

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

EQUALITY FLORIDA, et, al,

Plaintiffs,

Case No: 4:22-cv-00134-AW-MJF

vs.

RONALD DION DESANTIS, in
his official Capacity as Governor
of the State of Florida, et al,

Defendants.

**DEFENDANT, PASCO COUNTY SCHOOL BOARD'S
MOTION TO DISMISS SECOND AMENDED COMPLAINT**

COMES NOW, Defendant, PASCO COUNTY SCHOOL BOARD (“Pasco”), pursuant to Federal Rules of Civil Procedure Rules 12(b)(6) of the Federal Rules of Civil Procedure, moves the Court for an Order dismissing the Plaintiffs’ Complaint as to Pasco, and states as follows:

PRELIMINARY STATEMENT

1. Plaintiffs are a collection of two (2) students, nine (7) parents, and two (2) teachers (*See* ¶¶ 9 – 15) who make various challenges to the constitutionality of

Florida State legislative act entitled House Bill 1557 (also known as “H.B. 1557”)¹.
(See ¶¶ 99 – 145)

2. There is no allegation in the Complaint that the Pasco participated in the creation, drafting, or passage of such legislation, nor that Pasco has any authority to have done so. Rather, the Complaint generally asserts that Pasco’s duties “include implementing H.B. 1557”. (See ¶ 23)

3. Within the second amended Complaint, Plaintiff Myndee Washington alleges the following to support Plaintiffs’ claim against Defendant Pasco:

A. She is “a long-time middle-school civics and drama teacher” at a charter school in Pasco County, Florida. (See ¶ 15)

B. She has one child, who is not a party to this action, attends a traditional Pasco County public high school. (See ¶ 15)

C. She has been denied the ability to use “safe space” stickers, presumably in her workspace at Union Park Charter Academy, where she is employed.

MOTION TO DISMISS

4. The Complaint fails to state sufficient facts to articulate a cause of action against Pasco for which relief may be granted.

¹ As codified, H.B. 155 creates new subsections to the existing statutory provisions of §1001.42(8), Fla. Stat., inserting the substantive language about which the Plaintiffs complain in this action.

5. The Complaint is a vague statement of assertions which do not specifically describe Pasco's unlawful conduct, Plaintiff's substantive claim for relief against Pasco, nor Plaintiff's injuries related to any action or omission taken by Pasco. Rather, it is a shotgun pleading which is insufficient to apprise Pasco of its specific action or inaction which is the basis for the claim.

6. The Pasco County Plaintiff fails to recognize that Union Park Charter Academy is a separate legal entity from Defendant, Pasco, and that, as such, Washington is NOT an employee of Defendant, Pasco, and is not subject to any direct management, supervision or control of Defendant, Pasco. Thus, any direct relationship between Washington and Defendant, Pasco, is virtually non-existent -- remote and/or tenuous, at best.

MEMORANDUM OF LAW

7. To survive a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a "complaint must now contain a sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *American Dental Ass'n v. Cigna Corp.*, 605 F.3d 1283, 1289 (11th Cir. 2010) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). In making this determination, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009). "[T]hreadbare recitals of [the] elements of a cause of

action, supported by mere conclusory statements, do not suffice.” Id. In short, Plaintiffs must provide enough factual allegations to raise a right to relief above the speculative level and to indicate the presence of the required elements. See e.g., *Watts v. Fla. Int’l Univ.*, 495 F.3d 1289, 1302 (11th Cir. 2007). Defendant Washington is not an employee of Pasco. Rather, she is an employee of the separate legal entity, Union Park Charter Academy, a public charter school operating within Pasco County Florida pursuant to § 1002.33, Fla. Stat.

8. Under Florida law, charter schools, such as Union Park Charter Academy, are operated by independent governing boards, which are separate legal entities from the School Board. Most significantly, some of statutory rights under which a charter school such as Union Park Charter Academy, enjoy include the following:

A. The right to select its own employees, (which are not employees of Pasco); §1002.33(12)(a), Fla. Stat.

B. Adopt its own policies (which are separate from the policies of Pasco²); §1002.33(12)(g)(3), Fla. Stat., and

² Also related and significant to understanding the significance of this provision is 1002.33(5)(b)(1)(d), which provides, “The **sponsor shall not apply its policies to a charter school unless mutually agreed to by both the sponsor and the charter school.** If the sponsor subsequently amends any agreed-upon sponsor policy, the version of the policy in effect at the time of the execution of the charter, or any subsequent modification thereof, shall remain in effect and the sponsor may

C. The exemption from “all statutes in chapters 1000-1013.”
§1002.33(16)(a), Fla. Stat.

9. As drafted against Pasco, it appears that any claim by Washington’s would have to be against her employer, Union Park Charter School. If, and to the extent that Washington’s claim is on behalf of her child, then it fails as the child is not a party to the suit. In either event, the basis of Plaintiffs claim in this regard is unclear.

CONCLUSION

For the aforementioned reasons, Pasco should be dismissed from the relief requested by the Complaint based upon Plaintiffs’ failure to state of cause of action against Pasco.

Dated 5 December 2022

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not hold the charter school responsible for any provision of a newly revised policy until the revised policy is mutually agreed upon.” (**Emphasis added.**)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the undersigned electronically filed the foregoing with the Clerk of the Court via the CM/ECF system on 5th day of December 2022, and requested the Clerk provide electronic notification to all counsel of record.

s/ Dennis J. Alfonso

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