covid19\\_report\\_archive/state\\_reports\\_latest.pdf](http://ww11.doh.state.fl.us/comm/_partners/covid19_report_archive/state_reports_latest.pdf).

<sup>3</sup> State of Florida, Agency for Health Care Administration, *Hospital Beds Census and Staffed Availability*, updated Aug. 4, 2020, [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>4</sup> See Florida Coronavirus Map and Case Count, *supra* note 2.

<sup>5</sup> Lisa Shumaker, *Florida sets one-day record with over 15,000 new COVID cases, more than most countries*, Reuters, July 12, 2020, <https://www.reuters.com/article/us-health-coronavirus-usa/florida-sets-one-day-record-with-over-15000-new-covid-cases-more-than-most-countries-idUSKCN24D0HE>.

<sup>6</sup> Florida Dep’t of Health, *Coronavirus: characteristics of cases in pediatric Florida residents <18 years old*, August 3, 2020, [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>7</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>8</sup> Joe McLean, *Gov. DeSantis doubles down on belief that schools should reopen their doors*, WJXT, July 18, 2020, <https://www.news4jax.com/news/local/2020/07/18/gov-desantis-doubles-down-on-belief-that-schools-should-reopen-their-doors/>.

As to susceptibility to illness, while children between the ages of 1 and 5 tend to be far less likely than older children and adults to contract severe illness from COVID-19 infection, this tendency changes with increasing age.<sup>9</sup> And “less likely” does not mean never; indeed, Florida’s youngest coronavirus fatality was nine years old and had no known underlying conditions.<sup>10</sup> Moreover, children of all ages with certain underlying conditions—including metabolic disorders, obesity, diabetes, asthma and chronic lung disease, or immunosuppression—face the risk of serious illness from contracting the virus.<sup>11</sup> And some children who have been infected with or exposed to the virus contract multisystem inflammatory syndrome, a serious and sometimes life-threatening condition in which organs and blood vessels become inflamed.<sup>12</sup>

A recent study concluded that young children, ages five and under, may host up to 100 times as much of the virus in their upper respiratory tracts as adults.<sup>13</sup> Children between the ages of 10 and 19—a group that includes students in grades 5 through 8 and all high school students—spread the

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<sup>9</sup> Michelle Fernandes, Why children are not immune to COVID-19, BBC, Mar. 31, 2020, <https://www.bbc.com/future/article/20200330-coronavirus-are-children-immune-to-covid-19>; Beth Kerber, Children Face Risk for Severe Complications and Death from COVID-19, May 11, 2020, <https://www.sciencedaily.com/releases/2020/05/200511142153.htm>.

<sup>10</sup> Denise Royal & Rosa Flores, *A 9-year-old who died of coronavirus had no known underlying health issues, family says*, CNN, July 26, 2020, <https://edition.cnn.com/2020/07/25/us/kimora-lynum-dies-of-coronavirus/index.html>.

<sup>11</sup> Center for Disease Control, *People with Certain Medical Conditions*, July 17, 2020, [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC\\_AA\\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html#children-underlying-conditions](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html#children-underlying-conditions).

<sup>12</sup> See Mayo Clinic, *Multisystem inflammatory syndrome in children (MIS-C) and COVID-19*, June 12, 2020, <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/mis-c-in-children-covid-19/art-20486809>; Center for Disease Control, *Multisystem Inflammatory Syndrome (MIS-C)*, May 29, 2020, <https://www.cdc.gov/mis-c/>.

<sup>13</sup> *Children May Carry Coronavirus at High Levels, Study Finds*, July 31, 2020, <https://www.nytimes.com/2020/07/30/health/coronavirus-children.html>.

virus just as readily as adults do.<sup>14</sup> For all these reasons, students and their families face serious risks if schools reopen for in-person instruction prematurely. The close correlation between this spring's school closures and reductions in COVID-19 infection and mortality rates risks reversal with devastating consequences for communities if schools reopen for in-person instruction too soon.<sup>15</sup>

For the same reasons, educators and education support professionals (e.g., bus drivers, cafeteria workers, custodial staff) also face serious risks from reopening of schools in the midst of an uncontrolled pandemic. A study by the Kaiser Family Foundation concluded that approximately one in four teachers (25%, or about 1.47 million people nationwide), have a condition that puts them at higher risk of serious illness from the virus that causes COVID-19.<sup>16</sup> On July 28, 2020, NBC's local affiliate reported that more than 200 Broward public school employees or contractors had tested positive for the virus, while schools are mostly empty.<sup>17</sup>

Accordingly, public health officials and medical experts have strongly urged against reopening schools unless community transmission of the virus is low and declining. CDC guidelines recommend that schools remain closed if the COVID-19 viral positivity rate in the community is greater than 5%. (Dr. Moline Decl. ¶ 14; **Exhibit 2**, Declaration of Dr. Viviana Horigian, hereinafter, "Dr. Horigian Decl.", at ¶ 13) Florida's positivity rate is approximately 19%. (Dr.

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<sup>14</sup> See Apoorva Mandavilli, *Older Children Spread the Coronavirus Just as Much as Adults, Large Study Finds*, N.Y. Times, July 18, 2020, <https://www.nytimes.com/2020/07/18/health/coronavirus-children-schools.html>.

<sup>15</sup> Katherine Auger, Samir Shah, Troy Richardson, *Association between Statewide School Closure & Covid-19 Incidence & Mortality in the United States*, JAMA (July 29, 2020) <https://jamanetwork.com/journals/jama/fullarticle/2769034?resultClick=1>

<sup>16</sup> Gary Claxton et al., *How Many Teachers Are at Risk of Serious Illness If Infected with Coronavirus?*, July 10, 2020, <https://www.kff.org/coronavirus-covid-19/issue-brief/how-many-teachers-are-at-risk-of-serious-illness-if-infected-with-coronavirus/>.

