

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

M.A., by and through his parent  
AMBER ARMSTRONG; S.S., by  
and through her parents, IVONNE  
SCHULMAN and CARL  
SCHULMAN; RABBI AMY  
MORRISON and CECILE HOURY;  
LOURDES CASARES and  
KIMBERLY FEINBERG; 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 members  
of the Board of Education;  
FLORIDA DEPARTMENT OF  
EDUCATION; BROWARD  
COUNTY SCHOOL BOARD;  
SCHOOL BOARD OF MANATEE  
COUNTY; SCHOOL BOARD OF  
MIAMI-DADE COUNTY;  
ORANGE COUNTY SCHOOL  
BOARD; and PASCO COUNTY  
SCHOOL BOARD,  
Defendants.

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

**DEFENDANT ORANGE COUNTY SCHOOL BOARD'S  
MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**

DEFENDANT ORANGE COUNTY SCHOOL BOARD ("OCSB"), by and through undersigned counsel, responds to and opposes Plaintiff's Second Amended Complaint (Docket No. 123).

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 their 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. This Court dismissed the First Amended Complaint via order on September 29, 2022. (Docket No. 120) Plaintiffs filed the Second Amended Complaint on October 27, 2022.

2. Plaintiff Volmer and her minor children reside in Orange County, Florida.

3. The allegations listing OCSB as a party to this case are critical: “Defendant Orange County School Board is a district school board organized and governed pursuant to §1001.34, *et seq.* The Orange County School Board operates the school attended by the children of Plaintiff Volmer. **Its powers and duties include implementing H.B. 1557.** See *id.* §1001.42(8).” (Emphasis added)(Second Amended Complaint, ¶22)

4. The sum of the factual allegations raised by Plaintiff Volmer against OCSB are as delineated in paragraph 80 of the Second Amended Complaint:

“80. In Orange County, where Plaintiff Volmer’s children attend school, teachers have been instructed not to talk about same-sex partners because ‘it could be deemed classroom instruction on sexual orientation or gender identity,’ according to district spokesman Michael Ollendorff. Teachers in K-3 classrooms were also cautioned against wearing clothing that could bring up similar discussions. As a result, Volmer’s children are being denied an equal educational opportunity, including an opportunity to see LGBTQ teachers as equal citizens and role models, that she wants to be made available to them, in order to foster a non-discriminatory environment for all families and persons. Thus, again, because it is unclear whether H.B. 1557 precludes teachers from talking about their same-sex partners (or transgender identity) in class or even wearing clothing that could prompt discussions related to LGBTQ persons and issues, Volmer’s child (and others at her school) are being denied the opportunity to hear about such issues and identities, as they would like to do.”

5. Plaintiff then proceeds to list OCSB in the following counts:

- Count I for violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, claiming the law is void for vagueness

- Count IV for violation of the First Amendment to the United States Constitution for the “right to receive information.”
- Count V for violation of the First Amendment to the United States Constitution for the right to “freedom of expression.”
- Count VI for violation of the First Amendment to the United States Constitution for H.B. 1557 being overbroad.

6. For the following reasons, the Complaint against OCSB should be dismissed with prejudice with no further allowances for amendment.

### **MEMORANDUM OF LAW**

#### **I. Motion to Dismiss Standard**

Plaintiffs’ Second Amended Complaint as to OCSB again requires dismissal pursuant to the seminal case of Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007), which states:

“While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do, see *Papasan v. Allain*, 478 U.S. 265, 286, 106 S.Ct. 2932, 92 L.Ed.2d 209 (1986) (on a motion to dismiss, courts ‘are not bound to accept as true a legal conclusion couched as a factual allegation’). Factual allegations must be enough to raise a right to relief above the speculative level, see 5 C. Wright & A. Miller, *Federal Practice and Procedure* § 1216, pp. 235–236 (3d ed.2004) (hereinafter *Wright & Miller*) (‘[T]he pleading must contain something more ... than ... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action’)...”

The Supreme Court followed Twombly with Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009):

“To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ *Id.*, at 570, 127 S.Ct. 1955. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.*, at 556, 127 S.Ct. 1955. The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Ibid.* Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of ‘entitlement to relief.’”

As will be explained below, Plaintiff Volmer’s singular factual allegation against OCSB contained in Paragraph 80 of the Second Amended Complaint is insufficient to prove four separate constitutional claims against OCSB. Plaintiff’s factual allegation is not “enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555. Moreover, as will be explained below, Plaintiff Volmer has not pleaded a claim of relief “that is plausible on its face.”

Complaints are also subject to dismissal if they are “shotgun pleadings”:

Though the groupings cannot be too finely drawn, we have identified four rough types or categories of shotgun pleadings. The most common type—by a long shot—is a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint.<sup>11</sup> The next most common type, at least as far as our published opinions on the subject reflect, is a complaint that does not commit the mortal sin of re-alleging all preceding counts but is guilty of the venial sin of being replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action.<sup>12</sup> The third type of shotgun pleading is one that commits the sin of not separating into a different count each cause of action or claim for relief. **Fourth, and finally, there is the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.** The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” *Weiland v. Palm Beach Cnty. Sheriff’s Office*, 792 F.3d 1313, 1321–23 (11th Cir. 2015)(emphasis added).

