

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

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

Plaintiffs,

v.

Case No. 20-CA-006452

Division: G

HILLSBOROUGH COUNTY SCHOOL
BOARD, FLORIDA, and SUPERINTENDENT
ADDISON DAVIS,

Defendants.

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

Defendants, HILLSBOROUGH COUNTY SCHOOL BOARD, FLORIDA (the “School Board”) and SUPERINTENDENT ADDISON DAVIS (the “Superintendent”)¹ (collectively, “Defendants”), by and through their undersigned counsel, and pursuant to Florida Rules of Civil Procedure 1.140, hereby request an order dismissing the Verified Amended Emergency Complaint for Declaratory Relief and Injunctive Relief with Incorporated Motion for Temporary Restraining Order and Memorandum of Law (“Amended Complaint”) filed by Plaintiffs, KEVIN LEVONAS and ANGELINA AUCELLO; MATT and PRISCILLA POAGE; JUSTIN and GRACE WARNIMENT; ELIZABETH HAGAN; MIKE MILLER; and ROBERT and EVELYN GRIFFITH, (collectively, “Plaintiffs”), and state as follows:

¹ The Superintendent is not a proper defendant to this action. *See* Fla. Stat. § 1001.40 (stating the governing body of each school district is the School Board); § 1001.41 (stating the School Board shall be the entity to “sue, and be sued”).

SHORT STATEMENT OF THE RELIEF REQUESTED

Defendants respectfully request that this Court dismiss Plaintiffs' Amended Complaint for failure to state a claim. In each claim, Plaintiffs attempt to challenge face-covering requirements in Hillsborough County Public Schools ("HCPS"). Plaintiffs' claims all fail because: (1) Plaintiffs have failed to meet their burden under the rational basis test as required to allege these claims; (2) Plaintiffs have not alleged any claims requiring strict scrutiny; and (3) Defendants had the inherent authority to implement the Approved Reopening Plan and regulate on behalf of the health, safety, and welfare of students. There is no constitutional right preventing facial coverings in school or allowing individuals to expose students, teachers, and other citizens alike to a contagious and potentially deadly virus during a global pandemic. Defendants are implementing and instituted a plan which was approved and noticed appropriately according to Florida law. Accordingly, Plaintiffs' Amended Complaint is legally insufficient and should be dismissed.

THE GLOBAL COVID-19 PANDEMIC IS A PUBLIC HEALTH EMERGENCY EMPOWERING DEFENDANTS TO PROTECT THE HEALTH OF THEIR STUDENTS, STAFF, AND THE COMMUNITY

The global COVID-19 pandemic is the greatest public health crisis in modern history. As of this filing, there are more than 26.3 million confirmed cases of COVID-19 worldwide. Of the 6.17 million confirmed cases in the United States, over 637,000 cases have been confirmed in Florida alone. Chief Justice Roberts recently described COVID-19 as "a novel severe acute respiratory illness that has killed . . . more than 100,000 nationwide" and noted that "at this time, there is no known cure, no effective treatment, and no vaccine" and "[b]ecause people may be infected but asymptomatic, they may unwittingly infect others." *See S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring).

COVID-19 is spread by both asymptomatic and symptomatic individuals alike, primarily through airborne respiratory droplets produced when an infected person coughs, sneezes, or talks.² The spread of COVID-19 is more likely when people are in close contact with one another because the droplets can land into mouths and noses or possibly be inhaled into the lungs. *See id.* At the beginning of the COVID-19 pandemic, there was a misconception that children could not contract or spread the virus, which has since been scientifically disproven.³ During the last two weeks of July, nearly 100,000 children tested positive for COVID-19, creating a 40% increase in child cases.⁴ In the two weeks between August 13, 2020 and August 27, 2020, there were 70,330 new child cases reported. *See id.* As of September 4, 2020, Florida is the second highest state with cumulative child COVID-19 cases. *See id.* Of particular concern, children can carry high levels of the COVID-19 virus, while displaying relatively mild or no symptoms.⁵ It is a well-established

² Centers for Disease Control and Prevention (“CDC”), *Coronavirus Disease 2019 (COVID-19) Frequently Asked Questions* (Aug. 27, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (hereinafter referred to the “CDC COVID-19 FAQs”). The CDC is one of the major operating components of the United States Department of Health and Human Services and has offered reliable indispensable guidance in how to stop the spread of the COVID-19 disease.

³ “Rosenstock said the fact that fewer children were tested earlier in the pandemic may have fueled a ‘myth’ that children were not at risk of infection. While research suggests that children tend to have milder symptoms than adults, she said the new data attests to the fact children can still infect adults, whose symptoms can be more severe.” *See The Guardian, Surge in Covid cases among children fuels fears over US school reopenings*, <https://www.theguardian.com/world/2020/aug/14/school-reopenings-covid-19-coronavirus-us> (last visited on Sept. 4, 2020).

⁴ American Academy of Pediatrics, *Children and COVID-19: State-Level Data Report*, (Aug. 31, 2020), <https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/children-and-covid-19-state-level-data-report/>.

⁵ Yonker, Lael M., Neilan, Anne M., et. al., *Pediatric SARS-CoV-2: Clinical Presentation, Infectivity, and Immune Response*, the Journal of Pediatrics (Aug. 13, 2020), available at [https://www.jpeds.com/article/S0022-3476\(20\)31023-4/fulltext](https://www.jpeds.com/article/S0022-3476(20)31023-4/fulltext); Heald-Sargent, Taylor, Muller, William J., et. al., *Age Related Differences in Nasopharyngeal Severe Acute Respiratory Syndrome Coronavirus-2 (SARS-CoV-2) Levels in Patients with Mild to Moderate Coronavirus Disease 2019 (COVID-19)*, JAMA Pediatrics (July 30, 2020), available at <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2768952>. “Our analyses suggest children younger than 5 years with mild to moderate COVID-19 have high amounts of SARS-CoV-2 viral RNA in their nasopharynx compared with older children and adults . . . Thus, young children can potentially be important drivers of SARS-CoV-2 spread in the general population, as has been demonstrated with respiratory syncytial virus, where children with high viral loads are more likely to transmit. Behavioral habits of young children and close quarters in school and day care settings raise concern for SARS-CoV-2 amplification in this population as public health restrictions are eased.”

and accepted truth that while there is currently no cure or vaccine for COVID-19, face coverings and social distancing are proven to minimize the transmission of and exposure to COVID-19.⁶ The CDC “recommends that everyone 2 years and older wear a mask that covers their nose and mouth in public settings when around people not living in your household, particularly where other social distancing measures are difficult to maintain.” *See* CDC COVID-19 FAQs.

In an effort to control the spread of COVID-19 and protect its students, staff, and the community, the School Board and the Superintendent created the Approved Reopening Plan, based largely in part on the CDC’s guidance for reopening schools, which requires all students and staff to wear face coverings during school.⁷ Defendants agree with the CDC and acknowledge the

⁶ Florida Dep’t of Health, *How do I prevent and prepare for COVID-19?* (Aug. 21, 2020), <https://floridahealthcovid19.gov/prevention/> (listing the wearing of cloth face coverings in public and practicing social distancing as two of the best ways to prevent exposure to COVID-19); U.S. Dep’t of Labor, Occupational Safety and Health Administration, *COVID-19 Frequently Asked Questions*, <https://www.osha.gov/SLTC/covid-19/covid-19-faq.html#cloth-face-coverings> (last visited on Aug. 21, 2020) (“OSHA generally recommends that employers encourage workers to wear face coverings at work. Face coverings are intended to prevent wearers who have Coronavirus Disease 2019 (COVID-19) without knowing it . . . from spreading potentially infectious respiratory droplets to others.”); Mayo Clinic, *COVID-19: How much protection do face masks offer?*, (Aug. 20, 2020), <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-mask/art-20485449> (“[F]ace masks combined with other preventive measures, such as frequent hand-washing and social distancing, help slow the spread of the virus.”); John Hopkins Medicine, *Coronavirus Face Masks & Protection FAQs*, (Aug. 20, 2020), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-face-masks-what-you-need-to-know> (“Face masks help prevent the spread of COVID-19. Because it’s possible to have coronavirus without showing symptoms, it is best to wear a face covering even if you think you are healthy.”). *See also*, CDC, *Coronavirus Disease 2019 (COVID-19) How to Protect Yourself & Others* (July 31, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

⁷ School Board of Hillsborough County, *Hillsborough County Public Schools Reopening Plan 2020-2021* (the “Approved Reopening Plan”) (“Face coverings will be required based upon best available data and input from local health authorities, the School Board, CDC guidelines and stakeholder groups including teachers and parents. Social distancing is not always possible in school settings, therefore, students and staff will be provided with reusable masks and expected to wear them while on campus where social distancing is not possible and when exemptions do not apply. . . . Superintendent Davis collaborated with local medical authorities to guide decision-making regarding guidelines to ensure safety for our entire district. After listening to the medical community, along with concerns from parents and staff, the district will require face coverings for students and staff where social distancing is not possible. According to the CDC, face coverings have been shown to be an effective tool in slowing the spread of COVID-19 in concert with social distancing, hand washing and disinfecting.”).

importance and benefits of in-person learning.⁸ Defendants are also sensitive to the fact that parents, educators, and administrators alike are faced with difficult decisions during this unprecedented time. In the midst of a global pandemic, Defendants' primary responsibility is to reopen Hillsborough County Public Schools as safely and efficiently as possible. To do so, Defendants must take certain necessary precautions to reduce the risk of in-school transmission and prevent the underlying risk of continued community spread of COVID-19.⁹

Plaintiffs' Amended Complaint is filled with unsubstantiated allegations attacking the portion of the Approved Reopening Plan requiring students to wear face coverings at school. Plaintiffs contend that requiring face coverings is "utterly irrational" and that there is no scientific evidence whatsoever to support that children are susceptible to spreading the COVID-19 pandemic. *See generally* (Amended Compl.). Conveniently, Plaintiffs omit countless studies and scientific evidence that show that children do in fact contract COVID-19, that face coverings are an effective means of reducing COVID-19 spread, and that **"[i]f schools were to re-open fully without necessary precautions, it is likely that children will play a larger role in this pandemic."**¹⁰ Critically, the CDC states:

⁸ See CDC, *Coronavirus Disease 2019 (COVID-19) Operating schools during COVID-19: CDC's Considerations* (Aug. 20, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/schools.html> (hereinafter referred to as the "CDC's Considerations").