<sup>17</sup> "Broward School Board discuss ways to improve distance learning for upcoming year, July 29, 2020, <https://www.nbcmiami.com/news/local/education-on-6/broward-school-board-discuss-ways-to-improve-distance-learning-for-upcoming-year/2269143/>.

Moline Decl. ¶ 15; Dr. Horigian Decl. ¶ 13.) Beginning in May of this year, the Centers for Disease Control and Prevention (“CDC”) acknowledged the reality that “full sized, in-person classes,” present the “highest risk”<sup>18</sup> of virus transmission and accordingly issued guidelines for schools advising that unless communities met specific “gating criteria”—including 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—schools that are closed should remain closed.<sup>19</sup> On July 23, 2020, the CDC supplemented that guidance regarding the reopening of schools, cautioning as follows:

If there is substantial, uncontrolled transmission, schools should work closely with local health officials to make decisions on whether to maintain school operations. The health, safety, and wellbeing of students, teachers, staff and their families is the most important consideration in determining whether school closure is a necessary step. ... [I]f community transmission levels cannot be decreased, school closure is an important consideration.<sup>20</sup>

The CDC further stressed that “[s]chool officials should make decisions about school reopening based on available data including levels of community transmission and their capacity to implement appropriate mitigation measures in schools.”<sup>21</sup>

The CDC’s guidance is consistent with that of other experts. The Infectious Disease Society of America has called for evidence-based decisions on school re-openings and has cautioned that “[w]e will not gain control of this pandemic or successfully reopen the economy unless we protect

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<sup>18</sup> See Center for Disease Control, *Considerations for K-12 Schools: Readiness and Planning Tool*, July 1, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community/School-Admin-K12-readiness-and-planning-tool.pdf>; Center for Disease Control, *Considerations for Schools*, May 19, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html>

<sup>19</sup> *Id.*

<sup>20</sup> Center for Disease Control, *Preparing K-12 School Administrators for a Safe Return to School in Fall 2020*, July 23, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/prepare-safe-return.html>

<sup>21</sup> *Id.*

people and public health first. The safety of our children, their families, teachers and other school staff must be guiding factors in all school reopening decisions, and no school should be forced to open in a situation that presents unacceptable risks.”<sup>22</sup>

The American Academy of Pediatrics also advises that re-opening schools should depend on the judgment of health experts based on science, rather than on political considerations:

Returning to school is important for the healthy development and well-being of children, but we must pursue re-opening in a way that is safe for all students, teachers and staff. Science should drive decision-making on safely reopening schools. Public health agencies must make recommendations based on evidence, not politics. We should leave it to health experts to tell us when the time is best to open up school buildings and listen to educators and administrators to shape how we do it.<sup>23</sup>

And the Academy has specifically advised that “schools in areas with high levels of COVID-19 community spread should not be compelled to reopen against the judgment of local experts.”<sup>24</sup> The problem is further compounded by the challenge of ensuring that students will follow best practices. (Dr. Horigian Decl. ¶ 16.) It is almost impossible to provide assurances to teachers and parents that children will be able to follow CDC guidelines when adults are often unable to comply with the same guidelines. (*Id.* ¶ 17.) It seems unreasonable to put the responsibility on children to protect the health and safety of their teachers, parents, and each other. (*Id.*)

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<sup>22</sup> Infectious Disease Society of America , *Infectious Diseases Society of America and the HIV Medicine Association Call for Evidence-based Decisions on School Re-openings*, July 10, 2020, [https://www.hivma.org/news\\_and\\_publications/hivma\\_news\\_releases/2020/infectious-diseases-society-of-america-and-the-hiv-medicine-association-call-for-evidence-based-decisions-on-school-re-openings/](https://www.hivma.org/news_and_publications/hivma_news_releases/2020/infectious-diseases-society-of-america-and-the-hiv-medicine-association-call-for-evidence-based-decisions-on-school-re-openings/).

<sup>23</sup> Am. Academy of Pediatrics, *Pediatricians, Educators and Superintendents Urge a Safe Return to School This Fall*, July 10, 2020, <https://services.aap.org/en/news-room/news-releases/aap/2020/pediatricians-educators-and-superintendents-urge-a-safe-return-to-school-this-fall/>.

<sup>24</sup> *Id.*

The CDC has advised that once community transmission levels are low enough that it is safe to begin resuming some level of in-person instruction, comprehensive protections should be put in place to protect students and staff including:

- conducting daily health checks of staff and students;
- requiring the use of cloth face covering by students and staff;
- 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);
- intensifying cleaning and disinfection;
- sanitizing frequently touched surfaces (e.g., playground equipment, door handles, sink handles, drinking fountains) between use;
- limiting use of shared objects;
- staggering arrivals and multiple arrival locations;
- spacing students' desks at least 6 feet apart;
- using flexible work sites (e.g., telework) and flexible work hours (e.g., staggered shifts);
- identifying an isolation room or area to separate symptomatic individuals;
- limiting the number of school visitors;
- 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
- offering telework and virtual learning opportunities for staff and students who are at higher risk of severe illness.<sup>25</sup>

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<sup>25</sup> See *Preparing K-12 School Administrators for a Safe Return to School in Fall 2020*, supra note \_\_; Center for Disease Control, *CDC Activities and Initiatives Supporting the COVID-19 Response and the President's Plan for Opening America Up Again*, May 2020, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/php/CDC-Activities-Initiatives-for-COVID-19-Response.pdf>; Considerations for Schools, supra note 17; Center for Disease Control, *Guidance for Child Care Programs that Remain Open*, July 23, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/guidance-for-childcare.html>; Center for Disease Control, *When You Can be Around Others After You Had or Likely Had COVID-19*, July 16, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/end-home-isolation.html>.



