

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
NO. _____

SCHOOL BOARD OF MIAMI-DADE
COUNTY, FLORIDA;
LEON COUNTY SCHOOL BOARD;
ROCKY HANNA, as Superintendent of
Leon County Schools;
DUVAL COUNTY SCHOOL BOARD;
ORANGE COUNTY SCHOOL BOARD;
SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA; and
SCHOOL BOARD OF ALACHUA
COUNTY,

Petitioners,

v.

FLORIDA DEPARTMENT OF HEALTH,

Respondent.

**PETITION TO DETERMINE INVALIDITY OF DEPARTMENT OF HEALTH
EMERGENCY RULE 64DER21-15**

Petitioners, School Board of Miami-Dade County (“MDCSB”), Leon County School Board (“LCSB”), Rocky Hanna, as Superintendent, Leon County Schools (“Hanna”), Duval County School Board (“DCSB”), Orange County School Board (“OCSB”), School Board of Broward County, Florida (“BCSB”), and School Board of Alachua County (“ACSB”) (MDCSB, LCSB, Hanna, DCSB, OCSB, BCSB, and ACSB shall collectively be referred to as the “Petitioners”), pursuant to sections 120.56 and 120.595, Florida Statutes, and Chapter 28-106, Florida Administrative Code, hereby file this petition challenging Florida Department of Health (“DOH”) Emergency Rule 64DER21-15 (“DOH Rule”), as an invalid

exercise of delegated legislative authority. In support thereof, Petitioners state as follows.

OVERVIEW

Although it is titled “Protocols for Controlling COVID-19 in School Settings” and enacted solely pursuant to the DOH’s limited rulemaking authority to control communicable diseases, the DOH Rule challenged in this Petition is actually focused not on controlling COVID-19 but rather on protecting parental rights. The DOH does not have rulemaking authority in this area, and thus exceeded its rulemaking authority.

Petitioners challenge only those portion of sections (1)(d) and (3) of the DOH Rule, which (i) require that all schools “must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian’s sole discretion” (the “Mask Opt-Out Requirement”); and (ii) “allow parents or legal guardians the authority to choose how their child receives education after having direct contact with an individual that is positive for COVID-19,” based on an unspecified determination that a child is “asymptomatic” (the “Quarantine Opt-Out Requirement”). *Id.* The Mask Opt-Out Requirement and the Quarantine Opt-Out Requirement are referred to collectively as the “Parental Opt-Out Requirements.”

The DOH Rule identifies one solitary source for DOH’s rulemaking authority: 1003.22(3), Florida Statutes. DOH’s rulemaking authority, therefore, is limited, as follows:

The Department of Health may adopt rules *necessary* to administer and enforce *this section*. The Department of Health, after

consultation with the Department of Education, shall adopt *rules governing the immunization of children against, the testing for, and the control of preventable communicable diseases.*

§ 1003.22(3), Fla. Stat. (emphasis added). Section 1003.22 concerns itself with pre-enrollment or pre-attendance immunizations or medical certifications. § 1003.22(1), Fla. Stat. At most, the DOH is permitted to enact rules governing immunizations and “the control of preventable communicable diseases” in public schools. § 1003.22(3), Fla. Stat. Such rulemaking authority does not extend to enforcing parental rights. Additionally, as reflected below, the DOH Rule runs counter to the express legislative intent that schools remain open safely and in accordance with, among other things, federal health agency guidelines. The DOH Rule is an invalid exercise of legislated delegated authority and must be invalidated for the reasons set forth below.

GENERAL ALLEGATIONS

1. MDCSB is the governing body of the Miami-Dade County School District in Miami-Dade County, Florida, which is the largest school district in Florida and the fourth largest in the United States, with over 334,000 students and 41,000 teachers and other employees. It is an “A” graded district. The address of the MDCSB is 1450 NE 2nd Avenue, Miami, FL 33132 (telephone: 305-995-1000).

2. LCSB is the governing body of the Leon County School District, in Leon County, Florida, with over 34,000 students, 2,400 teachers and 4,300 employees. Mr. Hanna, as Superintendent, is responsible for the administration and management of Leon County schools and for the supervision of instruction

in the Leon County School District. The address of the LCSB and Mr. Hanna as Superintendent is 2757 West Pensacola Street, Tallahassee, FL 32304 (telephone: 850-487-7100).

3. DCSB is the governing body of the Duval County School District, in Duval County, Florida, with approximately 128,000 students and over 7,500 teachers. The address of the DCSB is 1701 Prudential Drive, 6th Floor Room 642, Jacksonville, FL 32207 (telephone: 904-390-2000).

4. OCSB is the governing body of the Orange County School District, with over 204,000 students and approximately 25,000 employees including more than 14,000 teachers. OCSB is an “A” graded district. The address of OCSB is 445 W. Amelia St., Orlando, FL 32801 (telephone: 407-317-3200).

5. BCSB is the governing body of the Broward County School District. With over 260,000 students and over 14,000 teachers, BCSB was the first fully accredited school system in Florida. It is the second largest school system in Florida and the sixth largest in the U.S. The address of the BCSB is 600 SE 3rd Ave, Fort Lauderdale, FL 33301 (telephone: 754-321-0000).

6. ACSB is the governing body of the Alachua County School District, with over 27,000 students and nearly 1,970 teachers. ACSB is an “A” graded district. The address of the ACSB is 620 East University Avenue, Gainesville, FL 32601 (telephone: 352-955-7300).

7. Counsel, contact persons and contact information for the Petitioners for this proceeding is its legal counsel set forth below.

8. DOH is a Florida executive branch agency, the general purpose of which is “to protect and promote the health of all residents and visitors in the state.” § 20.43(1), Fla. Stat. Among other things, DOH is generally required by statute to “[i]mplement interventions that *prevent or limit* the impact or spread of diseases and health conditions.” § 20.43(1)(b), Fla. Stat. (emphasis added).¹ The address of the DOH is 4052 Bald Cypress Way, Tallahassee, Florida 32399-1703 (telephone: 850-245-4732).

9. The DOH Rule being challenged in this proceeding is Florida Department of Health Emergency Rule 64DER21-15, which was published in the Florida Administrative Register on September 23, 2021, Volume 47, Number 185, pp. 4,442-44. A copy of the DOH Rule is attached as **Exhibit 1**.

10. The Division of Administrative Hearings (“Division”) has jurisdiction to hear this rule challenge under section 120.56, Florida Statutes.

FACTUAL BACKGROUND

A. The Executive Order.

11. On July 30, 2021, Governor Ron DeSantis issued Executive Order 21-175 (the “Executive Order”), titled “Ensuring Parents’ Freedom to Choose – Masks in Schools,” a copy of which is attached as **Exhibit 2**. The DOH Rule refers to and states that it “conforms to” the Executive Order.

12. The Executive Order makes repeated statements hostile to the mitigation strategy of requiring schoolchildren to wear masks—contrary to

¹ Notably, DOH did not cite to this statute as the source of its rulemaking authority.

guidance from the Centers for Disease Control and Prevention (“CDC”), the American Academy of Pediatrics (“AAP”), and the overwhelming consensus of medical authorities that mask-wearing can significantly reduce the risk of transmitting COVID-19.

