

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA**

EQUALITY FLORIDA; FAMILY EQUALITY;
M.A., by and through his parent AMBER
ARMSTRONG; S.S., by and through her parents,
IVONNE SCHULMAN and CARL SCHULMAN;
ZANDER MORICZ; LINDSAY MCCLELLAND, in
her personal capacity and as next friend and parent of
JANE DOE; RABBI AMY MORRISON and CECILE
HOURY; DAN and BRENT VANTICE; LOURDES
CASARES and KIMBERLY FEINBERG; LINDSEY
BINGHAM SHOOK; ANH VOLMER; SCOTT
BERG and MYNDEE WASHINGTON,

Plaintiffs,

v.

FLORIDA STATE BOARD OF EDUCATION;
THOMAS R. GRADY, BEN GIBSON, MONESIA
BROWN, ESTHER BYRD, GRAZIE P. CHRISTIE,
RYAN PETTY, and JOE YORK, in their official
capacities as member of the Board of Education;
JACOB OLIVIA, in his official capacity as
Commissioner of Education of Florida; FLORIDA
DEPARTMENT OF EDUCATION; BROWARD
SCHOOL BOARD; SCHOOL BOARD OF
MANATEE COUNTY; SCHOOL BOARD OF
SARASOTA COUNTY; SCHOOL BOARD OF
MIAMI-DADE COUNTY; ORANGE COUNTY
SCHOOL BOARD; ST. JOHNS COUNTY SCHOOL
BOARD; and PASCO COUNTY SCHOOL BOARD.

Defendants.

**Civil Action No.: 4:22-cv-00134
(AW) (MJF)**

**DEFENDANT ORANGE COUNTY SCHOOL BOARD'S
MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO LIFT THE STAY
OF DISCOVERY**

Defendant, ORANGE COUNTY SCHOOL BOARD ("OCSB"), by and through undersigned counsel files this Memorandum in Opposition to Plaintiffs' Motion to Lift the Stay of

Discovery (Docket No. 113)

1. On March 31, 2022, Plaintiffs filed a Complaint [Docket No. 1] against the Defendants, not including OCSB, challenging the constitutionality of House Bill 1557, the bill titled Parental Rights in Education by the Florida Legislature. On May 25, 2022, Plaintiffs filed the First Amended Complaint (Docket No. 45). This Complaint added parent Ahn Volmer (“Volmer”) from Orange County as a Plaintiff and the Orange County School Board as a Defendant.

2. OCSB filed its Motion to Dismiss on June 27, 2022. (Docket No. 63)

3. OCSB also joined the Motion to Stay Discovery with various Defendants on July 1, 2022. (Docket No. 72)

4. On July 21, 2022, this Court entered an Order Granting Stay of Discovery. (Docket No. 89)

5. In doing so, this Court identified numerous factors in granting the Motion for Stay. Specifically, Plaintiffs were concerned about the delay in obtaining discovery and the November discovery deadline. However, as this Court pointed out in footnote 1 in its Order Granting Motion Stay of Discovery: “Plaintiffs also point to the November discovery deadline. That deadline, though, is not immovable. **If Plaintiffs’ claims survive the motion-to-dismiss stage, I will ensure that Plaintiffs have adequate time to conduct appropriate discovery.**” (Emphasis added)

6. It is no less true today than it was on July 21, 2022, that the Court will ensure that Plaintiffs have adequate time to respond to discovery.

7. Second, the Court specifically stated the discovery was voluminous. (Docket No. 89, Page 2) “Second, the discovery sought is extensive and would impose substantial burdens—

burdens that could be avoided altogether if the motions to dismiss are granted. Staying discovery until pleadings close would always, of course, potentially avoid unnecessary discovery.”