⁹ On August 24, 2020, the Second Judicial Circuit in and for Leon County, Florida issued an Order Granting Motion for Temporary Injunction finding that Emergency Order 2020-EO-6 entered on July 6, 2020 by Richard Corcoran, Commissioner of the Florida Dep't of Education, mandating that all school boards reopen open brick and mortar schools at least five days per week for all students, was unconstitutional. *See Florida Education Association, et. al., v. Ron DeSantis, et. al.*, Case No. 2020 CA 001450, Order Granting Motion for Temporary Injunction (Aug. 24, 2020). In issuing its Order, the Court stated that the injunction would "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 . . . Reasoned and data-driven decisions based on local conditions will minimize further community spread of COVID-19, severe illness, and possible death of children, teachers and school staff, their families, and the communicated at large." *Id.*

¹⁰ See Yonker, Lael M., Neilan, Anne M., et. al., *Pediatric SARS-CoV-2: Clinical Presentation, Infectivity, and Immune Response*, the Journal of Pediatrics (Aug. 13, 2020), available at [https://www.jpeds.com/article/S0022-3476\(20\)31023-4/fulltext](https://www.jpeds.com/article/S0022-3476(20)31023-4/fulltext) (emphasis added).

The use of cloth face coverings or masks is one of many important mitigation strategies to help prevent the spread of COVID-19 Appropriate and consistent use of cloth face coverings or masks is most important when students, teachers, and staff are indoors and when social distancing is difficult to implement or maintain Cloth face coverings are recommended as a simple barrier to help prevent respiratory droplets from traveling into the air and onto other people when the person wearing the mask coughs, sneezes, talks, or raises their voice. This is called source control.

See CDC’s Considerations (emphasis added). Defendants have the inherent authority to take necessary measures to protect the health and safety of students, especially in the midst of a global pandemic. Accordingly, Plaintiffs’ Amended Complaint fails to state a claim for any constitutional violation and must be dismissed.

BACKGROUND FACTS

1. Plaintiffs filed their Verified Emergency Complaint for Declaratory Relief and Injunctive Relief with Incorporated Motion for Temporary Restraining Order on August 14, 2020. Plaintiffs filed the Amended Complaint at issue on August 17, 2020.

2. Plaintiffs seek to enjoin the alleged “Facemask Order” issued by the Superintendent on July 7, 2020, that requires that all staff and students wear face coverings where social distancing cannot be maintained or when an approved exemption does not apply for the purpose of stopping the spread of COVID-19 and most importantly, protecting the health and safety of students, teachers, staff, and Hillsborough County residents. *See* (Amended Compl., ¶ 64).

3. Plaintiffs repeatedly referred to the statement made by the Superintendent on July 7, 2020 as the “Facemask Order” – which Defendants deny is an accurate description of the statement. The Superintendent did not issue a “Facemask Order” as alleged by Plaintiffs. Rather, he made a statement regarding the intent of mandating face coverings which was to be subsequently formalized in the School Board’s Reopening Plan which was carefully created and tailored with the input of medical experts. The Reopening Plan was approved by the School Board

(where a public meeting was held) and the Florida Department of Education on or around July 23, 2020. A true and correct copy of the Reopening Plan is attached hereto as ***Exhibit 1***.¹¹ Subsequently a public hearing, where public comments were heard, was held on Aug. 6, 2020.¹²

4. Plaintiffs' Amended Complaint sets forth a myriad of violations which allegedly entitle them to relief, including violations of the Florida Constitution; the Florida Sunshine Law, Ch. 286, Fla. Stat.; a parent's right to choose their child's medical treatments; Ch. 125, Fla. Stat., and Fla. Stat. § 119.11. *See generally* (Amended Compl.).

5. As an initial matter, Ch. 125, Fla. Stat., governing County Government, and Fla. Stat. § 119.11, governing public records requests, are inapplicable to this lawsuit. Defendants are not considered the "County" governed by Ch. 125 and Plaintiffs did not make nor were they denied a public records request.

6. Prior to filing this Motion, the Court entered its Order Denying Motion for Temporary Injunction ("Order") on August 18, 2020. The Court held that, "the allegations in the Amended Complaint do not set forth a legally sufficient basis for temporary injunctive relief." (Order, at p. 2). The Court ruled that the Amended Complaint did not demonstrate an immediate and irreparable harm if the Court did not grant a temporary injunction and the "variety of unsupported allegations" did not qualify as irreparable harm. (Order, at p. 3). Plaintiffs failed to demonstrate a public interest would be served by a temporary injunction. (Order, at p. 4).

¹¹ See Fla. R. Civ. P. 1.130, allowing a party to attach an exhibit to a motion if it is central to the allegations in the complaint and not disputed. "If an attached document negates the pleader's cause of action . . . the plain language of the document will control and may be the basis for a motion to dismiss." *Fla. Farm Bureau Gen. Ins. Co. v. Ins. Co. of N. Am.*, 763 So. 2d 429, 432 (Fla. 5th DCA 2000). Here, the Amended Complaint focuses on the face covering requirement, as described in the Reopening Plan.

¹² During this meeting, the School Board asked a panel of seven doctors whether it was safe to reopen schools in-person based on the current spread of COVID-19 in the community. In response, five of the seven doctors stated it was not safe to reopen in person at this time. One of the doctors, Dr. Douglas Holt, with the Florida Department of Health, Hillsborough County and Infectious Disease Physician, described face masks as "critical."

7. Defendants' Motion for Judicial Notice is being contemporaneously filed with the instant Motion.

LEGAL ARGUMENT

Plaintiffs' Amended Complaint cannot show a constitutional violation or a violation of any other statute it pleads in its 49-page Amended Complaint. While Plaintiffs' Amended Complaint is full of lengthy opinions and allegations, none of them provide a legal basis for bringing this lawsuit. Notably, courts throughout the state have denied injunctive relief or dismissed similar constitutional challenges to face covering requirements. *See, e.g.*, Defendants' Motion for Judicial Notice, Exs. 15-23 thereto (collecting trial court orders).

Plaintiffs fail to show a *prima facie* case and a clear legal right to any requested relief. There is no constitutional right preventing facial coverings in school or allowing individuals to expose students, teachers, and other citizens alike to a contagious and potentially deadly virus during a global pandemic. Defendants were within their rights and powers to institute the Approved Reopening Plan, which mandates face coverings. Further, as the local authorities governing the Hillsborough County School District, Defendants are in the best position to make decisions which will enable the safe reopening of schools. Accordingly, Plaintiffs' Amended Complaint is legally insufficient and should be dismissed.

I. Standard for Motion to Dismiss

A motion to dismiss should be granted where the complaint fails to state a claim upon which relief may be granted. *See* FLA. R. CIV. P. 1.140(b)(6). To state a cause of action, a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief. *See* FLA. R. CIV. P. 1.110(b). When evaluating a motion to dismiss, the court must accept the allegations as true, view the allegations in a light most favorable to the plaintiff, and decide only questions of law. *See*

Siegle v. Progressive Consumers Ins. Co., 819 So. 2d 732, 734-35 (Fla. 2002) (approving affirmance of order granting motion to dismiss). The complaint must contain ultimate facts supporting each element of a cause of action. *See Barrett v. City of Margate*, 743 So. 2d 1160, 1162 (Fla. 4th DCA 1999) (“It is insufficient to plead opinions, theories, legal conclusions or argument”). Although all reasonable inferences must be made in favor of the plaintiff, conclusory allegations are insufficient to survive a motion to dismiss. *See Stein v. BBX Capital Corp*, 241 SO. 3d 874, 876 (Fla. 4th DCA 2018) (affirming dismissal of complaint).

A cause of action cannot be based on vague and general allegations. *See Foley v. Hialeah Race Course*, 53 So. 2d 771 (Fla. 1951). Conclusory allegations fail to meet Florida’s pleading requirement because “Florida’s pleading rule forces counsel to recognize the elements of their cause of action and determine whether they have or can develop the facts necessary to support it.” *Continental Baking Co. v. Vincent*, 634 So. 2d 242, 244 (Fla. 5th DCA 1994). Although the Court must assume all facts alleged in the Amended Complaint as true, it is not bound by mere statements of opinions or conclusions unsupported by facts. *See Brandon v. Pinellas Cnty.*, 141 So. 2d 278, 279 (Fla. 2d DCA 1962).

II. The School Board and Superintendent Have the Inherent Authority to Regulate on Behalf of the Health, Safety, and Welfare of Students.

Plaintiffs’ claim that Defendants lacked the authority to issue the Approved Reopening Plan, which includes a face covering requirement, is without merit. The protection of the health, safety, and welfare of students is inherent in the role of the School Board and the Superintendent.

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 and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

(emphasis added).

To achieve a uniform, efficient, and safe school system, the Florida Constitution created school boards (Art. I, § 4) and superintendents (Art. I, § 5). The Florida Constitution grants the School Board the right to “operate, control and supervise all free public schools.” *See* Art. IX, § 4 (Fla. Const.). “In other words, the school board is vested with exclusive authority over the free public schools within its district, subject only to such infringement expressly contemplated by the Florida Constitution.” *Kunz v. Sch. Bd. of Palm Beach Cnty.*, 237 So. 3d 1026, 1028 (Fla. 4th DCA 2018) (internal citation omitted). The School Board is responsible for the “proper attention to **health, safety**, and other matters relating to the welfare of students.” Fla. Stat. § 1001.42(8)(a) (emphasis added). Similarly, the Superintendent “shall perform all tasks necessary to make sound recommendations, nominations, proposals, and reports required by law to be acted upon by the district school board.” Fla. Stat. § 1001.51.

The Superintendent has the general power to, “[a]dvice and counsel [] the district school board on all educational matters and recommend to the district school board for action such matters as should be acted upon.” Fla. Stat. § 1001.49. After considering the recommendations submitted by the Superintendent, the School Board has the general power to “[d]etermine policies and programs consistent with state law and rule deemed necessary by it for the efficient operation and general improvement of the district school system.” Fla. Stat. § 1001.41(1). The School Board also has supplemental powers to “adopt programs and policies to ensure appropriate response in

emergency situations.”¹³ Fla. Stat. § 1001.43(7). The COVID-19 pandemic constitutes an emergency. *See* Defendants’ Motion for Judicial Notice, Exs. 1 – 14 (including orders from the President of the United States, the Governor of Florida, the Hillsborough County Emergency Policy Group, and the Florida Department of Education, all addressing the public health emergency caused by the COVID-19 Pandemic).

The School Board and the Superintendent acted within their general, supplemental, and inherent powers when it created and implemented the Reopening Plan for the purpose of ensuring the health and safety of its students. Defendants are in the best position to recommend and implement policies and procedures that will keep students and staff healthy and safe. As such, the Approved Reopening Plan is valid and within the Defendants’ powers as set forth in the Florida Constitution and Florida Statute.

III. Plaintiffs’ Amended Complaint Fails to State a Claim Based on a Constitutional Violation.

Plaintiffs’ Amended Complaint fails in its entirety because Plaintiffs fail to allege any ultimate facts to support its claims for purported constitutional violations. Notwithstanding Plaintiffs’ failure to allege a constitutional violation, the Amended Complaint is riddled with vague, conclusory allegations that simply cannot survive a motion to dismiss. *See Foley* 53 So. 2d at 771.

