

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION

CASE NO.: 2026-006626-CA-01

CHRIS MISERESKY and LAUREN COLEMAN,
individually and on behalf of their minor child, A.M.,

Plaintiffs,

v.

FISHER ISLAND DAY SCHOOL, INC., *et al.*,

Defendants.

_____ /

**DEFENDANTS' MOTION TO COMPEL PLAINTIFFS
TO SERVE COMPLETE INITIAL DISCOVERY DISCLOSURES**

Defendants Fisher Island Day School, Inc. ("FIDS"), Arthur Viscusi, and Jana Neff (collectively, "Defendants"), subject to and without waiving their Motion to Strike Plaintiffs' Untimely Initial Disclosures and Written Discovery Requests filed on October 22, 2026 (the "Motion to Strike"), and subject to and without waiving their right to arbitrate and their pending appeal, move under paragraph 8 of the Court's Case Management Order [DIN 25] (the "CMO") and Florida Rule of Civil Procedure 1.280(a) for an order compelling Plaintiffs to serve complete initial discovery disclosures, and state as follows:

I. Introduction

In addition to being late, Plaintiffs' initial disclosures promise information instead of disclosing it. They list an outside evaluator, admissions personnel at other schools, and a platform vendor without one name. They claim tuition, donations, tutoring, and replacement-school costs without one number. Plaintiffs know the people they have listed and paid the bills for which the

are seeking damages and hold the necessary records. Rule 1.280(a) required Plaintiffs to disclose what they already know, and they did not. If the Court does not strike the disclosures as untimely, it should order Plaintiffs to file compliant initial disclosures within ten days and pay Defendants' attorney's fees and costs for this motion and any hearing.

II. Statement of Facts

The CMO set September 27, 2026 as the deadline for Rule 1.280(a) initial discovery disclosures.¹ Paragraph 8 of the CMO repeats the four categories of information Rule 1.280(a)(1) requires. It closes with this sentence: "If a party fails to make a disclosure required by rule 1.280(a), any other party may move to compel disclosure and for appropriate sanctions."²

On October 19, 2026, Plaintiffs served Plaintiffs' Initial Discovery Disclosures Under Florida Rule of Civil Procedure 1.280(a) (the "Disclosures") [DIN 50]. The Disclosures have four parts: individuals (Part A), documents (Part B), damages (Part C), and insurance (Part D).

Part A lists eleven entries. Five of them name no one.³ Entry 7 describes A.M.'s teachers and School staff by job title, as persons "whose names appear in the School's records." Entry 8 lists "[t]he members of the School's Board of Trustees during the 2025-2026 school year" without naming any of them. Entry 9 lists "[t]he outside evaluator who assessed A.M." Entry 10 lists "[a]dmissions personnel of the schools to which A.M. applied after March 13, 2026." Entries 9 and 10 say these persons will be "identified in the records produced in discovery." Entry 11 lists the records custodian of an unnamed "enrollment and e-signature platform vendor." Entries 9, 10, and 11 give no address, telephone number, or e-mail address.

¹Case Management Order [DIN 25], ¶ 2, p. 2.

²Id., ¶ 8, p. 4.

³Plaintiffs' Initial Discovery Disclosures, Part A, ¶¶ 7–11.

Part C lists seven categories of damages. None includes a number.⁴ In place of a computation, Part C states that “[e]conomic amounts will be computed from the documents identified in Part B and the records to be produced by Defendants, and the computations will be supplemented when those records are compiled.” Part C attaches no documents.

Part B tells a different story. It states that the listed categories are “in Plaintiffs’ possession, custody, or control.”⁵ Those categories include the outside evaluation of A.M. (entry 16); records of tuition, fees, deposits, and donations paid to the School and of costs at “A.M.’s subsequent school” (entry 17); and the applications, correspondence, and decisions from the schools to which A.M. applied (entry 18).

