

**IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIRCUIT CIVIL DIVISION**

**KEVIN LEVONAS and ANGELINA
AUCELLO; MATT and PRISCILLA
POAGE; JUSTIN and GRACE
WARNIMENT; ELIZABETH
HAGAN; MIKE MILLER; ROBERT
and EVELYN GRIFFITH,
Plaintiffs,**

**Case No: 20-CA-6452
Div.: G**

v.

**HILLSBOROUGH COUNTY
SCHOOL BOARD, FLORIDA, and
SUPERINTENDENT ADDISON
DAVIS,
Defendants.**

ORDER DENYING MOTION FOR TEMPORARY INJUNCTION

THIS CAUSE is before the Court without hearing on *Amended Consolidated Verified Plaintiffs' Emergency Complaint for Declaratory Relief and Injunctive Relief with Incorporated Motion for Temporary Restraining Order and Memorandum of Law*, filed August 17, 2020.¹ Plaintiffs seek a temporary injunction pursuant to Florida Rule of Civil Procedure 1.610 to prevent enforcement of a facemask policy which they allege requires children to wear a facemask in order to attend a Hillsborough County public school in person. Having thoughtfully and carefully considered the allegations of the Amended Complaint and attached affidavits with respect to the request for a temporary injunction, along with the court file, and being duly advised in the premises, the Court finds as follows:

The Court acknowledges that this is a tender matter of significant public importance and that parents and educators alike are making difficult decisions with regard to education in the wake of the

¹ The original Complaint was filed August 14, 2020.

global pandemic. However, the Court is bound by the applicable law. As such, the Court finds that the allegations in the Amended Complaint do not set forth a legally sufficient basis for temporary injunctive relief. Because the Motion does not set forth a facially sufficient basis for temporary relief, the Court finds no need to have a hearing on this matter.

“The issuance of a preliminary injunction is an extraordinary and drastic remedy which should be granted sparingly.” *Islandia Condo. Ass’n, Inc. v. Vermut*, 438 So. 2d 89, 89 (Fla. 4th DCA 1983); *see Hiles v. Auto Bahn Federation, Inc.*, 498 So. 2d 997, 998 (Fla. 4th DCA 1986) (noting that a temporary injunction should only be granted after the moving party has alleged and proved facts entitling it to relief). “To obtain temporary injunctive relief, the movant must satisfy each of the following elements: (1) the movant has a clear legal right to the requested relief or, in other words, it has a substantial likelihood of success on the merits; (2) the movant will suffer irreparable harm if the trial court refuses to grant the injunction; (3) the movant does not have available another adequate remedy at law; and (4) a public interest will be served by the imposition of the injunction.” *Charlotte County v. Grant Med. Transp., Inc.*, 68 So. 3d 920, 922 (Fla. 2d DCA 2011). If even one of the requirements is lacking, the motion for temporary injunction must be denied. *See Genchi v. Lower Fla. Keys Hosp. Dist.*, 45 So. 3d 915, 919 (Fla. 3d DCA 2010). Where the request for temporary injunction was presented without proper notice to the opposing party,² Rule 1.610(a) provides the following relevant procedural requirements:

- (1) A temporary injunction may be granted without written or oral notice to the adverse party only if:

² While the Amended Complaint states that it will be served on Defendants concurrently with the electronic filing, to date, the court file does not reflect a return of service. Moreover, Plaintiffs request that the Court rule without proper notice because “the injuries to Plaintiff’s [sic] and those similarly situated is immediate, ongoing, and compelling.”

- (A) it appears from the specific facts shown by affidavit or verified pleading that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
- (B) the movant's attorney certifies in writing any efforts that have been made to give notice and the reasons why notice should not be required.