As will be explained below, each count, while directed at multiple defendants, does not specify how each Defendant’s conduct violates the statute.

Finally, OCSB will be attaching a document to this Motion to Dismiss. It will attach its August 1, 2022 memorandum titled “House Bill 1557 Guidance” which was sent to all principals and assistant principals in OCSB with instructions to distribute to all teachers during pre-planning. That memorandum was previously filed in this Court in response to Plaintiff’s Motion to Lift Stay. (Docket No. 117, Exhibit “B.”)

While attachments to the Motions to Dismiss are not usually considered, they may be considered under certain circumstances under controlling 11<sup>th</sup> Circuit case law. In Horsely v. Feldt, 304 F.3d 1125, 1134 (11<sup>th</sup> Cir. 2002), the Court held:

*“In re Silicon Graphics Inc. v. Securities Litigation*, 183 F.3d 970 (9<sup>th</sup> Cir. 1999) under which a document attached to a motion to dismiss may be considered by the court without converting the motion into one for summary judgment only if the attached document is (1) central to plaintiff’s claim; and (2) undisputed. [Citation omitted] ‘Undisputed’ in this context means the authenticity of the document is not challenged.”

See also, Harris v. Ivax Corp., 182 F.3d 799, FN 2 (11<sup>th</sup> Cir. 1999)(“But a document central to the complaint that the defense appends to its motion to dismiss is also properly considered provided that its contents are not in dispute.”)

**II. Plaintiff’s Second Amended Complaint is a shotgun pleading because it does not specify in the Counts which defendants are responsible for which conduct.**

Plaintiff Volmer’s Complaint must be dismissed as a shotgun pleading. As stated previously, a Plaintiff must, in each count of the lawsuit, identify which defendants are responsible for which acts or omissions making them liable.

**“Fourth, and finally, there is the relatively rare sin of asserting multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against.** The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.” Weiland v. Palm Beach Cnty. Sheriff’s Office, 792 F.3d 1313, 1321–23 (11<sup>th</sup> Cir. 2015)(emphasis added).

Plaintiff Volmer states four counts against OCSB:

- Count I for violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, claiming the law is void for vagueness
- Count IV for violation of the First Amendment to the United States Constitution for the “right to receive information.”
- Count V for violation of the First Amendment to the United States Constitution for the right to “freedom of expression.”

- Count VI for violation of the First Amendment to the United States Constitution for H.B. 1557 being overbroad.

Each Count asserted against OCSB is also asserted against multiple co-defendants. Count I, the void for vagueness count, is stated against all members of the State Board of Education, as well as the Broward, Miami-Dade, Manatee and Pasco County School Boards. In paragraph 102 of the Second Amended Complaint, Plaintiffs allege that the terms “third parties,” “classroom instruction,” “sexual orientation,” and “gender identity” are vague and have a chilling effect on teachers, parents and students.<sup>1</sup>

Paragraph 103 states “As a direct and proximate result of Defendants’ unlawful conduct, Plaintiffs have suffered and will continue to suffer irreparable injury, including violations of their rights under the Fourteenth Amendment to due process.” Wholly absent from the Complaint is any allegation describing the specific conduct by OCSB that is allegedly unlawful, or how OCSB’s alleged interpretation of HB 1557 is void for vagueness. Instead, Plaintiffs lump OCSB in with other entities which have different factual allegations made against them. As such, this is an impermissible shotgun pleading as described in Weiland.

Count IV, the “right to receive information” count, suffers from the same flawed pleading. OCSB is again lumped in with the other school boards and the State Board of Education members.

Paragraph 122 states:

“H.B. 1557 violates the First Amendment right to receive information and ideas of Plaintiffs M.A., S.S., and the children of Morrison, Houry, Casares, Feinberg, Volmer, and Washington facially and as applied by Defendants. More specifically, the law violates their right to receive and debate information and ideas concerning the sexual orientation and gender identity of LGBTQ people, even when such information serves essential pedagogical purposes.”

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<sup>1</sup> As will be argued below, Plaintiff Volmer does not have standing to assert claims on behalf of third-party teachers and other parents and students.

This Court does not specify what alleged conduct by OCSB prevented Plaintiff Volmer's children from receiving debate and information Plaintiff desired. The Complaint does not allege the teachers of Plaintiff Volmer's children would have provided instruction on sexual orientation and gender identity but for OCSB spokesman Michael Ollendorff's statements to the Washington Post. It again lumps OCSB in with other districts with distinct factual allegations made against them. This is a shotgun pleading in violation of the requirements of Weiland.

Count V, the freedom of expression claim, states:

"H.B. 1557 violates the First Amendment right to freedom of expression of students, including Plaintiffs M.A., S.S., and the children of Morrison, Houry, Casares, Feinberg, Volmer, and Washington. More specifically, the law restricts Plaintiffs' ability to discuss topics related to the sexual orientation and gender identity of LGBTQ people in class and related settings, and also restricts their ability to self-identify as LGBTQ."

Second Amended Complaint at ¶128.