The National Academies of Sciences, Engineering, & Medicine (“NAS”) has issued a comprehensive report with similar guidance, advising that when a decision is made to begin re-opening schools to in-person instruction--a decision that should be made in consultation with representatives of school staff, families, local health officials, and other community interests—schools should:

- have students and staff wear face masks and provide surgical masks to all staff
- provide hand washing stations or hand sanitizer for all people who enter school buildings, minimize contact with shared surfaces, and increase regular surface cleaning
- limit large gatherings of students and overcrowding at school entrances, possibly by staggering arrival times
- reorganize classrooms to enable physical distancing, such as by limiting class sizes or moving instruction to larger spaces; and
- prioritize cleaning, ventilation, and air filtration.<sup>26</sup>

The NAS report also stresses that for schools to be able to adopt these essential safety measures, federal and state governments will have to provide significant resources.<sup>27</sup>

Despite the wealth of guidance from public health officials and experts as to when it is safe to reopen schools and how those schools should operate when it is safe to do so, Commissioner Corcoran’s Order would push school districts to re-open their school buildings to full-time in-person instruction for all students while providing no meaningful support to school districts in terms of health and safety resources, and they have done so during a devastating statewide surge in new cases, hospitalizations, and deaths from COVID-19. Moreover, the Emergency Order and subsequent

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<sup>26</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>.

<sup>27</sup> *Id.*

comments from the Governor's office include threats to withhold funding from school districts that do not provide "assurances" that they will open the doors of their schools to students in August 2020.<sup>28</sup>

### **III. MEMORANDUM OF LAW**

The ongoing dangerous circumstances undeniably call for temporary injunctive relief. The Governor and Education Commissioner's continued call to reopen schools amidst the raging pandemic endangers the health and safety of teachers, students, and the community. As of the filing of this Motion, the first schools are scheduled to reopen brick and mortar locations the week of **August 10, 2020**, with the majority of districts reopening by August 31<sup>st</sup>. If the Court does not issue temporary injunctive relief, thousands of students and teachers will be forced to spend six to eight hours a day with twenty people are more in one room at a time. No one has dared attend such large gatherings in over four months. Now suddenly, at a time when health indicators in Florida continue to plunge and experts continue to warn of the risks of all gatherings, the Governor and Commissioner are pushing for the repeated and long term exposure of students and staff to conditions that will spread the virus not just to some of those in school but to their families as well. The outcome will be disastrous.

To establish entitlement to a temporary injunction, the movant must plead and prove "(1) a likelihood of irreparable harm and the unavailability of an adequate remedy at law; (2) a substantial likelihood of success on the merits; (3) that the threatened injury to the petitioner outweighs any possible harm to the respondent and (4) that the granting of a temporary injunction

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<sup>28</sup> *DeSantis touts the return of in-person classes as schools say they'll go online*, July 29, 2020, <https://www.politico.com/states/florida/story/2020/07/29/desantis-touts-the-return-of-in-person-classes-as-schools-say-theyll-go-online-1304178>; See also **Exhibit 3**, Department of Education's template for each school district's "Optional Innovative Reopening Plan" at 3 (requiring certain "assurances," including opening brick and mortar locations to offer the full range of services to parents and students).

will not disserve the public interest.” *Allied Univ. Corp. v. Given*, 223 So. 3d 1040, 1042 (Fla. 3d DCA 2017). Each element is satisfied here.

**A. Likelihood of Irreparable Harm and Unavailability of Adequate Remedy at Law**

The Plaintiffs will suffer irreparable harm of the increased likelihood of severe illness and death if a preliminary injunction is not entered. An injury is irreparable, and thus supports the issuance of a temporary injunction, where the potential damages may be calculated only by conjecture and not by an accurate standard. *JonJuan Salon, Inc. v. Acosta*, 922 So.2d 1081, 1084 (Fla. 4th DCA 2006). Here, teachers, staff, and students will return to in-person school without health and safety protocols in place, and with no guarantee of adequate personal protective equipment, no accommodations for social distancing, no sufficient cleaning supplies and disinfectant, and no increased personnel to implement and monitor health and safety protocols. Under the current infection levels in Florida, opening brick and mortar schools poses an immediate threat of severe illness and possible death to the Plaintiffs. (Dr. Moline Decl. ¶ 15.) Many teachers are also making decisions to retire early or leave the work force because they feel unsafe returning to school during the pandemic.<sup>29</sup> These harms cannot be compensated by money damages or remedied at law. *See Dunkin’ Donuts Inc. v. Kashi Enterprises, Inc.*, 106 F. Supp. 2d 1325, 1327 (N.D. Ga. 2000) (finding threat of irreparable injury where the “unsanitary conditions at the defendant’s store may result in illness to the plaintiff’s customers”); *Gayle v. Meade*, No. 20-21553, 2020 WL 1949737, at \*30 (S.D. Fla. April 22, 2020) (finding irreparable harm where ICE failed to provide sufficient amounts of soap, cleaning material, and masks to detainees).

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<sup>29</sup> “I’m going to miss it.” It’s my heart. First Coast teachers choosing to retire instead of returning to classrooms amid COVID-19 concerns, July 30, 2020, <https://www.firstcoastnews.com/article/news/im-going-to-miss-it-its-my-heart-teachers-choosing-to-retire-instead-of-returning-to-the-classroom-amid-covid-19-concerns/77-2382f78e-7a4b-45c0-8b76-8d7754d89d62>.