8. This concern also remains the same as it was on July 21, 2022, when the Court entered the stay.

9. Plaintiffs’ statement that they have narrowed discovery, i.e. by dropping the Governor as a party and by withdrawing portions of discovery requested direct at communications by and among legislators acting in their legislative capacity (Docket No. 113, Page 6) is not applicable to OCSB. OCSB and the other district school boards are still subject to the same extensive discovery requests that have not been narrowed as it was when the original Order Granting the Stay was issued on July 21, 2022. Given that OCSB and the other district school boards were not responsible for passing House Bill 1557 and given OCSB and the other district school boards as well as those school boards’ superintendents are required to follow House Bill 1557 (See §1001.42(15), Fla. Stat. and §1001.51(14), Fla. Stat.), it is a waste of the limited resources of the district school boards to have to respond to these voluminous discover requests.

10. The Plaintiffs cite what it claims are the broad application of the law since it went into effect. It cited examples from various districts, including OCSB. On page 8 of the Motion, Plaintiffs allege “Orange County school officials warned educators not to wear rainbow articles of clothing and to remove not only safe space stickers from the classroom, but also pictures of same-sex spouses from their desks.” The cited news article, when linked from footnote 4, leads to a broken link. (See Exhibit “A” hereto)

11. Plaintiffs allegation about Orange County is also incorrect as a matter of fact. On August 1, 2022, OCSB issued a memorandum to all of its administrators, with instructions to

provide the memorandum to all of the teachers within the system. The memorandum stated as follows with respect to the alleged prohibitions by OCSB under House Bill 1557:

- “The State has further refined the guidance in its Motion to Dismiss filed in a lawsuit seeking to invalidate H.B. 1557. The guidance from the Motion to Dismiss is quoted below:

...
‘There is no merit, for example, to the suggestion that the statute restricts gay and transgender teachers from ‘put[ting] a family photo on their desk’ or ‘refer[ring] to themselves and their spouse (and their own children).’ Those actions are not ‘instruction,’ which is ‘the action, practice, or profession of teaching.’

- “Based upon this guidance, the mere wearing of an ‘Ally’ lanyard or rainbow symbols on clothing or in classrooms, or the display of ‘safe space’ stickers in the classroom are not ‘classroom instruction’ as defined by the State in its Motion to Dismiss the lawsuit seeking to invalidate House Bill 1557. (A copy of the August 1, 2022 Memorandum to Principals is attached hereto as Exhibit “B.”)¹

12. This Court’s discretion on managing its docket, including the conduct of discovery is “broad.” “Courts maintain great discretion to regulate discovery, *Patterson v. U.S. Postal Serv.*, 901 F.2d 927, 929 (11th Cir. 1990), including ‘broad discretion to stay discovery pending the decision on a dispositive motion.’” *Raymond James & Associates, Inc. v. Lowe's Companies, Inc.*, 2019 WL 13149835, at *1 (M.D. Fla. Mar. 20, 2019).

13. “In deciding whether to stay discovery pending resolution of a pending motion, the Court inevitably must balance the harm produced by a delay in discovery against the possibility that the motion will be granted and entirely eliminate the need for such discovery. This involves weighing the likely costs and burdens of proceeding with discovery.” *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006). Again, there is no harm in delay in discovery as this Court stated in its

¹ The undersigned, as author of the August 1, 2022 memorandum, informs the Court that the document attached hereto as Exhibit “B” is a true and correct copy of the memorandum.

original Order Granting Stay of Discovery that “I will ensure that Plaintiffs have adequate time to conduct appropriate discovery.” (Docket No. 89, FN 1).

CONCLUSION

For the foregoing reasons, Plaintiff’s Motion to Lift Stay of Discovery should be denied as to the Orange County School Board.

DATED: September 26, 2022

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have filed the foregoing with the Clerk of Court via CM/ECF this 26th day of September 2022. I further certify that any party that enters an appearance in this matter will receive a copy of this document via CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notice of Electronic Filing.



JOHN C. PALMERINI, B.C.S.



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Palmerini, John C.