Absent from Count V is any allegation regarding OCSB's conduct which prevented plaintiff Volmer's children from discussing sexual orientation or gender identity in the classroom.<sup>2</sup> Moreover, as this Court recognized in its Order Dismissing the First Amended Complaint, the law is not enforceable against Plaintiff Volmer and her children. It is only enforceable against a school district:

"As noted above, the law is enforced against school districts and not individuals. So although there are allegations that a student will be less likely to "share information about their family's LGBTQ friends with their peers," Am. Compl. ¶ 77, and that a teacher "will be 'walking on eggshells' next year," *id.* ¶ 224, there has been no allegation that H.B. 1557 would be *enforced* against a Plaintiff" (Docket No. 120, Page 9)

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<sup>2</sup> In Exhibit "A" hereto, the August 1, 2022 Memorandum to all principals and assistant principals regarding House Bill 1557 advised as follows: "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.'" This factual allegation, at least as to OCSB, is plainly contradicted by the guidance OCSB provided its personnel. See Section III below.

It again lumps OCSB in with other districts with distinct factual allegations made against them.

This is a shotgun pleading in violation of the requirements of Weiland.

Finally, in Count VI, the overly broad claim, Plaintiffs generically allege against all Defendants:

“H.B. 1557 is overbroad in violation of the First Amendment rights of Plaintiffs M.A., S.S., and the children of Morrison, Houry, Casares, Feinberg, Volmer, and Washington facially and as applied by Defendants, because even to the extent that the law could be interpreted as having any legitimate pedagogical purpose, ‘a substantial number of its applications are unconstitutional.’ *Id.* More specifically, even if H.B. 1557 has some legitimate pedagogical purpose, it is not narrowly tailored to that purpose but rather will be applied in a manner that broadly infringes Plaintiffs M.A., S.S., and the children of Morrison, Houry, Casares, Feinberg, Volmer, and Washington’s First Amendment rights to receive information and ideas, and their right to freedom of expression.”

Second Amended Complaint at ¶133.

Count VI is a rehash of Counts IV and V. As such, OCSB repeats its arguments here that this Count is a shotgun pleading for the same reasons counts IV and V are shotgun pleadings.

For the foregoing reasons, this Court should dismiss all claims against OCSB on the basis that the pleading is a shotgun pleading.

**III. The Second Amended Complaint’s lone factual allegation against OCSB is contradicted by OCSB’s actual guidance on the law.**

Plaintiff Volmer alleges in Paragraph 80 that “teachers have been instructed not to talk about same-sex partners because ‘it could be deemed classroom instruction on sexual orientation or gender identity,’” citing to a statement attributed to District spokesman Michael Ollendorff in an article in the Washington Post on July 30, 2022. On August 1, 2022, well before this Second Amended Complaint was filed, the OCSB Office of Legal Services, with the permission of the OCSB Superintendent, issued a memorandum titled “House Bill 1557 Guidance” (“Memorandum”). The Memorandum was distributed to all OCSB principals and assistant principals, with instructions to distribute to all instructional personnel. This Memorandum may

be considered as part of this Motion to Dismiss because it is the central guidance at issue in Plaintiffs' lawsuit. The issuance of the Memorandum cannot be disputed, based upon the email indicating it was sent to all principals and assistant principals at OCSB. See Horsley and Harris, supra.

In the Memorandum, OCSB advised instructional staff regarding the very issue raised by Plaintiffs as the basis for their Complaint: "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.'" (Exhibit "A" hereto, pages 3-4) The guidance OCSB offered its teachers is in contradiction to that alleged in Paragraph 80.

Plaintiff Volmer also claims in Paragraph 80 that "Teachers in K-3 classrooms were also cautioned against wearing clothing that could bring up similar discussions." This allegation too is contradicted by the August 1, 2022 Memorandum issued by the District which advised as follows: "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." (Exhibit "A," Page 4) Plaintiff Volmer's allegation that it is "unclear whether H.B. 1557 precludes teachers from talking about their same-sex partners (or transgender identity<sup>3</sup>) in class or even wearing clothing that could prompt discussions related to LGBTQ persons and issues" is contradicted by the August 1, 2022 Memorandum.

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<sup>3</sup> Obviously, neither OCSB nor the State of Florida could discipline or sanction a teacher for speaking about the fact the teacher is transgender. See Bostock v. Clayton County, Georgia, 140 S Ct. 1731, 1737 (2020):

"Today, we must decide whether an employer can fire someone simply for being homosexual or transgender. The answer is clear. An employer who fires an individual for being homosexual or transgender fires that person for traits or actions it would not have questioned in members of a different sex. Sex plays a necessary and undisguisable role in the decision, exactly what Title VII forbids."

Reliance upon a statement by Mr. Ollendorff in response to a question from a newspaper reporter is not binding on OCSB for the purposes of establishing a constitutional violation. First, Mr. Ollendorff, as district spokesperson, is not the policy maker for the School Board. The School Board sets policy for the school district under state law. See §1001.41(1), Fla. Stat., giving the School Board the general power to “determine 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.” Moreover, Mr. Ollendorff is not the management head of the school district – that power resides in the Superintendent. See §1001.32(3), Fla. Stat.: “Responsibility for the administration and management of the schools and for the supervision of instruction in the district shall be vested in the district school superintendent as the secretary and executive officer of the district school board, as provided by law.”