III. Argument

A. Rule 1.280(a) Requires Disclosure of What a Party Knows Now

Initial disclosures are not discovery responses. A party makes them “without awaiting a discovery request.” Fla. R. Civ. P. 1.280(a)(1). The rule sets the standard for what must be disclosed and when:

A party must make its initial discovery disclosures based on the information then reasonably available to it. A party is not excused from making its initial discovery disclosures because it has not fully investigated the case

Fla. R. Civ. P. 1.280(a)(4).

The test is what the party has, not what the other side may produce later. Plaintiffs applied the opposite test. They deferred names and numbers to “records produced in discovery” and “records to be produced by Defendants.”

⁴Id., Part C.

⁵Id., Part B.

Counsel's signature on the Disclosures carries a certification. It certifies that the disclosure "is complete and correct as of the time it is made." Fla. R. Civ. P. 1.280(k)(1). A disclosure that leaves its own blanks for later is not complete.

B. Plaintiffs Did Not Name Their Witnesses

Rule 1.280(a)(1)(A) requires "the name and, if known, the address, telephone number, and e-mail address of each individual likely to have discoverable information" that the disclosing party may use. A description is not a name.

Start with the outside evaluator. Plaintiffs list the evaluation itself in Part B as a document in their possession. They know who wrote it. Yet Part A says only that the evaluator will be "identified in the records produced in discovery." As of this motion, no records have been produced in discovery in this case.

The same is true of the other schools. Plaintiffs list A.M.'s applications and the schools' decisions as documents they hold. They know where they applied. They named none of those schools and none of the people Plaintiffs intend to use from them.

Entry 11 names a records custodian for an "enrollment and e-signature platform vendor" but not the vendor. Plaintiffs intend to use that vendor's records to prove "the Enrollment Contract transaction." Defendants cannot subpoena a custodian of a company Plaintiffs will not name.

Entries 7 and 8 fare no better. Plaintiffs are A.M.'s parents. Their own Part B lists e-mails and texts with A.M.'s teachers going back to August 2024. A list of job titles, or a reference to the full Board, does not tell Defendants which of their own employees Plaintiffs intend to call. The rule puts that choice on the party who will use the witness. Plaintiffs must make it.

Part C also claims tutoring costs and the cost of A.M.'s replacement school. Part A identifies no tutor and no one at the replacement school. If Plaintiffs intend to prove those costs through any such witness, Rule 1.280(a)(1)(A) requires Plaintiffs to say who.

C. Plaintiffs Did Not Compute Their Damages

Rule 1.280(a)(1)(C) requires two things for each category of damages claimed:

a computation for each category of damages claimed by the disclosing party and a copy of the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered

Fla. R. Civ. P. 1.280(a)(1)(C).

Plaintiffs provided neither. Part C contains no computation for any category. It attaches no documents. It points instead to “invoices and receipts” and “payment records” that Part B describes but Plaintiffs did not produce.

The second requirement matters. Rule 1.280(a)(1)(B) lets a party describe documents “by category and location.” Rule 1.280(a)(1)(C) does not. For damages, the rule requires “a copy.”

The numbers are not hidden from Plaintiffs. Entry 21 seeks tuition, fees, and deposits paid to the School. Entry 22 seeks donations. Plaintiffs made those payments, and Part B says Plaintiffs hold the records of them. Entries 23 and 24 seek tutoring, evaluation, and replacement-school costs. Plaintiffs incurred those costs and hold those invoices. Each figure is a matter of addition.

Plaintiffs tie the tuition computation to “the records to be produced by Defendants.” That is not a reason to wait. Plaintiffs know what they paid. If Plaintiffs contend that FIDS owes a refund for “educational services not provided after March 13, 2026,” Plaintiffs can state the amount they claim and how they reached it.

Entry 26 claims consequential damages from communications with other schools. Plaintiffs do not call these noneconomic, and they offer no computation. Entry 25 identifies noneconomic categories. Even there, the rule requires the party to “identify categories of damages claimed and provide supporting documents.” Fla. R. Civ. P. 1.280(a)(1)(C). Plaintiffs provided none.