From: Palmerini, John C.
Sent: Monday, August 1, 2022 10:24 AM
To: Jenkins, Barbara M.; Vazquez, Maria F.
Cc: Cabinet; Area Superintendents; Executive Area Directors; Principals/OTEC Dir (ALL); Assistant Principals-All
Subject: House Bill 1557 and House Bill 1467 guidance memoranda
Attachments: 2022-08-01 HB 1557 Guidance.pdf; 2022-08-01 HB 1467 Guidance.pdf

Dear Dr. Jenkins and Dr. Vazquez,

Please find the attached guidance memoranda on House Bill 1557 and House Bill 1467. Principals must ensure the guidance on House Bill 1557 is shared with all instructional personnel. Principals must ensure the guidance on House Bill 1467 is shared with all media specialists.

If you have any further questions or concerns, please do not hesitate to contract me.

Sincerely,

John C. Palmerini, B.C.S. in Education and Labor and Employment Law
Deputy General Counsel, Employment, Labor and Litigation
School Board of Orange County, Florida
445 W. Amelia St., Orlando, FL 32801
407-317-3200, ext. 2002954





Date: August 1, 2022
To: Dr. Barbara M. Jenkins, Superintendent
Dr. Maria Vazquez, Deputy Superintendent
From: John C. Palmerini, Deputy General Counsel
Office of Legal Services
Recipients: Cabinet, Area Superintendents, Associate Superintendents, Executive Area Directors-on-Assignment, Principals and Assistant Principals
Subject: House Bill 1557 Guidance

Principals: Please distribute to teachers during pre-planning.

We understand the stress recent legislation has placed on teachers and principals. The following is our best interpretation to date of House Bill 1557, the "Parental Rights in Education" statute. This interpretation is being shared for your understanding and guidance. We will provide further guidance as it is received from the State. The Bill made the following changes:

The School Board is required to "adopt procedures for notifying a student's parent if there is a change in the student's services or monitoring related to the student's mental, emotional, or physical health or well-being and the school's ability to provide a safe and supportive learning environment for the student. The procedures must reinforce the fundamental right of parents to make decisions regarding the upbringing and control of their children by requiring school district personnel to encourage a student to discuss issues relating to his or her well-being with his or her parent or to facilitate discussion of the issue with the parent. The procedures may not prohibit parents from accessing any of their student's education and health records created, maintained, or used by the school district..."

- A change in student services or monitoring related to the student's mental, emotional or physical health or well-being (as opposed to a single conversation with the student on his or her mental, emotional or physical health or well-being) includes:
 - New scheduled mental health counseling
 - Scheduled behavior intervention
- A change in monitoring includes:
 - School counselor follow up services
 - Follow up by the teacher or other school personnel after the student discloses personal information to the teacher or other school personnel.
- If a student discloses personal information, teachers must encourage the child to discuss such information with their parents.
- The District "may not adopt procedures or student support forms that prohibit school district personnel from notifying a parent about his or her student's mental, emotional, or physical health



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or well-being, or a change in related services or monitoring, or that encourage or have the effect of encouraging a student to withhold from a parent such information. School district personnel may not discourage or prohibit parental notification of and involvement in critical decisions affecting a student's mental, emotional, or physical health or well-being."

