

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

EQUALITY FLORIDA, et al.,

Plaintiffs,

vs.

CASE NO.: 4:22-CV-00134-AW-MJF

FLORIDA STATE BOARD OF
EDUCATION, et al.,

Defendants. /

**DEFENDANT ST. JOHNS COUNTY SCHOOL BOARD'S RESPONSE TO
PLAINTIFFS' MOTION TO LIFT THE STAY OF DISCOVERY**

Defendant St. Johns County School Board (“St. Johns” or “Board”) responds in opposition to Plaintiffs’ Motion to Lift the Stay of Discovery, because at its core, Plaintiffs’ motion is more properly construed as a motion for reconsideration. None of the alleged new facts establish or support allegations of a constitutional deprivation or an actionable Board policy, custom, or practice, none are sufficient to lift the stay, the concessions offered by Plaintiffs do not mitigate the significant burden their proffered discovery imposes on the Board, nor do they rectify the several procedural and substantive – some of which are dispositive – deficiencies contained in the Amended Complaint. Plaintiffs’ dismissal of the Governor as a party defendant, their agreement to not seek third party discovery from his office,

and the minor revisions to the already-served interrogatories are largely immaterial to the claims against the Board. Namely, Plaintiffs’ agreement to “substantially and voluntarily narrow[]” various areas of their discovery both overstates their concessions and does not shift “[t]he balance of equities” in their favor, [DE 113 at 14], as this does nothing to rectify the overly broad and unnecessarily intrusive discovery Plaintiffs seek from the Board, especially in light of the glaring deficiencies in Plaintiffs’ as applied claims against all Defendants.

In its well-reasoned Order Granting Stay of Discovery, the Court weighed the issues in evaluating whether a stay was appropriate under the facts present here, and determined on balance, the stay was appropriate. [DE 89]. Notwithstanding Plaintiffs’ new arguments—which are essentially just a restatement of arguments this Court largely already considered and rejected in initially granting the stay—nothing here compels a different result. More specifically, the Court reasoned that the stay was appropriate after weighing issues of potential delay against the “extensive discovery” that would impose “substantial burdens,” and that could be avoided altogether if the motions to dismiss are granted. [DE 89, p. 2]. The Eleventh Amendment immunity argument was not advanced by, nor does it apply to, the Board, and therefore, further discussion on this issue is omitted.

A. There Has Been No Significant Delay Warranting the Lifting of the Stay

Pursuant to the Court’s briefing schedule, Defendants’ replies to Plaintiffs’ opposition to their respective motions to dismiss, to the extent they filed one, were all due on or before August 10, 2022. [DE 71]. Therefore, it has been only six weeks since the briefing was concluded. There can be no reasonable argument that this constitutes an unreasonable delay here, where the Court must consider a 114 page, 317 paragraph Amended Complaint alleging hundreds of claims,¹ and adjudicate seven different motions to dismiss. Indeed, this is far less than the time between the filing of the Complaint, [DE 1], and Amended Complaint. [DE 47]. As argued by the State Defendants and acknowledged by the Court, Plaintiffs have not moved quickly up to this point. [DE 89, pp. 1-2]. Plaintiffs’ apparent efforts to now expedite a ruling on the various motions to dismiss, or alternatively, to engage in voluminous discovery, is unpersuasive.

Plaintiffs also cite a reliance on the February trial date and their desire for prompt resolution, as grounds to lift the stay and to immediately conduct discovery. This too is unavailing because the Court has already acknowledged the existing November discovery deadline is not immovable, and recognized that if Plaintiffs’

¹ Plaintiffs’ concession about *not really* seeking claims by “all Plaintiffs against all Defendants,” despite the unambiguous language in Count I, does little to mitigate the Court’s labors.

claims survive the motion to dismiss stage, the Court will ensure that Plaintiffs have adequate time to conduct appropriate discovery. [DE 89, p. 1 n.1]. The Court may also reschedule the trial or upon a motion by a party and a showing of good cause. Fed. R. Civ. P. 16(b)(4). To the extent Plaintiffs argue they detrimentally relied on the February trial date in making the decision to refrain from filing a motion for preliminary injunction, nothing stands in their way from filing one at any time.² Plaintiffs should not be permitted to delay amendment of the Complaint and sit on their rights to seek a preliminary injunction in an effort to create a scheduling emergency that requires discovery on a clearly improper shotgun pleading, and for which dispositive arguments remain pending.

To that end, Plaintiffs' Motion is unpersuasive because the case remains in the identical posture as it was when the Court granted the stay. The only substantive alleged change includes anecdotal media reports of the same alleged harm Plaintiffs predicted, but the Court found insufficient, to warrant immediate discovery during its consideration of the pending dispositive motions. Plaintiffs' Amended Complaint still contains the same procedural and substantive deficiencies as it did when the stay was granted, and their discovery, in continuing to aggregate all the parties together, still fails to separate the wheat from the chaff. *See Composite Exhibit A,*

²To the extent Plaintiffs claim to require voluminous discovery to establish the bases for a preliminary injunction, perhaps a preliminary injunction is not appropriate in this case.