13. Among other things, the Executive Order makes conclusory statements denying the well-recognized efficacy of mask-wearing. Without any elaboration or attempted justification, the Executive Order falsely states, “forcing students to wear masks lacks a well-grounded scientific justification.”

14. The Executive Order references “a Brown University study” in ostensible support of its anti-mask sentiments, but does not name the study or its authors or discuss it in any detail. According to the Executive Order, the Brown University study “analyzed COVID-19 data for schools in Florida” at some unspecified point in time “and found no correlation with [unspecified] mask mandates.”

15. On information and belief, the Brown University study referenced in the Executive Order is a study titled “COVID-19 Mitigation Practices and COVID-19 Rates in Schools: Report on Data from Florida, New York and Massachusetts,” by Emily Oster, Rebecca Jack, Clare Halloran, John Schoof, and Diana McLeod.

16. This study is a pre-print that has not yet been peer-reviewed, and relies on data from the 2020-2021 school year, prior to the emergence of the more contagious delta variant.

17. The study offers the following observation, contrary to the Executive Order’s conclusions:

We would emphasize that in general this literature suggests in-person school can be operated safely *with appropriate mitigation, which typically includes universal masking*. It would be premature to draw any alternative conclusions about this question based on this preliminary data.

(emphasis added).

18. The Executive Order goes even further than denying the medically accepted efficacy of mask-wearing. It goes on to *speculate* that mask-wearing could somehow *harm* children instead:

WHEREAS masking children *may* lead to negative health and societal ramifications; and

* * *

WHEREAS, forcing children to wear masks *could* inhibit breathing, lead to the collection of dangerous impurities including bacteria, parasites, fungi, and other contaminants, and adversely affect communications in the classroom and student performance; and

* * *

WHEREAS, on April 29, 2021, [then] Florida Surgeon General Dr. Scott Rivkees issued a Public Health Advisory stating that continuing COVID-19 restrictions on individuals, including long-term use of face coverings, pose a *risk* of adverse and *unintended* consequences

Ex. 1 (emphasis added).

19. Despite the Executive Order’s ostensible concern that the *efficacy* of mask-wearing have “a well-grounded scientific justification,” the Executive Order does not attempt to provide or even cite to “a well-grounded scientific justification” for its speculation that *harm* could result from mask-wearing.

20. The April 29, 2021, Public Health Advisory, which the Executive Order references and on which it in part relies, states, “*fully vaccinated* individuals should no longer be advised to wear face coverings.” (emphasis added). As of the date of the Executive Order, and as of the date of filing this

petition, schoolchildren under 12 years of age are not eligible for any COVID-19 vaccine.

21. After espousing its various anti-mask sentiments, the Executive Order “directs” the DOH and Florida Department Education to enact certain rules, even though rulemaking authority may only be established through a duly enacted statute. *See* § 120.536(1), Fla. Stat.

22. The Executive Order directs the DOH and Department of Education to “immediately execute rules pursuant to section 120.54, Florida Statutes, and take any additional agency action necessary, using all legal means available, to ensure safety protocols for *controlling* the spread of COVID-19 in schools.” Ex. 2 at 3 (emphasis added).

23. The Executive Order goes on to dictate that the rules to be promulgated must not “violate Floridians’ constitutional freedoms” or “parents’ right under Florida law to make health care decisions for their minor children,” and must “Protect children with disabilities or health conditions who would be harmed by certain protocols such as face masking requirements.” *Id.* at 3-4.

24. More specifically, the Executive Order commands that any such rules promulgated “shall at minimum be in accordance with Florida’s “Parents’ Bill of Rights” and protect parents’ right to make decisions regarding masking of their children in relation to COVID-19.” *Id.*

25. The “Parents’ Bill of Rights” refers to Florida legislation, adopted as H.B. 241 on June 29, 2021, and codified in relevant part at sections 1014.01, *et seq.*, Florida Statutes. This legislation addresses the scope of various parental

rights, including a parent’s “right to make health care decisions for his or her minor child, unless otherwise prohibited by law.” § 1014.04(1)(e), Fla. Stat.

26. The Parents’ Bill of Rights does not say anything about masks. Moreover, parents’ rights under the statute are not unlimited.

27. Included within the Parents’ Bill of Rights is section 1014.03, Florida Statutes, which provides that the enumerated parental rights *may* be infringed by local governments if “such action is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means.” § 1014.03, Fla. Stat.

28. The Executive Order instructs the Commissioner of Education to “pursue all legal means available to ensure school districts adhere to Florida law, including but not limited to withholding state funds from noncompliant school boards violating any rules or agency action taken pursuant to” the Executive Order. Ex. 2 at 4.

B. The Prior DOH Emergency Rule.

29. On August 6, 2021, DOH adopted Emergency Rule 64DER21-12 (the “Prior DOH Rule”, a copy of which is attached hereto as **Exhibit 3**. The Prior DOH Rule was also titled “Protocols for Controlling COVID-19 in School Settings,” and was adopted expressly as directed by the Governor through the Executive Order. Ex. 3 at 2.

30. As its purported basis and impetus, the Prior DOH Rule cited the Executive Order, as well as “a recent increase in COVID-19 infections, largely

due to the spread of the COVID-19 delta variant, coincid[ing] with the imminent start of the school year.” Ex. 3 at pg. 1.

31. As its only purported rulemaking authority, both the Prior DOH Rule and the DOH Rule cited the DOH’s “authority to adopt rules governing the control of preventable communicable diseases in public schools,” pursuant to “section 1003.22(3), Florida Statutes.” *Id.* at 1-2. Section 1003.22 is titled, “School-entry health examinations; immunization against communicable diseases; exemptions; duties of Department of Health.”

32. Section 1003.22(3) provides, in full:

The Department of Health may adopt rules necessary to administer and enforce this section. *The Department of Health, after consultation with the Department of Education, shall adopt rules governing the immunization of children against, the testing for, and the control of preventable communicable diseases.* The rules must include procedures for exempting a child from immunization requirements. Immunizations shall be required for poliomyelitis, diphtheria, rubeola, rubella, pertussis, mumps, tetanus, and other communicable diseases as determined by rules of the Department of Health. The manner and frequency of administration of the immunization or testing shall conform to recognized standards of medical practice. The Department of Health shall supervise and secure the enforcement of the required immunization. Immunizations required by this section shall be available at no cost from the county health departments.

s. 1003.22(3), Fla. Stat. (emphasis added).

33. Despite its title and ostensible purposes, the Prior DOH Rule did not actually mandate any measure to control COVID-19. The *only* provisions in the Prior DOH Rule that were mandatory or prohibitive related to parental choice. Specifically, as to masks, the Prior DOH Rule stated, “the school *must allow* for a parent or legal guardian of the student to *opt-out* the student from wearing a

face covering or mask.” Ex. 3 at pg. 1 (emphasis added). In addition, the Prior DOH Rule also mandated that students whose parents or legal guardians opt them out of wearing a mask not be discriminated against.

34. The Prior DOH Rule did not define “face covering or mask,” did not set forth the procedures for parental opt-outs, and did not set forth the criteria for opt-outs. Those issues, as well as many others involved in implementing rules for masks and opt-outs, were left to each individual school district to determine based upon local conditions and their constitutional authority to “operate, control and supervise” the public schools within the school district. Art. IX, Sec. 4, Fla. Const.