¹³ A similar lawsuit was filed in Adams County, Illinois against the Quincy Board of Education regarding its mandate that students wear a face covering and submit to a temperate check prior to entry into school buildings. *See Quin v. Bd. Of Edu. School District, No. 172, Adams Cnty., Illinois*, Case No. 2020-MR-166 (Ill. Eighth Cir. Aug. 14, 2020). The Adams County Court granted the defendant’s motion to dismiss in part upholding the precautionary measures stating the school board was authorized to institute the order pursuant to its inherent powers but also that the school board had a “broad spectrum of implied incidental powers which are to be inferred from their general powers.” *Id.* It stated that the school board also had the powers to allow school attendance by “remote learning” through implementation of technologies which were not “imagined” during times of smallpox vaccines (in response to plaintiff’s citations). *Id.*

The United States Supreme Court has long recognized the “paramount necessity” for a community “to protect itself against an epidemic of disease which threatens the safety of its members.” *Jacobson v. Commonwealth of Mass.*, 197 U.S. 11, 25 (1905) (finding emergency order requiring vaccination against smallpox disease was constitutional). The unfettered liberties to which Plaintiffs describe simply do not exist. *See generally*, (Amended Compl.). “[T]he liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint.” *Jacobson*, 197 U.S. at 25. “Throughout our history the several States have exercised their police powers to protect the health and safety of their citizens. Because these are primarily, and historically, . . . matter[s] of local concern, the States traditionally have had great latitude under their police powers to legislate as to the protection of the lives, limbs, health, comfort, and quiet of all persons.” *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996); *State v. Eitel*, 227 So. 2d 489, 491 (Fla. 1969) (“[N]o person is an entirely isolated being; it is impossible for a person to do anything seriously or permanently hurtful to himself, without mischief reaching at least to his near connections, and often far beyond them.”); *Davis v. City of S. Bay*, 433 So. 2d 1364, 1366 (Fla. 4th DCA 1983) (“[T]here are circumstances in which a public emergency, for instance, a fire, the spread of infectious or contagious diseases or other potential public calamity, presents an exigent circumstance before which all private rights must immediately give way under the government’s police power.”). Similarly, the Florida Supreme Court has emphasized that “[t]he enactment and enforcement of necessary and appropriate health laws and regulations is a legitimate exercise of the police power which is inherent in the State and which it cannot surrender.” *Varholly v. Sweat*, 15 So. 2d 267, 269 (Fla. 1943).

Other courts have recently relied on *Jacobson* when confronted with constitutional challenges to face covering requirements and stay at home orders resulting from the COVID-19 pandemic. *See Cross Culture Christian Ctr. v. Newsom*, 445 F. Supp. 3d 758, 767 (E.D. Cal. 2020) (denying request for a preliminary restraining order alleging infringement upon the fundamental rights, finding the “State and County stay at home orders being challenged here bear a real and substantial relation to public health”); *In re Abbott*, 954 F.3d 772, 778 (5th Cir. 2020) (“The bottom line is this: when faced with a society-threatening epidemic, a state may implement emergency measures that curtail constitutional rights so long as the measures have at least some ‘real or substantial relation’ to the public health crisis and are not ‘beyond all question, a plain, palpable invasion of rights secured by the fundamental law.’”) (citing *Jacobson*, 197 U.S. at 31).

Florida courts have repeatedly held requiring individuals to wear face coverings in public locations is not a constitutional violation. *See Green v. Alachua Cnty.*, Case No. 01-2020-CA-001249 (Fla. 8th Cir. Ct. May 26, 2020) (“There is no recognized constitutional right not to wear a facial covering in public locations or to expose other citizens of the county to a contagious and potentially lethal virus during a declared pandemic emergency.”) (*See* Motion for Judicial Notice, Ex. 15); *Israel Ham, et al., v. Alachua Cnty. Bd of Cnty Comm’rs, et al.*, Case No. 1: 20-CV-111MW (N.D. Fla. Jun. 3, 2020) (denying motion for preliminary injunction) (*See* Motion for Judicial Notice, Ex. 16); *Power v. Leon Cnty*, 2020 WL 4919774, at *14 (Fla. 2nd Cir. Ct. Jul. 27, 2020) (denying injunction and finding emergency ordinance requiring face coverings in business establishments was not a constitutional violation) (*See* Motion for Judicial Notice, Ex. 17); *Machovec, et al., v. Palm Beach Cnty.*, Case No. 2020-CA-006920 (Fla. 15th Cir. Ct. Jul. 27, 2020) (denying temporary injunctive relief for plaintiffs challenging constitutionality of emergency order mandating face coverings the court stated) (*See* Motion for Judicial Notice, Ex. 18); *Leavitt v.*

Seminole Cnty., Case No. 2020-CA-001136 (Fla. 18th Cir. Ct. July 28, 2020) (granting defendant’s motion to dismiss plaintiff’s complaint challenging the constitutionality of emergency order mandating face coverings) (*See* Motion for Judicial Notice, Ex. 19); *Oakes v. Collier Cnty.*, Case No. 2:20-cv-568-FtM-38NPM (M.D. Fla. Aug. 20, 2020) (denying motion for preliminary injunction) (*See* Motion for Judicial Notice, Ex. 20); *See Carroll v. Gadsden Cnty.*, Case No. 20-542-CA (Fla. 2nd Cir. Ct. May 26, 2020) (“[C]ommissioners were asked to choose between sparing residents the miniscule inconvenience of wearing a mask and saving lives. They chose saving lives. And they did so in conformity with the Florida Constitution.”) (*See* Motion for Judicial Notice, Ex. 21); *Dolata v. City of Deland*, Case No. 2020-10900-CIDL (Fla. 7th Cir. Ct. Aug. 31, 2020) (“Even if the instant [p]laintiff had a recognized right to privacy here, which he does not, it is clear that the City’s interest in reducing the spread of COVID-19 is a compelling state interest”) (*See* Motion for Judicial Notice, Ex. 22); *Jackson v. Orange Cnty.*, Case No: 48-2020-CA-006427-O (Fla. 9th Cir. Ct. Aug. 31, 2020) (“Plaintiff is unable to show he has a recognized constitutional right not to wear a facial covering in public locations or to expose other persons to a contagious and potentially lethal virus during a declared pandemic.”) (*See* Motion for Judicial Notice, Ex. 23).

a. Plaintiffs’ Claims Fail to Survive Rational Basis Review Because They Cannot Negate Every Conceivable Basis In Support of the Approved Reopening Plan.

The rational basis test applies, rather than the more stringent strict scrutiny test, because the Approved Reopening Plan on its face does not target a suspect class and applies to all students and staff equally. *See City of Cleburne, TX v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Since *Jacobson*, the rational basis test adopted by the Florida Supreme Court requires that a “state statute must be upheld . . . if there is *any* reasonable relationship between the act and the furtherance of a valid governmental objective.” *Haire v. Fla. Dep’t of Agric. & Consumer Servs.*, 870 So. 2d

774, 782 (Fla. 2004) (internal citations omitted) (emphasis added). When considering rational basis review, courts “must remain cognizant of the legislature’s broad range of discretion in its choice of means and methods by which it will enhance the public good and welfare.” *Id.* (internal citations omitted). Here, this Court should consider the powers granted to the School Board and Superintendent to adopt policies and procedures necessary to manage its school affairs, specifically to protect the health and safety of students. *See Ferrara v. Hendry Cty. Sch. Bd.*, 362 So. 2d 371, 374 (Fla. 2d DCA 1978) (in conducting a rational basis review of the school board’s dress code, “we feel compelled to recognize and give weight to the very strong policy considerations in favor of giving local school boards the widest possible latitude in the management of school affairs. School administrators must daily make innumerable decisions which restrict student liberty.”) (citing to *Karr v. Schmidt*, 460 F.2d 609, 615 (5th Cir. 1972)).

Here, Plaintiffs fail to meet their burden under the rational basis test because they cannot “negate every conceivable basis” in support of the Approved Reopening Plan. *See Haire*, 870 So. 2d at 782. Clearly, wearing face coverings is far less burdensome than the smallpox vaccine deemed constitutional in *Jacobson*. The Approved Reopening Plan is rationally related to a legitimate government interest— preventing the spread of COVID-19 in schools and the community. The scientific evidence and importance of requiring students to wear face coverings, in addition to the potentially deadly consequence of not wearing a face covering, greatly outweigh any mere inconvenience or irritation that Plaintiffs might otherwise experience. Similarly, wearing a face covering for students, staff, and the community’s safety is a minimal inconvenience that is far outweighed by Defendants’ interest during these extraordinary times. Furthermore, attending in-person classes while wearing face coverings is an option given to parents, because children could elect to attend virtual classes if preferred.

Plaintiffs fail to meet the rational basis test because they simply cannot show that the Approved Reopening Plan does not bear at least some “real or substantial relation” to the current public health crisis caused by the COVID-19 pandemic. *See Jacobson*, 197 U.S. at 31. Accordingly, Plaintiffs’ Amended Complaint should be dismissed because Plaintiffs’ claims fail to survive rational basis review.

b. Plaintiffs Have Not Alleged Any Claims Requiring the Application of Strict Scrutiny Because There is No Suspect Class or Infringement of Any Fundamental Right.

Strict scrutiny applies when a statute or ordinance “operates to the disadvantage of a suspect class or impairs the exercise of a fundamental right.” *State v. J.P.*, 907 So. 2d 1101, 1110 (Fla. 2004). The Florida Constitution identifies certain suspect classes that cannot be deprived of any basic right which include race, religion, national origin, and physical disability. *See* Art. 1, § 2, Fla. Const. None of these suspect classes are identified in this case. “A fundamental right is one which has its source in and is explicitly guaranteed by the federal or Florida Constitution.” *J.P.*, 907 So. 2d at 1110. Plaintiffs allege constitutional violations of the fundamental rights to privacy, due process, equal protection, and the parental right to determine medical treatment for their children. As described in detail below, strict scrutiny does not apply, and Plaintiffs’ claims fail to allege any constitutional violation of a fundamental right.¹⁴

¹⁴ While strict scrutiny is not appropriate in this case, it is important to note that “[t]here is no adequate, approved, and available alternative to the emergency use of face mask for source control by the general public and for HCPs to help prevent the spread of the virus due to face mask shortages during the COVID-19 pandemic.” U.S. Food & Drug Administration (“FDA”), Emergency Use Authorization (April 24, 2020), <https://www.fda.gov/media/137121/download>.