Interrogatories. Plaintiffs have not remedied the shotgun pleading issues, and their discovery still takes a one-size-fits-all approach. Given this similarity between the case's posture then and now, the same reasons that favored entry of the stay once more favor maintaining it.

B. The Shotgun Discovery Sought by Plaintiffs Is Unnecessarily Intrusive and Burdensome

Plaintiffs served their First Set of Interrogatories to All Defendants and their Request for Production to the Board. *See Composite Exhibit A*. In their one-size-fits-all Interrogatories, Plaintiffs seek extensive information dating back *three years* before the July 1, 2022 implementation of H.B. 1557, the purported source of their constitutional harm. The portions of their interrogatories unchanged by their current minimal concessions include, but are not limited to, seeking information about: (1) justification for the pedagogical interests furthered by the law; (2) partisan and/or political interests that the law is intended to further; (3) legislative involvement in the drafting, proposal, consideration, enactment, enforcement, operationalization, application, interpretation, or implementation of the law; (4) prior instances of classroom instruction “on sexual orientation or gender identity;” and (5) the Defendants’ subjective interpretation of undefined statutory language. *Composite Exhibit A, Interrogatories*. Plaintiffs’ Request for Production contain extraordinarily detailed and labor intensive records requests for the same three-year time period in areas wholly unrelated to the enactment and enforcement of H.B.

1557. *Composite Exhibit A, Request for Production*. Indeed, a quarter of Plaintiffs’ Requests are more akin to a fishing expedition of potential LGBTQ issues rather than discovery about their facial and as applied challenges to the recently passed H.B. 1557. *E.g. Composite Exhibit A, Request for Production, Request No.’s 28-38*.

Although the Board defers its specific objections and arguments to Plaintiffs’ discovery until the appropriate time, the sheer volume, depth and breadth of their discovery, the time necessary to respond to it, and the “substantial burden,” to the Board, to use the Court’s language, is self-evident. Plaintiffs’ claim that they really didn’t allege claims by all Plaintiff’s against all Defendants, despite the unambiguous style of Count I, is similarly unavailing. Their gaslighting argument that “to the extent Defendants are confused (and there is no good reason why they should be)” ignores the Board’s entitlement to take Plaintiffs allegations at face value, [DE 91, p. 72]. These efforts to re-cast the Amended Complaint from what it actually is renders the proffered discovery even more intrusive and premature. Even though Plaintiffs now claim to have “clarif[ied]” the allegations in the Amended Complaint, *see* [DE 91, p. 59], which includes effectively re-writing Count I at the very least in their response in opposition, they have not remedied these defects in their discovery. Plaintiffs’ dismissal of the Governor as a party, their concession about not seeking third party discovery from him, and the revisions to the pending

document request set forth in their Motion, [DE 113, pp. 15-16], do little, if anything, to reduce the time, expense, and burden to the Board.

Plaintiffs' substantive arguments seeking to have the Court re-balance the issues are largely a restatement of their fears set forth in their response in opposition to Defendants' motion to stay discovery. [DE 81]. Set aside for the moment that the proffered harm is largely rooted in media articles and in one case, a Plaintiff's affidavit containing hearsay, none of the purported wrongs change the balance to lift the stay. To the contrary, none of the alleged harms proffered by Plaintiffs in support of their effort to conduct voluminous discovery while dispositive motions are pending constitute actionable unconstitutional conduct. [DE 113, pp. 8-10]. Also notably absent are any new claims of actionable unconstitutional Board customs, policies, or practices. Plaintiffs' recounting of media reports where some had questions about the implementation of H.B. 1557 – many of which are objectively unreasonable – does not favor lifting of the stay, particularly when *none* are attributable to official Board action. Plaintiffs seems to suggest that anything other than a full throated Board endorsement of LGBTQ issues constitutes unconstitutional conduct traceable to the enactment and implementation of H.B. 1557. This is not the case.

Plaintiffs' efforts to paint Defendants as mischaracterizing the effects of H.B. 1557, is tenuous at best. [DE 113, pp. 12-13]. Moreover, Plaintiffs' argument that

“Defendants have taken affirmative steps to emphasize the law’s sweeping scope and discriminatory intent” is simply untrue, and is not supported by *any* factual allegation. [DE 113, p. 13]. Equally unsupported is Plaintiffs’ contention that Defendants’ arguments have been “counterfactual.” [DE 113, p. 13]. At most, and assuming the media articles are true and without bias, Plaintiffs have alleged *individual* confusion as to the effect of H.B. 1557, *not* the implementation of a Board custom, policy, or practice that endorses discriminatory intent. Equally unsupported is Plaintiffs’ argument that “Defendants continue to say one thing to this Court and something else to teachers and school administrators desperate for guidance,” [DE 113 at 13], which both again paints all Defendants with the same brush, and, at its core, constitutes ad hominem attacks against defense counsel. Plaintiffs’ suggestion that “Defendants” lack candor to this tribunal is disingenuous.