Finally, it is frankly disingenuous for counsel for Ms. Volmer to have made the allegations asserted in the Second Amended Complaint. The First Amended Complaint alleged on behalf of Ms. Volmer that “Volmer wants her children to learn that all families should be welcomed and included in their community” and that “Volmer’s children recently attended a wedding of two women, and she is worried that once H.B. 1557 takes effect, her children will not be able to talk about experiences like attending that wedding or share information about their family’s LGBTQ friends with their peers.” (Docket No. 45, Paragraphs 76-77) In the Second Amended Complaint, the allegation on behalf of Ms. Volmer shifted to those statements attributed to Mr. Ollendorff about OCSB’s alleged practices.

However, in the interim, OCSB filed with this Court, and Plaintiff Volmer and counsel necessarily received, OCSB’s August 1, 2022 Memorandum on compliance with House Bill 1557. (See Docket No. 117, Exhibit “B.”) As such, Plaintiff Volmer’s counsel knew the allegations in the Second Amended Complaint directly contradicted OCSB’s official position on House Bill

1557 regarding discussion of same-sex partners and the clothing teachers could wear to school. Counsel for Plaintiffs also represent Equality Florida, which while not a party in the Second Amended Complaint, was a party in the First Amended Complaint. Had OCSB and Equality Florida not had a long-standing and excellent working relationship, OCSB would be filing motions pursuant to Fed.R.Civ.P. 11 and 28 U.S.C. §1927. Counsel knew or should have known there is no evidentiary support for the factual contentions made in Paragraph 80 of the Second Amended Complaint. In fact, the undisputed evidence in the form of the August 1, 2022 Memorandum contradicts their allegations.

Factually, Plaintiffs' allegation is expressly contradicted by the August 1, 2022 memorandum. As such, there is no plausible claim, based upon the sole allegation of conduct against OCSB that survives this Motion to Dismiss under the standards enunciated in Twombly and Ashcroft.

**IV. Plaintiff Volmer lacks standing to assert claims against OCSB as House Bill 1557 is aimed at the conduct of school districts, not parents or students.**

Plaintiff Volmer in Paragraph 80 of the Second Amended Complaint, alleges:

“Thus, again, because it is unclear whether H.B. 1557 precludes teachers from talking about their same-sex partners (or transgender identity) in class or even wearing clothing that could prompt discussions related to LGBTQ persons and issues, Volmer's child (and others at her school) are being denied the opportunity to hear about such issues and identities, as they would like to do.”

Plaintiffs do not have standing to assert claims on either their own behalf or on behalf of third parties, such as teachers. In order to assert standing, Plaintiff Volmer must “have suffered actual injury or show the imminence of such injury.” E.F. Hutton & Co., Inc. v. Hadley, 901 F.2d 979, 984 (11th Cir. 1990). “Abstract harm is insufficient; the litigant must establish ‘actual or threatened injury.’” Id. Second, Plaintiff Volmer must demonstrate “the injury must be fairly

traceable to the alleged unlawful conduct.” *Id.* Third, Plaintiff Volmer must demonstrate “that the requested relief likely will redress the injury.” *Id.*

Plaintiff Volmer cannot demonstrate actual injury. As this Court held in its Order dismissing the First Amended Complaint, Plaintiffs do not have the right to direct teachers regarding the exact instruction they desire:

“With or without the law, school districts direct teachers as to what they may and may not teach. Plaintiffs do not allege otherwise; they do not assert, for example, that Florida’s public-school teachers may teach whatever lessons they wish. So to the extent Plaintiffs allege that some teachers or others wish to provide “[c]lassroom instruction . . . on sexual orientation or gender identity” to students “in kindergarten through grade 3,” they would have to show (at a minimum) that without the law their individual school district would allow it. Yet Plaintiffs offer no specific allegation that any teacher would be providing such classroom instruction absent H.B. 1577.” (Docket No. 120, Page 6)

The Court in *E.F. Hutton* further ruled a party cannot meet the standing requirement on behalf of third parties, i.e. teachers who wish to teach of sexual orientation and gender identity:

“After satisfying these constitutional requirements, a party claiming standing also must demonstrate that prudential considerations do not restrain the trial court from hearing the case. *Morley*, 867 F.2d at 1386. **The Court recognizes three considerations which discourage judicial action despite a party's satisfaction of the constitutional prerequisites for standing: (1) assertion of a third party's rights**, (2) allegation of a generalized grievance rather than an injury particular to the litigant, and (3) assertion of an injury outside the zone of interests of the statute or constitutional provision.” *Id.* at 984-985 (emphasis added).

See also, *Knight v. State of Ala.*, 14 F.3d 1534, 1554 (11th Cir. 1994): “In addition to Article III’s standing requirements, the Supreme Court has imposed non-constitutional limits on standing to sue. One such prudential limitation is the requirement that parties assert only their own rights and not those of others.”