**B. Substantial Likelihood of Success on Merits**

The Plaintiffs have a substantial likelihood of success on the merits as the Defendants cannot reopen brick and mortar schools without violating Florida’s constitutional mandate to provide students a safe education and threatening teachers, students, and the community with increased COVID-19 infection, serious illness, and possible death. “A substantial likelihood of success on the merits requires a showing of only *likely* or *probable*, rather than *certain* success.” *Schiavo ex rel Schindler v. Schiavo*, 358 F. Supp. 2d 1161, 1164 (M.D. Fla. 2005) (emphasis in original).

Count I seeks a declaration from this Court that unsafely reopening schools is a violation of Article IX, Section 1(a) of the Florida Constitution. Article IX, Section 1(a) of the Florida Constitution provides:

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.) 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. Based on the CDC guidelines and experts in the field, given the current levels of infection in Florida, it is not safe to reopen brick and mortar schools unless and until community transmission levels in Florida are brought under control. (Dr. Moline Decl. ¶ 20.)

What is more, even once community transmission levels fall in Florida, the CDC's July 23, 2020, guidance urges that it is "critical to implement multiple mitigating measures" to continue to contain the COVID-19 virus in reopened schools.<sup>30</sup> Schools should:

- Engage and encourage everyone in the school and the community to practice preventive behaviors.
- Implement multiple SARS-CoV-2 mitigation strategies (e.g., social distancing, cloth face coverings, hand hygiene, and use of cohorting).
- Communicate, educate, and reinforce appropriate hygiene and social distancing practices in ways that are developmentally appropriate for students, teachers, and staff.
- Integrate SARS-CoV-2 mitigation strategies into co-curricular and extracurricular activities (e.g., limiting or cancelling participation in activities where social distancing is not feasible).
- Maintain healthy environments (e.g., cleaning and disinfecting frequently touched surfaces).
- Make decisions that take into account the level of community transmission.
- Repurpose unused or underutilized school (or community) spaces to increase classroom space and facilitate social distancing, including outside spaces, where feasible;
- Develop a proactive plan for when a student or staff member tests positive for COVID-19.
- Develop a plan with state and local health department to conduct case tracing in the event of a positive case.
- Educate parents and caregivers on the importance of monitoring for and responding to the symptoms of COVID-19 at home.
- Develop ongoing channels of communication with state and local health departments to stay updated on COVID-19 transmission and response in your local area.

The Defendants have made no provision for schools to follow these guidelines and safely reopen. At this moment, the only guidance from the Defendants, through Commissioner Corcoran's

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<sup>30</sup> *Preparing K-12 School Administrators for a Safe Return to School in Fall 2020*, July 23, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/prepare-safe-return.html>

Order, is that schools must reopen brick and mortar locations five days a week – a directive that directly undermines the safety of students in school. Indeed, it is not clear whether a local school must provide *any* health or safety measures to prevent the spread of COVID-19 to satisfy the Order. Whatever the full scope of the Article IX § 1 paramount duty may be, at the very least, the duty requires the Defendants not to take actions that put students’ safety in jeopardy and, as well, to make some reasonable attempt to safeguard their safety. On both of these scores, Plaintiffs have shown a substantial likelihood of success on the merits of their claim that the Order requires schools to reopen in an unsafe manner, in violation of the Florida Constitution.

While some school districts, such as Broward County, having made the decision to reopen with virtual classes only until a later date, there is no indication that these plans have been approved by the Department of Education.<sup>31</sup> Indeed, as of the August 3, 2020, the list of “approved” reopening plans listed on the Department Education’s website includes thirty-one approved plans.<sup>32</sup> Under the Order, to “receive the flexibility and continuity provided for in this Order, school districts must submit to the Department a reopening plan that satisfies the requirements of the Order.” (DOE Order No. 2020-EO-06 at § II(a).) Part of this “flexibility” includes “reporting flexibility and *financial continuity*.” (*See id.* at § III) (emphasis added). Therefore, there is still a threat that the Department of Education will not approve certain reopening plans and school districts will not receive the “financial continuity” described in the Order. A reduction in state funding would likely force local school districts to eliminate teaching and staff positions, further injuring Plaintiffs.

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<sup>31</sup> *Approved K-12 District Re-Opening Plans*, <http://www.fldoe.org/em-response/>, last visited July 31, 2020.

<sup>32</sup> *Id.*

With regard to Count II, the Plaintiffs have a substantial likelihood of success on the merits as the Order is arbitrary and capricious. 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). Under the arbitrary and capricious standard, the court does not substitute its judgment for that of the government agency so long as the agency’s decision was “reasoned and rational.” *Freiwald v. Federal Aviation Admin.*, 686 F. App’x 719, 724 (11th Cir. 2017). The arbitrary and capricious standard requires that the government agency provide an explanation for its actions that indicates “reasoned decisionmaking.” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 53 (1983). *See also Dep’t of Homeland Security v. Regents of Univ. of California*, 140 S. Ct. 1891, 1912-13 (2020) (finding that DHS’s rescission of DACA was arbitrary and capricious because DHS did not provide a “reasoned analysis” for its decision). Here, there is no evidence that the Defendants’ decision was reasoned and rational.

The Order requires all school boards to open brick and mortar locations, at least five days a week, beginning in August, “subject to advice and orders of the Florida Department of Health, local departments of health, Executive Order 20-149 and subsequent executive orders.” DOE-2020-EO-06 at 2. However, the local departments of health, which are ultimately arms of the state Department of Health, have been reluctant to provide such advice.<sup>33</sup> Confusingly, the Order recognizes 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[.]” DOE-

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<sup>33</sup> *School leaders don’t know if it’s safe to open, and local health officials won’t (or can’t) tell them*, July 20, 2020, <https://www.floridatoday.com/story/news/education/2020/07/20/health-officials-wont-or-cant-say-if-schools-safe-open/5456874002/>

2020-EO-06 at 2. (emphasis added). The Order also states that local school districts “**must** provide the full array of services that are required by law so that families that wish to educate their children in a brick and mortar school full time have the opportunity to do so,” and further states that “these services include in-person instruction (barring a state or local health directive to the contrary).” (*Id.*) While Commissioner Corcoran and Governor DeSantis continue to insist that the decision to re-open is a local one, the requirement to provide full in-person services to parents that choose it appears directly at odds with these pronouncements. Florida deserves much better than confusing commands concerning life and death issues. 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.