While Plaintiffs strive to attribute the subjective confusion and conduct of individuals to official Board action (and apparently to the advice rendered by defense counsel who have advocated in this Court), Plaintiffs have failed entirely to allege the foundation upon which a *Monell* claim requires, either in the Amended Complaint itself, or in its most recent summary of perceived wrongs.³ [*E.g.*, DE 66,

³ While clear Plaintiffs are not required to state a separate claim for relief in support of their efforts to lift the stay, none of the newly alleged harm is actionable, either individually or in the aggregate, nor do they rectify Plaintiffs’ insufficient as applied claims in the Amended Complaint.

pp. 15-16; DE 103, pp. 6-8]. An official governmental policy includes “the acts of its policymaking officials.” *Connick v. Thompson*, 563 U.S. 51, 61 (2011). For unwritten policies, a plaintiff must allege “a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well-settled as to constitute a custom or usage with the force of law.” *Brown v. City of Fort Lauderdale*, 923 F. 2d 1474, 1481 (11th Cir. 1991). Here, at best, Plaintiffs’ new allegations point only to isolated incidents and perceptions that do not individually or collectively amount to constitutional deprivations, much less establish the requisite Board custom, policy, or practice. The alleged incidents, even if true, do not favor lifting the stay while dispositive motions remain pending. Plaintiffs’ failure to allege facts to even state a claim for Board liability is but one of the pending potentially dispositive motions to dismiss arguments that continues to provide grounds to maintain the stay of discovery pending adjudication of the pending motions to dismiss.⁴ In order to prevail, or even to state a claim, Plaintiff must allege much more than vicarious liability for the conduct of its employees.

⁴ As a separate but independently sufficient basis to maintain the stay, Plaintiffs failed to allege any actionable act or omission by the Board, and instead, rely solely on Plaintiffs’ subjective fears to establish as applied claims. [DE 66]. While the Board may be a proper declaratory or injunctive relief defendant, it is entirely unnecessary to include it because it, like all school boards, it would be bound by any statewide injunction preventing or limiting the enforcement of H.B. 1557. Thus, the requirement for it to participate in any discovery at all is questionable in the absence of a cognizable as applied claim.

This, they have failed to do, and nothing in the instant motion moves the needle towards discovery at this stage.

Contrary to Plaintiffs' unsupported arguments, counsel for the Defendants have appropriately and aptly addressed the conduct prohibited by the unambiguous language of H.B. 1557. Labeling H.B. 1557's limitation on discussing sexual identity and gender identity in grades K-3 as "draconian," [DE 113, p. 13], accusing Defendants of duplicitous conduct, and using a cudgel to pound individual fears and confusion into the spectre of constitutional as applied claims do not advance Plaintiffs' positions, nor do they tip the scales to permit voluminous discovery while potentially dispositive motions are pending. Succinctly stated, the subjective misperception of individual employees, like the subjective and speculative fears of Plaintiffs, are not actionable, nor do they reflect the implementation of unconstitutional Board customs, policies, or practices, and do not warrant immediate discovery during the pending dispositive motions to dismiss.

CERTIFICATE OF WORD COUNT

I certify that this Memorandum complies with the word count limitation set forth in Local Rule 7.1(F) because this Memorandum contains 2,240 words, excluding the parts exempted by said Local Rule.

Respectfully submitted,

/s J. David Marsey

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 26, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following: **Roberta Ann Kaplan at rkaplan@kaplanhecker.com, D. Brandon Trice at btrice@kaplanhecker.com, John Charles Quinn at jqunn@kaplanhecker.com, Joshua Adam Matz at jmatz@kaplanhecker.com, Kate Linsley Doniger at kdoniger@kaplanhecker.com, Valerie Lynn Hletko at vhletko@kaplanhecker.com, Christopher Stoll at CStoll@nclrights.org,**

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COMPOSITE EXHIBIT A

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

EQUALITY FLORIDA, et al.,

Plaintiffs,

v.

RONALD D. DESANTIS, in his official
capacity as Governor of Florida, et al.,

Defendants.

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

PLAINTIFFS' FIRST SET OF INTERROGATORIES TO ALL DEFENDANTS

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and Rule 26.1 of the Local Rules of the United States District Court for the Northern District of Florida, Plaintiffs Equality Florida, Family Equality, M.A., S.S., Zander Moricz, Lindsay McClelland, Rabbi Amy Morrison, Cecile Houry, Dan and Brent VanTice, Lourdes Casares, Kimberly Feinberg, Lindsey Bingham Shook, Anh Volmer, Scott Berg, and Myndee Washington (“Plaintiffs”), through undersigned counsel, hereby request that Defendants Ronald D. DeSantis, Florida State Board of Education, Thomas R. Grady, Ben Gibson, Monesia Brown, Esther Byrd, Grazie P. Christie, Ryan Petty, Joe York, Manny Diaz Jr., 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 answer under oath this First Set of Interrogatories (“Interrogatories”) and serve such answers to undersigned counsel at the offices of Kaplan Hecker & Fink LLP, 350 Fifth Avenue, 63rd Floor, New York, New York 10118, within thirty (30) days of service of these Interrogatories,

as specified in Rule 33 of the Federal Rules of Civil Procedure, unless otherwise agreed by the parties or required by any order entered by the Court in this action.

