

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

BROWARD TEACHERS UNION,
LOCAL 1975, FEA AFT AFL-CIO,

Plaintiff,

v.

BROWARD COUNTY PUBLIC SCHOOLS as
THE SCHOOL BOARD OF BROWARD
COUNTY FLORIDA; and ALAN STRAUSS
in his capacity as Chief Human Resources &
Equity Officer of Broward County Public Schools,

Defendants.

GENERAL JURISDICTION DIVISION

CASE NO:

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff, BROWARD TEACHERS UNION LOCAL 1975 FEA AFT AFL-CIO (hereinafter “BTU” or “Union”), files this Complaint against Defendant BROWARD COUNTY PUBLIC SCHOOLS as THE SCHOOL BOARD OF BROWARD COUNTY FLORIDA (hereinafter “Broward Schools,” “SBBC” or “District”) and ALAN STRAUSS, in his capacity of Chief Human Resources & Equity Officer of Broward County Public Schools, alleging as follows:

1. Plaintiff Broward Teachers Union, which represent some 18,000 public school educators including, but not limited to, teachers, social workers, psychologists, counselors, and education support professionals dedicated to the education and support of our children, seeks declaratory judgment. The actions of Defendants threaten the health and welfare of educators represented by the Union by violating their rights under Article I, Section 9 of the Florida Constitution, which provides that “[n]o person shall be deprived of life, liberty or property without due process of law[.]” Without any rational basis for doing so, the District is requiring approximately 1,600 of its educators who have until now been working remotely because they are at high risk of

severe illness or even death from COVID-19, to return to the classroom on January 11, 2021, even if their school does not have the operational need for their return. Defendants' arbitrary, dangerous, and unconstitutional actions in the midst of a global pandemic put the lives of hundreds of educators at unnecessary and avoidable risk. The District has cut off this protection as pandemic positivity rates are at the highest to date.

2. Plaintiff Broward Teachers Union further seeks temporary injunctive relief pending expedited arbitration to protect the health and lives of the educators it represents. Plaintiff BTU has submitted emergency grievances challenging the District's violation of a Memorandum of Understanding ("MOU") which relates to the operation of brick-and-mortar schools amidst the unprecedented COVID-19 pandemic, the MOU is attached as Exhibit A. The District has failed to comply with its requirement to, among other things, "strive to provide the choice of a remote assignment to the highest possible number of requesting employees," and to prioritize determinations regarding remote assignment based on the health and safety needs of the requesting employees as well as operational capacity at each individual school. Violations of the MOU are subject to the grievance and arbitration provisions of the Collective Bargaining Agreements, attached as composite Exhibits B and C. The Union has filed grievances for each unit alleging a violation of the MOU. Composite Exhibit D. The Plaintiff seeks to maintain this public health and safety protection and therefore enjoin Defendants from terminating any remote work assignments until the parties' dispute is heard by an arbitrator. Absent an injunction issued from this Court, by the time an arbitrator reaches a decision on the grievance, it will be far too late to remedy the harms caused by the District's failure to comply with its contractual obligations—hundreds of high-risk educators will have already been further exposed to the deadly COVID-19 virus.

JURISDICTION AND VENUE

3. This is an action seeking injunctive and declaratory relief. This Court has jurisdiction pursuant to Chapter 26, Florida Statutes, and Section 86.011, Florida Statutes.

4. Venue is appropriate in Broward County, Florida, pursuant to § 47.011. Florida Statutes, as the actions which gave rise to the Complaint accrued in Broward County.

5. All conditions precedent to bringing this action have been performed, excused or waived.

PARTIES

6. The Broward Teachers Union is a labor organization as defined under Fla. Stat. § 447.02, that has standing to maintain this cause of action pursuant to Fla. Stat. § 447.11. BTU is the certified exclusive bargaining agent of Education Professionals, Education Support Professionals, and Technical Support Professionals, employed by Defendant SBBC, pursuant to Fla. Stat. § 447.307, and represents approximately 18,000 public employees. These public employees work with public school students on a daily basis and are proudly charged with their education, health, welfare, and safety.

7. Defendant Broward Schools is, and at all times mentioned in this complaint was, the constitutionally created entity pursuant to Article IX, Section 1 of the Florida Constitution created to oversee the operations of the Broward County School District. Pursuant to Section 1001.41(4), Florida Statutes, Defendant SBBC is the contracting agent for the Broward district school system.