Assuming *arguendo* the Court determines that strict scrutiny does apply, the Reopening Plan would nonetheless pass strict scrutiny given the Defendants’ compelling interest in combating and preventing the spread of the COVID-19 virus and protecting the health and safety of its students, staff, and the community; and the Reopening Plan’s goal is narrowly tailored to advance that interest.

i. Right to Privacy

While Article I, § 23 of the Florida Constitution affords privacy protections that are broader and more expansive than the federal protections, this right is not without limitation. *See City of North Miami v. Kurtz*, 653 So. 2d 1025 (1995) (finding a right to privacy does not exist as to whether an individual smokes or not because this information is something that can be uncovered in public, and is therefore not a private matter). In fact, Article I, § 23, Florida Constitution, “was not intended to provide an absolute guarantee against all governmental intrusion into the private life of an individual.” *Stall v. State*, 570 So. 2d 257, 262 (Fla. 1990) (citing *Florida Bd. of Bar Examiners re Applicant*, 443 So. 2d 71, 74 (Fla. 1983)). However, a reasonable expectation of privacy must exist before a right of privacy can attach. *See Winfield v. Div. of Pari-Mutuel Wagering, Dep’t of Bus. Reg.*, 477 So. 2d 544, 547 (Fla. 1985); *Nucci v. Target*, 162 So. 3d 146 (Fla. 4th DCA 2015) (“Before the right to privacy attaches, there must exist a legitimate expectation of privacy.”); *Picou v. Gillum*, 874 F.2d 1519 (11th Cir. 1989) (rejecting a right to privacy challenge involving the requirement to wear a motorcycle helmet and finding “[t]here is little that could be termed private in the decision whether to wear safety equipment [in public].”)

In *Green*, Judge Keim recently cited to *Picou* in his order denying the plaintiff’s Emergency Motion for Temporary Injunction involving a face covering requirement. *See* Judge Keim’s order at p. 2. In applying rational basis review to Florida’s motorcycle helmet laws, the *Picou* Court stated:

There is no broad legal or constitutional ‘right to be let alone’ by government. In the complex society in which we live, the action and nonaction of citizens are subject to countless local, state, and federal laws and regulations. Bare invocation of a right to be let alone is an appealing rhetorical device, but it seldom advances legal inquiry, as the ‘right’- to the extent it exists- has no meaning outside its application to specific activities. The Constitution does protect citizens from government interference in many areas- speech,

religion, the security of the home. But the unconstrained right asserted by appellant has no discernible bounds, and bears little resemblance to the important but limited privacy rights recognized by our highest Court.

It is true that a primary aim of the helmet law is prevention of unnecessary injury to the cyclist himself. **But the costs of this injury may be borne by the public.** A motorcyclist without a helmet is more likely to suffer serious head injury than one wearing the prescribed headgear. State and local governments provide police and ambulance services, and the injured cyclist may be hospitalized at public expense...(citation omitted), we think Florida's helmet requirement a rational exercise of its police powers.

Legislatures and not courts have the primary responsibility for balancing conflicting interests in safety and individual autonomy. Indeed, the evidence suggests that arguments asserting the importance of individual autonomy may prevail in the political process.

Picou v. Gillum, 874 F.2d at 1521-22. (emphasis in original of Judge Keim's order).

Further, it is well-settled that students are subject to greater controls and have a lessened expectation of privacy at school. *See Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls*, 536 U.S. 822, 830-31 (2002) ("A student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, **health**, and **safety**.") (emphasis added); *see also New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985) (Powell, J., concurring) (noting "the special characteristics of elementary and secondary schools that make it unnecessary to afford students the same constitutional protections granted adults and juveniles in a non-school setting"); *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, 2020 WL 4561817, at *19 (11th Cir. Aug. 7, 2020) ("Schools have a 'custodial and tutelary' power over minor students, 'permitting a degree of supervision and control that could not be exercised over free adults.'"); *Ferrara v. Hendry Cnty. Sch. Bd.*, 362 So. 2d 371, 374 (Fla. 2d DCA 1978) (finding a school board's restriction on a student's haircut was permissible under rational basis review and not a violation of his right to privacy under either the Federal or Florida constitutions); *cf Prince*

v. Massachusetts, 321 U.S. 158 (1944) (“[T]he power of the state to control the conduct of children reaches beyond the scope of its authority over adults, as is true in the case of other freedoms.”). For that reason, courts, including the Supreme Court, have long deferred to the decisions of school boards in a variety of constitutional contexts. *See Adams by & through Kasper*, 2020 WL 4561817, at *19 (“The Board’s assessment of the privacy risks its students face and the effectiveness of its policy in mitigating those risks deserves deference.”)

Therefore, Plaintiffs’ purported unfettered “right to be let alone and free from governmental intrusion” simply does not exist, especially within the school context. *See Amended Compl.*, ¶ 117. Students are routinely required to undergo physicals and vaccines to ensure the health and safety of others before they are allowed to attend classes. *See Earls*, 536 U.S. at 830-31 (“Securing order in the school environment sometimes requires that students be subjected to greater controls than those appropriate for adults.”). As such, courts are often “compelled to recognize and give weight to the very strong policy considerations in favor of giving local school boards the widest possible latitude in the management of school affairs. School administrators must daily make innumerable decisions which restrict student liberty.” *Ferrara*, 362 So. 2d at 374.

Here, Plaintiffs have no legitimate expectation of privacy in wearing face coverings at school, or in any other public location for that matter. *See Machovec*, Case No. 2020-CA-006920 (“There is no reasonable expectation of privacy as to whether one covers their nose and mouth in public places.”); *Green*, No. 01-2020-CA-001249; *Dolata v.*, Case No. 2020-10900-CIDL; *Jackson*, Case No: 48-2020-CA-006427-O. The obligation under the Approved Reopening Plan for students to wear face coverings at school is indistinguishable from Florida’s requirements for individuals to wear helmets, seatbelts, or undergo vaccinations prior to attending school. In fact, it is a critical and necessary component to not only prevent the spread of COVID-19, but to safely

and effectively reopen schools and conduct in-person classes. Plaintiffs’ right to be alone is not more important than the right of their fellow students, faculty, and staff to prevent the spread of COVID-19. *See Green*, No. 01-2020-CA-001249 (“Alachua County citizens’ right to be let alone is no more precious than the corresponding right of his fellow citizens to not become infected by that person and potentially hospitalized.”).

ii. Equal Protection

Plaintiffs fail to allege an equal protection violation under Article 1, § 2, of the Florida Constitution. Plaintiffs’ allegation that requiring students to wear face coverings at school is “utterly irrational in light of how COVID 19 operates” lacks any factual basis. *See* (Amended Compl., ¶ 109). Plaintiffs’ unsupported, conclusory argument that wearing face coverings “has no basis in science or has the potential to create more health problems for those compelled to follow the regulation,” is likewise false and has no bearing on an equal protection claim.¹⁵ *Id.*; *see also Brandon*, 141 So. 2d at 279 (“[M]ere statements of opinions or conclusions unsupported by specific facts will not suffice” in passing a motion to dismiss).

“An equal protection analysis is appropriate only if similarly situated individuals are treated differently.” *Fredman v. Fredman*, 960 So. 2d 52, 59 (Fla. 2d DCA 2007) (citing *Troy v. State*, 948 So. 2d 635, 645 (Fla. 2006)); *see Level 3 Communications, LLC v. Jacobs*, 841 So. 2d 447, 454 (Fla. 2003) (“Equal protection is not violated simply because persons are treated differently.”). As explained in detail above, rational basis is the proper review in this case because a fundamental right is not being infringed and Plaintiffs also have not identified a suspect class.

¹⁵ Florida Dep’t of Health, *supra*, n. 5. *See also*, U.S. Food & Drug Administration (“FDA”), Emergency Use Authorization (April 24, 2020), <https://www.fda.gov/media/137121/download> (“Based on the totality of scientific evidence available to FDA, it is reasonable to believe that the authorized face masks may be effective as source control to help prevent the spread of SARS-CoV-2 by infected individuals who may or may not have symptoms of COVID-19 during the COVID-19 pandemic, and that the known and potential benefits of face masks, when used in accordance with the scope of this authorization (Section II), outweigh the known and potential risks of such product.”).

Estate of McCall v. U.S., 134 So. 3d 894, 901 (Fla. 2014) (“Unless a suspect class or fundamental right protected by the Florida Constitution is implicated by the challenged provision, the rational basis test will apply to evaluate an equal protection challenge.”). As such, “the test for consideration of equal protection is whether individuals have been classified separately based on a difference which has a reasonable relationship to the applicable statute, and the classification can never be made arbitrarily without a reasonable and rational basis.” *Id.*

Here, Plaintiffs’ equal protection argument appears to hinge on the premise that students who have medical conditions exempting them from wearing a face covering are treated differently than students without medical conditions who are required to wear a face covering. *See* (Amended Compl., ¶ 109). The Approved Reopening Plan includes various exceptions to wearing face coverings for all students, such as while eating or drinking, or for students with special needs or certain medical conditions.¹⁶ These exceptions are reasonably related to the legitimate government interest in protecting the health and safety of students, particularly during a global pandemic.

Similarly, Plaintiffs’ argument that providing a virtual learning option for students creates a “separate and unequal” education is meritless. *See* (Amended Compl., ¶ 145). The Approved Reopening Plan provides students the option to attend in-person classes, with the implementation of certain necessary health and safety measures (such as wearing face coverings) or attend virtual, online classes. Students are not being denied their constitutional right to a free public education. Rather, students and their parents have the option of choosing their preferred method of education

¹⁶ *Frequently Asked Questions on the Use of Face Coverings*, https://www.sdhc.k12.fl.us/doc/2719/school-reopening-plan/about/openingplan/?utm_source=web&utm_medium=redirect&utm_campaign=reopening (last visited Aug. 25, 2020) (“The following approved exemptions apply: Persons eating or drinking; persons for whom a face covering would cause an impairment due to an existing health condition; persons observing social distancing in accordance with CDC guidelines; persons who need to communicate with someone who is hearing impaired and needs to see the person’s mouth to communicate; teachers and students when a face covering would be an impediment to specific classroom instruction (i.e. when necessary for a specific lesson); and persons participating in recess and physical education classes while maintaining social distancing.”).

during a global pandemic. Further, Plaintiffs fail to provide any evidence to support the contention that virtual learning subjects students to a “substandard education.” *See* (Amended Compl., ¶ 145). Accordingly, Plaintiffs’ equal protection claim fails because Plaintiffs cannot show that the Approved Reopening Plan does not bear a rational relationship to a legitimate state purpose—protecting students from contracting and spreading COVID-19.

iii. Due Process

Plaintiffs’ fail to allege a procedural due process claim in violation of Article 1, § 9 of the Florida Constitution. While “all litigants have a right to procedural due process, there is no uniform test to determine its application.” *Carmona v. Wal-Mart Stores, E., LP*, 81 So. 3d 461, 463 (Fla. 2d DCA 2011). Further,

The extent of procedural due process protection varies with the character of the interest and nature of the proceeding involved. There is, therefore, no single unchanging test which may be applied to determine whether the requirements of procedural due process have been met. Courts instead consider the facts of the particular case to determine whether the parties have been accorded that which the state and federal constitutions demand.

Id. at 464 (internal citations omitted).