The Definitions and Instructions below form an integral part of the Interrogatories that follow and must be read in conjunction with them and followed when responding to the Interrogatories.

DEFINITIONS

Any capitalized terms not defined below shall have the meaning ascribed to them in the Federal Rules of Civil Procedure or as otherwise defined in the Amended Complaint (as defined below).

1. “Action” shall mean this lawsuit, *Equality Florida et al v. DeSantis et al*, No. 22 Civ. 134 (N.D. Fla.).

2. “Amended Complaint” refers to the First Amended Complaint filed on May 25, 2022, ECF No. 47.

3. “Communication” is used in the broadest sense permissible under Federal Rule of Civil Procedure 34(a)(1)(A) and includes any correspondence, discussion, or the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

4. “Defendant” or “Defendants” shall mean Ronald D. DeSantis, Florida State Board of Education, Thomas R. Grady, Ben Gibson, Monesia Brown, Esther Byrd, Grazie P. Christie, Ryan Petty, Joe York, Manny Diaz Jr., 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, including any other names, nicknames, images, or icons by which the individual Defendants are known.

5. “Document” is synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a)(1)(A). For the avoidance of doubt, Documents include, without limitation, drafts (revisions or finals), original or preliminary notes, and summaries of other Documents, memorialized Communications of any type, and computer files, including with all attachments and/or other matters affixed thereto, including, without limitation email, word processing or presentation software files, PDF software files, materials edited on collaborative Document-sharing platforms like Google Drive, materials generated through messaging or social media platforms, including text messages, SMS messages, instant messages, Bloomberg messages, iMessages, Blackberry messages, Skype messages, Slack messages, Microsoft Teams messages, tweets, LinkedIn messages, Snapchats, Instagram messages, Facebook status updates, posts, or messages, TikTok messages, Tumblrs, Vines, Vlogs, WhatsApp messages, or any other message board, chat, or social media message or post. A draft of a non-identical copy is a separate Document within the meaning of this term. Documents may constitute, include, or concern Communications.

6. “Includes” and “including” mean “includes but not limited to” and “including but not limited to” respectively.

7. “Plaintiffs” shall mean Equality Florida, Family Equality, M.A., S.S., Zander Moricz, Lindsay McClelland, Rabbi Amy Morrison, Cecile Houry, Dan and Brent VanTice; Lourdes Casares, Kimberly Feinberg; Lindsey Bingham Shook, Anh Volmer, Scott Berg, and Myndee Washington.

8. “Policies” shall mean policies, procedures, protocols, practices, programming, guidance, guidelines, directives, and/or curricula, written or unwritten, formal or informal.

9. “Relating” or “related” shall mean affecting, concerning, constituting, dealing with, describing, embodying, evidencing, identifying, involving, providing a basis for, reflecting, regarding, respecting, stating, or in any manner whatsoever pertaining, in whole or in part, to that subject.

10. “You,” “Your,” or “Yours” refers to each Defendant, as defined above.

INSTRUCTIONS

1. Each Defendant shall provide their own individual responses to the Interrogatories.

2. Your responses to these Interrogatories shall be based on all knowledge and information in Your possession, custody, or control and should be provided irrespective of the Federal Rules of Evidence.

3. The singular includes the plural and vice versa, except as the context may otherwise require.

4. Reference to any gender includes any and all genders and gender identities.

5. Whenever a term is used herein in the present, past, future, subjunctive, or other tense, voice, or mood, it shall also be construed to include all other tenses, voices, or moods.

6. The words “and,” “any,” and “or” shall be construed as either conjunctive or disjunctive in such manner as will broaden as widely as possible the scope of any Interrogatory; the word “all” means “any and all”; the word “any” means “any and all”; the word “each” means “any and all.”

7. Any reference to a person, including You, in these Interrogatories should be construed as also referring to any persons acting, engaged to act, or purporting to act for them or on their behalf, including all subsidiaries, divisions, successors, predecessors, assigns, parents, affiliates, representatives, servants, agents, employees, officers, or attorneys.

8. When the term “identify” is used in the Interrogatories in reference to a person, You must give, to the extent known, the person’s full name, present or last known address, and, when referring to a natural person, the present or last known place of employment.

9. When the term “identify” is used in the Interrogatories in reference to Documents, You must give, to the extent known:

- a. The type of Document;
- b. The Document’s general subject matter;
- c. The date of the Document; and
- d. The Author(s), addressee(s) and recipient(s).

In the alternative, the responding party may produce the Document, together with identifying information sufficient to satisfy Federal Rule of Civil Procedure 33(d).