In addressing the Order, Defendant DeSantis has said “if you actually look at the way it’s structured, it’s not exactly mandatory.”<sup>34</sup> However, the Order makes “financial continuity” for local school districts dependent on an “approved” reopening plan that provides in-person schooling five days a week. (DOE-2020-EO-06 at 6.) Consistent with the Order’s language, the Department of Education provided school districts with a template to use when formulating a reopening plan. (*See* Exhibit 3.). The template requires that each reopening plan provide seven assurances. Assurance One is: “Upon reopening in August, the district will assure that all brick and mortar schools are open at least five days per week for all students subject to advice and orders of the Florida Department of Health, local department of health, Executive Order 20-149, and subsequent executive orders.” (*Id.* at 3.) Assurance Two is: “The district must provide the full array of services

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<sup>34</sup> *Was Palm Beach County’s health director “politically silenced” in recommendation to keep schools closed?*, July 17, 2020, <https://www.wptv.com/news/region-c-palm-beach-county/was-palm-beach-countys-health-director-politically-silenced-in-recommendation-to-keep-schools-closed>.



that are required by law so that families who wish to educate their children in a brick and mortar school have the opportunity to do so.” (*Id.*) Based on this and the Order, local school districts are interpreting the Commissioner’s reopening mandate to require brick and mortar openings in August. Defendants have taken the opposite position in their most recent submission to the Court, stating that “the Emergency Order leaves it to each local school district to make these decisions.” (Defendants’ Response to Motion for Mediation, at 7.) Thus, the Order has violated the Constitution by failing to put forth consistent, reasoned, and rational policy to guide local authorities in reopening public schools.<sup>35</sup>

With regard to Count III, the Plaintiffs have a substantial likelihood of success on the merits of their claim to enjoin all Defendants from reopening public schools until it is safe to do so. “To obtain a permanent injunction, the petitioner must establish a clear legal right, an inadequate remedy at law and that irreparable harm will arise absent injunctive relief.” *Liberty Counsel v. Fla. Bar Bd. Of Governors*, 12 So. 3d 183, 186 n.7 (Fla. 2009) (internal citations and quotations omitted). Here, Plaintiffs have a clear legal right to be free from significant threats to public health, including outbreaks of infectious diseases. *See State Dept. of Environmental Regulation v. Kaszyk*, 590 So. 2d 1010, 1012 (Fla 3d DCA 1991) (finding clear legal right and granting injunction where statutes and regulations being violated were meant to protect public health and welfare). Moreover, as detailed above, Plaintiffs have an inadequate remedy at law and will suffer irreparable harm if an injunction is not granted.

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<sup>35</sup> As one Supreme Court Justice recently noted, “a public health emergency does not give Governors and other public officials carte blanche to disregard the Constitution for as long as the medical problem persists. As more medical and scientific evidence becomes available, and as States have time to craft policies in light of that evidence, courts should expect policies that more carefully account for constitutional rights.” *Calvary Chapel Dayton Valley v. Sisolak, Governor of Nevada, et al.*, 591 U.S. \_\_\_\_ (2020) (Alito, J., dissenting).

**C. Threatened Injury to Petitioner Outweighs Possible Harm to Respondent**

The threat of severe illness or death faced by Plaintiffs if schools are allowed to reopen in-person instruction unsafely is outweighed by any potential harm to the Defendants. In addition, teachers and staff members face potential layoffs if they work in school districts whose reopening plans are rejected by the Department of Education. There is no harm to the Defendants in this case, “other than inconvenience.” See *Westchester General Hospital, Inc. v. Dep’t of Health, Ed. and Welfare*, 434 F. Supp. 435, 440 (M.D. Fla. 1977). Indeed, granting a preliminary injunction will prevent harm to Commissioner Corcoran and other Defendants who will be stopped from necessarily violating a constitutional duty to provide for a safe and secure education system. See *id.* (finding no harm to defendants and that issuance of preliminary injunction will prevent harm to defendants as well because they will not be forced to violate a law). Preventing severe illness and possible death greatly outweighs the political inconvenience that may befall Commissioner Corcoran if he is required to amend the Order.

Nor is it the case that entering such an injunction will harm the interests of the public. The order would not prevent schools from reopening at all; schools would still reopen for instruction albeit provided remotely. Rather, the order would only prevent requiring students and staff to return to in-person instruction at a time when it is hazardous to themselves and their families to do so.

**D. An Injunction Will Further the Public Interest**

A temporary injunction will further the public interest by preventing further community spread of COVID-19, severe illness, and possible death of children, teachers and school staff, their families, and the community at large. Florida is currently experiencing substantial, uncontrolled, transmission of the COVID-19 virus. As previously discussed, as of August 3, 2020, Florida had more

than 497,330 confirmed positive cases and 7,402 deaths.<sup>36</sup> At the same time, adult ICU beds are at 84% capacity, with several hospitals already at or over 100% capacity.<sup>37</sup> Since July 21, Florida's daily new cases have averaged more 9,000 per day.<sup>38</sup> Of particular relevance here, as of August 3, 2020, *more than 38,000 Floridians under the age of 18* tested positive for the virus.<sup>39</sup> And contrary to suggestions by Defendant DeSantis,<sup>40</sup> school-age children are *not* immune from illness—including serious and life-threatening illness—arising from COVID-19 infection. Thus, an injunction in this case will further the public interest.