Here, Plaintiffs were not entitled to a pre-enforcement hearing. Pursuant to Florida Statute § 286.0114(2), members of the public are generally afforded the opportunity to be heard before a board or commission as required by substantive due process. However, Florida Statute § 286.0114(3) provides that the public meeting requirement does not apply to “[a]n official act that must be taken to deal with an emergency situation affecting the public health, welfare, or safety, if compliance with the requirements would cause an unreasonable delay in the ability of the board or commission to act.” Clearly, creating a plan to reopen schools in the midst of the COVID-19 global pandemic constitutes an “emergency situation affecting the public health, safety, and

welfare,” despite Plaintiffs’ opinions otherwise. Nonetheless, the School Board and Superintendent passed the Reopening Plan in accordance with the appropriate procedures and protocols afforded to them to safely and efficiently reopen schools. The Reopening Plan was instituted in good faith for the health and safety of students and based on expert medical opinions, including the CDC’s recommendations. Additionally, the public was given an opportunity to be heard on both July 23, 2020 and Aug. 6, 2020 during the School Board’s public meetings regarding the approval and implementation of the Reopening Plan. The School Board heard the testimony and read submitted comments of countless members of the public in addition to testimony from medical experts. Accordingly, Plaintiffs substantive due process claim fails.

iv. **Parental Authority to Determine Medical Treatment for Their Minor Child**

Similar to the constitutional right to privacy, the right of parents to rear their children without unwarranted governmental interference is not without limitation, especially when considering children’s health and safety. *See Von Eiff v. Azicri*, 720 So. 2d 510, (Fla. 1998) (acknowledging parental rights are not without limitation when “it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.”); *Prince*, 321 U.S. at 170 (“Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children.”); *M.N. v. S. Baptist Hosp. of Fla., Inc.*, 648 So. 2d 769, 771 (Fla. 1st DCA 1994) (“Medical treatment may thus be rejected when the evidence is not sufficiently compelling to establish the primacy of the state’s interest, or that the child’s own welfare would be best served by such treatment.”).

Plaintiffs allege that face coverings are “medical devices” and Defendants are interfering with their right to choose the medical decisions and treatments for their minor children. *See* (Amended Compl. ¶ 8, n. 7) (allegedly citing the FDA without specific citation). Plaintiffs’ only

support for this notion is cited out of context and stands for the exact opposite proposition upon which Plaintiffs rely. The FDA has repeatedly made clear that when face coverings are worn by the public for the purpose of reducing the spread of COVID-19, the face covering is deemed source control and not a medical device since it is not “intended for a medical purpose.” *See* U.S. Food & Drug Administration (“FDA”), Emergency Use Authorization (April 24, 2020), <https://www.fda.gov/media/137121/download> (“Source control refers to the use of a facemask or cloth face covering over the mouth and nose to contain that individual’s respiratory secretions to help prevent transmission from infected individuals who may or may not have symptoms of COVID-19.”)

Likewise, here, a face covering is not “medical treatment” or a “medical device,” but rather a method of “source control, by members of the general public.” *Id.* Florida courts have recently rejected Plaintiffs’ very argument. *See Green*, Case. No. 2020-CA-001249 (“This Court additionally finds that the facial covering requirement contained in the County’s emergency order is neither a medical treatment, compelled or otherwise, nor compelled speech.”); *Machovec*, Case No. 2020-CA-006920 (rejecting the argument that “the wearing of a mask is a medical treatment or medical procedure . . . A mask is no more a ‘medical procedure’ than putting a Band-Aid on an open wound. It is also not close to being analogous to the consequential or invasive procedures at issue in other cases addressing the right to medical privacy.”); *Jackson*, Case No: 48-2020-CA-006427-O (“The court rejects the premise that a face mask is a medical device”). Accordingly, Plaintiffs’ claim fails because a face mask is neither a medical device nor medical treatment and therefore, the Approved Reopening Plan does not infringe on a parent’s right to determine the medical treatment for their child.

CONCLUSION

This Court should dismiss Plaintiffs' Amended Complaint for failure to state a claim because: (1) Plaintiffs have failed to meet their burden under the rational basis test as required to allege these claims; (2) Plaintiffs have not alleged any claims requiring strict scrutiny; and (3) Defendants had the inherent authority to implement the Approved Reopening Plan and regulate on behalf of the health, safety, and welfare of students. Implementing the face covering requirement is within the powers granted to the School Board and Superintendent, by statute. The face covering requirement was within the reopening plan approved by the State. Moreover, Plaintiffs have no constitutional right preventing facial coverings in school or allowing Plaintiffs to expose students, teachers, and other citizens to a contagious and potentially deadly virus during a global pandemic. Therefore, Plaintiffs' Amended Complaint is legally insufficient and should be dismissed.

WHEREFORE, Defendants, HILLSBOROUGH COUNTY SCHOOL BOARD, FLORIDA and SUPERINTENDENT ADDISON DAVIS, respectfully request this Court dismiss Plaintiffs, KEVIN LEVONAS and ANGELINA AUCELLO; MATT and PRISCILLA POAGE; JUSTIN and GRACE WARNIMENT; ELIZABETH HAGAN; MIKE MILLER; and ROBERT and EVELYN GRIFFITH's Amended Complaint and for any other relief deemed just and proper.

Dated: September 8, 2020

Respectfully submitted,

/s/ Jason L. Margolin

Jason L. Margolin, Esquire

Florida Bar Number: 69881

Primary Email: jason.margolin@akerman.com

Secondary Email: judy.mcarthur@akerman.com

Mallorie R. Bonti, Esquire

Florida Bar Number: 1007973

Primary Email: mallorie.bonti@akerman.com

Secondary Email: nicole.emmett@akerman.com

Melissa Torres, Esquire
Florida Bar No. 1002646
Primary: melissa.torres@akerman.com
Secondary: caren.collier@akerman.com
Akerman LLP
401 E. Jackson Street, Suite 1700
Tampa, Florida 33602
Phone: (813) 223-7333
Fax: (813) 223-2837
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2020, I served a true and correct copy of this notice
via email to Patrick Leduc, Esquire, email: Patrick.leduc@ymail.com.

/s/ Jason L. Margolin
Attorney



FLORIDA DEPARTMENT OF
EDUCATION
fldoe.org



2020-21 Florida's Optional Innovative Reopening Plan

[Hillsborough County]

Due: July 31, 2020

EXHIBIT 1

Submit to the following email address: 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. 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: _____

Hillsborough County Public Schools will offer a five day per week onsite option to students in the Fall. Additionally, the District will allow parents the flexibility to select an eLearning option which provides for live, synchronous instruction that is directly aligned with the curriculum and pacing of face-to-face instruction, as well as the asynchronous option of Hillsborough Virtual K-12 option.

Fact to Face Instruction

Hillsborough will be offering in-person instruction five days a week in the traditional instructional delivery model at each of District's brick and mortar sites. This option will include the following:

- District adopted curriculum with lessons developed and taught by classroom teachers
- Students will remain enrolled in their 2020-2021 assigned school
- Traditional, in-person, face-to-face instruction for grades PK-12, following the regular student schedule and student calendar and bell times
- Students will physically come to their school for their learning
- Students will physically see and interact with their teacher(s) and classmates and follow their class/course schedule each day
- Assignments, activities, and classroom-based assessments will be developed and conducted by their teachers
- ESE, ESOL, and Gifted services will occur as outlined in student-specific plans

2020-21 Florida's Optional Innovative Reopening Plan

- Student Services Staff/Mental Health Professionals that includes school counselors, school health services professionals, school psychologists, and school social workers will provide meet students' academic, physical, and social-emotional needs.
- All students will be expected to complete and submit assignments as determined by the assigned teacher
- All students will follow the assessment calendar and participate in all local and state assessments
- Collaborative activities may look different or be lessened to ensure the safety and wellbeing of the school community.
- Classroom spaces will be arranged to maximize social distancing and minimize any shared items.
- Lunch schedules will be modified to maximize social distancing
- Large group gatherings will be eliminated or reduced
- Parent meetings and/or conferences will be scheduled to occur virtually, until it is deemed appropriate to have larger number of individuals on campus
- Teachers and instructional support staff report each day to lead and support instruction in their assigned classrooms
- Teachers develop and implement daily lesson plans for grade-level, standards-based instruction for students
- Teachers and instructional support staff differentiate and adjust instruction to meet the individual needs for student learning
- Teachers provide student make-up work, flexibility and support if they are out of school for any reason

eLearning Instruction

Hillsborough will be offering instruction five days a week an eLearning instructional delivery model. This option will include the following:

- eLearning students will maintain their enrollment status at their brick and mortar schools
- eLearning students will attend school online during regular school hours and follow a standard school schedule.
- Teachers will teach "live" each day with students daily utilizing web conferencing technology
- Teacher-designed lessons are delivered through Canvas
- Students are asked to commit to the eLearning model for the first semester. Students may return to their school campuses second semester if they so choose. If a student is not demonstrating adequate progress in the eLearning delivery model, they will be provided the opportunity to transition to the traditional model immediately. Parents that request to transition from eLearning to traditional models prior to the end of the semester will work their school to devise a plan based on factors such as class size, transportation, etc.
- Wrap-around support services provided for students (e.g. Counseling Services, Therapies, and Mental Health) on campus or remotely as appropriate
- eLearning is not an option for Voluntary Prekindergarten (VPK) Program and Head Start/Early Head Start Programs
- Electronic devices will be available for check out at the school site, if needed
- eLearning courses will be designed to ensure rigor matches the traditional classroom setting
- Standards have been prioritized in the scope and sequence of instruction to support students as they enter the next grade, course level
- High-quality curriculum and learning experiences are being designed that can be implemented in both the traditional and eLearning model
- The exact course offerings by school will be solidified by the student's school
- Dual Enrollment courses will be available through the Traditional and eLearning settings as well through Hillsborough Community College (HCC)
- Our district will follow the procedures outlined by Hillsborough Community College (HCC) including the use of a Canvas course in each DE course. HCC has determined that courses taken at HCC will be virtual for the 1st semester
- Each course is aligned to Florida State Standards and the scope and sequence has been adjusted and developed to support the prioritization of essential standards and to support the acceleration of potential unfinished learning from previous grades standards
- All assignments, activities and classroom-based assessments will be developed and facilitated by assigned by teacher
- All students will be expected to complete and submit assignments as determined by the assigned teacher
- Code of Student Conduct and all technology expectations remain in effect
- All students will follow the assessment calendar and participate in all local and state assessments.