10. Questions regarding the interpretation of these Interrogatories should be resolved in favor of the broadest possible construction. Any ambiguity in an Interrogatory shall be construed to bring within the scope of the Interrogatory all information that otherwise could be construed to be outside of its scope. If, in responding to any of these Interrogatories, You encounter any ambiguity or confusion in construing either an Interrogatory or a Definition or Instruction relevant to an Interrogatory, set forth the matter deemed ambiguous, select a reasonable interpretation that You believe resolves the ambiguity, respond to the Interrogatory using that interpretation, and explain with particularity the construction or interpretation selected by You in responding to the Interrogatory.

11. To the extent you believe that any Interrogatory requires disclosure of information claimed by You to be protected by attorney-client privilege, work product doctrine, or any other right of non-disclosure, furnish a list identifying the Documents, Communications, or information

for which the protection is claimed together with the following (if applicable): (i) the type of Document or Communication (*e.g.*, letter or memorandum); (ii) the general subject matter of the Document; (iii) the date of the Document; (iv) the author of the Document, the addressees of the Document, and any other recipients, and, where not apparent, the relationship of the author, addressees, and recipients to each other; (v) the nature of the privilege that is being claimed; and any other information to enable an assessment of the applicability of the privilege or protection claims, as required by Rule 26(b)(5) of the Federal Rules of Civil Procedure. If a Document or Communication is withheld on the basis of work product doctrine, also specify whether the Document or Communication was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based. To the extent a requested Document or Communication contains non-privileged information, the privileged information shall be redacted from the same and the redacted version of the Document produced.

12. The obligation to respond to these Interrogatories is continuing in nature. If, after responding to the Interrogatories, You obtain or become aware of any further information responsive to these Interrogatories, You are required to supplement Your responses pursuant to Federal Rule of Civil Procedure 26(e).

13. These Interrogatories are without prejudice to, or waiver of, Plaintiffs' right to conduct further discovery.

14. Unless otherwise indicated, these Interrogatories refer to the time period of on or after June 1, 2019 through the present.

INTERROGATORIES

1. Identify all persons with knowledge or information concerning the subject matter of the above-captioned action and the nature of each such person's knowledge.

2. Identify and describe all categories of Documents concerning the subject matter of the Action.

3. Identify each and every interest, including any pedagogical interests, that H.B. 1557 furthers or is intended to further.

4. For each interest identified in response to Interrogatory No. 3, state whether the interest is compelling, substantial, important, or significant, and explain why.

5. For each interest identified in response to Interrogatory No. 3, identify all persons with knowledge or information concerning such interest, including how H.B. 1557 will or will not further such interest.

6. For each interest identified in response to Interrogatory No. 3, identify and describe all categories of Documents concerning such interest, including how H.B. 1557 will or will not further such interest.

7. Identify any partisan and/or political interests that H.B. 1557 is intended or expected to further, or alternatively, state that no such interests exist.

8. Identify all offices, subdivisions, officials, agents, employees, partners, affiliates, and/or representatives of Your office who have information or knowledge regarding the passage of H.B. 1557, including its drafting, proposal, consideration, debate, enactment, and implementation.

9. Identify all persons with whom You have communicated concerning the drafting, proposal, consideration, passage, enactment, enforcement, operationalization, application, interpretation, or implementation of H.B. 1557.

10. Identify and generally describe any actions You have taken, anticipate taking, or have considered taking as a result or in light of the passage of H.B. 1557, including any changes to Policies.

11. Identify all instances of classroom instruction “on sexual orientation or gender identity” in grades K-3 and all instances of classroom instruction that were not “age-appropriate or developmentally appropriate for students” in grades 4-12 that were referenced, considered or intended to be prohibited in connection with the proposal, consideration, passage, and/or enactment of H.B. 1557, or that You have considered in interpreting, operationalizing, applying, and/or implementing H.B. 1557.

12. With respect to Your role in interpreting, operationalizing, applying, implementing, and/or enforcing H.B. 1557, state Your definition of the phrases “classroom instruction,” “school personnel,” “third parties,” and “on sexual orientation and gender identity” as those phrases are used in H.B. 1557.

13. Identify any documents that define “classroom instruction,” “school personnel,” “third parties,” “sexual orientation,” “gender identity,” “age appropriate,” and/or “developmentally appropriate,” as those terms are used in H.B. 1557.

14. State whether and to what extent H.B. 1557 applies to Florida public charter schools. *See Fla. Stat. § 1002.33(16)(a)(5) (2021).*

Dated: June 17, 2022

Respectfully submitted,

By: 

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

EQUALITY FLORIDA, et al.,

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RONALD D. DESANTIS, in his official
capacity as Governor of Florida, et al.,

Defendants.

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

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2022, true and correct copies of Plaintiffs' First Set of Interrogatories to All Defendants were duly served upon Defendants Ronald D. DeSantis, Florida State Board of Education, Thomas R. Grady, Ben Gibson, Monesia Brown, Esther Byrd, Grazie P. Christie, Ryan Petty, Joe York, Manny Diaz Jr., Florida Department of Education, School Board of Manatee County, School Board of Sarasota County, School Board of Miami-Dade County, and St. Johns County School Board via email and Defendants Broward School Board, Orange County School Board, and Pasco County School Board via mail.

