

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

LESLY METHELUS, ROSALBA ORTIZ
and ZOILA LORENZO, on behalf of Y.M.,
a minor, on behalf of themselves and all
others similarly situated

Plaintiffs,

v.

Case No: 2:16-cv-379-FtM-38MRM

THE SCHOOL BOARD OF COLLIER
COUNTY, FLORIDA and KAMELA
PATTON,

Defendants.

REPORT AND RECOMMENDATION

TO THE UNITED STATES DISTRICT COURT

On July 19, 2016, the Court held a Preliminary Pretrial Conference in this case. At the hearing, the Court addressed the best method of establishing an effective case-management schedule in this case given its current procedural posture.

By way of relevant background, Plaintiffs filed a Complaint for Declaratory and Injunctive Relief ([Doc. 1](#)) on May 18, 2016. Plaintiffs allege that they are parents or guardians of three children, Y.M., G.O., and M.D. ([Doc. 1 at ¶ 1](#)). Plaintiffs claim, among other things, that these children have been denied equal access to educational opportunities by Defendants, The School Board of Collier County, Florida, and Kamela Patton, in her official capacity as Superintendent of Collier County Public Schools. ([Doc. 1 at ¶ 1](#)). Plaintiffs allege that these children are not permitted to attend public high schools and, instead, are “funnel[ed]” to “non-

credit, English language-only, adult programs that charge a fee.” ([Doc. 1 at ¶ 1](#)). The Complaint includes class action allegations pursuant to [Fed. R. Civ. P. 23](#). ([Doc. 1 at ¶¶ 58-76](#)).

In the Complaint, Plaintiffs assert five counts or claims stated as causes of action. In the First Cause of Action, Plaintiffs allege a violation of the Equal Educational Opportunities Act of 1974. In the Second Cause of Action, Plaintiffs allege a violation of Title VI of the Civil Rights Act of 1964. In the Third Cause of Action, Plaintiffs allege a violation of the Fourteenth Amendment Equal Protection Clause. In the Fourth Cause of Action, Plaintiffs allege a violation of the Fourteenth Amendment Due Process Clause. In the Fifth Cause of Action, Plaintiffs allege a violation of the Florida Education Equity Act, [Fla. Stat. §§ 1000.05 et seq.](#) ([Doc. 1 at ¶¶ 77-113](#)).

Approximately eight (8) days after the Complaint was filed, on May 26, 2016, Plaintiffs filed a Motion for Class Certification ([Doc. 7](#)). The deadline to respond to the Motion for Class Certification was extended to August 5, 2016. (*See* [Doc. 20](#)). In addition, Defendants filed a Motion to Dismiss ([Doc. 24](#)) on July 18, 2016, the day before the Preliminary Pretrial Conference.

At the Preliminary Pretrial Conference, the Court addressed the practicality of setting case-management deadlines given the current procedural posture of the case. The Court raised concerns that a determination of the Motion for Class Certification may be premature in light of (1) a statement in the Motion for Class Certification concerning the possibility that additional class discovery may be needed and (2) the filing of the Motion to Dismiss, which raises issues concerning, *inter alia*, the named Plaintiffs’ standing. Specifically, at the end of the Motion for Class Certification ([Doc. 7](#)), Plaintiffs stated, “[s]hould the Court determine that the record has not yet been sufficiently developed to support Plaintiffs’ motion, Plaintiffs respectfully request

that the Court defer resolution of the motion pending class discovery in accordance with Local Rule 4.04(c) and set a hearing on the matter.” ([Doc. 7 at 23](#)). Even though counsel for Plaintiffs stated at the hearing that they wanted to proceed on the pending Motion for Class Certification, this statement in the Motion indicates facially that it is possible the class certification issues may be impacted by class-related discovery not yet taken.¹ Although Plaintiffs argued at the Preliminary Pretrial Conference that they believe their Motion for Class Certification is sufficiently supported, Plaintiffs nevertheless plan to proceed with additional class and merits discovery simultaneously and the proposed deadlines in the Case Management Report took that into account.

Because the Motion to Dismiss ([Doc. 24](#)) was filed the day before the Preliminary Pretrial Conference, the Court also raised concerns that the nature and scope of the claims in the case and the challenge to standing must be determined before any ruling on class certification would be appropriate. Moreover, Plaintiffs indicated in response to the Court’s questioning that they may amend the Complaint.

After consideration of the parties’ arguments and a review of the docket, the Court finds and recommends that this case should be managed differently by the Court than the parties have proposed in the Case Management Report for the reasons stated above. Specifically, the Undersigned recommends that the pending Motion for Class Certification ([Doc. 7](#)) be denied without prejudice to Plaintiffs’ ability to re-file the Motion after (1) resolution of the pending

¹ A skeletal, perfunctory motion for class certification will not satisfy the requirements of Rule 23. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011); see also *Lakeland Reg’l Med. Ctr., Inc. v. Astellas U.S. LLC*, No. 8:10-CV-2008-T-33TGW, 2012 WL 2402825, at *2 (M.D. Fla. June 26, 2012). “A party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are in fact sufficiently numerous parties, common questions of law or fact, etc.” *Dukes*, 564 U.S. at 350.

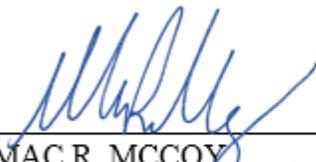
Motion to Dismiss and (2) completion of class-related discovery. The Undersigned further recommends that class and merits discovery be bifurcated to allow the parties to focus on class-related discovery first. The Undersigned also recommends setting a schedule for filing a renewed motion for class certification, response in opposition thereto, and a possible class certification hearing. If these recommendations are approved and entered by the Court, the Undersigned will then enter a separate Case Management and Scheduling Order addressing all other case management deadlines, including trial, consistent with the recommendations herein.

Notably, in open Court and on the record, Defendants waived the 14-day objection period to this Report and Recommendation. Plaintiffs, however, reserved their right to object until after they have had an opportunity to review the Report and Recommendation. Plaintiffs' counsel stated that if, after reviewing the Report and Recommendation, Plaintiffs had no objection, Plaintiffs would file a notice of non-objection.

Accordingly, **IT IS RESPECTFULLY RECOMMENDED:**

- 1) The Motion for Class Certification ([Doc. 7](#)) be **DENIED without prejudice** as premature.
- 2) Upon approval and adoption of this Report and Recommendation, the Undersigned recommends that this matter be referred to the Undersigned for the entry of a Case Management and Scheduling Order as set forth above.

Respectfully recommended in Chambers in Ft. Myers, Florida on July 21, 2016.



MAC R. MCCOY
UNITED STATES MAGISTRATE JUDGE

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* [11th Cir. R. 3-1](#).

Copies furnished to:

Counsel of Record
Unrepresented Parties