2020-21 Florida's Optional Innovative Reopening Plan

- Each morning, students are expected to be present and engage in virtual instruction each day within the designated schedule
- All students will be expected to adhere to daily attendance guidelines, log in and attend class during the designated times
- Students will access their curriculum and assignments via Canvas Learning Management System
 - Students will utilize Zoom for viewing live-lessons, meetings, and small group instruction
- Parent meetings and/or conferences will be scheduled to occur virtually, until it is deemed appropriate to have larger numbers of individuals on campus
- Students who need a device will be issued one to engage in digital learning
- Students will also be issued any associated materials such as textbooks, art supplies, musical instruments, and other necessary materials where possible
- All teachers have access to professional learning to prepare them for the 2020-2021 school year
- Growing with Canvas Course 2.0 (self-paced eLearning course) will be offered during the summer, preplanning week, and beyond for instructional staff to enhance knowledge of Canvas tools and applications
- Summer professional development will be offered virtually with session facilitators focusing on important teaching and learning topics related to the 20-21 instructional models: blended learning, synchronous learning, Achieve 3000, iReady, SIPPS, digital tools and platforms, etc.
- New Teacher Induction will be provided virtually and will be provide onboarding and content supports
- All professional development will be structured, organized, and maintained to provided easy access to relevant PD, resources, and tools related to preplanning PD, and other relevant professional development offered throughout the year
- Guidance and resources will be shared with administrators for them to assist teachers in course development
- Training will be available during pre-planning week for elective or specialized area teachers to work through course development
- During pre-planning week, District office hours and support teams will be available to teachers who are designing their own courses for unplanned check-ins and scheduled appointments
- Depending on the model of delivery (traditional or eLearning), each teacher will have the ability to adapt and adjust the core resources to meet the setting and needs of their students
- Teachers will be expected to provide “live” instruction via web conferencing throughout the school day
- Student Services Staff may be accessed via the following platforms: Video conferencing (Zoom/TEAMS,etc.) telephonically or through email. .
- Telehealth services can be provided via a virtual platform with a two-way interactive communication using audio and video between a student and the mental health professional.

Hillsborough Virtual K-12 Asynchronous Instruction

Hillsborough will be offering virtual instruction for student who choose to enroll in Hillsborough Virtual K-12. This option will include the following:

- HVK12 is a school choice option in which students learn in a digital space using a web-based curriculum with highly qualified teachers from Hillsborough County
- HVK12 students will withdraw from their brick and mortar school and enroll full time in the virtual program
- Students can re-enroll at their brick and mortar school in the second semester if they so choose.
- HVK12 students will have flexibility when they complete their work and are not tied to a specific bell schedule
- HVK12 students follow the same school calendar as brick and mortar sites
- HVK12 is a “flipped classroom” environment in which students have access to the entire curriculum up front and are given a weekly set of assignments
- Students will have access to the content and curriculum 24/7
- Teachers will offer one “live” session per week with students utilizing web conferencing technology
- Teacher-designed lessons are delivered through Canvas for K-5 and through FLVS for 6-12

2020-21 Florida's Optional Innovative Reopening Plan

- Wrap-around support services provided for students (e.g. Counseling Services, Therapies, and Mental Health) remotely as appropriate
- All students attending HVK12 will have access to many accommodations that naturally occur in the virtual setting. In addition, HVK12 may be able to provide additional accommodations and services per a student's IEP or Section 504 Plan if the accommodation(s) is/are applicable to the online educational environment. Please note that some accommodations and services, including instruction on access points, may not be possible to implement in the HVK12 online educational setting
- HVK12 is not an option for Voluntary Prekindergarten (VPK) Program, Head Start/Early Head Start Programs, and PreK ESE
- Electronic devices will be available for check out at our site, if needed for students that qualify for free and reduced lunch
- HVK12 courses will be designed to ensure rigor matches the traditional classroom setting
- Standards have been prioritized in the scope and sequence of instruction to support students as they enter the next grade, course level
- Dual Enrollment courses will be available through HVK12 in conjunction with Hillsborough Community College (HCC)
- Our district will follow the procedures outlined by Hillsborough Community College (HCC) including the use of a Canvas course in each DE course. HCC has determined that courses taken at HCC will be virtual for the 1st semester
- Each course is aligned to Florida State Standards and the scope and sequence has been adjusted and developed to support the prioritization of essential standards and to support the acceleration of potential unfinished learning from previous grades standards
- All assignments, activities and classroom-based assessments will be developed and/or facilitated by assigned teacher(s)
- All students will be expected to complete and submit assignments as determined by the assigned teacher(s) electronically on a weekly basis
- Code of Student Conduct and all technology expectations remain in effect
- All students will follow the assessment calendar and participate in all local and state assessments in person. Students will report to D.W. Waters for testing
- Students are expected to complete the work at their own pace throughout the week and submit all required assignments by the end of the week
- Students will access their curriculum and assignments via Canvas Learning Management System for K-5th grade and via FLVS for 6th-12th grade.
- Students will utilize Zoom for viewing live-lessons, meetings, and small group instruction
- Parent meetings and/or conferences will be scheduled to occur virtually, until it is deemed appropriate to have larger numbers of individuals on a campus
- Students in K-5 will be issued consumables for math, science, social studies and will have access to all other content and curriculum electronically 24/7
- Students in 6-12 will have access to all content and curriculum electronically 24/7
- All teachers have access to professional learning to prepare them for the 2020-2021 school year
- Growing with Canvas Course 2.0 (self-paced eLearning course) will be offered during the summer, preplanning week, and beyond for instructional staff to enhance knowledge of Canvas tools and applications for our K-5 teachers and an FLVS professional development for our 6-12 teachers
- Summer professional development will be offered virtually with session facilitators focusing on important teaching and learning topics related to the 20-21 instructional models: blended learning, synchronous learning, Achieve 3000, iReady, digital tools and platforms, etc.
- All professional development will be structured, organized, and maintained to provided easy access to relevant PD, resources, and tools related to preplanning PD, and other relevant professional development offered throughout the year
- Each teacher will have the ability to adapt and adjust the core resources to meet the setting and needs of their students
- Teachers will be expected to provide one "live" lesson via web conferencing throughout the week

2020-21 Florida's Optional Innovative Reopening Plan

- Teachers will be expected to respond to students' and families' communication within 24 hours and provide feedback on assignments with 48 hours.
- HVS has Student Services Staff available to assist with meeting the academic, emotional and behavioral needs of the student.

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.

2020-21 Florida's Optional Innovative Reopening Plan

☒ **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.

All Hillsborough County Public Schools will reopen on August 24, 2020 and end on May 28, 2020. All schools will be open five days a week as required in Assurance 1. All schools will operate as normal utilizing the following schedules:

- Elementary Schools: The standard elementary bell schedule will remain as it was for the 2019 – 2020 academic year, with start and end times of 7:40 and 1:55, respectively.
- Middle Schools: The standard middle school bell schedule with start and end times of 9:35 and 4:30, respectively.
- High Schools: The standard high school bell schedule with start and end times of 8:30 and 3:35, respectively.

Students enrolling in the District's eLearning option for instruction will follow their assigned school's bell schedule. They will follow the class schedule of their assigned teacher(s), with eLearning instruction that is directly aligned with the teachers' face-to-face, daily instruction, thereby enabling them to work at a prescribed pace with their peers. Classroom hours and office hours will be specified on a daily schedule.

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.

All available resources will be utilized and strategically maximized to provide a high-quality education for all students with the goal of bridging the achievement gap for our most vulnerable population of students.

Hillsborough County Public School's reopening guiding principles will include; ensuring that the safety of our students, faculty, and community is our highest priority, expanding our commitment to educational equity, ensuring that all learners have access high-quality instruction through various delivery Models and supporting the personalization of learning for all students by providing parental choice.

Students from low-income families will receive supplemental and expanded services and support as aligned with their Title I and School-wide Improvement Plans, utilizing Title I Part A funds for Economically Disadvantaged Students as well as UniSIG school improvement and TSSSA funds as available and based on the school's comprehensive needs assessment. These services and supports may include:

- supplemental instructional staff to provide classroom interventions, especially focused in areas of reading and mathematics, to provide students with extra opportunities to learn the standards and attain proficiency,
- supplemental staff to provide support to teachers through coaching, co-teaching and modeling lessons, to provide teachers with strategies to become even more effective,
- multi-tiered systems of support using response to intervention resource teachers to address the amplified loss due to Covid-19 and the unique circumstances caused by the disruption of face to face learning
- supplemental socio-emotional support through additional social workers, school counselors, and school psychologists to provide wrap around mental health services,
- expanded learning opportunities for students beyond the school day/year,
- collaborative planning and professional learning opportunities for instructional staff,
- instructional supplies and technology to provide resources that will enhance the classroom instruction,

2020-21 Florida's Optional Innovative Reopening Plan

- translation of materials, as feasible, to remove language barriers in communicating and engaging families and community,
- parent and family engagement opportunities such as annual Title I meeting, parent-teacher conferences, GED classes, English classes and other trainings and meetings to maximize the power of the home to school connection and partnership in educating students.

The Department of Student Services provides prescriptive, ongoing support designed to meet the evolving needs of students.

- Student Services Staff will provide counseling services (individual and small group), Social and Emotional Learning supports/resources, academic planning and support, career and postsecondary planning, assessment and evaluation, monitoring of student attendance, connecting families with community resources.

Students of migrant workers will continue to receive supplemental services aligned with the state's Service Delivery Plan and based on activities approved within the project application. Whether in person or in an alternative format, migrant students will receive supplemental services to ensure they are successful with learning. Our focus will continue to be the success of All migrant students, with careful attention to those migrant students who have a Priority for Service designation and are most at risk. Migrant advocates and recruiters will be available to assist in the smooth transition into the 2020-2021 school year by communicating with migrant parents and students as well as home/school liaisons.

Services may include:

- identification and recruitment via face-to-face interview or phone interview, with parents, to determine eligibility for the program and develop a comprehensive needs assessment and identify greatest areas of need for the children
- advocacy for migrant students enrolled in the schools (both remotely or brick or mortar). This advocacy may include focusing on the needs of the students and ensuring they are receiving the support they need to be successful based on other available programs
- tutoring in the areas of reading and math for groups of students based on need and when no other programs are available
- parent engagement to help parents connect with the school such as assistance with school enrollment, interpretation during parent-teacher conferences, graduation requirement trainings, reading trainings, math trainings and school readiness trainings
- high school migrant advocates will collaborate with school guidance counselors to ensure students are enrolled in appropriate courses and accelerated options for migrant students. In addition, migrant advocates will ensure students are setting rigorous goals so they can graduate from high school
- migrant staff will work with PreK students not enrolled in a school setting to provide readiness lessons focused on preparing them to start Kindergarten. In addition, the migrant school-based VPK classroom will focus on providing 20 migrant identified students the necessary skills to prepare them for Kindergarten.
- connect families to available providers for immunization, health and nutrition services

Students identified as homeless will receive services aligned with The McKinney-Vento Acts Education for Homeless Children and Youth (EHCY). HCPS will provide students with school access and stability in order to assure equitable and quality instruction. The HELP: Student's in Transition Team will continue to support the identification of homeless children and youth. In addition, HELP team will continue to work with families and schools to provide resources and tools to ensure the attendance and academic success of students. These services and supports may include:

- communicating with parents of homeless children through phone calls, letters, face to face meetings, home visits, as well as through online platforms such as Microsoft TEAMS, Google Voice, or Zoom regarding school registration, attendance, and academic success. Every student identified during the 2019-2020 school year will be contacted by phone, email, and U.S. mail to ensure registration for the 2020-2021 school year.
- engaging school staff, community partners and families in quality conversations about specific student identification, attendance and academic support needs. The HELP Team will collaborate with each school based social worker to assess the needs of students and families.
- removing barriers that may interfere with identification and enrollment. A web-based referral system will be utilized for school based social workers and community partners to request specific services from the HELP Team including transportation.
- collaboration with key stakeholders at school sites to problem solve and develop a school-wide plan of action that addresses identification and enrollment issues for homeless students and remove any barriers to these students' enrollment, including but not limited to remaining at the school of origin.