8. Defendant Alan Strauss is Chief Human Resources & Equity Officer of Broward County Public Schools who is charged with overseeing the implementation of crucial parts of the

Memorandum of Understanding between the parties regarding school operations for the 2020-2021 School Year amidst the COVID-19 pandemic.

FACTS AND BACKGROUND

9. In the midst of the Covid-19 pandemic, the parties attempted to work as partners to address the education needs of Broward students as well as the health and safety of their educators.

10. As a result of these public negotiations, the parties reached a critical Memorandum of Understanding (“MOU”), effective through June 30, 2021, governing terms and conditions of employment for Education Professionals and Educations Support Professionals during the COVID-19 pandemic. Exhibit A.

11. This MOU is crucial to the health and safety of the educators represented by Plaintiff, many of whom suffer from underlying conditions that put them at increased risk for serious complications or even death from COVID-19 exposure. More than 2/3 of students are still being taught remotely during this pandemic while the schools are fully open for those parents who send their children to school. As a result, a certain percentage of teachers have been assigned full-time to remote teaching. The MOU gives preference for full-time remote assignments to those educators with the highest risk of health complications associated with exposure to Covid-19.

12. The Centers for Disease Control (“CDC”) defines severe illness from COVID-19 as “hospitalization, admission to the ICU, intubation or mechanical ventilation, or death.”¹ The CDC advises that certain conditions, increase a persons’ risks including, among others, cancer, chronic kidney disease, chronic obstructive pulmonary disease (COPD), down syndrome, heart failure, coronary artery disease, cardiomyopathies, organ transplants, severe obesity, pregnancy, sickle cell disease, and type 2 diabetes.² Additionally, adults 65 years and older are at greater risk

¹ *Id.*

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

of requiring hospitalization or dying if they are diagnosed with COVID-19.³ Risks can vary depending on age and the type and severity of the underlying condition.⁴ The older the adult, and the more underlying conditions they have, the greater their risk for severe illness.⁵

13. According to the CDC, people at increased risk of severe illness from COVID-19 should:

[c]onsider avoiding activities where taking protective measures may be difficult, such as activities where social distancing can't be maintained. . . In general, the more people you interact with, the more closely you interact with them, and the longer that interaction, the higher the risk. . .⁶

People who are at increased risk of severe illness from exposure to the virus are also advised to limit the number of people they interact with, maintain safe distances from others, visit friends and family only outdoors where feasible and otherwise make sure they are in well-ventilated spaces (i.e. open windows and doors, and to limit the time of contact to less than 15-20 minutes).⁷ Of course, these things are undeniably difficult, if not impossible, for educators to do at schools where they are required to interact with students and other employees for hours at a time on a daily basis, mainly indoors and in typically poorly ventilated spaces.

14. In order to protect employees who are at high risk, Section 13 of the MOU specifically requires the District to “strive to provide the choice of a remote assignment to the highest possible number of requesting employees,” to make determinations regarding remote assignments based on the operational capacity of each school, and to prioritize available remote work (1) first for those employees who have underling conditions that present the strongest evidence of the highest risk

³ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

⁴ <https://www.mayoclinic.org/diseases-conditions/coronavirus/in-depth/coronavirus-who-is-at-risk/art-20483301> ; <https://www.scientificamerican.com/article/why-some-people-get-terribly-sick-from-covid-19/>

⁵ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

⁶ *Id.*

⁷ *Id.*

for serious complications, (2) next for those employees whose conditions present mixed evidence of higher risk, (3) third for employees with a family member who has underlying conditions, (4) and finally for any other employee that wishes to be considered for a remote assignment due to Covid-19.⁸ The MOU further requires the decisions to be made at the district level based on information provided by the employee's supervisor regarding the operational needs of their school.

15. The MOU does not sunset until June 30, 2021, and provides that for the duration of the MOU remote assignments are only subject to change if the operational needs of a particular school

⁸ Specifically, the MOU provides that “[t]he District will strive to provide the choice of a remote assignment to the highest possible number of requesting employees. Eligibility for a work from home remote extended assignment is based on the function of the job and needs of the worksite. The employee must be able to perform the essential function of the employee's job through digital platforms without commuting to an office and or centralized location. This determination will be made by a District review panel with consultation of a medical expert when appropriate and shall not be made in an arbitrary or capricious manner.

No rights otherwise available to the employee are waived.