C. Petitioners’ Mask/Facial Covering and Quarantine Policies.

35. Based upon scientific data and recommendations, the Petitioners have each adopted policies to control and mitigate the spread of COVID-19 in schools, subject to change as conditions dictate.

36. Among other things, the Petitioners have each adopted a policy requiring students to wear a mask or facial covering.

37. Each of the Petitioners’ mask/facial covering policy provides certain exceptions, such as if a student has a medical condition that prevents him or her from wearing a mask or facial covering. The LCSB policy allows parents of high school students to opt-out their children without a medical reason based upon individual liberties.

38. The Petitioners each have a quarantine policy or practice governing students who have come in direct contact with a person who has tested positive for COVID-19.

D. Threats and Enforcement Action by the Department of Education Under the Prior DOH Rule.

39. On August 27, 2021, Florida Department of Education Commissioner Richard Corcoran wrote letters to the Petitioners, threatening penalties against the Petitioners for noncompliance with the Prior DOH Rule, and asserting, “Parents have a fundamental right to direct the upbringing, education and care of their minor children. The Department of Education will protect that right.”

40. Commissioner Corcoran had sent similar threatening letters to other school districts, including Alachua County and Broward County.

41. After receiving responses from these two other school districts indicating they would not comply with the Prior DOH Rule to his satisfaction, and after ordering the Superintendents from those districts to appear before the Board of Education, Commissioner Corcoran followed through with his threat and directed the Department of Education to withhold funds from Alachua and Broward school districts.

E. Legal Challenges to the Prior Rule.

42. In early September 2021, various parties, including Petitioners, mounted legal challenges to the Prior DOH Rule before the Division.

43. The various proceedings were consolidated (Case Nos. 21-2696RE, 21-2707RE, Case No. 21-002697RE, and 21-002721RE), and set for final hearing on September 24, 2021.

44. On September 14, 2021, DOH moved to dismiss the school board petitioners for lack of standing and lack jurisdiction based upon the public officials standing doctrine, but the administrative law judge denied the motion on September 20, 2021.

45. That same day, DOH filed a petition for writ of prohibition in the First District Court of Appeal, seeking to prevent the Division from exercising jurisdiction over the rule challenges.

46. On September 22, 2021—two days before the final hearing had originally been scheduled—DOH moved to dismiss the rule challenges for mootness, because it had just enacted the DOH Rule, which repealed and replaced the Prior DOH Rule.

47. That same day, the ALJ granted DOH’s motion and dismissed the consolidated rule challenges as moot.

F. The DOH Rule.

48. On September 22, 2021, DOH adopted the DOH Rule.

49. The DOH Rule bears the same title as the Prior DOH Rule: “Protocols for Controlling COVID-19 in School Settings.” Like the Prior DOH Rule, the DOH Rule was adopted as directed by the Governor through the Executive Order (namely, to protect parental rights), and states it “conforms to Executive Order Number 21 -175, which ordered the Florida Department of Health and the

Florida Department of Education to ensure safety protocols for controlling the spread of COVID-19 in schools” Ex. 1 at 1.

50. As its purported basis and emergency impetus, the DOH Rule claims that since the adoption of the Prior Rule, DOH “conducted a review of data for cases of COVID-19 positive school-aged children and data for school-aged children who have been in direct contact with a COVID-19 positive person,” which led DOH to conclude that “a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning.” Ex. 2 at 1. DOH also claimed to have observed “no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates.” *Id.* The data, however, was not made available to the public.

51. On September 23, 2021, undersigned counsel, on behalf of MDCSB and LCSB, made a public records request to DOH for the data referenced in the Notice of the Emergency Rule. The DOH refused to produce any records regarding the data, claiming the data was “confidential.”

52. As its only purported rulemaking authority, the DOH Rule cited DOH’s “authority to adopt rules governing the control of preventable communicable diseases in public schools,” pursuant to “section 1003.22(3), Florida Statutes.” *Id.*

53. As its purported purpose or goal, the DOH Rule states it is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and

health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

Id. Thus, the DOH Rule expressly seeks to vindicate parental rights under the Parents' Bill of Rights as directed by the Executive Order. *Id.* None of those articulated goals is authorized by section 1003.22(3), Florida Statutes.

54. Despite its title and purported justifications, the DOH Rule, with small exception, does not actually mandate the implementation of measures to control COVID-19. Subsection (1) states, “[t]he following procedures shall be instituted . . .” but the provisions that follow are *suggestive*: “[s]chools will *encourage* routine cleaning,” “[s]tudents *will be encouraged* to practice routine handwashing,” “[s]chools *may* adopt requirements for students to wear masks or facial coverings” Ex. 1 at 2 (emphasis added).

55. The only provision under subsection (1) using mandatory language is a general statement that “[s]tudents will stay home if they are sick.” *Id.* Other than that, the only provisions in the DOH Rule that are mandatory or prohibitive relate to parental choice.

56. As to masks, the DOH Rule states, as did the Prior DOH Rule, that “the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask.” In a phrase that was not present in the Prior DOH Rule, the DOH Rule adds that the parental choice to opt their children out is “at the parent or legal guardian’s sole discretion.”

57. The DOH Rule also includes a provision titled “Protocols for Students with Exposure to COVID-19.” It states that for children who have had

direct contact with a person that has tested positive for COVID-19, schools must allow parents to have the choice to allow the exposed student to attend school and school-sponsored activities, without restrictions or disparate treatment (or a requirement to wear a mask), so long as the student is asymptomatic.

58. The DOH Rule does not define mask, facial covering, “sick,” or “symptomatic.” It also does not indicate who has the authority to determine whether a student is symptomatic, what those symptoms might be, or who decides whether those symptoms are attributable to COVID-19 (as opposed to a common cold or seasonal allergies). It also fails to establish a procedure for implementing parental opt-outs.

G. Enforcement Action Under the DOH Rule.

59. On October 4, 2021, Commissioner Corcoran sent letters to the Petitioners, stating that he found that there is probable cause that the Petitioners’ policies have “violated the provisions of Rule 64DER21-12 and continue[] to violate Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings.” The October 4, 2021, probable cause letters to each of the Petitioners, with exhibits, are attached hereto as **Exhibits 4-9**.

60. Based on his conclusion that there was probable cause that the Petitioners have violated the Prior DOH Rule and the DOH Rule, Commissioner Corcoran recommended “that the State Board of Education use its enforcement powers to enforce the health protocols found in Emergency Rule 64DER21-15 and protect the right of parents to make both health and educational decisions on behalf of their children.”

61. He concludes by requesting that the DOE “consider the sanction of withholding state funds in an amount equal to 1/12 of all school board members’ salaries, as well as withholding state funds in an amount equal to any federal grant funds awarded to the [Petitioners] for [their] noncompliance with Emergency Rule 64DER21-15.”

62. Because the Petitioners are subject to the DOH Rule and are being threatened with penalties for noncompliance, Petitioners are “substantially affected by” the DOH Rule within the meaning of section 120.56(1)(a), Florida Statutes, will have a “substantial interest” affected, and have standing to bring this petition.

THE DOH RULE IS AN INVALID EXERCISE OF DELEGATED LEGISLATIVE AUTHORITY.

63. Under section 120.56(1)(a), “[a]ny person substantially affected by a rule or a proposed rule may seek an administrative determination of the invalidity of the rule on the ground that the rule is an invalid exercise of delegated legislative authority.” § 120.56(1)(a), Fla. Stat.