- If a student makes a disclosure to a teacher about the student's mental, emotional or physical health or well-being, and if the parent asks the teacher if the student has disclosed such information, then the teacher must disclose such information to the parent.
 - A teacher should inform the student that if the teacher is asked about the conversation by the student's parents, the teacher will have to disclose the information.
 - The School District is allowed to adopt procedures that permit school personnel to withhold information from a parent "if a reasonably prudent person would believe that the disclosure would result in abuse, abandonment or neglect..." Those terms are defined in Management Directive A-4, a link to which is found [here](#).
- The Bill states "Classroom instruction by school personnel or third parties on sexual orientation or gender identity may not occur in kindergarten through grade 3 or in a manner that is not appropriate or developmentally appropriate for students in accordance with state standards."
 - Based upon a memorandum dated June 6, 2022, from DOE "This provision takes effect on July 1, 2022, only for kindergarten through grade 3. For other grades, it takes effect only after the Florida Department of Education (Department) develops rules or guidance on age-appropriate and developmentally appropriate instruction."
 - The State has further refined the guidance in its Motion to Dismiss filed in a lawsuit seeking to invalidate H.B. 1557. The guidance from the Motion to Dismiss is quoted below:
 - The Bill equally prohibits instruction on heterosexuality and all other types of sexuality: "The statute limits classroom instruction on 'sexual orientation or gender identity.' Nothing in that language 'aims at sexual orientations and gender identities that differ from heterosexual and cisgender identities.' To the contrary, instruction on 'the normalcy of opposite-sex attraction' would equally be 'instruction on sexual orientation.' The statute is neutral on the proscribed subjects." A "cisgender" identity is when a person's gender identity corresponds with the person's birth sex.
 - "There is no merit, for example, to the suggestion that the statute restricts gay and transgender teachers from 'put[ting] a family photo on their desk' or 'refer[ring] to themselves and their spouse (and their own children).' Those



actions are not ‘instruction,’ which is ‘the action, practice, or profession of teaching.’”

- The Bill “does not prohibit intervention against LGBTQ bullying, participation in extracurricular activities (such as Gay-Straight Alliances or book fairs) and even after-hours tutoring, among many other examples.”
 - The Bill restricts “instruction” on sexual orientation and gender identity, not mere discussion of those subjects. In fact, an earlier version of the Bill prohibited classroom “discussion” about sexual orientation and gender identity, but the prohibition of classroom “discussion” rather than “instruction” on sexual orientation and gender identity did not make it into the final Bill.
 - Teachers are “free to ‘respond if their students discuss ... their identities or family life,’ ‘provide grades and feedback if a student chooses ‘LGBTQ identity’ as an essay topic and answer ‘questions about their families.’”
 - The State said “no one should think that H.B. 1557 prohibits incidental references in literature to a gay or transgender person or to a same-sex couple. Such references, without more, are not ‘instruction on’ those topics. Nor are ‘references’ to a student’s ‘mom’ and ‘dad’ ‘instruction’ on cisgender identity or heterosexual orientation. Such references could be to a person of any sexual orientation or gender identity.”
 - The State said “typical class participation and schoolwork are not ‘instruction,’ even if a student chooses to address sexual orientation or gender identity.”
- Based upon this guidance, the mere wearing of an “Ally” lanyard or rainbow symbols on clothing or in classrooms, or the display of “safe space” stickers in the classroom are not “classroom instruction” as defined by the State in its Motion to Dismiss the lawsuit seeking to invalidate House Bill 1557.
 - Employees should note School Board Policy GBI, which states that no employee shall “use the authority of his/her position to secure support or opposition for any candidate, party or issue in an election.” Employees are also prohibited from “engaging in passive political expressions, including but not limited to wearing a lapel pin, campaign button, hat, or political advertising on items of clothing.”
 - Under the Bill, if a parent notifies a principal of concerns that the provisions of this Bill have been violated, the Principal must attempt to resolve those concerns within seven (7) calendar days after notification by the parent. If a parent invokes this procedure, principals shall contact their area superintendent/chief/associate superintendent, who will involve the Office of Legal Services to provide guidance on resolution of the concerns. If the parent is not satisfied with the principal’s determination and escalates the concerns to the appropriate area superintendent/chief/associate superintendent, the concern must be resolved to the parent’s



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satisfaction within 30 days after notification, or the appropriate area superintendent/chief/associate superintendent must provide a statement of the reason(s) for not resolving the concerns.

- The District will provide further guidance as such guidance is received from the State. In the interim, should you have any questions, please feel free to call the Office of Legal Services at (407) 317-3411.