Plaintiff Volmer has not alleged that any of her children’s teachers would teach about sexual orientation and gender identity in their classes. As such, Plaintiffs cannot, and have not, made any factual allegation sufficient to demonstrate standing based upon the content of the

teachers' lessons. Moreover, even if the teachers of Plaintiff Volmer's children wished to teach about sexual orientation and gender identity in third grade and below, those teachers could choose to assert their own rights and there would be no obstacle to them doing so. As such, Plaintiff Volmer cannot assert standing on behalf of any of her children's teachers. Knight, 14 F.3d at 1554, holding that standing can only be satisfied if "there is some obstacle to the third party asserting the right."

Based upon the foregoing, Plaintiff Volmer has not suffered injury in fact attributable to OCSB sufficient to confer standing. Plaintiff Volmer does not have the standing to assert claims on behalf of teachers regarding any allegations (which there are none) that those teachers wanted to and are prevented from teaching sexual orientation and gender identity in third grade and below.

**V. The allegations pertaining to OCSB spokesman Michael Ollendorff are not sufficient to state a claim against OCSB pursuant to 42 U.S.C. §1983.**

All of Plaintiffs' claims are brought pursuant to 42 U.S.C. §1983. Under the law governing the statute, OCSB is not liable under a *respondeat superior* theory for the statement of non-policy makers which it did not sanction:

"A plaintiff seeking to impose liability on a municipality (school district) under section 1983 must identify a municipal 'policy' or 'custom' that caused a deprivation of federal rights. *Board of County Comm'rs of Bryan Cty. v. Brown*, 520 U.S. 397, 403, 117 S.Ct. 1382, 1388, 137 L.Ed.2d 626 (1997). But it is well established that a municipality may not be held liable under section 1983 on a theory of respondeat superior. *See Monell v. Dept. of Social Servs.*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978). Instead, 'recovery from a municipality is limited to acts that are, properly speaking, acts 'of the municipality'—that is, acts which the municipality has officially sanctioned or ordered.'" Davis v. DeKalb Cnty. Sch. Dist., 233 F.3d 1367, 1375 (11th Cir. 2000).

OCSB's official statement regarding compliance with House Bill 1557 is the August 1, 2022 Memorandum, not any statement attributed to Mr. Ollendorff. Moreover, any statement by Mr. Ollendorff was subject to meaningful review by both the Superintendent as operational head of the school district (§1001.32(3), Fla. Stat.) and the School Board as policy makers for the school

district under state law (§1001.41(1), Fla. Stat.”). Since Mr. Ollendorff’s statements were subject to meaningful review based upon his position in the media relations office, his statements cannot form an official policy or custom of OCSB and cannot form the basis of liability under §1983:

The Eleventh Circuit “has interpreted *Monell*’s policy or custom requirement to preclude § 1983 municipal liability for a subordinate official’s decisions when the final policymaker delegates decision making discretion to the subordinate, but retains the power to review the exercise of that discretion.” *Scala v. City of Winter Park*, 116 F.3d 1396, 1399 (11th Cir.1997). Thus, “[f]inal policymaking authority over a particular subject area does not vest in an official whose decisions in the area are subject to meaningful administrative review. *Quinn v. Monroe Cnty.*, 330 F.3d 1320, 1325 (11th Cir. 2003).

The Second Amended Complaint does not allege that OCSB delegated any decision making authority to Mr. Ollendorff on compliance with House Bill 1557. His alleged statements cannot form the basis of §1983 liability against OCSB.

**VI. OCSB will defer to the State Defendant’s arguments regarding the Constitutionality of House Bill 1557.**

As tacitly acknowledged by Plaintiffs in their Second Amended Complaint, OCSB has a duty to implement House Bill 1557. The duty is imposed by law on OCSB. See §1001.42(15), Fla. Stat.: “The district school board, acting as a board, shall exercise all powers and perform all duties listed below: Require that all laws and rules of the State Board of Education or of the district school board are properly enforced.” See also §1001.51(14), Fla. Stat., requiring that the District School Superintendent follow all laws:

“The district school superintendent shall exercise all powers and perform all duties listed below and elsewhere in the law...: Require that all laws and rules of the State Board of Education, as well as supplementary rules of the district school board, are properly observed and report to the district school board any violation that the district school superintendent does not succeed in having corrected.”

To the extent the School Board does not implement the law passed by the Legislature and signed by the Governor, the Governor has authority under Article IV, §7(a) of the Florida Constitution to suspend school board members. *See In re Advisory Opinion to Governor-Sch. Bd. Member-Suspension Auth.*, 626 So. 2d 684, 687 (Fla. 1993): “For the reasons expressed in this opinion, we conclude that an elected school board member may be suspended by the governor only under the authority granted in article IV, §7.” Bases for suspension listed under Article IV, §7(a) include “malfeasance” and “misfeasance.” “Malfeasance” under Florida law includes performing illegal acts, which in this case would be the School Board and Superintendent’s refusal to implement House Bill 1557: “Malfeasance has reference to evil conduct **or an illegal deed**, the doing of that which one ought not to do, the performance of an act by an officer in his official capacity **that is wholly illegal** and wrongful, which he has no right to perform or which he has contracted not to do.” *State ex rel. Hardie v. Coleman*, 155 So. 129, 132 (Fla. 1934). (Emphasis added)