Dated: New York, NY
June 17, 2022



Roberta A. Kaplan, Esq.

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

EQUALITY FLORIDA, et al.,

Plaintiffs,

v.

RONALD D. DESANTIS, in his official
capacity as Governor of Florida, et al.,

Defendants.

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

**PLAINTIFFS' FIRST SET OF REQUESTS FOR THE PRODUCTION OF
DOCUMENTS TO DEFENDANT ST. JOHNS COUNTY SCHOOL BOARD**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 26.1 of the Local Rules of the United States District Court for the Northern District of Florida, Plaintiffs Equality Florida, Family Equality, M.A., S.S., Zander Moricz, Lindsay McClelland, Rabbi Amy Morrison, Cecile Houry, Dan and Brent VanTice, Lourdes Casares, Kimberly Feinberg, Lindsey Bingham Shook, Anh Volmer, Scott Berg, and Myndee Washington (“Plaintiffs”), through undersigned counsel, hereby request that Defendant St. Johns County School Board produce the following Documents at the offices of Kaplan Hecker & Fink LLP, 350 Fifth Avenue, 63rd Floor, New York, New York 10118, within thirty (30) days of service of this First Set of Requests for the Production of Documents (the “Requests”), unless otherwise agreed by the parties or required by any order entered by the Court in this action.

The Definitions and Instructions below form an integral part of the Requests that follow and must be read in conjunction with them and followed when responding to the Requests.

DEFINITIONS

Any capitalized terms not defined below shall have the meaning ascribed to them in the Federal Rules of Civil Procedure or as otherwise defined in the Amended Complaint (as defined below).

1. “Action” shall mean this lawsuit, *Equality Florida et al v. DeSantis et al*, No. 22 Civ. 134 (N.D. Fla.).

2. “Amended Complaint” shall mean the First Amended Complaint filed on May 25, 2022, by Plaintiffs in this Action, ECF No. 47.

3. “Communication” is used in the broadest sense permissible under Federal Rule of Civil Procedure 34(a)(1)(A) and includes any correspondence, discussion, or the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

4. “Document” is synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a)(1)(A). For the avoidance of doubt, Documents include, without limitation, drafts (revisions or finals), original or preliminary notes, and summaries of other Documents, memorialized Communications of any type, and computer files, including with all attachments and/or other matters affixed thereto, including, without limitation, email, word processing or presentation software files, PDF software files, materials edited on collaborative Document-sharing platforms like Google Drive, materials generated through messaging or social media platforms, including text messages, SMS messages, instant messages, Bloomberg messages, iMessages, Blackberry messages, Skype messages, Slack messages, Microsoft Teams messages, tweets, LinkedIn messages, Snapchats, Instagram messages, Facebook status updates, posts, or messages, TikTok messages, Tumblrs, Vines, Vlogs, WhatsApp messages, or any other message board, chat, or social media message or post. A draft

of a non-identical copy is a separate Document within the meaning of this term. Documents may constitute, include, or concern Communications.

5. “Includes” and “including” mean “includes but not limited to” and “including but not limited to” respectively.

6. “Interrogatories” shall mean Plaintiffs’ First Set of Interrogatories to all Defendants served on Defendants concurrently with these Requests.

7. “Plaintiffs” shall mean Equality Florida, Family Equality, M.A., S.S., Zander Moricz, Lindsay McClelland, Rabbi Amy Morrison, Cecile Houry, Dan and Brent VanTice; Lourdes Casares, Kimberly Feinberg; Lindsey Bingham Shook, Anh Volmer, Scott Berg, and Myndee Washington.

8. “Policies” shall mean policies, procedures, protocols, practices, programming, guidance, guidelines, directives, and/or curricula, written or unwritten, formal or informal.

9. “Relating” or “related” means affecting, concerning, constituting, dealing with, describing, embodying, evidencing, identifying, involving, providing a basis for, reflecting, regarding, respecting, stating, or in any manner whatsoever pertaining, in whole or in part, to that subject.

10. “You,” “Your,” or “Yours” refers to the St. Johns County School Board.

INSTRUCTIONS

1. The Documents called for by these Requests are Documents in Your possession, custody, or control, or the possession, custody, or control of anyone acting on Your behalf.

2. Your responses to these Requests shall be based on all knowledge and information in Your possession, custody, or control.

3. The singular includes the plural and vice versa, except as the context may otherwise require.

4. Reference to any gender includes any and all genders and gender identities.

5. Whenever a term is used herein in the present, past, future, subjunctive, or other tense, voice, or mood, it shall also be construed to include all other tenses, voices, or moods.

6. The words “and,” “any,” and “or” shall be construed as either conjunctive or disjunctive in such manner as will broaden as widely as possible the scope of any Request; the word “all” means “any and all”; the word “any” means “any and all”; the word “each” means “any and all.”

7. Any reference to a person in these Requests should be construed as also referring to any persons acting, engaged to act, or purporting to act for them or on their behalf, including all subsidiaries, divisions, successors, predecessors, assigns, parents, affiliates, representatives, servants, agents, employees, officers, or attorneys.