The employee's direct supervisor will provide the review panel with all requested information regarding the operational needs and capacity of the school/department. To the extent that the operational needs and capacity of the school/department are not able to accommodate all requests for remote work, the requests will be prioritized as follows:

1. Consideration will be given to qualified employees who have an underlying medical condition that presents the strongest and most consistent evidence of the likelihood of a severe case involving COVID-19, which places them at a higher risk for serious complications if they contract COVID-19 as supported by a letter from a medical professional (Priority One);
2. Consideration will be given to qualified employees who have an underlying medical condition that may present mixed evidence of the likelihood of a severe case involving COVID-19, which may place them at a higher risk for serious complications if they contract COVID-19 as supported by a letter from a medical professional (Priority Two);
3. Consideration will be given to qualified employees who live with a family member who has an underlying medical condition which may place them at a higher risk for serious complications if they contract COVID-19 as supported by a letter from a medical professional (Priority Three);
4. All other employees who wish to be considered for remote work (Priority Four).

A District review panel will determine eligibility for the priority classifications listed above based upon information/documentation supplied by the employee. Assignments are subject to change based upon the needs of the school/ department as listed above. There is no guarantee as to the length of time an employee may be permitted to continue to work remotely. Applicants will remain in a remote assignment pending final disposition of their request. Teachers will continue teaching remotely and school administration will arrange supervision of students in the school classroom.”

(emphasis added.)

so demand—it does not provide any set expiration date for remote work during the entire 2020-2021 School Year.

16. Upon execution of the MOU, the District began processing and granting requests for remote assignments in accordance with the tier system established by the agreement and the operational capacity of each school. The District ultimately approved approximately 1,600 remote work assignments (or the equivalent of about 10% of the educator workforce), the vast majority of which were employees with medical conditions that put them at the highest risk of severe complications. The remaining roughly 90% of educators are physically back teaching at the schools.

17. Early on, the District indicated that the operational needs and capacity of each school, including in-person student enrollment, would be reevaluated for the Spring 2021 semester to determine whether each approved remote assignment would be extended based on the shifting needs of each school. However, at no point did the District state that all approvals would be suddenly terminated on an arbitrary date and indeed repeatedly insisted that any dates it had provided to employees were merely dates upon which the schools' individual needs would be reevaluated. This position was underscored by the fact that the virus is unpredictable and nobody could foresee surges in positivity and hospitalization rates.

18. The District failed to otherwise establish or communicate any plan or details regarding the fate of these most vulnerable educators in spite of numerous requests for information from Plaintiff and countless inquiries from concerned educators who, in order to make plans about their health and livelihood with their doctors and families, needed to know whether their particular remote assignment would be extended into the Spring Semester.

19. Instead, the District sent out a generic email to all employees indicating that all remote assignments were scheduled to end unless an employees' principal communicated to them directly that their remote assignment was being extended. The District claimed that it was surveying parents to determine how many students would be returning in person for the second semester and that this survey would inform decisions at each school regarding their individual needs and capacity—and how many educators would be assigned remote work due to their health and safety needs.

20. The winter break came and went without any word from the District as affected employees anxiously awaited throughout the holidays to learn their fate, and classes resumed on January 4th without any update from the District.

21. Instead, the first news came not from the District but from the Broward Principals' and Assistants' Association ("BPAA"), a private organization who offers services to District principals and other administrators. In an email sent to BPAA members on the first day of the Spring Semester, BPAA advised principals that—in spite of the District requirement that principals make decisions regarding remote assignments—principals had no authority to extend remote work assignments for any employees. The message also wrongfully stated that the MOU established a specific expiration date for remote assignments—which it clearly did not. The email quickly circulated to anxious teachers across the District.

22. Deplorably, the District did absolutely nothing to publicly correct the misinformation that was going out to the same principals it had tasked with making decisions regarding operational needs of each school despite assurances to the contrary. Principals across the District began wrongfully denying remote work extensions—dispassionately informing vulnerable employees with serious medical conditions that their online work assignments were

being canceled in less than a week regardless of their risk and regardless of their school's actual operational needs. Upon information and belief, the following are just a few examples of principals who refused to grant remote work assignments to some of the most vulnerable educators:

- a. Catrice Duhart, Principal at North Andrews Elementary**
- b. Leena Itty, Principal at Maplewood Elementary**
- c. Laneia Hall, Principal at Parkside Elementary**
- d. Marie Hautigan, Principal at Piper High School**
- e. Devon O'Neal, Principal at Orange Brook Elementary**
- f. Lewis C. Jackson, Principal at Dania Elementary**
- g. Susan Sasse, Principal at Pines Lakes Elementary**
- h. Colleen Stern, Principal at Cross Creek School Center**
- i. Robert Pappas, Principal at Pioneer Middle**
- j. Tracy Lockhart-Tally, Principal at H.D. Perry Educational Center**
- k. Donald Lee, Principal at Cresthaven Elementary**
- l. Paula Peters, Principal at Flanagan High School**
- m. Kelvin Lee, Principal at Seagull Alternative High School**
- n. Keith Peters, Principal at Gator Run Elementary**
- o. Karen Nesbeth, Principal at Sanders Park Elementary**
- p. Thomas Darby, Principal at Royal Palm Elementary**
- q. Amy Winder, Principal at Indian Trace Elementary**
- r. Joanne Schlissel, Principal at Miramar Elementary**
- s. Mindy Morgan, Principal at Country Isles Elementary**
- t. Riquelme Rodriguez, Principal at Sea Castle Elementary**

- u. **David Levine, Principal at Meadowbrook Elementary**
- v. **Georgia Stewart, Principal at Westwood Heights Elementary**
- w. **Francine Baugh, Principal at Millennium Collegiate Academy**
- x. **Ian Murray, Principal at Indian Ridge Middle**
- y. **Danielle Smith, Principal at Bennett Elementary**
- z. **Scott Fiske, Principal at Coconut Creek High School**
- aa. **Priscille Elie, Principal at Palm Cove Elementary**

23. While the health of hundreds of its employees was being undermined by principals across the District, it became abundantly clear that there would be no significant increase of additional students physically reporting back to schools in the second semester and there was therefore no real need to terminate the remote work assignments. **Indeed, there remain many teachers who have little to no students physically present in their classrooms and, upon information and belief, the District’s initial survey results revealed a low percentage increase in in-person student enrollment—clearly allowing for the vast majority of high-risk employees to maintain their remote work assignments and remain protected.**

24. Nevertheless, in callous and reckless disregard for the health and lives of the most vulnerable employees, on January 5, 2021 Superintendent Robert Runcie announced that all remote work assignments for all District Education Professionals and Education Support Professionals were being terminated effective January 8, 2021—regardless of the risk level of the employee and the actual operational needs of each school.⁹ He went on to claim that there “may be opportunities to offer remote assignments,” however, again provided no date by which these

⁹<https://becon.eduvision.tv/play.aspx?qev=3SfVi13wT7TpXbrKkz%252f1MTQQOCUTjbbhawAKZHwCFOFrTFG5jjXKIZXkZHh10AYdpWzexgMn0myqn71qOx7xI63TRS9ATjqQ3ZkMIBwdY6n3WOC50cfs%252fA%253d%253d>

vulnerable employees can expect a decision and specified, in direct violation of the MOU, that decisions regarding these opportunities would be made at the school level and would not be based on the health risks of affected employees.

25. The District's new mandate announced by Superintendent Runcie neglects the District's contractual and public health responsibility to its employees and comes in stark contrast to the tone and priorities articulated on August 25, 2020 when the Superintendent committed that "the path of the virus will drive the decisions we have to make" and they "will continue to watch for that [positivity] rate to remain between 3 and 5% for 14 consecutive days" before even considering to open schools for anyone.¹⁰ With Broward's average daily positivity rate climbing from 6.65% between December 20-26, 2020 to 10.96% between December 27-January 3, 2021, the District has now made the dangerous decision to bring back the most vulnerable educators without any rational basis.¹¹ This complete disregard for the health and lives of educators is reprehensible.

26. As a result of Defendants' unlawful actions, the limited number of educators who are currently working remotely due to underlying health conditions will be unnecessarily required to physically report to schools and risk exposure to the virus in just four days absent intervention by this Court. They will be sharing common equipment and areas, including hallways, classrooms, and bathrooms and needlessly risking contact with a virus that can lead to hospitalization, leave them with lasting serious effects, or potentially kill them because of their serious preexisting medical circumstances.

¹⁰ <https://www.local10.com/news/local/2020/08/25/runcie-enormously-difficult-to-run-schools-during-coronavirus-pandemic/>

¹¹ <https://www.miamiherald.com/news/coronavirus/article248244150.html>

27. Among the hundreds of affected employees are the following exceptional teachers who are in the first MOU tier but have now been unnecessarily forced to choose between their lives and their livelihood:

- a. Mark Whalen, a teacher at Indian Ridge Middle School who suffers from chronic kidney disease and asthma;
- b. Michael Porter, a teacher at Bennett Elementary who suffers from obesity and severe hypertension;
- c. Chris Gunn, a teacher at Flanagan High who suffers from type 2 diabetes, asthma, an autoimmune disease, high blood pressure, and obesity;
- d. Maria Farfan-Suarez, a teacher at Palm Cove Elementary School who suffers from cancer, high blood pressure, and asthma; and
- e. Dawn Morley, a teacher at Coral Springs PreK-8 School who suffers from an autoimmune disease and is on immune suppressant medication.