The Court finds that Plaintiffs have failed to meet the procedural requirements of Rule 1.610 and have failed to plead a facially sufficient basis for temporary injunctive relief. Namely, the Court finds that Plaintiffs' allegations do not demonstrate that an immediate and irreparable harm will result if the Court does not grant a temporary injunction. Plaintiffs make a variety of unsupported allegations with respect to the purported harm and the immediate nature of such harm, none of which qualify as *irreparable harm*. See *Gonzalez v. Benoit*, 424 So. 2d 957, 959 (Fla. 3d DCA 1983) (defining "irreparable harm" as harm "of such nature that it cannot be redressed in a court of law; an injury for which monetary compensation will not suffice"), *receded from on other grounds*, *Nash v. Hunt*, 434 So. 2d 51 (Fla. 3d DCA 1983); see also *State, Dep't of Health v. Bayfront HMA Med. Center, LLC*, 236 So. 3d 466, 475 (Fla. 1st DCA 2018) ("Irreparable injury will never be found where the injury complained of is 'doubtful, eventual or contingent.'") (citations omitted). While the Court cannot address every allegation presented in the Amended Complaint, of note, some of Plaintiffs allegations with respect to the perceived harm are conclusory. Other allegations purport to foreshadow possible, future injuries. Still other allegations relate to the cost associated with eLearning—a purported harm potentially compensable through monetary damages. Nor have Plaintiffs sufficiently alleged an immediate and irreparable harm directly associated with wearing a mask at school. These allegations, and those other allegations not specifically identified herein, do not demonstrate that an immediate and irreparable injury will result if the Court does not grant a temporary injunction. "Without a showing of irreparable injury, the granting of an injunction is inherently an abuse of discretion

meriting reversal.” *Hiles*, 498 So. 2d at 999 (citing *Fla. East Coast Railway v. City of Miami*, 299 So. 2d 152 (Fla. 3d DCA 1974)).

Moreover, the Court finds that Plaintiffs’ allegations do not demonstrate a public interest will be served by the imposition of a temporary injunction. *See also Cosmic Corp. v. Miami-Dade County*, 706 So. 2d 347, 348 (Fla. 3d DCA 1998) (stating the requirement another way as showing “that the granting of the preliminary injunction will not *disserve* the public interest”) (emphasis added). It cannot be said at this juncture that a temporary injunction preventing enforcement of the purported facemask policy will serve the public interest. Nor can the Court find that granting the temporary injunction will not *disserve* the public interest. Indeed, at best, there are competing public interests at play, and the Court cannot at this stage weigh those competing interests.

Based on the affidavits attached to the Amended Complaint and the allegations contained therein, to which this Court is limited to resolve the request for a temporary injunction without notice, the Court cannot find that Plaintiffs have demonstrated a basis for relief at this time.³ However, a preliminary injunction does not address the merits of a cause of action, and, therefore, this matter will proceed on the merits in due course. *See generally S. Fla. Limousines, Inc. v. Broward County Aviation Dept.*, 512 So. 2d 1059, 1060 (Fla. 4th DCA 1987).⁴

³ The Court notes that the affidavits attached to the Amended Complaint are themselves bare-boned, containing only four paragraphs each. The only substance of each affidavit is to state that the affiant has a minor child or children enrolled in Hillsborough County Schools, and that the allegations in the Verified Complaint are true and correct. The affidavits themselves do not make any other specific averments which is notable given the extensive allegations throughout the Amended Complaint which include scientific and medical assertions, as well as citations to news reporting and anecdotal musings about the best interests of children generally and the state of affairs in the wake of the current global pandemic.

⁴ Despite Plaintiffs’ contention that Section 119.11, Florida Statutes, requires an expedited hearing in this matter, this is not a Public Records request pursuant to Chapter 119. This matter will be handled in due course.

It is therefore **ORDERED and ADJUGED** that Plaintiffs' request for a temporary injunction is **DENIED**. Defendant shall have twenty days after proper service is effectuated to file a responsive pleading, and this matter shall proceed accordingly.

DONE AND ORDERED and effective as of the date and time imprinted below with the Judge's signature.

Martha J. Cook
20-CA-006452 8/18/2020 12:57:42 PM

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MARTHA J. COOK,
Circuit Court Judge

Electronic Copies via JAWS and via U.S. Mail to:⁵
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⁵ The Court notes that as of the date of entry of this Order, no parties or counsel are properly associated on JAWS in order to receive an electronic copy of this Order. Therefore, the Court will provide a copy via U.S. Mail to the addresses available in the court file.