8. These Requests seek production of all Documents, in their entirety, along with any attachments, drafts, and non-identical copies. A Document with handwritten, typewritten, or other recorded notes, editing marks, etc., is not and shall not be deemed identical to one without such modifications, additions, or deletions. If any portion of any Document or Communication is responsive to any Request, the entire Document or Communication, including any attachments or disclosures, must be produced. No attached Documents should be separated from one another.

9. Responsive Documents should be produced in the manner prescribed by the Federal Rules of Civil Procedure, including producing the requested Documents as they are kept in the ordinary course of business, in the sequence in which they are ordinarily maintained or organized and labeled to correspond with the categories in the Requests, and identifying the name of the

person from whose files the Documents were produced. Responsive Documents should also be produced in accordance with any order entered by the Court concerning the production of discovery materials.

10. To the extent that responsive Documents are located on a social media platform, such Documents should be produced directly from the platform.

11. Questions regarding the interpretation of these Requests should be resolved in favor of the broadest possible construction. Any ambiguity in a Request shall be construed to bring within the scope of the Request all Documents that otherwise could be construed to be outside of its scope. If, in responding to any of these Requests, You encounter any ambiguity or confusion in construing either a Request or a Definition or Instruction relevant to a Request, set forth the matter deemed ambiguous, select a reasonable interpretation that You believe resolves the ambiguity, respond to the Request using that interpretation, and explain with particularity the construction or interpretation selected by You in responding to the Request.

12. If You object to the production of a Document in relation to a specific Request, state with particularity the legal and factual basis for Your objection(s) with respect to such Request. You should respond to all portions of that Request that do not fall within the scope of Your objection. If You object to a Request on the ground that it is overly broad, provide such Documents that are within the scope of production that You believe is appropriate. If You object to a Request on the ground that to provide responsive Documents would constitute an undue burden, provide such responsive Documents as You believe can be supplied without undertaking an undue burden.

13. To the extent You believe any Request calls for production of a Document or Communication, or requires disclosure of information, claimed by You to be protected by attorney-

client privilege, work product doctrine, or any other right of non-disclosure, furnish a list identifying the Documents, Communications, or information for which the protection is claimed together with the following (if applicable): (i) the type of Document or Communication (*e.g.*, letter or memorandum); (ii) the general subject matter of the Document; (iii) the date of the Document; (iv) the author of the Document, the addressees of the Document, and any other recipients, and, where not apparent, the relationship of the author, addressees, and recipients to each other; (v) the nature of the privilege that is being claimed; and any other information to enable an assessment of the applicability of the privilege or protection claims, as required by Federal Rule of Civil Procedure 26(b)(5). If a Document or Communication is withheld on the basis of work product doctrine, also specify whether the Document or Communication was prepared in anticipation of litigation and, if so, identify the anticipated litigation(s) upon which the assertion is based. To the extent a requested Document contains non-privileged information, the privileged information shall be redacted from the same and the redacted version of the Document produced.

14. These Requests are continuing in nature. If, after producing the requested Documents, You obtain or become aware of any further Documents responsive to these Requests or if additional information You or any persons acting on Your behalf obtain would augment, clarify, or otherwise modify Your responses, You are required to supplement Your responses and produce such additional Documents pursuant to Federal Rule of Civil Procedure 26(e).

15. These Requests are without prejudice to, or waiver of, Plaintiffs' right to conduct further discovery.

16. Unless otherwise indicated, the Requests seek Documents generated, created, received, or distributed on or after June 1, 2019 through the present.

DOCUMENT REQUESTS

1. All Documents identified in Your response to any interrogatory in the Action.
2. All Documents concerning the drafting, proposal, consideration, passage, enactment, enforcement, operationalization, application, interpretation, or implementation of H.B. 1557, or any prior versions of that bill.
3. All Documents concerning any amendments to H.B. 1557, including offered, considered, or proposed amendments, whether or not adopted or approved.
4. All Documents concerning the purported connection between discussion of “gender identity” and “social engineering” or “grooming,” and/or the purported connection between discussion of “sexual orientation” and “social engineering” or “grooming.”
5. All Documents concerning H.B. 1557, or any earlier version or draft of that bill, including Communications transmitted between You and any other person.
6. All Communications relating to the Action transmitted between You and any other person.
7. All Documents concerning H.B. 1557 and the advancement of any pedagogical or governmental interest, including H.B. 1557’s role in advancing any pedagogical or government interest.
8. All Documents concerning respects in which H.B. 1557 may hinder, undermine, frustrate, or defeat any pedagogical or governmental interest.
9. All Documents concerning educational practices and/or classroom instruction that H.B. 1557 prohibits.
10. All Documents concerning conduct or speech by school personnel that H.B. 1557 prohibits.

11. All Documents concerning the application of H.B. 1557 to “third parties” or “school personnel” as provided by the statute.

12. All Documents concerning the application of H.B. 1557 to “classroom instruction” on (i) heterosexuality; (ii) persons who identify with the sex they were assigned at birth; (iii) homosexuality; (iv) bisexuality; and/or (v) transgender identity or status.