#### IV. CONCLUSION

For the above-stated reasons, the Court should grant the Plaintiffs' motion and enter an order enjoining the following:

- (a) Invalidating Emergency Order 2020-EO-06 as violative of Florida's Constitution.
- (b) Holding that Defendants may not unnecessarily and unconstitutionally force millions of public-school students and employees to report to unsafe brick and mortar schools.
- (c) 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

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<sup>36</sup> See *Florida Dep't of Health COVID-19 Report*, Aug. 3, 2020, [http://ww11.doh.state.fl.us/comm/\\_partners/covid19\\_report\\_archive/state\\_reports\\_latest.pdf](http://ww11.doh.state.fl.us/comm/_partners/covid19_report_archive/state_reports_latest.pdf).

<sup>37</sup> State of Florida, *Agency for Health Care Administration, Hospital Beds Census and Staffed Availability*, updated Aug. 4, 2020, [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>38</sup> See *Florida Dep't of Health COVID-19 Report*, Aug. 3, 2020, [http://ww11.doh.state.fl.us/comm/\\_partners/covid19\\_report\\_archive/state\\_reports\\_latest.pdf](http://ww11.doh.state.fl.us/comm/_partners/covid19_report_archive/state_reports_latest.pdf).

<sup>39</sup> Florida Dep't of Health, *Coronavirus: characteristics of cases in pediatric Florida residents <18 years old*, August 3, 2020, [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>40</sup> Joe McLean, *Gov. DeSantis doubles down on belief that schools should reopen their doors*, WJXT, July 18, 2020, <https://www.news4jax.com/news/local/2020/07/18/gov-desantis-doubles-down-on-belief-that-schools-should-reopen-their-doors/>.

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.

Dated: August 4, 2020

Respectfully submitted,

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*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 4th day of August, 2020, to the following:

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By: /s/ Kendall B. Coffey

# **Exhibit 1**

**to**

**Expedited Motion for  
Temporary Injunction**

## **DECLARATION OF DR. JACQUELINE MOLINE**

I, Dr. Jacqueline Moline, hereby declare and state as follows:

1. I am over the age of 18 and make this affidavit from personal knowledge. I make this declaration pursuant to Florida Statutes § 92.525.
2. I am board certified in internal medicine and occupational medicine. My specialty, occupational and environmental medicine, deals with the impact of exposures on the health of individuals.
3. I am currently the Chairperson of the Department of Occupational Medicine, Epidemiology and Prevention at Northwell Health in New York.
4. I sit on a Clinical Advisory Committee at Northwell Health related to COVID-19. As a Committee, we make policy decisions related to COVID-19, particularly as it pertains to the hospital's work force and our interactions with our patients and the community.
5. As an occupational medicine physician and through my work on the Clinical Advisory Committee, I have become familiar with the Center for Disease Control's ("CDC") guidelines regarding COVID-19. These guidelines, along with state regulations, are what we have used at the hospital to protect our workforce from infection and prevent further spread of the virus.
6. I have also reviewed credible news reports and data regarding COVID-19 in Florida and the United States, including data from the Florida Department of Health.
7. COVID-19 is a highly contagious virus. It is spread through respiratory droplets produced when an infected person coughs, sneezes, or talks. These droplets can infect others if they come into contact with a healthy person's mouth or nose. The virus spreads more easily when people are in close contact, usually within six feet. There is also evidence that there is an airborne route of viral transmission, making contagion possible through close contact.

8. Adults and children are both susceptible to the virus, especially individuals with pre-existing conditions such as asthma, obesity, diabetes, cardiovascular illness, auto-immune disease, and adults over the age of 60.

9. One study concluded that 25% of teachers nationwide have a pre-existing condition that puts them at a higher risk of serious illness from COVID-19.

10. School-age children, whether symptomatic or not, are capable of transmitting the virus. As more data becomes available, it is clear that children between the ages of 10 and 19 spread the virus just as readily as adults do.

11. Some children who have been infected with COVID-19, even if they were asymptomatic, develop multisystem inflammatory syndrome, a serious and sometimes life-threatening condition in which organs and blood vessels become inflamed, often requiring intensive hospital care.

12. As of July 25, 2020, more than 31,000 Floridians under the age of 18 tested positive for the virus. From July 16<sup>th</sup> to July 24<sup>th</sup>, there was a 23% increase in COVID-19 hospitalizations in children.

13. The American Academy of Pediatrics' recent recommendations regarding reopening schools emphasizes the importance of in-person education but recommends first ensuring that the community infection rate is reasonable before trying to open brick and mortar locations.

14. Based on CDC guidelines, it clearly states that schools should not reopen if the COVID-19 viral positivity rate in the community is greater than 5%.

15. According to the Florida Department of Health, Florida's positivity rate is approximately 19%. Opening brick and mortar schools and welcoming back the workforce with



such a high positivity rate in Florida poses an immediate threat to the health of students, teachers, school staff, and the community.

16. To help mitigate the spread of COVID-19 at Northwell Health, we have instituted a number of mitigation strategies such as increased testing, contact tracing, sanitation stations, temperature checks, personal protective equipment for staff, mandatory use of masks and social distancing. These measures should be instituted in all workplaces as businesses reopen during the continued surge of the virus.

17. In making reopening decisions, businesses, hospitals, and schools must consider the local conditions, positivity rates, and other key indicators, as per the CDC's guidelines.