Previously, OCSB was sanctioned for failing to follow emergency rules of the State Department of Health. In the fall of 2021, the Florida Department of Health issued Emergency Rule 64DER21-15 requiring school districts to allow parents to opt their children out of wearing masks. OCSB adopted a policy that all students be masked and that a student could only opt out of wearing a mask based upon a medical note from the doctor. Pursuant to the authority of §1008.32, Fla. Stat.<sup>4</sup>, the State Board of Education issued its Order of State Board of Education

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<sup>4</sup> Section 1008.32(4), Fla. Stat. states as follows with respect to the State Board of Education’s enforcement authority over school districts:

“If the State Board of Education determines that an early learning coalition, a district school board, or a Florida College System institution board of trustees is unwilling or unable to comply with law or state board rule within the specified time, the state board shall have the authority to initiate any of the following actions:

(a) Report to the Legislature that the early learning coalition, school district, or Florida College System institution is unwilling or unable to comply with law or state board rule and recommend action to be taken by the Legislature.

Under its Oversight and Enforcement Authority. (The Order of State Board of Education Under its Oversight and Enforcement Authority is attached as Exhibit “B”). The Order found in paragraph 1 that the School Board’s mask policy “does not comply with Florida Department of Health Emergency Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings.” The Order in paragraph 5 directed the Florida Department of Education:

“to begin withholding state funds, on a monthly basis, an amount equal to 1/12 of the total annual compensation of the school board, as an initial step. Monthly withholding must continue until the School Board of Orange County demonstrates compliance, the State Board of Education withdraws this order, or when the rule expires or is withdrawn.”

House Bill 1557 was adopted by the Florida Legislature and signed by the Governor. The State Board of Education can penalize local school boards such as OCSB, pursuant to §1008.32(4), Fla. Stat. if the local school boards fail to implement the law. Adjudication of injunctive relief in this matter is by and between Plaintiffs and the state actors, not OCSB – if this Court were to invalidate the law passed by the state actors as unconstitutional, then OCSB would not follow the law deemed by this Court to be unconstitutional. Unless and until this Court deems House Bill 1557 unconstitutional, OCSB must implement the law as enacted.: “The doctrine, which we recently addressed and which is grounded in the separation of powers, ‘recognizes that public officials are obligated to obey the legislature’s duly enacted statute until the judiciary passes on its constitutionality.’” Sch. Bd. of Collier Cnty. v. Florida Dep’t of Educ., 279 So. 3d 281, 288 (Fla. 1st DCA 2019).

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- (b) Withhold the transfer of state funds, discretionary grant funds, discretionary lottery funds, or any other funds specified as eligible for this purpose by the Legislature until the early learning coalition, school district, or Florida College System institution complies with the law or state board rule.
  - (c) Declare the early learning coalition, school district, or Florida College System institution ineligible for competitive grants.
  - (d) Require monthly or periodic reporting on the situation related to noncompliance until it is remedied.”

Based upon those principles, OCSB will defer to the State, which passed House Bill 1557, to provide the substantive defense on the Constitutionality of the law.

**VII. Plaintiff Volmer’s allegations are not ripe for adjudication and this Court may not issue an advisory opinion on her claims.**

Plaintiff Volmer’s against OCSB are not ripe for adjudication. Her claim as to OCSB is:

“80. In Orange County, where Plaintiff Volmer’s children attend school, teachers have been instructed not to talk about same-sex partners because ‘it could be deemed classroom instruction on sexual orientation or gender identity,’ according to district spokesman Michael Ollendorff. Teachers in K-3 classrooms including an opportunity to see LGBTQ teachers as equal citizens and role models, that she wants to be made available to them, in order to foster a non-discriminatory environment for all families and persons. Thus, again, because it is unclear whether H.B. 1557 precludes teachers from talking about their same-sex partners (or transgender identity) in class or even wearing clothing that could prompt discussions related to LGBTQ persons and issues, Volmer’s child (and others at her school) are being denied the opportunity to hear about such issues and identities, as they would like to do.”

Plaintiff Volmer has the burden of establishing the case is ripe for review. “Because standing and ripeness are jurisdictional inquiries, Plaintiffs, as the party invoking federal jurisdiction, bear the burden of establishing that that they have standing to sue and that this case is ripe for review.” Rubenstein v. Florida Bar, 69 F. Supp. 3d 1331, 1338 (S.D. Fla. 2014).

Plaintiff Volmer’s fear about the impact of the law rests upon the faulty notion that OCSB has prohibited all discussion of teachers’ same-sex partners, their gender identity and the wearing of clothing that could prompt discussion of sexual orientation and gender identity. The complaint is purely speculative regarding events which have not occurred. As established above, OCSB has instructed its personnel to the contrary in its August 1, 2022 memorandum:

- “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.’” (Exhibit “A” hereto, pages 3-4)

- “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.” (Exhibit “A,” Page 4)
- Teachers can speak about their transgender identity – OCSB cannot discriminate against teachers for doing so under Bostock.