13. All Documents concerning H.B. 1557’s application to students who (i) identify as homosexual, bisexual, queer, or transgender and/or (ii) who face bullying, harassment, criticism, or violence from other students or teachers relating to their sexual orientation or gender identity.

14. All Documents concerning H.B. 1557’s application to school psychologists, school counselors, school nurses, school administrators, or other personnel who learn that a student has faced bullying, harassment, criticism, or violence from other students or teachers relating to their sexual orientation or gender identity.

15. All Documents concerning whether H.B. 1557 applies to Florida public charter schools.

16. All Documents concerning evidence or analysis of the forecasted, anticipated, or potential impact of H.B. 1557 on Florida public school (i) students, including LGBTQ students and students from LGBTQ families; (ii) teachers, administrators, and/or other school personnel, including those who identify as LGBTQ and those from LGBTQ families; and/or (iii) families, including LGBTQ.

17. All Documents concerning the actual impact of H.B. 1557 on Florida public school (i) students, including LGBTQ students and students from LGBTQ families; (ii) teachers, administrators, and/or other school personnel, including those who identify as LGBTQ and those from LGBTQ families; and/or (iii) families.

18. All Documents concerning any steps you have taken to “review and update” “school counseling frameworks and standards; educator practices and professional conduct principles; and any other student services personnel guidelines, standards, or frameworks,” as set forth in H.B. 1557, or any plans, written or unwritten, formal or informal, for this review and update process.

19. All Documents concerning any Policies that You have implemented as a result of or in light of H.B. 1557.

20. All Documents concerning any changes in Policies that You have considered, anticipate taking, plan to take, or have taken in connection with or response to H.B. 1557.

21. All Documents concerning any Policies that You have provided or plan to provide to Florida public school (i) students; (ii) teachers, administrators, and/or other school personnel; and/or (iii) families regarding discussion of issues of “sexual orientation” or “gender identity.”

22. All Documents concerning the continuation, existence, funding, support for, and/or school personnel involvement in GSAs (i.e., Genders and Sexualities Alliances or Gay-Straight Alliances) following enactment of H.B. 1557.

23. Documents sufficient to show books, periodicals, or literary, audio, or visual materials of any kind that have been removed from any school facility as a result of or in light of H.B. 1557.

24. Documents sufficient to show any conferences, events, and/or meetings that have been modified, postponed, or cancelled in connection with H.B. 1557.

25. All Documents You have received concerning or evincing complaints, concerns, confusion, uncertainty, or questions regarding H.B. 1557.

26. All Communications you have received from any parent with a “concern” about a violation of H.B. 1557 pursuant to the notification procedures developed in accordance with paragraph 7 of H.B. 1557.

27. All social media posts and drafts of such posts, made by You or anyone in Your office regarding (i) LGBTQ persons or issues; (ii) H.B. 1557; and/or (iii) the above-captioned action.

28. Documents sufficient to show the process for developing curricula for St. Johns County Public Schools.

29. Documents sufficient to show any Policies that are designed or used to assure that standards, guidelines, frameworks, and curriculum are “age appropriate.”

30. Documents sufficient to show any Policies relating to sex education in Florida public schools, including any instruction on human sexuality or sex acts.

31. Documents sufficient to show any Policies relating to LGBTQ issues of diversity, equity, inclusion, and/or non-discrimination.

32. Documents sufficient to show any Policies relating to (i) LGBTQ students in Florida public schools; (ii) LGBTQ teachers, administrators, and/or school personnel in Florida public schools, and/or (iii) LGBTQ families with students in Florida public schools.

33. All Documents concerning the formation, presence, and/or activities of GSAs or similar clubs or groups in Florida public schools.

34. Documents sufficient to show any Policies governing the removal of books, periodicals, or literary, audio or visual materials of any kind related to LGBTQ topics.

35. All Documents concerning any content regulation, editing, or removal of LGBTQ related topics in school-associated publications, including newspapers, newsletters, and yearbooks.

36. Documents sufficient to show any reports or complaints of bullying and/or discrimination related to sexual orientation or gender identity that You have received from or on behalf of any student, teacher, administrator, and/or other school personnel.

37. Documents sufficient to show any reports or complaints of harassment, abuse, or physical violence directed at LGBTQ students, teachers, administrators, and/or other school personnel.

38. Documents sufficient to show any surveys, studies, or polls regarding or addressing the experience of LGBTQ students in Florida public schools.

Dated: June 17, 2022

Respectfully submitted,

By: 

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

EQUALITY FLORIDA, et al.,

Plaintiffs,

v.

RONALD D. DESANTIS, in his official
capacity as Governor of Florida, et al.,

Defendants.

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

CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2022, true and correct copies of Plaintiffs' First Set of Requests to Defendant St. Johns County School Board were duly served upon counsel for Defendant St. Johns County School Board via email.

Dated: New York, NY
June 17, 2022



Roberta A. Kaplan, Esq.