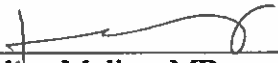
18. The CDC also recommends canceling all group events or meetings of more than 10 people during Phase 1 and more than 50 people during Phase 2. Most public school classrooms have more than 10 students at a time. Reopening schools with large classroom sizes would put many children and teachers at risk of infection, particularly when social distancing is not feasible.

19. The long-term effects of COVID-19 are also unknown at this time. Even patients with mild symptoms may experience long-term health consequences, including cardiovascular, pulmonary damage, and neurological damage.

20. Until there is a sustained decrease in the rate of positive infections in Florida, it is not safe to require all schools to reopen; and once schools are open it is imperative that comprehensive mitigation strategies, including plans for sustained social distancing, enhanced school cleaning, extensive testing and tracing protocols, and accommodations for those students and staff at higher risk.

Under penalties of perjury, I declare that I have read the foregoing Declaration and that the facts stated in it are true.

Executed this 31 day of July, 2020.

  
\_\_\_\_\_  
Jacqueline Moline, MD

# **Exhibit 2**

**to**

**Expedited Motion for  
Temporary Injunction**

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

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

**DECLARATION OF DR. VIVIANA HORIGIAN**

I, Dr. Viviana Horigian, hereby declare and state as follows:

1. I am over the age of 18 and make this affidavit from personal knowledge. I make this declaration pursuant to Florida Statutes § 92.525.

2. I am a psychiatrist by training and also hold a Masters in Health Administration. I currently serve as the Director of Public Health Education at the University of Miami Miller School of Medicine.

3. I write this Declaration as an educator, doctor, and parent.

4. I am familiar with the CDC's guidelines regarding COVID-19.

5. Reopening schools is a very difficult issue. Schools provide an essential function in our society and the decision whether to close them temporarily is not an easy one, at any level.

6. Although schools provide an essential function, the decision to reopen schools for in-person learning during a surge of COVID-19 could be disastrous.

7. COVID-19 is a highly contagious virus. It is spread through respiratory droplets produced when an infected person coughs, sneezes, or talks. These droplets can infect others if they come into contact with a healthy person's mouth or nose. The virus spreads more easily when people are in close contact, usually within six feet.

8. Adults and children are both susceptible to the virus, especially individuals with pre-existing conditions such as asthma, obesity, diabetes, cardiovascular illness, auto-immune disease, and adults over the age of 60.

9. The long-term effects of COVID-19 are also unknown at this time. Even patients with mild symptoms may experience long-term health consequences, including cardiovascular damage. New research on the disease is being published every day.

10. One recent study, published on July 30, 2020 in JAMA Pediatrics, raises the prospect that children could be just as, or even more, prone to COVID-19 infection and transmission. This poses serious problems for schools under any reopening scenario.

11. Based on CDC guidelines and medical expertise, the best way to reduce the spread of the virus is to remain socially distant, wear masks, regularly wash our hands, and disinfect high-touch surfaces.

12. These guidelines raise a number of questions for when, how, and for whom to reopen schools.

13. **When Schools Reopen:** Based on CDC guidelines and the experience of other developed countries, schools should reopen after new cases have been steadily decreasing for 14 days. Schools should not reopen if the positivity rate in the community is greater than 5%.

According to the Johns Hopkins Coronavirus Resource Center, Florida's positivity rate is approximately 19%.

14. **How Schools Reopen**: How to reopen schools requires extensive planning and a clear assessment of space, density, allocation of resources, and risk assessment for high risk individuals, including students, teachers, and staff.

15. Some teachers will be considered high risk because of their age or underlying conditions. Similarly, some students will be considered high risk because of underlying health conditions.

16. Another challenge is ensuring that students follow best practices with regard to social distancing, face coverings, and hand washing.

17. It seems almost impossible to provide assurances to teachers and parents that children will be able to follow these rules when adults are unable to comply with CDC guidelines. If adults are not adhering to the guidelines and oftentimes challenging the use of masks, it seems unreasonable to put the responsibility on children to protect the health of their teachers, parents, and each other.

18. In any reopening plan, schools need additional resources to clean regularly, add bus routes, improve ventilation, provide PPE, modify classrooms and shared space, and increase personnel and monitoring to enforce CDC guidelines.

19. **For whom to reopen**: The reality is that there are students that require in-person learning and rely on school resources more than others. Younger children will be more disadvantaged than older children. Younger children, still learning to read, require more attention and interactive learning than high school students. Although it is by no means an adequate

substitute for in-person learning, older children can more easily use technology and manage the online classroom. By shifting resources, these varying needs can be accommodated.

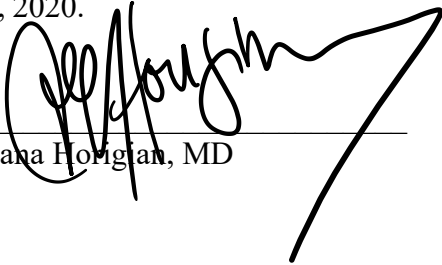
20. Children from low-income backgrounds and special needs children are also in greater need of in-person learning and the resources provided by schools, whether it be specialized attention, subsidized meals, or other social services. Again, all stakeholders must be consulted, given choice, and given alternatives as resources are reallocated.

21. The National Academies of Sciences, Engineering, and Medicine convened an expert committee to provide guidance on the reopening of schools. The Committee recommended that school districts make every effort to prioritize reopening of in-person instruction for kindergarten to fifth grade as well as special needs students.

22. We have missed an opportunity to thoroughly plan. Now, a few weeks before reopening, schools are making last minute decisions that will have life-long consequences.

Under penalties of perjury, I declare that I have read the foregoing Declaration and that the facts stated in it are true.

Executed this 30 day of July, 2020.