64. An “invalid exercise of delegated legislative authority” is any “action that goes beyond the powers, functions, and duties delegated by the Legislature.” § 120.52(8), Fla. Stat. Moreover, section 120.52(8) also broadly sets forth the *limitations* that govern an agency’s rulemaking authority:

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. *No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and*

is not arbitrary and capricious or is within the agency’s class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency *shall be construed to **extend no further** than implementing or interpreting the specific powers and duties conferred by the enabling statute.*

§ 120.52(8), Fla. Stat.

65. An agency’s action is also deemed an “invalid exercise of delegated legislative authority” if any one of the enumerated grounds in sections 120.52(8)(a)-(f) applies.

A. The DOH Materially Failed to Follow Emergency Rulemaking Procedures.²

66. The Parental Opt-Out Requirements constitute an invalid exercise of delegated legislative authority because the DOH “has materially failed to follow the applicable rulemaking procedures or requirements set forth in” chapter 120. § 120.52(8)(1), Fla. Stat.

67. The DOH enacted the DOH Rule as an emergency rule without undergoing the regular rulemaking process that would have included notice, publication and public hearings. In fact, the public was given no notice or opportunity to be heard at all prior to the adoption of the DOH Rule.

68. The DOH Rule’s “Specific Reasons for Finding an Immediate Danger to the Public Health, Safety, or Welfare” is predicated on, among other things,

² This particular basis for challenging the DOH Rule is brought by all Petitioners except for MDCSB.

“an increase in COVID-19 infections, largely due to the spread of the COVID-19 delta variant, prior to the beginning of the 2021-2022 school year.” Ex. 1 at 1.

69. The DOH Rule’s “Reason for Concluding that the Procedure is Fair Under the Circumstances” is as follows:

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule is necessary in light of the unnecessary exclusion of healthy students from in-person learning and the urgent need to provide updated COVID-19 guidance to school districts. Given the evolving nature of this novel disease and the potential for adverse impacts on school children resulting from the unnecessary exclusion of healthy children from in-person learning, there is a need to issue an immediately effective rule while the department promulgates a permanent rule through the non-emergency process.

Ex. 1 at 1.

70. The limited circumstances under which a state agency, such as DOH, may bypass normal procedures and instead enact a rule on an emergency basis are set forth in section 120.54(4), Florida Statutes:

(a) If an agency *finds that an immediate danger to the public health, safety, or welfare requires emergency action*, the agency may adopt any rule *necessitated by the immediate danger*. The agency may adopt a rule by *any procedure which is fair under the circumstances if*:

1. The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.
2. The agency takes *only that action necessary to protect the public interest under the emergency procedure*.
3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one or a part

of one county, including the full text of the rules, shall be published in the first available issue of the Florida Administrative Register and provided to the committee along with any material incorporated by reference in the rules. The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

§ 120.54(4)(a), Fla. Stat. (2020) (emphasis added).

71. To be sufficient to support an emergency rule, an agency's stated reasons for the emergency must be factually explicit and persuasive. *Fla. Health Care Ass'n v. Agency for Health Care Admin.*, 734 So. 2d 1052, 1053-54 (Fla. 1st DCA 1998).

72. Emergency rules must be narrowly tailored to address the specific emergency described in the agency's stated reasons for emergency, and the agency is confined to measures that are demonstrably necessary to alleviate the emergency described in the justification statement. Section 120.54(4)(a)2. authorizes emergency rulemaking, provided that "the agency takes only that action necessary to protect the public interest under the emergency procedure." § 120.54(4)(a)2., Fla. Stat. (emphasis added).

73. The emergency enactment of the Parental Opt-Out Requirements was not justified by the immediate danger to the public from COVID-19.

74. There is no stated linkage between the Parental Opt-Out Requirements and controlling the immediate health dangers of COVID-19. Rather, by reducing the number of students that would wear masks, and increasing the number of COVID-exposed children (especially if they do not have to wear masks) in schools, the Parental Opt-Out Requirements would actually

contribute to, rather than reduce, the spread of the stated immediate public health danger of COVID-19.

75. The DOH has failed to state, in a “factually explicit and persuasive” fashion, how allowing parents to prohibit their children from wearing masks, or how allowing COVID-exposed children to attend school, would address or control the spread of COVID-19.

76. The emergency enactment of the Parental Opt-Out Requirements was not justified by any purported immediate danger to the public from wearing masks.

77. The emergency enactment of the Parental Opt-Out Requirements was not justified by any purported immediate danger to school children’s ability to attend in-person learning, nor would such a danger be within the realm of the DOH’s rulemaking authority.

78. The emergency enactment of the Parental Opt-Out Requirements was not justified by any purported immediate danger based on any alleged infringement on parental rights, nor would such a danger be within the realm of the DOH’s rulemaking authority.

79. The DOH Rule does not set forth any other immediate dangers to public health, safety or welfare that necessitated the “protection” of the Parental Opt-Out Requirements.

80. Moreover, the DOH Rule’s emergency enactment procedures were not fair under the circumstances. The DOH Rule fails to provide an explanation justifying the emergency enactment that is explicit or persuasive, and no

explanation for the utter lack of notice or opportunity to be heard during the weeks prior to the adoption of the DOH Rule.

81. The only justification DOH has given for “fairness” is the conclusory assertion that the “rule is necessary in light of the unnecessary exclusion of healthy students from in-person learning and the urgent need to provide updated COVID-19 guidance to school districts.”

82. As for the Mask Opt-Out Requirement, the DOH Rule does not address *at all* the purported “necessity” or fairness of enactment on an emergency basis.

83. As for the Quarantine Opt-Out Requirement, the need to quarantine after exposure to someone infected by COVID-19 is not unexpected or, as suggested by the DOH Rule’s boilerplate assertion, something that arises from the “evolving nature of this novel disease.” Ex. 1 at 1. Rather, quarantining for some period of time after direct contact exposure to an individual infected with COVID-19 has been a standard and continuous protocol since shortly after the pandemic was declared more than 18 months ago.

84. There is no plausible, much less persuasive, reason why DOH, in consultation with the Department of Education, could not have engaged in regular, non-emergency rulemaking in the many months leading up to the start of the 2021-22 school year, or in the time period after the enactment of the Prior DOH Rule, in order to address quarantining concerns and school attendance.

85. Thus, in adopting the Parental Opt-Out Requirements, the DOH “has materially failed to follow the applicable rulemaking procedures or requirements set forth in” chapter 120. § 120.52(8)(1), Fla. Stat.

B. The DOH has Exceeded its Grant of Rulemaking Authority.

86. The Parental Opt-Out Requirements constitute an invalid exercise of delegated legislative authority because the DOH “has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.” § 120.52(8)(b), Fla. Stat. Specifically, the Parental Opt-Out Requirements do not “implement or interpret the specific powers and duties granted by” section 1003.22, which is the only source of statutory authority cited in the DOH Rule. § 120.52(8), Fla. Stat.

87. Section 1003.22(3) substantially limits the DOH’s authority to adopt rules. Any rule adopted pursuant to that statute must “administer or enforce” that section, and only that section. § 1003.22(3), Fla. Stat. (stating DOH “may adopt rules *necessary* to administer or enforce *this section*”). Section 1003.22 concerns itself with pre-enrollment or pre-attendance immunizations or medical certifications. § 1003.22(1), Fla. Stat. At most, the DOH is permitted to enact rules governing immunizations and “the control of preventable communicable diseases” in public schools. § 1003.22(3), Fla. Stat.