28. In direct violation of the MOU, these and numerous other high-risk educators who are currently full-time working remotely are being given an arbitrary date to return to brick-and-mortar schools, with no consideration as to any underlying conditions that put them at high risk of severe illness or death from Covid-19 and with no consideration as to whether their school actually needs them physically back on campus for operational reasons.

29. Public school educators in Miami Dade County continue to be protected and their most vulnerable teachers provided with accommodations.

30. Pursuant to the terms of the CBA, on January 6, 2021, BTU filed emergency class action grievances on behalf of all affected EP and ESP bargaining unit members alleging that the District violated their terms and conditions of employment when it arbitrarily and sweepingly

rescinded hundreds of remote assignments in violation of Section 13 of the MOU. Composite Exhibit D.

31. Given the severity and immediacy of the threat that high-risk educators are facing due to Defendants arbitrary and dangerous actions, BTU requested that the grievances be expedited. Absent agreement, the grievances might not be heard for several months pursuant to the usual timeframes established by the parties' CBAs. Even if the District agrees to expedite the process, it is nearly impossible for an arbitrator to rule on a District decision that wasn't announced until the evening of January 5th by this upcoming Monday. In the meantime, Defendants intend to move forward with their reckless plan to unnecessarily risk the lives of their most vulnerable employees.

COUNT I: CLAIM FOR A TEMPORARY INJUNCTION PENDING ARBITRATION

Plaintiff realleges paragraphs 1-31 above.

32. This Court has the authority to issue injunctive relief. Fla. Stat. § 26.012(3).

33. Plaintiff seeks an injunction which will prohibit the Defendants from arbitrarily and unnecessarily terminating the remote assignment of hundreds of high-risk employees who will likely suffer severe illness or death if exposed to COVID-19, and from forcing these vulnerable educators to schools in the middle of an uncontrolled resurgence of COVID-19 cases, hospitalizations, and deaths.

34. The BTU and the SBBC are signatories to a collective bargaining agreement governing wages, hours and conditions of employment for Education Professionals ("EP CBA") effective from August 16, 2019 to August 15, 2022, attached to the Complaint as composite Exhibit B. Further, the BTU and the SBBC are signatories to a collective bargaining agreement governing

wages, hours and conditions of employment for Education Support Professionals (“ESP CBA”) effective from July 1, 2017 to June 30, 2020, attached to the Complaint as composite Exhibit C.

35. Article 4 of the ESP-CBA and Article 34 of the EP-CBA set forth a multi-step grievance procedure that contains enforceable provisions for binding arbitration of all contractual grievances before an impartial arbitrator.

36. Pursuant to Section 13 of the health and safety MOU between the parties Defendants have a duty to “provide the choice of a remote assignment to the highest number of requesting employees,” and to prioritize eligibility for available remote assignments based on operational needs of each school and the employees’ underlying medical circumstances. Exhibit A at 4-5.

37. Defendants decision to impose an arbitrary termination date for all remote assignments, without regard to the capacity or needs of each school or the affected employees, violates the MOU and recklessly puts medically compromised educators’ lives and health at risk.

38. Pursuant to the CBA, BTU filed grievances for the EP and ESP bargaining units regarding the District’s violation and misapplication of the MOU. Composite Exhibit D. The grievances seek an order from an arbitrator requiring Defendants to comply with the MOU and to maintain the currently approved remote assignments unless and until there is an operational need at a particular school that necessitates a specific change. However, in order to save lives and protect the health and safety of high-risk educators, Plaintiff seeks to enjoin Defendants from altering the status quo pending the resolution of the grievances at arbitration.

39. An arbitrator has the authority to grant the relief requested in the grievances. Unfortunately, any arbitration award issued on the Union’s grievances will be too late and will be rendered meaningless if temporary injunctive relief is not granted by the Court. Injunctive relief

in this matter is necessary to protect the arbitral process itself, and the health and safety of hundreds of high-risk educators.