  
\_\_\_\_\_  
Viviana Hongian, MD

# **Exhibit 3**

**to**

**Expedited Motion for  
Temporary Injunction**





FLORIDA DEPARTMENT OF  
**EDUCATION**  
fldoe.org



## 2020-21 Florida's Optional Innovative Reopening Plan

[District]

*Due: July 31, 2020*

Submit to the following email address: [reopeningplan@fldoe.org](mailto:reopeningplan@fldoe.org)

## 2020-21 Florida's Optional Innovative Reopening Plan

### Purpose

The purpose of this document is to support districts in the development and submission of their Innovative Reopening Plan for the Department's consideration for the Fall 2020 school semester. This document will assist districts in aligning their existing plan with required assurances, or serve as the actual template for districts without an aligned plan to develop and submit one based on the assurances outlined in DOE ORDER NO. 2020-EO-06.

### Directions

Districts shall complete this form and email to [reopeningplan@fldoe.org](mailto:reopeningplan@fldoe.org). This form must be received no later than July 31, 2020. The subject line of the email must include **[District Name] Innovative Reopening Plan**. The district has **two options** in the submission of an Innovative Reopening Plan:

- Option 1:** The district provides a narrative plan, as well as identifies the page number(s) of where Assurances 1-5 are located in the district plan (captured next to Assurances 1-5 below). The district's Innovative Reopening Plan must accompany this template upon submission.
- Option 2:** The district completes the Department's template provided later in this document.

### Proposed Innovative Model (Required for Option 1 and Option 2)

The district shall explain in detail the proposed Innovative Model by school type (elementary, middle, high, combination, alternative, DJJ education programs, etc.). This description must include the following: in-person instruction, specialized instruction, live synchronous or asynchronous instruction with the same curriculum as in-person instruction, and the ability to interact with a student's teacher and peers. Provide the page(s) where the narrative of the proposed Innovative Model is located in your submitted plan: \_\_\_\_\_

## 2020-21 Florida's Optional Innovative Reopening Plan

### Reopening Plan Assurances (Required for Option 1 and Option 2)

The district must agree to ALL of the assurances by checking the corresponding boxes.

**Assurance 1:** Upon reopening in August, the district will assure that all brick and mortar schools are open 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. Provide the page(s) where the narrative of this assurance is located in your submitted plan: \_\_\_\_\_

**Assurance 2:** The district must provide the full array of services that are required by law so that families who wish to educate their children in a brick and mortar school have the opportunity to do so. These services include in-person instruction, specialized instruction for students with an Individual Educational Plan (IEP) and those services required for vulnerable populations, such as students from low-income families, students of migrant workers, students who are homeless, students with disabilities, students in foster care, and students who are English language learners (ELLs). Provide the page(s) where the narrative of this assurance is located in your submitted plan: \_\_\_\_\_

**Assurance 3:** The district will provide robust progress monitoring to all students; tiered support must be provided to all students who are not making adequate progress. If a student is receiving instruction through innovative teaching methods fails to make adequate progress, the student must be provided additional support and the opportunity to transition to another teaching method. Provide the page(s) where the narrative of this assurance is located in your submitted plan: \_\_\_\_\_

**Assurance 4:** The district will work with IEP teams to determine needed services, including compensatory services for students with disabilities. School districts must immediately begin working with IEP teams to identify students who may have regressed during school closures. IEP teams must follow a student-centered approach with a commitment to ensure that the individual needs of each child are met. Provide the page(s) where the narrative of this assurance is located in your submitted plan:  
\_\_\_\_\_

**Assurance 5:** The district will work with ELL Committees to identify ELLs who have regressed and determine if additional or supplemental English for Speakers of Other Languages (ESOL) services are needed. Districts should ensure that appropriate identification of English skills has been noted and that schools have the resources to implement additional interventions and strategies. Provide the page(s) where the narrative of this assurance is located in your submitted plan: \_\_\_\_\_

**Assurance 6:** Progress monitoring data must be shared regularly by the district with the Department, in a manner prescribed by the Department.

**Assurance 7:** Districts must extend the same flexibility in instructional methods to every charter school that submits a reopening plan to the sponsoring district addressing the requirements set forth in DOE ORDER NO. 2020-EO-06. In addition, the district will collect reopening plans from each charter school's governing board for approval.

**Template Option for Reopening Plan (Option 2)**

**Plan for Implementation of Assurance 1**

- In the box below, describe the reopening in August of brick-and-mortar schools reflecting at least five days of school 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. Also, provide the district's reopening date and schedule by school type.

**Plan for Implementation of Assurance 2**

- In the box below, describe the plan for a full array of services that are required by law so that families who wish to educate their children in a brick and mortar school have the opportunity to do so. These services include in-person instruction and services required for vulnerable populations, such as students from low-income families, students of migrant workers, students who are homeless, and students in foster care.

**Plan for Implementation of Assurance 3**

- In the box below, describe the schedule and process for administering local progress monitoring assessments, as well as the assessment tool(s) used by the local district or school by grade level. In addition, describe how the data is used to determine how adequate progress is being made and how intervention and tiered support is being deployed.

**Plan for Implementation of Assurance 4**

- In the box below, describe how the district will work with IEP teams to determine needed services, including compensatory services for students with disabilities.

## 2020-21 Florida's Optional Innovative Reopening Plan

### Plan for Implementation of Assurance 5

- In the box below, describe how the district will work with ELL Committees to identify ELLs who have regressed and determine if additional or supplemental English for Speakers of Other Languages (ESOL) services are needed.

Assurances 6 and 7 do not require additional narrative.

### Acknowledgement

The district verifies the information in this form.

<b>Name and title of person responsible for completion and submission of the Innovative Reopening Plan</b>
<b>Contact information: email, phone number</b>
<b>Date submitted</b>
<b>Superintendent Signature (or authorized representative)</b>