88. The Parents’ Bill of Rights, §§ 1014.01, *et seq.*, Fla. Stat., which is obliquely referenced in the DOH Rule, does not confer *any* authority on DOH to implement any rules. For that matter, nothing in the Parents’ Bill of Rights calls

for *any* rulemaking or delegates to the Governor the authority to direct rulemaking by the DOH or any other agency.

89. The Parental Opt-Out Requirements were not adopted for the purpose of administering the immunization of students or controlling preventable communicable diseases, but were instead adopted expressly for the purpose of protecting parental rights. Section 1003.22(3) does not authorize the DOH to adopt rules to protect parental rights, and therefore, the Parental Opt-Out Requirements do not “implement or interpret the specific powers and duties granted by the enabling statute.” Moreover, protecting parental rights is not “necessary” to administer or enforce section 1003.22, Florida Statutes. § 1003.22(3), Fla. Stat.

90. As section 120.52(8) makes clear, the DOH cannot justify its overreach simply by claiming that the Parental Opt-Out Requirements are “reasonably related to the purpose of the enabling legislation.” Even if they *were* “reasonably related,” that would not suffice. See § 120.52(8), Fla. Stat. (“No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation....”).

91. In fact, the Parental Opt-Out Requirements accomplishes quite the opposite of the cited authority: forbidding mask mandates unless they include an unqualified right to opt-out, and requiring schools to allow COVID-exposed children (especially ones who do not have to wear a mask if their parents simply do not want them to), can only *facilitate* the *spread* of communicable diseases. In that way, the Parental Opt-Out Requirements directly contradict the cited

rulemaking authority, and also contradict the broader statutory requirement that the DOH “[i]mplement interventions that *prevent or limit* the impact or spread of diseases and health conditions.” § 20.43(1)(b), Fla. Stat. (emphasis added).

92. Inasmuch as the Parental Opt-Out Requirements are not authorized by section 1003.22(3), and the Parents’ Bill of Rights confers no authority whatsoever on the DOH to enact any rule regarding parental rights, it becomes apparent that the DOH Rule was the product of direction given by the Governor in Executive Order 21-175 (entitled “Ensuring Parent’s Freedom to Choose – Masks in Schools). Indeed, the DOH Rule suggests as much. However, the Executive Order’s directive amounted to overreach and was unlawful, because the Governor cannot violate the separation of powers doctrine by delegating rulemaking authority to the DOH. *See, e.g., Wilely v. Scott*, 79 So. 3d 702 (Fla. 2011) (invalidating the Governor’s effort to control rulemaking by means of an executive order).

93. As the *Wilely* Court explained: “[S]ection 1(a) of article IV of the Florida Constitution did not confer upon the governor any power of direct control and supervision over all state agencies.... Because the department heads, and not the Governor, shall direct the powers, duties, and functions vested in a department, ... the Governor could not give binding directions to any state executive department to comply with a particular plan or act, or exercise rulemaking authority....” *Id.* at 714 (footnotes and internal quotation marks omitted).

94. DOH did not identify any legislative authority for implementing a rule intended to protect parental rights. Nor has DOH explained how protecting parental rights was “necessary” for it to fulfill its limited rulemaking authority under section 1003.22(3) to control communicable diseases. Thus, in adopting the Parental Opt-Out Requirements, the DOH “has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.,” rendering the Parental Opt-Out Requirements an invalid exercise of delegated legislative authority. § 120.52(8)(b), Fla. Stat.

C. The Opt-Out Provisions Improperly Enlarge or Modify the Specific Provisions of Section 1003.22, Florida Statutes.

95. The Parental Opt-Out Requirements constitute an invalid exercise of delegated legislative authority because they “enlarge[], modif[y], or contravene[] the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.” § 120.52(8)(c), Fla. Stat.

96. The Parental Opt-Out Requirements purport to implement the Parental Bill of Rights, sections 1014.01, *et seq.*, Florida Statutes.

97. This legislation codifies various parental rights, including “[t]he right to make health care decisions for his or her minor child, unless otherwise prohibited by law.” § 1014.04(1)(e), Fla. Stat.

98. The Parents’ Bill of Rights does not say anything about masks or quarantines.

99. Although the Parents’ Bill of Rights codifies a “right to make health care decisions” for one’s minor children, it does not define or dictate the scope of

that right. As recently determined by the Fourth District Court of Appeal in *Machovec v. Palm Beach County*, 310 So. 3d 941 (Fla. 4th DCA 2021), review denied by *Machovec v. Palm Beach County*, -- So.3d --, 2021 WL 2774748 (Fla. July 2, 2021), the decision to wear a mask is primarily a decision to protect the well-being of *others*.

100. The codified right to make health care decisions for one's own minor children also does not include the right to *prevent* Petitioners from requiring children to wear masks with an opt-out only for medical reasons or requiring them to quarantine after they have been exposed to someone who has tested positive for COVID-19. Yet the Parental Opt-Out Requirements purport to read such rights into the Parents' Bill of Rights.

101. The codified right to make health care decisions for one's own minor children does not include the right to place *other children and staff* at risk of harm, or the right to cause others harm. Indeed, the U.S. Supreme Court has made clear in the context of a parent's right to determine the upbringing of a child that the right "does not include the liberty to expose the community or the child to communicable disease or the latter to ill health or death. *Prince v. Massachusetts*, 321 U.S. 158, 166-67 (1944). Parents are not free "to make martyrs of their children." *Id.* at 170. And yet, the Parental Opt-Out Requirements purport to read such rights into the Parents' Bill of Rights.

102. Thus, in purporting to implement the Parents' Bill of Rights, the Parental Opt-Out Requirements purport to modify or enlarge the Parents' Bill of Rights, in violation of section 120.52(8)(c).

103. Indeed, included within the Parents' Bill of Rights is section 1014.03, Florida Statutes, which provides that the enumerated parental rights *may* be infringed if it can be demonstrated "that such action is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means." § 1014.03, Fla. Stat.

104. The Parental Opt-Out Requirements prevent the school districts from engaging in the statutory balancing test contemplated by section 1014.03.

105. Specifically, the Parental Opt-Out Requirements contravene section 1014.03 by forbidding *outright* school districts from implementing mask and quarantine mandates that do not include an unqualified parental opt-out right, without regard to whether such mask and quarantine mandates are reasonable, necessary, and narrowly tailored to achieve a compelling state interest that is not otherwise served by a less restrictive means.

106. Moreover, the Quarantine Opt-Out Requirement contravenes section 1014.03 by requiring schools to allow children exposed to a COVID-positive person to attend school and school activities, without regard to whether a contrary policy is reasonable, necessary and narrowly tailored to achieve a compelling state interest that is not otherwise served by a less restrictive means.

107. Thus, the Parental Opt-Out Requirements "enlarge[], modif[y], or contravene[] the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.," rendering the Parental Opt-Out Requirements an invalid exercise of delegated legislative authority. § 120.52(8)(c), Fla. Stat.