“Ripeness doctrine “originate[s] from the Constitution's Article III requirement that the jurisdiction of the federal courts be limited to actual cases and controversies.” Harris v. Mexican Specialty Foods, Inc., 564 F.3d 1301, 1308 (11th Cir. 2009). The ripeness doctrine permits dismissal in order for the courts to prevent wasting their resources on speculative claims:

“For a court to have jurisdiction, the claim must be ‘sufficiently mature, and the issues sufficiently defined and concrete, to permit effective decision making by the court.’ *Cheffer v. Reno*, 55 F.3d 1517, 1524 (11th Cir.1995). ‘The ripeness doctrine protects federal courts from engaging in speculation or wasting their resources through the review of potential or abstract disputes.’ *Digital Props., Inc. v. City of Plantation*, 121 F.3d 586, 589 (11<sup>th</sup> Cir. 1997). **‘A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all.’** *Id.* (emphasis added).

Based upon the August 1, 2022 memorandum, Plaintiff Volmer’s fears about the impact of the law will not occur at all. As such, it is not ripe for adjudication under Harris.

Ripeness review typically relies upon two prongs: fitness of the issues for judicial decision and hardship to the parties of withholding judicial review. Mulhall v. UNITE HERE Local 355, 618 F.3d 1279, 1291 (11<sup>th</sup> Cir. 2010).

“To determine whether a claim is ripe, we assess both the fitness of the issues for judicial decision and the hardship to the parties of withholding judicial review.” *Id.* at 1258 (emphasis omitted). “The fitness prong is typically concerned with questions of ‘finality, definiteness, and the extent to which resolution of the challenge depends upon facts that may not yet be sufficiently developed.’” *Id.* (citation and quotation marks omitted). “The hardship prong asks about the costs to the complaining party of delaying review until conditions for deciding the controversy are ideal.” *Id.* Unite's argument, which goes to the ‘fitness’ prong of the ripeness inquiry, has some appeal, for it is generally true that the existence of contingencies raises fitness concerns that ‘militat[e] in favor of postpon[ing]’ review. *Id.* at 1263 (quoting *AT&T Corp. v. FCC*, 349 F.3d 692, 700 (D.C.Cir.2003)). ... Yet, to determine whether a future contingency creates fitness

(and ultimately ripeness) concerns, a court must assess the *likelihood* that a contingent event will deprive the plaintiff of an injury. *See Pittman*, 267 F.3d at 1278. In other words, it is not merely the existence, but the “*degree* of contingency [that] is an important barometer of ripeness.” *Riva v. Massachusetts*, 61 F.3d 1003, 1011 (1st Cir.1995) (emphasis added). *See also United Steelworkers of Am., Local 2116 v. Cyclops Corp.*, 860 F.2d 189, 194 (6th Cir.1988) (**‘In undertaking a ripeness analysis, we ... pay particular attention to the likelihood that the harm alleged by plaintiffs will ever come to pass.’**)”*Id.* at 1291–92 (11th Cir. 2010)

Plaintiff Volmer’s hardship will not come to pass if her claim is dismissed as OCSB has specifically given guidance in a manner which conflicts with her allegation in Paragraph 80 of the Second Amended Complaint.

Since Plaintiff Volmer’s claims are not ripe for adjudication, she is essentially seeking an advisory opinion from this Court. Article III courts do not issue advisory opinions on claims which are not ripe.

“And it is quite clear that ‘the oldest and most consistent thread in the federal law of justiciability is that the federal courts will not give advisory opinions.’ C. Wright, *Federal Courts* 34 (1963). Thus, the implicit policies embodied in Article III, and not history alone, impose the rule against advisory opinions on federal courts. When the federal judicial power is invoked to pass upon the validity of actions by the Legislative and Executive Branches of the Government, the rule against advisory opinions implements the separation of powers prescribed by the Constitution and confines federal courts to the role assigned them by Article III.” *Flast v. Cohen*, 392 U.S. 83, 96 (1968)

See also, *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203 (2021): “Federal courts do not possess a roving commission to publicly opine on every legal question. Federal courts do not exercise general legal oversight of the Legislative and Executive Branches, or of private entities. And federal courts do not issue advisory opinions.”

Based upon the foregoing, Plaintiff Volmer’s claims are not ripe because the substantive allegations in Paragraph 80 of the Second Amended Complaint will not occur. As such, this Court

cannot issue an advisory opinion on her claims. Therefore, Plaintiff Volmer's complaints must be dismissed as to OCSB.

### **CONCLUSION**

The Second Amended Complaint should be dismissed as a shotgun pleading. The factual allegations against OCSB in Paragraph 80 are contradicted by the August 1, 2022 memorandum issued to OCSB personnel regarding House Bill 1557. Also, Plaintiff Volmer does not have standing to assert claims either on behalf of her children because her children have not suffered an injury in fact, or on behalf of third parties, such as teachers. The claims against OCSB pursuant to 42 U.S.C. §1983 may not be asserted against OCSB because Michael Ollendorff, the district spokesperson, is not a policy maker subjecting OCSB to liability under the theory of Respondeat Superior. Since OCSB is required to comply with House Bill 1557 until such time as the courts address the law's constitutionality, OCSB will defer to the legal arguments of the State Defendants regarding the constitutionality of the law. Finally, the claim should be dismissed as it is not ripe for adjudication because the generalized fear alleged by Plaintiff Volmer will not occur based upon the guidance provided in the August 1, 2022 memorandum.