40. The Supreme Court of the United States has held that a court can issue an injunction in the context of a labor dispute in order to preserve the arbitral process. *Boys Markets, Inc. v. Retail Clerks Union Local 770*, 398 U.S. 235 (1970). Florida courts have the authority to grant temporary injunctions maintaining the status quo pending arbitration. See *Korn v. Ambassador Homes, Inc.*, 546 So. 2d 756, 757 (Fla. 3d DCA 1989).

41. As a party to the Collective Bargaining Agreements and a labor organization charged by the laws of this state with an affirmative duty to advance grievances and take measures necessary to protect the interests of Defendants' employees, Plaintiff has a clear legal right and interest in the subject matter of this lawsuit.

42. Plaintiff has a substantial likelihood of success on the merits. Absent an injunction, hundreds of educators represented by Plaintiff will be unnecessarily and irreversibly exposed to illness and potentially death. There is an undeniable likelihood that hundreds of BTU's most vulnerable members will suffer immediate and irreparable injury if Defendants rescind their remote work assignments prior to the exhaustion of the grievance and arbitration process. Defendants actions will have irreversible effects and are scheduled to take place in merely days absent an injunction from this Court.

43. Any harm that Defendants may suffer from maintaining the status quo until the arbitrations are resolved is greatly outweighed by the irreparable harm, absent an injunction, faced by the hundreds of educators represented by Plaintiff.

44. Plaintiff has no adequate remedy at law for the harm arising out of Defendants actions. Plaintiff's bargaining unit members are suffering and will continue to suffer irreparable

harm unless the status quo is maintained pending arbitration. They will be required to unnecessarily put their health and lives at risk by prematurely returning to schools amid an uncontrolled outbreak of COVID-19 before Defendants' CBA violations can be resolved by an arbitrator as contemplated by the parties. It will be impossible for the contractual grievance procedure to retroactively protect the health and safety of these vulnerable educators if Defendants' actions expose them to the virus before there is an opportunity to resolve the grievances.

**COUNT II: DECLARATORY JUDGMENT AGAINST DEFENDANTS FOR
ARBITRARY AND CAPRICIOUS ACTIONS IN VIOLATION OF THE FLORIDA
CONSTITUTION AND UNDERMINING EDUCATOR SAFETY**

Plaintiff realleges paragraphs 1-31 above.

45. Section 86.011, Florida Statutes, gives the circuit courts of this state jurisdiction and the power “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”

46. Plaintiffs seek a declaration that SBBC's mandate to terminate all employees' remote work assignments without any rational basis is arbitrary and capricious in violation of the Florida Constitution.

47. Article I, Section 9 of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law[.]” If a statute or government action is arbitrary and capricious, it violates due process rights guaranteed by the Florida Constitution. *See State v. Saiez*, 489 So. 2d 1125, 1128 (Fla. 4th DCA 1986).

48. SBBC's mandate unlawfully requires all employees, including those employees who are at a high risk of severe illness or death from Covid-19 exposure, to return to populated schools amidst a deadly pandemic without any consideration as to the actual need of individual schools to have every teacher physically present. At the same time, the District claims that—while

all high-risk teachers with current online assignments must return on January 11, 2021—individual schools can later revisit available opportunities to offer remote assignment but these opportunities will not be based on the health of the employee and there will be no District oversight of the approval process. The mandate is unreasonable, inconsistent, arbitrary and capricious and should be declared unconstitutional.

49. Importantly, certain principals across the District have already confirmed their refusal to make any determination regarding remote work assignments for any SBBC employees, effectively rendering the District’s empty promise for reconsideration of assignments meaningless.

50. The District’s mandate has no rational basis and its implementation is completely unpredictable. The District provided for health-related remote work assignments at lower positivity and hospitalization rates and now terminates all such accommodations at the peak of the pandemic. This is creating fear and anxiety among the medically vulnerable educators represented by Plaintiff as they plan for a semester which begins in less than a week.

51. An actual controversy currently exists between the Plaintiff and the Defendants. The mandate fails to provide the constitutional clear and logical guidance that Broward educators so desperately need during this deadly pandemic, especially when it relates to the District’s most high-risk employees. This is arbitrary and capricious government action and violates due process.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief and judgment as follows:

1. A temporary injunction maintaining the status quo pending the conclusion of arbitration;
2. A declaration that Defendants’ actions are arbitrary and capricious in violation of Article I, Section 9 of the Florida Constitution;

3. Such other relief as this Court deems appropriate.

Dated: January 7, 2021

Respectfully Submitted,

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