D. The Parental Opt-Out Requirements are Vague and Fail to Establish Adequate Standards.

108. The Parental Opt-Out Requirements constitute an invalid exercise of delegated legislative authority because they are “vague, fail[] to establish adequate standards for agency decisions, or vest[] unbridled discretion in the agency.” § 120.52(8)(d), Fla. Stat.

109. The DOH Rule does not define “symptomatic,” “asymptomatic,” or “sick.”

110. The DOH Rule does not state who has the authority to make the determination that a particular child is “asymptomatic” or “sick.”

111. The DOH Rule does not establish a procedure for implementing parental choice, including, among many others, (a) advise whether the opt-outs need to be in writing, (c) provide guidance as to how to implement parental opt-outs (i.e., what to do if there are two parents of the same child making different choices, etc.), (c) determine if a child is symptomatic.

112. If anything, the DOH Rule is self-contradictory, with one provision seeming to suggest a school can or must act if a student is symptomatic or “sick,” but another provision seemingly allowing parents to decide whether a student’s symptoms are attributable to COVID-19 and return the child to school, school-sponsored activities, or school property “without restriction.”

113. Thus, the Parental Opt-Out Requirements are “vague, fail[] to establish adequate standards for agency decisions, or vest[] unbridled discretion

in the agency,” rendering them an invalid exercise of delegated legislative authority. § 120.52(8)(d), Fla. Stat.

E. The Parental Opt-Out Requirements are Arbitrary or Capricious.

114. The Parental Opt-Out Requirements constitute an invalid exercise of delegated legislative authority because they are “arbitrary or capricious.” § 120.52(8)(e), Florida Statutes.

115. The Parental Opt-Out Requirements are not supported by logic or the necessary facts. They were adopted without thought or reason and are irrational.

116. For one thing, the Parental Opt-Out Requirements are directly contrary to the ostensible purpose of the DOH Rule, as disclosed by its title, in that they *facilitate*, rather than control, the spread of a communicable disease.

117. The United States Education Secretary Miguel Cardona has acknowledged that the DOH Rule’s quarantine provisions would put other students at risk, stating “[o]f course, it’s dangerous. It’s irresponsible in my opinion.”

118. It was thoughtless, irrational, and without reason for the DOH to adopt such disease-facilitating provisions as an ostensible measure to control COVID-19. Moreover, the Parental Opt-Out Requirements, by reducing the number of students who wear masks and allowing COVID-exposed children (especially maskless ones) to attend school and school activities, will result in greater exposure and quarantining for other students, contrary to the rule’s stated purposes concerning school attendance.

119. Moreover, the DOH Rule was adopted at the impetus of, and expressly to conform to, the Executive Order, the contents of which demonstrate the arbitrariness and capriciousness of the Parental Opt-Out Requirements.

120. The anti-mask sentiments in the Executive Order were expressly predicated on pure speculation, rather than “necessary facts” concerning ostensible harm or “unintended consequences” that masks “may” or “could” cause.

121. The Executive Order dismissed masks as an effective safety measure despite the overwhelming consensus of medical authorities, as well as CDC and AAP guidance, to the contrary.

122. The Executive Order’s dismissal of masks as an effective safety measure was presumably predicated in part on a Brown University study that has not yet been peer-reviewed, relies on data from the 2020-2021 school year (prior to the emergence of the more contagious delta variant), and whose own authors emphasized that “appropriate mitigation” for reopening schools “typically includes universal masking.”

123. The arbitrariness and capriciousness of the Executive Order’s anti-mask sentiments is highlighted by the fact that the Executive Order does not attempt to provide or even cite to “a well-grounded scientific justification” for its speculations that *harm* could result from mask-wearing, despite simultaneously expressing concern that the *efficacy* of mask-wearing lacked “a well-grounded scientific justification.”

124. Additionally, the Parental Opt-Out Requirements are directly contrary to the express legislative intent to maintain schools open *provided* it can be done safely based upon mitigation strategies recommended by federal and state health agencies. Section 252.36(1)(c) states, “The Legislature intends that, during an extended public health emergency, such as the COVID-19 pandemic, there should be a presumption that K-12 public schools, to the greatest extent possible, should remain open so long as the health and safety of students and school personnel can be maintained *by specific public health mitigation strategies recommended by federal or state health agencies for educational settings.*” § 252.36(1)(c), Fla. Stat. (emphasis added). The CDC, a federal health agency, has promulgated its health mitigation strategy for schools, and it includes universal indoor masking.

125. Thus, the Parental Opt-Out Requirements are “arbitrary or capricious,” rendering them an invalid exercise of delegated legislative authority. § 120.52(8)(e), Fla. Stat.

DISPUTED ISSUES OF MATERIAL FACT

126. Petitioners do not know which facts set forth above may be disputed by the DOH, but believe that the following may be disputed, among others:

- a. That masks protect against the spread of COVID-19, in addition to protecting the wearer from contracting COVID-19;
- b. That masks are safe and effective;
- c. That masks are a mitigation strategy for COVID-19, whose effectiveness is directly proportional to the number of people wearing masks (i.e.,

the more students who wear masks the more effect masks will be as a mitigation strategy);

d. That children who have contracted COVID-19 may be asymptomatic and transmit COVID-19 to others, especially if they are not wearing masks, may transmit COVID-19 to others;

e. That the Parental Opt-Out Requirements do not serve the purpose of controlling preventable communicable diseases;

f. That the Parental Opt-Out Requirements are neither reasonable nor necessary to prevent or limit the spread of communicable diseases, as required by section 1003.22;

g. That the Parental Opt-Out Requirements facilitate the spread of communicable diseases and would not prevent or limit the impact or spread of COVID-19; and

h. That a parent's decision whether his or her child should wear a mask is not a health care decision for that child, but is a non-health care decision related to the protection of other children and teachers;

i. That a parent's decision whether his or her COVID-exposed, asymptomatic child should attend school or school activities is not a health-care decision.

RELIEF REQUESTED

Petitioners respectfully request the Division enter an order, constituting final agency action, (1) ruling that the Parental Opt-Out Requirements of the Department of Health Emergency Rule 64DER21-15 constitute an invalid

exercise of delegated legislative authority, (2) awarding Petitioners their reasonable costs and attorneys' fees pursuant to Section 120.595, Florida Statutes, and (3) entering any such other and further relief as the Division deems just and proper.

Respectfully submitted,

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By: /s/ Edward G. Guedes
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Exhibit 1

Notice of Emergency Rule

DEPARTMENT OF HEALTH

Division of Disease Control

RULE NO.: RULE TITLE:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Because of an increase in COVID-19 infections, largely due to the spread of the COVID-19 delta variant, prior to the beginning of the 2021-2022 school year, it is imperative that state health and education authorities continue to provide emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. In August 2021, all public schools in Florida began the 2021-2022 school year with in-person learning available for all students. The Department of Health adopted Emergency Rule 64DER21-12 on August 6, 2021. Since that time the Department has conducted a review of data for cases of COVID-19 positive school-aged children and data for school-aged children who have been in direct contact with a COVID-19 positive person. The Department observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

In order to permit students to continue in-person learning, to minimize the detriment to students and school personnel from the added burden of recurrent removal of students, and to benefit the overall welfare of students in Florida, it is necessary to provide updated emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. This emergency rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to ensure safety protocols for controlling the spread of COVID-19 in schools that (1) do not violate Floridians' constitutional freedoms; (2) do not violate parents' rights under Florida law to make health care decisions for their minor children; and (3) protect children with disabilities or health conditions who would be harmed by certain protocols, such as face masking requirements. The order directs that any COVID-19 mitigation actions taken by school districts comply with the Parents' Bill of Rights, and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19."

