

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:21-cv-22863-KMM

Judith Anne Hayes, individually
and on behalf of W.H., a minor, *et al.*,

Plaintiffs,

v.

Governor Ronald Dion DeSantis, in
his official capacity as Governor of
the State of Florida, *et al.*,

Defendants.

**DEFENDANT MIAMI-DADE SCHOOL BOARD'S RESPONSE TO
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

Defendant, the School Board of Miami-Dade County, Florida (“Miami-Dade School Board”), respectfully submits this response pursuant to this Court’s order of August 10, 2021 (DE20) requiring that all Defendants in this action respond to Plaintiffs’ expedited Amended Motion for Preliminary Injunction (the “Amended Motion”) (DE17) by August 24, 2021. For the reasons stated below, the Miami-Dade School Board takes no position on the relief sought in Plaintiffs’ Amended Motion.

I. SUMMARY OF RELIEF REQUESTED BY PLAINTIFFS.

Plaintiffs’ Amended Motion seeks only “a mandatory preliminary injunction commanding that [Co-Defendants] *Governor DeSantis* and *the Florida Department of Education* refrain from enforcing Executive Order 21-175.” DE17:9 (emphasis added); *see also* DE17:21 (“Plaintiffs ... respectfully request that this Court immediately enjoin enforcement of Defendant Governor DeSantis’ Executive Order 21-175 and allow the school districts to implement these children’s IEP and 504 plans to ensure that each child receives a free and appropriate education in the least restrictive and

the most integrated environment – without jeopardizing their lives or safety.”). There is no contention that the Miami-Dade School Board took any part in issuing Executive Order 21-175, “Ensuring Parents’ Freedom to Choose – Masks in School,” or will have any role in enforcing it.¹ As the Amended Motion notes, “[t]he School Districts that [Plaintiffs] attend are added as defendants, as complete relief under Rule 19, Fed. R. Civ. P. because in their absence, this Court could not complete relief among existing parties and the school districts must be secure in their liability from the State of Florida.” DE17:4. And as the Plaintiffs’ Complaint expressly notes, the Miami-Dade School Board is not an adverse party. Compl. ¶ 32.

II. PLAINTIFFS’ REQUEST FOR RELIEF FROM THE MIAMI-DADE SCHOOL BOARD SHOULD BE TREATED AS MOOT.

Plaintiffs state in their Amended Motion that Executive Order 21-175 prevents school districts from providing “a safe atmosphere by allowing masks and other commonsense precautions to the spread of COVID-19” DE17:13. The Miami-Dade School Board, however, voted on August 18, 2021, to have a mask-mandate in place for the 2021–2022 school year, to be reviewed on a weekly basis and adjusted as needed. *See* Miami-Dade School Board Excerpts from the Unofficial Minutes of August 18, 2021 Board Meeting, attached as “Exhibit A” at 10. It follows that the relief sought by Plaintiffs in their Amended Motion — even if directed at the Miami-Dade School Board and not just Co-Defendants DeSantis and the Florida Department of Education — has now been rendered moot as to this Defendant. *See generally*

¹ Should at any point in these proceedings the Court determine that the rules promulgated by the Florida Department of Health (Rule 64DER21-12, “Protocols for Controlling COVID-19 in School Settings”), or the Florida Department of Education (Rules 6AER21-01, “Pupil Attendance Records for COVID-19,” and 6AER21-02, “COVID-19 Hope Scholarship Transfer Procedures”), are at issue and are in fact being challenged through Plaintiffs’ Amended Motion, the Miami-Dade School Board reserves the right to withdraw its assertion of mootness (without prejudice to raise arguments of mootness if appropriate in the future) and to amend its response to include its own challenge to these emergency rules and to any rules that would seek to preclude the Miami-Dade School Board from setting safety protocols to protect the health, safety, and welfare of students, teachers, and staff during a local health crisis and an ongoing pandemic.

Al Najjar v. Ashcroft, 273 F.3d 1330, 1335 (11th Cir. 2001) (“If events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed.”).

CONCLUSION

The Miami-Dade School Board respectfully submits that it takes no position on the relief sought in Plaintiff’s Amended Motion because it cannot, as Plaintiffs seek in their Amended Motion, direct Co-Defendants DeSantis and the Florida Department of Education to “refrain from enforcing” Executive Order 21-175. In any event, the Miami-Dade School Board has mandated that all students, employees and visitors wear masks while on School Board property (except for those with medically endorsed accommodations), rendering the relief sought from this Defendant moot.

Dated: August 24, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 24, 2021, I electronically filed the foregoing with the Clerk of the Court using CM/ECF. I also certify that the foregoing is being served this date on all counsel of record either via transmission of Notices of Electronic Filing generated by CM/ECF, or in some other authorized manner.

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