Plaintiffs’ promise to supplement does not cure the omission. Rule 1.280(g)(1) requires supplementation “in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect.” The duty reaches what a party learns later. It does not postpone what the party already knows.

The gap has a cost. The CMO makes the parties “responsible for assuring that they have all the necessary information to value their position prior to mediation.”⁶ Defendants cannot value a claim that Plaintiffs have not priced.

D. The Court Should Compel Complete Disclosures

The CMO authorizes a party to “move to compel disclosure and for appropriate sanctions” when another party fails to make a disclosure required by Rule 1.280(a). CMO ¶ 8. An incomplete disclosure is a failure to disclose what was omitted.

Rule 1.280(k) also governs. Where a certification violates the rule without substantial justification, the rule leaves the Court no discretion on whether to act:

If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney’s fees, caused by the violation.

⁶CMO, ¶ 13, p. 6.

Fla. R. Civ. P. 1.280(k).

Plaintiffs had the evaluator's name, the schools' names, and their own payment records when counsel signed. No justification appears in the Disclosures. Defendants ask for the reasonable expenses incurred in bringing this motion.

Defendants also ask that the order carry a consequence. If Plaintiffs do not timely serve complete disclosures, they should not be permitted to use any undisclosed witness, computation, or document on a motion, at a hearing, or at trial, unless they show the failure was substantially justified or harmless. Fla. R. Civ. P. 1.380(d).

IV. Reservation of Rights

This motion is made in the alternative. Defendants maintain that the Disclosures were untimely and should be stricken for the reasons stated in the Motion to Strike. Nothing in this motion concedes the timeliness of the Disclosures or the Court's authority to excuse it.

WHEREFORE, Defendants respectfully request that, if the Court does not strike the Disclosures under the Motion to Strike, the Court (a) compel Plaintiffs, within ten days of the Court's order, to serve amended initial disclosures that (i) state the name and, if known, the address, telephone number, and e-mail address of each individual described in entries 7 through 11 of Part A and of any other individual Plaintiffs may use, including the outside evaluator, admissions personnel at each school to which A.M. applied, the enrollment and e-signature platform vendor, any tutor, and any person at A.M.'s subsequent school; (ii) provide a computation for each category of damages in entries 21 through 24 and 26 of Part C; and (iii) provide a copy of the documents on which each computation is based and the supporting documents for each noneconomic category; (b) award Defendants their reasonable expenses, including attorneys' fees, incurred in bringing this motion under Rule 1.280(k); (c) order that, if Plaintiffs fail to comply,

Plaintiffs may not use any undisclosed witness, computation, or document on a motion, at a hearing, or at trial unless Plaintiffs show the failure was substantially justified or harmless; and (d) grant such further relief as the Court deems just and proper.

Dated: October 23, 2026

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CERTIFICATE OF CONFERRAL

I HEREBY CERTIFY that, before filing this motion, I conferred with counsel for Plaintiffs by email on October 22, 2026 and provided a copy of this motion in draft form. I requested that counsel confirm by no later than 3:00 p.m. on October 23, 2026 to provide complete initial disclosures by no later than October 27, 2026 regarding each deficiency in Plaintiffs' initial disclosures identified in the draft motion. Counsel for Plaintiffs responded to the email (after the deadline set in the October 22 email) but did not agree to the relief requested and did not agree to correct the deficiencies in Plaintiffs' disclosures. The undersigned will continue to confer in an effort to resolve the disputes but will also file this motion to avoid delay given Plaintiffs' counsel's refusal to agree to meaningfully extend the CMO deadlines.

By: */s/ Christopher David*

CHRISTOPHER M. DAVID

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 23, 2026, I electronically filed the foregoing document using Florida's eFiling Portal. I also certify that the foregoing document is being served this day on all parties of record via the E-service list associated with this action.

By: */s/ Christopher David*
CHRISTOPHER M. DAVID