**WHEREFORE**, OCSB respectfully requests that this Honorable Court dismiss Plaintiff Volmer's claims with prejudice for the reasons stated above and that this Honorable Court not permit any further amendments of the Complaint, as such amendments would be futile based upon the August 1, 2022 memorandum issued by OCSB. "Nevertheless, a motion for leave to amend may appropriately be denied "(1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile." In re Engle Cases, 767 F.3d 1082, 1108–09 (11th Cir. 2014).

**COMPLIANCE WITH LOCAL RULE 7.1(F)**

OCSB certifies that this Motion complies with Local Rule 7.1(F) as it contains less than 8,000 words, as calculated by the Word Processing program Microsoft Word.

DATED: November 30, 2022

Respectfully submitted,



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*Attorney for Defendant,*  
*Orange County School Board*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I have filed the foregoing with the Clerk of Court via CM/ECF this 30th day of November 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.



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**JOHN C. PALMERINI, B.C.S.**



**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**

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**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



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



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.



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2021 OCT 12 PM 2:01

DEPT OF EDUCATION  
TALLAHASSEE FLA

**STATE OF FLORIDA  
STATE BOARD OF EDUCATION**

IN RE:

DOE No.: 2021-4033

SCHOOL BOARD OF ORANGE COUNTY,  
STUDENT OPT-OUT REQUIREMENTS.

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**ORDER OF STATE BOARD OF EDUCATION UNDER ITS OVERSIGHT AND  
ENFORCEMENT AUTHORITY**

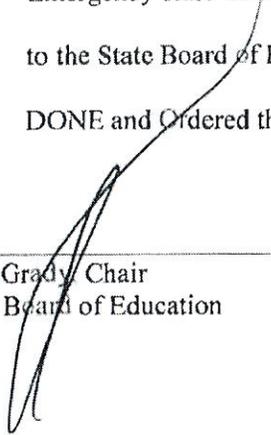
After having considered the determination of probable cause made by the Commissioner of Education, Richard Corcoran, along with an independent review of the documentary support for that determination, as well as public comment and discussions provided at the October 7, 2021, State Board of Education meeting, the State Board of Education implements its oversight authority under section 1008.32, Florida Statutes, as follows:

1. The State Board of Education finds that the School Board of Orange County's masking/face covering policy does not comply with Florida Department of Health Emergency Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings. That rule requires public schools to "allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's sole discretion."
2. Based on this finding, it is ordered that the School Board of Orange County must document compliance with Florida Department of Health Emergency Rule 64DER21-15.
3. The School Board of Orange County has 48 hours from receipt of this order to document compliance as set forth in this order. If the School Board of Orange County demonstrates compliance by this deadline, then no further action is needed.

4. If the School Board of Orange County fails to timely document compliance within 48 hours from receipt of this order, the School Board of Orange County must provide to the Commissioner of Education, no later than 48 hours after receipt of this order, information confirming the current annual compensation provided to all school board members.
5. Upon receipt of the annual compensation information for the School Board of Orange County members mentioned above, and continuing until the School Board of Orange County demonstrates compliance with the law, the Florida Department of Education is directed to begin withholding from state funds, on a monthly basis, an amount equal to 1/12 of the total annual compensation of the school board, as an initial step. Monthly withholding must continue until the School Board of Orange County demonstrates compliance, the State Board of Education withdraws this order, or when the rule expires or is withdrawn. If the School Board of Orange County fails to provide the requested compensation information within the 48 hour period, the Florida Department of Education shall withhold state funds based on the most recent appropriations estimate until the School Board of Orange County provides the current estimate.
6. In complying with this order, the School District of Orange County may not permit the reduction of funds based upon this order to impact student services or teacher pay.
7. The Florida Department of Education is also directed to withhold state funds, until the School Board of Orange County demonstrates compliance with the law, in an amount equal to any federal Project SAFE Grant funds, or successor grants, awarded to the School District of Orange County for its noncompliance with Emergency Rule 64DER21-15.
8. The Commissioner of Education shall monitor and report to the State Board of Education on the School Board of Orange County's compliance with Florida Department of Health

Emergency Rule 64DER21-15 and this order, and periodically provide recommendations to the State Board of Education on the matter.

DONE and Ordered this 12<sup>th</sup> day of October, 2021.

  
\_\_\_\_\_  
Tom Grady, Chair  
State Board of Education

  
\_\_\_\_\_  
Ben Gibson, Vice Chair  
State Board of Education

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 12, 2021, the foregoing was filed with the Agency Clerk of the Florida Department of Education, and that a true and correct copy of the foregoing has been furnished via email and U.S. Mail to:

Dr. Barbara Jenkins, Orange County School Superintendent  
[barbara.jenkins@ocps.net](mailto:barbara.jenkins@ocps.net)  
Ms. Teresa Jacobs, Chair, School Board of Orange County  
[teresa.jacobs@ocps.net](mailto:teresa.jacobs@ocps.net)

  
\_\_\_\_\_  
AGENCY CLERK