2020-21 Florida's Optional Innovative Reopening Plan

- monitoring homeless students' academic progress, as well as collaboration with school staff, district level partners, and community agency staff regarding services to support academic achievement. The HELP: Students in Transition counselors will work directly with homeless high school students at school sites and through virtual platforms. The counselors will provide post-secondary planning support and make linkages to school resources critical to academic success. The HELP: Students in Transition team will continue contracting with a private tutoring company to provide services in person and virtually to students who are identified through the MTSS process as needing additional interventions to achieve academic success.
- supporting student(s) needs pertaining to receiving free lunch, course materials, lockers, PE uniforms etc., ensuring that such is not a barrier to achieving academic success.
- training on identification and attendance procedures to district and school staff, as well as community agencies through face to face sessions and virtual platforms.

Students identified as living in a foster care/group home will receive services through the Fostering Education Initiative team of Hillsborough County Public Schools (HCPS) in collaboration with Eckerd Connects, the lead child welfare agency. The HCPS Fostering Education Team which is composed of school social work coordinator, three school counselors, two school social workers, and Eckerd Connects education specialist will continue to partner with families and schools to provide resources and tools to ensure the academic success of foster care students in a brick and mortar school setting and virtual learning. These services and supports may include:

- enrolling students in school immediately, even if the child is unable to produce records normally required for enrollment. If a student does not have required documentation for student enrollment, the student(s) will be provided a temporary exemption for proof of age, immunizations, and health examinations. Enrollment will occur virtually if needed.
- holding Every Student Succeeds Act (ESSA) staffings virtually for every student changing placements and pending school transfer to discuss best interest as it pertains to enrollment and other student concerns. Vested stakeholders, including instructional and administrative staff of the school of origin will be invited to attend the staffing.
- communicating with foster and group home parent(s)/guardians of foster care students through phone calls, letters, face to face meetings, home visits, as well as through online platforms such as Microsoft TEAMS, Google Voice, or Zoom regarding school registration, attendance, and academic success.
- engaging school staff, community partners, and foster and group home parent(s)/guardians regularly in quality conversations to address attendance, behavior, mental health, academics, and other identified needs.
- working directly with foster care elementary, middle, and high school students at school sites and through virtual platforms. The fostering education team school counselors and school social workers will work in collaboration with Eckerd Connects to provide services to identified students needing additional support to achieve academic success. The school counselors will provide post-secondary planning support to high school students and make linkages to school resources critical to academic success.
- collaborating with key stakeholders at school sites to problem solve, develop a school-wide plan of action to address any presenting issues for foster care students, and remove any barriers that may interfere with academic success, including but not limited to school of origin transportation.
- supporting student needs pertaining to receiving free lunch, course materials, lockers, PE uniforms etc., ensuring that such is not a barrier to achieving academic success.
- training on the phenomenon of foster care to district and school staff, as well as community partners through face to face sessions and virtual platforms.

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.

The District plan for Progress Monitoring details expectations for schools to gather instructional data and continue monitoring student progress at specific points throughout the school year. A combination of existing progress monitoring assessment tools will be used to measure performance of students in various grade levels, content areas, and subgroups as specified by Every Student Succeeds Act (ESSA). All tools offer the reporting of results at the level of instructional standards and/or learning concept, allowing identification of content-specific instructional gaps for individual students. For students instructed through access points, additional or alternative assessments may be utilized including diagnostic assessments and curriculum-based measures. Student-matched progress monitoring data from mid- and/or end-of-year administrations during the 2019-20 school year will serve as a point of comparison to determine learning gaps experienced during the disruption in educational services.

Assessments administered 3 times a year:

- K-5 Reading: iReady Reading; Achieve 3000
- K-5 Math: iReady Math
- 6-10 Reading: Achieve 3000

Tests will be administered 3 times a year to identify areas of weakness and growth toward grade-level standards. Schools will be provided actionable data by student, by standard and by content to make informed decisions regarding proper student placement. Baseline/Midyear assessments in the following courses will be administered:

- Algebra,
- Geometry,
- US History,
- Civics,
- Grades 6, 7, 8 Math,
- Grades 5 and 8 Science

iReady Instruction will be monitored in between diagnostics administrations to determine adequate practice and performance on appropriate standards, typical growth between testing points will be addressed for best instructional fit. Students in grades 3-10 will take Achieve 3000 Reading and complete the level sets 3 times a year. After completing a level set, students will be expected to complete a minimum of 4 articles (recommended 8 articles) with a proficiency score of 75% or greater.

Student iReady Instruction and Achieve 3000 proficiency metrics will be continually monitored by classroom teachers and school administration. Students identified as struggling will be counseled by teachers and staff to determine if the program or mode of instruction is the best fit for the student. If a student is showing major learning loss via eLearning, the teacher will alert guidance and school administration to intervene during the learning process to ensure the best instructional fit for the student.

To provide a true understanding of loss due to Spring 2020 school closure, in conjunction with the baseline measures, an analysis will be conducted looking at Fall 2018, Fall 2019 and Fall 2020 iReady differences in Reading and Math across grades K-5. Further, second semester exams in middle school language arts and math, as well as, high school English 1 and 2, will be given to students who were expected to test in May of 2020. Semester exam data will also be compared to spring 2018 and spring 2019 exam scores. The data across content and grade levels will be standardized and converted to highlight if there is a significant loss across any grade-level content.

These scores will be shared with teachers and staff to use along with the baseline outcomes to provide a richer and more accurate picture of instructional gaps for incoming students regarding prior grade-level standards and how moving toward the next grade-level standards may be impacted.

2020-21 Florida's Optional Innovative Reopening Plan

Students enrolled in the innovative instructional delivery model will participate in all progress monitoring assessments. eLearning students will be provided a controlled testing environment and the assessments will be administered online with a test administrator who will monitor via web conferencing technology with reduced student to test proctor ratios.

Student Services staff will problem-solve student's mental health needs to utilizing several evidence-based social, emotional, and behavior management frameworks and intervention programs. Programs are reviewed through the lens of the MTSS process for students at each tier level.

School teams will meet regularly to discuss students using a multi-tiered system of support and refer them to the school's Student Services Staff when students are experiencing or exhibiting behaviors that suggest Depression, Anxiety, Self-Harm, Threat to Others, and Suicidal Ideation.

Intervention and Tiered Support

Teachers will provide daily whole group instruction within the 90-minute block for all students, including phonological awareness, phonemic awareness, phonics, decoding, vocabulary and comprehension, as appropriate. In addition, teachers will provide differentiated instruction provided in small group within the classroom. While students are in small groups, other students may participate in enrichment centers or independent work. Progress monitoring for students receiving Tier I support is ongoing and students are assessed three times annually using i-Ready.

Teachers provide differentiated instruction in teacher-led small groups based on student performance on identified focus standards/skills, while the remaining students will be engaged in differentiated learning center rotations. Within small groups, the teachers will provide instruction to address student deficiencies through priority standards, reteach standards, and foundational standards/skills. For students on or above grade level, instruction will focus on current standards and providing enrichment opportunities. Progress monitoring for students receiving Tier II support is ongoing and the analysis of student performance data occurs every 6-8 weeks.

Students are homogeneously pulled for intensive support to target the students' skill deficits. Students who do not demonstrate proficiency in foundational skills will receive instruction on explicit and systematic reading strategies to develop phonemic awareness, phonics, fluency, vocabulary, language acquisition, and comprehension, with more extensive opportunities for guided practice, error correction, and feedback. Progress monitoring for students receiving Tier III support is ongoing and the analysis of student performance data occurs monthly.

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.

In alignment with all Federal, State and District guidelines regarding safety, health and equitable educational opportunities and providing a free appropriate public education in alignment with individual students Individual Educational Plans (IEPs), the Hillsborough County Public Schools Department of Exceptional Student Education is committed to addressing the individual needs of students with disabilities (SWD) through the provision of special education and supports. ESE teachers are provided with trainings, tools and resources to support IEP teams in determining the needs of the learner and the appropriate educational plan to support their progress whether they are receiving instruction in person or through a distance learning option.

Communication and collaboration with parents is critical to the success of students. ESE teachers, specialists and other school staff will utilize phone calls and virtual conferences to communicate with students and families about student progress, accommodations and required supports. Parents are an important member of the IEP team. To allow for the full participation for parents and students, IEP teams including all appropriate IEP team members may meet virtually utilizing Zoom or telephonically utilizing conference calls to conduct annual reviews, revisions and eligibility staffings. In person IEP meetings may also occur following CDC, state, and local guidance with respect to social distancing.

For students with IEPs attending brick and mortar, specially designed instruction and related services will be provided as documented in the student's IEP. Additional precautions will be taken to minimize exposure for students and staff. ESE Teachers/therapists/paras who serve multiple students, classes and schools will be scheduled to minimize exposure to

2020-21 Florida's Optional Innovative Reopening Plan

students/staff. A combination of virtual lessons and in-person lessons will be used to reduce the number of students and staff exposed each day. This blended model of instruction that incorporates various forms of virtual instruction, as appropriate, will be maximized. This can allow a therapist to provide therapies in multiple classrooms and schools while decreasing exposure for both the student and staff members. For students whom virtual lesson delivery is not appropriate, the ESE teacher or therapist will provide services inside the classroom or pull the student to a resource room following required sanitization procedures between students.

Based upon the developmental needs or the impact of their disabilities, students may require additional supports and specialized instruction to address safety protocols.

Personal Protective Equipment – Staff may wear a mask and face shield in cases where students are unable to wear a mask/face covering due to the nature of their disabilities. Therapists, teachers and other staff working with students who are Deaf/Hard of Hearing, will need to wear a shield and not a mask to ensure proper communication. Shields will also be used by Speech and Language Therapists when providing speech therapy.

Student Instructional Components - Social narratives, a tool for teaching a skill that presents information in an understandable and repeatable way, and visuals will be provided to staff upon return to school and will be included in instruction. These social narratives will be focused on developing an understanding of social distancing and safety protocols. Visuals will be provided for lining up, washing hands, and wearing a mask/face covering. These routines will be practiced throughout the school day.

Equipment and Material Cleaning - Where possible, students will have individual sensory items and classroom tools (e.g. pencils, crayons, etc.) These items should be in separate containers. If items or equipment must be shared, cleaning of equipment must occur between students. Time for cleaning must be planned for between activities.

Sensory/Cool Down/Therapy Spaces - Special care will be taken to ensure that sensory/cool down/therapy spaces and equipment is used in a way to minimize risk. Ball pits and tunnels will be removed as they cannot be cleaned between students. All cloth items will be removed. If more than one student is in the room, students must be socially distanced. If shared, equipment including standers and other positioning devices must be cleaned between students following the proper cleaning protocols.