Because of the importance of in-person learning to educational, social, emotional and mental health, and welfare, removing healthy students from the classroom for lengthy quarantines should be limited. Under Florida law, parents and legal guardians have a fundamental right to direct the upbringing, education, health care, and mental health of their minor children and have the right to make health care decisions for their minor children. HB 241, Ch. 2021-199, Laws of Fla. Parents and legal guardians are uniquely situated to understand the health care, emotional, and educational needs of their minor children. In furtherance of the Florida Department of Health's authority to adopt rules governing the control of preventable communicable diseases—and because students benefit from in-person learning—it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to maximize the allowance of in-person education for their children. Unnecessarily removing students from in-person learning poses a threat to the welfare of children, including their social, emotional and educational developmental, and is not necessary absent illness.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule is necessary in light of the unnecessary exclusion of healthy students from in-person learning and the urgent need to provide updated COVID-19 guidance to school districts. Given the evolving nature of this novel disease and the potential for adverse impacts on school children resulting from the unnecessary exclusion of healthy children from in-person learning, there is a need to issue an immediately effective rule while the department promulgates a permanent rule through the non-emergency process.

SUMMARY: Emergency rule 64DER21-15 sets forth the procedures for controlling COVID-19 in school settings. Emergency rule 64DER21-15 repeals and replaces Emergency rule 64DER21-12 that was adopted on August 6, 2021.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Carina Blackmore, Florida Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1703, (850)245-4732.

THE FULL TEXT OF THE EMERGENCY RULE IS:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

(1) GENERAL PROTOCOLS AND DEFINITION. The following procedures shall be instituted to govern the control of COVID-19 in public schools:

(a) Schools will encourage routine cleaning of classrooms and high-traffic areas.

(b) Students will be encouraged to practice routine handwashing throughout the day.

(c) Students will stay home if they are sick.

(d) Schools may adopt requirements for students to wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's sole discretion.

(e) For purposes of this rule, "direct contact" means cumulative exposure for at least 15 minutes, within six feet.

(2) PROTOCOLS FOR SYMPTOMATIC OR COVID-19 POSITIVE STUDENTS. Schools will ensure students experiencing any symptoms consistent with COVID-19 or who have received a positive diagnostic test for COVID-19 shall not attend school, school-sponsored activities, or be on school property until:

(a) The student receives a negative diagnostic COVID-19 test and is asymptomatic; or

(b) Ten days have passed since the onset of symptoms or positive test result, the student has had no fever for 24 hours and the student's other symptoms are improving; or

(c) The student receives written permission to return to school from a medical doctor licensed under chapter 458, an osteopathic physician licensed under chapter 459, or an advanced registered nurse practitioner licensed under chapter 464.

(3) PROTOCOLS FOR STUDENTS WITH EXPOSURE TO COVID-19. Schools shall allow parents or legal guardians the authority to choose how their child receives education after having direct contact with an individual that is positive for COVID-19:

(a) Parents or legal guardians of students who are known to have been in direct contact with an individual who received a positive diagnostic test for COVID-19 may choose one of the following options:

1. Allow the student to attend school, school-sponsored activities, or be on school property, without restrictions or disparate treatment, so long as the student remains asymptomatic; or

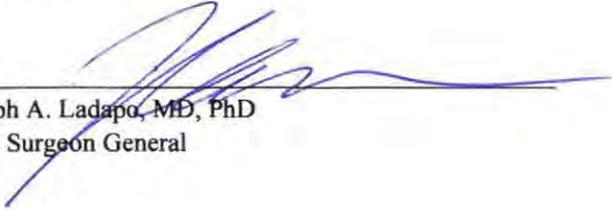
2. Quarantine the student for a period of time not to exceed seven days from the date of last direct contact with an individual that is positive for COVID-19.

(b) If a student becomes symptomatic following direct contact with an individual that has tested positive for COVID-19, or tests positive for COVID-19, the procedures set forth in subsection (2), above shall apply.

Rulemaking Authority 1003.22(3) FS. Law Implemented 1003.22(3) FS. History—New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE:


Joseph A. Ladapo, MD, PhD
State Surgeon General

9/22/21
Date

Exhibit 2

STATE OF FLORIDA

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 21-175

(Ensuring Parents' Freedom to Choose – Masks in Schools)

WHEREAS, a right to normal education is imperative to the growth and development of our children and adolescents; and

WHEREAS, last summer, at my direction, Florida's Department of Education ordered schools to be open for in-person instruction for five days per week to ensure the continued well-being of students and families; and

WHEREAS, schools – including those that did not require students to be masked – did not drive community transmission of COVID-19; and

WHEREAS, despite recent Centers for Disease Control and Prevention (CDC) "guidance," forcing students to wear masks lacks a well-grounded scientific justification; indeed, a Brown University study analyzed COVID-19 data for schools in Florida and found no correlation with mask mandates; and

WHEREAS, masking children may lead to negative health and societal ramifications; and

WHEREAS, studies have shown that children are at a low risk of contracting a serious illness due to COVID-19 and do not play a significant role in the spread of the virus; and

WHEREAS, forcing children to wear masks could inhibit breathing, lead to the collection of dangerous impurities including bacteria, parasites, fungi, and other contaminants, and adversely affect communications in the classroom and student performance; and

WHEREAS, there is no statistically-significant evidence to suggest that counties with mask requirements have fared any better than those without mask requirements during the 2020-2021 school year; and

WHEREAS, on April 29, 2021, Florida Surgeon General Dr. Scott Rivkees issued a Public Health Advisory stating that continuing COVID-19 restrictions on individuals, including long-term use of face coverings, pose a risk of adverse and unintended consequences; and

WHEREAS, on June 29, 2021, I signed into law H.B. 241, the Parents' Bill of Rights, which prevents the state, its subdivisions, or any governmental institution, from infringing on the fundamental rights of a parent to direct the upbringing, education, health care, or mental health of a minor child without demonstrating that such action is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by less restrictive means; and

WHEREAS, pursuant to Florida law, all parents have the right to make health care decisions for their minor children; and

WHEREAS, many school districts are scheduled to begin classes on August 10, 2021, which is less than two weeks away, and within four weeks virtually all public schools across Florida will be underway; therefore immediate action is needed to protect the fundamental right of parents to make health and educational decisions for their children; and

WHEREAS, Section 1003.22(3), Florida Statutes, mandates the Florida Department of Health to adopt rules, in consultation with the Florida Department of Education, governing the control of preventable communicable diseases, including procedures for exempting children from immunization requirements; and

WHEREAS, Florida's State Board of Education, the chief implementing and coordinating body of public education in Florida, has the authority to adopt rules pursuant to Sections

120.536(1), 120.54, and 1001.02, Florida Statutes, and may delegate its general powers to the Commissioner of Education; and

WHEREAS, pursuant to Section 1008.32(4), Florida Statutes, if the State Board of Education determines that a district school board is unwilling or unable to comply with the law, the State Board shall have the authority to, among other things, withhold the transfer of state funds, discretionary grant funds, discretionary lottery funds, or any other funds specified as eligible for this purpose by the Legislature until the school district complies with the law or state board rule and declare the school district ineligible for competitive grants; and

WHEREAS, given the historical data on COVID-19 and the ongoing debate over whether masks are more harmful than beneficial to children and to school environments in general, we should protect the freedoms and statutory rights of students and parents by resting with the parents the decision whether their children should wear masks in school; and

WHEREAS, we should equally and uniformly protect the freedoms and rights of students and parents across the state.