For families choosing eLearning, the IEP team will meet to ensure that the district's online program is individualized for each student in the eLearning environment. IEP meetings may be held to review services, discuss implementation in the virtual setting, and consider accommodations in eLearning. During eLearning, special education and related services as identified in the IEP may be provided in a variety of ways including the use of Internet-based or virtual lessons and/or virtual therapies, instructional support materials, telephone calls to support/consult with students and families, video lessons or tutorials, as well as other available distance-based learning approaches. Based on the student's IEP and utilizing evidence-based practices, services may be delivered whole group, small group, and/ or individually to provide skill-based lessons, remediation, and intervention in academics and social skills. Students will be provided support in collaboration with the general education teacher. Materials will be accessed through Canvas Learning Management System. Services and Therapy services (i.e. Speech/Language Therapy, Occupational and Physical Therapy, Deaf and Hard of Hearing Services, Vision Services, Mental Health services etc.) will be provided via a virtual platform with a two-way interactive communication using audio and video between a student and the therapist.

Students will have access to accommodations during distance learning. For example, interpreting services can be provided in the virtual learning environment. The following list includes some examples of the accessibility tools provided in the virtual learning environment:

- Bookshare
- Learning Ally
- Office 365
- Refreshable Braille
- I-Ready
- Epic.com
- Storyline Online
- NVDA Software

2020-21 Florida's Optional Innovative Reopening Plan

- Zoom Text Software
- Microsoft Accessibility Tools
- User Narrator
- Closed Captioning

For families choosing HV K-12, IEPs must be reviewed to determine if HV K-12 is the least restrictive environment. The application process for Hillsborough Virtual K-12 includes a consultation with the family and review of the IEP to determine if the school can provide the Least Restrictive Environment for the student.

Determination of ESE services and supports will be based on individual student needs, progress, and data. ESE services and therapies may be provided virtually to the student at home and/or through individual or group assignments. ESE therapies will be provided via a virtual platform with a two-way interactive communication using audio and video between a student and the therapist.

Many accommodations are available in the fully virtual environment. Additional accommodations may be supported, but are largely provided by the student/family. Some services and accommodations may be challenging to provide in this independently, self-paced, fully virtual model.

Pre-K ESE Distance Option: In this parental choice option, teachers will be implementing specially designed instruction in accordance with the IEP goals and objectives via a virtual platform. Materials will be utilized from multiple sources and will incorporate evidence-based teaching strategies. All related services (i.e. Speech/Language Therapy, Occupational and Physical Therapy, Deaf and Hard of Hearing Services, Vision Services, etc.) will be delivered to the student via a virtual platform.

HCPS will provide training, resources and tools to support IEP teams in determining the needed services, including compensatory services for SWD. Actions taken to ensure students' needs will be addressed include the review of baseline data, assessment to determine present level and learning gaps, review of progress toward IEP goals and objectives, determining the need for additional supports or services to remediate gaps, and the delivery of services and supports through extended learning opportunities as necessary.

IEP teams with the support and guidance of the HCPS ESE Department will:

- Review all distance learning plans and individual student progress
- Prioritize review/revision meetings for:
 - Medically fragile or immune compromised students
 - Students who were not able to access distance learning
 - Students whose rate of progress showed regression
- Assess all students' current levels of academic achievement and functional performance
- Compare rate of progress/learning gaps to address tiered intervention supports
- Review and revise goals/objectives and/or service delivery as appropriate based on current levels of performance in collaboration with the parent and IEP team.
- Monitor student progress through 1st semester to determine any additional needs as students return to schools including academic and social/emotional needs
- Utilize additional or alternative diagnostic measures and curriculum-based measures for students instructed through Access Points.
- Provide extended learning opportunities throughout the school year to address significant learning gaps
- Schedule and hold all meetings and complete all evaluations that were postponed due to requirements of social distancing and school closures and/or parent request for in person meetings
- Provide ongoing communication and collaboration with parents
- Hold IEP team meetings, including parents and all appropriate IEP team members to conduct annual reviews, revisions and eligibility staffing, virtually utilizing Zoom or telephonically utilizing conference calls or the IEP team may meet in person following CDC guidelines

IEP Team decision guidance:

2020-21 Florida's Optional Innovative Reopening Plan

For students with IEPs, gather current data on the students IEP goals and objective.

Considerations:

- 3rd quarter progress report/insert
- i-Ready Data Prior to March 16th
- Data on IEP goals and objectives
- Level of support needed as documents on the Access Grading Rubric as it relates the support the student needs to access curriculum
- Curriculum based assessment tools as they relate to IEP goals and objectives

Student Services Staff will be available to assist with meeting the academic, emotional and behavioral needs of student with disabilities by via a virtual platform with a two-way interactive communication using audio and video between a student and the mental health professional for e-Learning.

For students with IEPs gather current data that is comparable to baseline data. Compare the information and consider whether there has been any regression.

Considerations:

- Will there be a significant amount of time and effort beyond that required by non-disabled peers to assist the student in regaining previously learned critical life skills?
- Has the student experienced significant regression more pronounced than experience by non-disabled peers?
- Is the student failing to achieve instructional goals and short-term objectives on his IEP due to an interruption in instruction?
- Will the student need Extended School Year Services to address the regression that occurred over the pandemic?
- How much support will they need to regain skills that were lost? Consider intensity, duration and location.

If student regression warrants services and support through, Extended School Year Services, the IEP team will convene to revise the IEP.

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.

Hillsborough County is committed to continuing to identify and serve English Language Learners. Whether in-person or an alternative format, ESOL strategies will continue to be implemented by instructional and support staff to address the academic and language needs of ELL students. In addition, ESOL teams will continue to partner with families and schools to provide resources and tools to ensure the academic success of ELL students.

Schools will establish a line of communication with students and their families to regularly communicate about assignments, curriculum, or other critical updates, and to ensure their needs are being met. Translation technology and/or interpretation services for families will be in place. The District will assess the accessibility needs of learning platforms and resources for ELL parents and students (language, hardware, internet access, etc.), and provide necessary guidance, instructions, and support to students and their families in their home language as feasible.

ELL students will be provided daily opportunities to speak and be formatively assessed on a regular basis throughout the eLearning curriculum. These opportunities may be provided over the phone with the educator, remote interactions with classmates, or other means. Parents will be engaged to ensure their children read, speak, write, and listen in their native language as well as English every day. Texts, videos, and writing assignments will be strategically selected so that ELs can

2020-21 Florida's Optional Innovative Reopening Plan

read, listen, and write regularly. Models will be provided to demonstrate clear criteria for success. Student agency, curiosity, and exploration will be emphasized, and parents will be provided access to quality multilingual learning resources to supplement learning via electronic, print, and video formats.

Our focus will be to utilize technology to create a collaborative partnership with teachers in a digital environment. Using online platforms such as Microsoft TEAMS, Google Voice, or Zoom, you are encouraged to engage teachers in quality conversations about differentiation of instruction for ELLs, the implementation of appropriate ELL strategies, and providing support as the teacher takes action to systematize virtual classroom learning routines. The frequency and structure of virtual PLCs should be differentiated to meet the needs of individual teachers. The ELL Committee, which includes the principal or designee, the parent, an ESOL/English teacher, the school counselor, the Bilingual Education Paraprofessional, and any other instructional personnel responsible for the instruction of English language learners, will meet to:

- review and make placement recommendations;
- evaluate continuation of program services to support language acquisition;
- determine eligibility; and
- provide recommendations for programs and access to additional services
- utilizing data obtained from W-APT and WIS screeners; the WIDA Model assessment; the ACCESS for ELLs assessment; report cards; teacher input and observations; semester exams; iReady assessments; progress reports; data obtained from language acquisition programs (Reading Eggs, Exact Path, Imagine Learning); etc.

The placement of English language learners (ELLs) is determined by the student's level of English proficiency and academic potential based on academic history, transcripts, performance data, language screening, and/or the district's age-grade placement policy. The English for Speakers of Other Languages (ESOL) program model is designed to develop English language proficiency and academic potential. English language learners will have equal access to appropriate programs and courses that are equal and comparable in scope, sequence and quality to instruction provided to English proficient students. Instructional services are documented through the ELL student plan.

English language learners who have completed the credits required for graduation but have not met the 2.0 GPA or the state assessment requirements are eligible for a certificate of completion and an additional year of high school.

English language learners, including refugees and other immigrants, racial and national origin minority students, are entitled to equal access to programs and services other than ESOL, such as, but not limited to compensatory, exceptional, early childhood, career and technical education, adult education, dropout prevention, extended day, and other supportive services. All written and oral communication between a school district's personnel and parents of current or former English language learners will be in the parents' primary language or other mode of communication commonly used by the parents, as feasible. English language learners will not be subject to disciplinary action because of their use of a language other than English.

The academic progress of English language learners in reading, writing, science, and mathematics are determined through appropriate formal and informal assessments and through differentiation of instruction. English language learners are required to participate in the state annual English language proficiency assessment to evaluate their annual progress in English language acquisition. Assessment results will be used by schools to evaluate the progress of individual students. When indicated, evaluations will result in appropriate adjustments, modifications, and improvements of each individual ELL student plan and, if necessitated, an ELL Committee convened to make decisions and recommendations. The ELL committee will convene whenever substantive changes in an individual ELL student plan are required and will utilize data obtained from W-APT and WIS screeners; the WIDA Model assessment; the ACCESS for ELLs assessment; report cards; teacher input and observations; semester exams; iReady assessments; progress reports; data obtained from language acquisition programs (Reading Eggs, Exact Path, Imagine Learning); etc., to make determinations. English language learners are eligible for accommodations on all state, district and site-based assessments. Placement recommendations for English language learners will be made by the ELL committee upon review of the following criteria:

- results of the W-Apt or WIS screener;
- academic performance;
- standardized assessments and language acquisition data;
- number of years the student has been enrolled in the ESOL program with consideration for interrupted instruction;

2020-21 Florida's Optional Innovative Reopening Plan

- the student's English language proficiency; and
- attendance and retention data. Promotion or retention decisions may not be made for English language learners based solely on a score on any single assessment instrument, whether such assessment instrument is part of the statewide assessment program district's formal assessment process.

At the start of the academic year, students without interrupted education are placed in the appropriate consecutive grade-level. Throughout the academic year, students entering from another site in the district are placed in the concurrent grade-level. Students entering from another site in the state or from out-of-state will be screened for ELL program services eligibility and placed in the concurrent grade-level. The bilingual guidance services team will evaluate documents and recommend placement in cases where academic records are incomplete or require translation.

Assurances 6 and 7 do not require additional narrative.

Acknowledgement

The district verifies the information in this form.

Name and title of person responsible for completion and submission of the Innovative Reopening Plan
Terrence Connor, Deputy Superintendent, Instruction
Contact information: email, phone number
<u>terry.connor@hcps.net</u> – 813.272.4221
Date submitted
7/31/2020
Superintendent Signature (or authorized representative)