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution, and all other applicable laws, promulgate the following Executive Order, to take immediate effect:

Section 1. I hereby direct the Florida Department of Health and the Florida Department of Education, working together, to immediately execute rules pursuant to section 120.54, Florida Statutes, and take any additional agency action necessary, using all legal means available, to ensure safety protocols for controlling the spread of COVID-19 in schools that:

- A. Do not violate Floridians' constitutional freedoms;
- B. Do not violate parents' right under Florida law to make health care decisions for their minor children; and

C. Protect children with disabilities or health conditions who would be harmed by certain protocols such as face masking requirements.

Section 2. Any action taken pursuant to Section 1 above shall at minimum be in accordance with Florida's "Parents' Bill of Rights" and protect parents' right to make decisions regarding masking of their children in relation to COVID-19.

Section 3. The Florida Commissioner of Education shall pursue all legal means available to ensure school districts adhere to Florida law, including but not limited to withholding state funds from noncompliant school boards violating any rules or agency action taken pursuant to Section 1 above.

Section 4. This does not prohibit the Florida Legislature from exploring legislation to further protect the fundamental rights of students and parents to be free from excessive, harmful regulation in schools.

Section 5. This Executive Order is effective immediately.

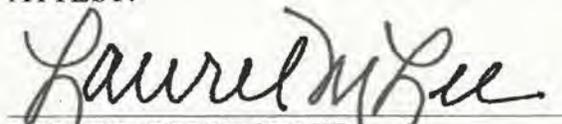


IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 30th day of July, 2021.



RON DESANTIS, GOVERNOR

ATTEST:



SECRETARY OF STATE

2021 JUL 30 PM 3:45
DEPARTMENT OF STATE
TALLAHASSEE, FL
FILED

Exhibit 3

Notice of Emergency Rule

DEPARTMENT OF HEALTH

Division of Disease Control

RULE NO.: RULE TITLE:

64DER21-12 Protocols for Controlling COVID-19 in School Settings

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Because a recent increase in COVID-19 infections, largely due to the spread of the COVID-19 delta variant, coincides with the imminent start of the school year, it is imperative that state health and education authorities provide emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. Accordingly, pursuant to its authority to adopt rules governing the control of preventable communicable diseases in public schools, *see* section 1003.22(3), Florida Statutes, the Florida Department of Health, after consultation with the Department of Education, hereby promulgates an emergency rule regarding COVID-19 protocols in public schools to encourage a safe and effective in-person learning environment for Florida's schoolchildren during the upcoming school year; to prevent the unnecessary removal of students from school; and to safeguard the rights of parents and their children.

This emergency rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to ensure safety protocols for controlling the spread of COVID-19 in schools that (1) do not violate Floridians' constitutional freedoms; (2) do not violate parents' rights under Florida law to make health care decisions for their minor children; and (3) protect children with disabilities or health conditions who would be harmed by certain protocols, such as face masking requirements. The order, which is incorporated by reference, directs that any COVID-19 mitigation actions taken by school districts comply with the Parents' Bill of Rights, and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19."

Because of the importance of in-person learning to educational, social, emotional and mental well-being, removing healthy students from the classroom for lengthy quarantines should be limited at all costs. Under Florida law, parents have a fundamental right to direct the upbringing, education, health care, and mental health of their minor children and have the right to make health care decisions for their minor children. HB 241, Ch. 2021-199, Laws of Fla. In furtherance of the Florida Department of Health's authority to adopt rules governing the control of preventable communicable diseases—and because students benefit from in-person learning—it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to allow for in-person education for their children. Removing children from school poses a threat to developmental upbringing and should not occur absent a heightened showing of illness or risk of illness to other students.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule is necessary in light of the recent rise in COVID-19 cases in Florida and the urgent need to provide COVID-19 guidance to school districts before the upcoming school year commences. Given that a majority of schools will resume in-person learning for the 2021-2022 school year within the next four weeks, there is insufficient time to adopt the rule through non-emergency process.

SUMMARY: Emergency rule 64DER21-12 sets forth the procedures for controlling COVID-19 in school settings. **THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS:** Carina Blackmore, Florida Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1703, (850)245-4732.

THE FULL TEXT OF THE EMERGENCY RULE IS:

64DER21-12 Protocols for Controlling COVID-19 in School Settings

(1) GENERAL PROTOCOLS AND DEFINITION. The following procedures should be instituted to govern the control of COVID-19 in public schools:

(a) Schools should encourage routine cleaning of classrooms and high-traffic areas.

(b) Students should be encouraged to practice routine handwashing throughout the day.

(c) Students should stay home if they are sick.

(d) Students may wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.

(e) For purposes of this rule, "direct contact" means cumulative exposure for at least 15 minutes, within six feet.

(2) PROTOCOLS FOR SYMPTOMATIC OR COVID-19 POSITIVE STUDENTS. Students experiencing any symptoms consistent with COVID-19 or who have received a positive diagnostic test for COVID-19 should not attend school, school-sponsored activities, or be on school property until:

(a) The student receives a negative diagnostic COVID-19 test and is asymptomatic; or

(b) Ten days have passed since the onset of symptoms or positive test result, the student has had no fever for 24 hours and the student's other symptoms are improving; or

(c) The student receives written permission to return to school from a medical doctor licensed under chapter 458, an osteopathic physician licensed under chapter 459, or an advanced registered nurse practitioner licensed under chapter 464.

(3) PROTOCOLS FOR STUDENTS WITH EXPOSURE TO COVID-19. Students who are known to have been in direct contact with an individual who received a positive diagnostic test for COVID-19 should not attend school, school-sponsored activities, or be on school property until:

(a) The student is asymptomatic and receives a negative diagnostic COVID-19 test after four days from the date of last exposure to the COVID-19 positive individual; or

(b) The student is asymptomatic and seven days have passed since the date of last exposure to the COVID-19 positive individual.

(c) If a student becomes symptomatic following exposure to an individual that has tested positive for COVID-19, the student should follow the procedures set forth in subsection (2), above.

(4) PROTOCOL FOR STUDENTS WITH PRIOR COVID-19 INFECTION. A student who has received a positive diagnostic test for COVID-19 in the previous 90 days and who is known to have been in direct contact with an individual who has received a positive diagnostic test for COVID-19 is not subject to the protocols set forth in subsection (3), so long as the student remains asymptomatic. If a student with a previous COVID-19 infection becomes symptomatic, the student should follow the procedures set forth in subsection (2), above. This subsection applies equally to students that are fully vaccinated for COVID-19.

(5) TESTING. Any COVID-19 testing of minors at school requires informed written consent from a parent or legal guardian.

(6) NON-DISCRIMINATION. Students whose parents or legal guardian have opted them out of a mask or face covering requirement shall not be subject to any harassment or discriminatory treatment, including but not limited to:

(a) Relegation to certain physical locations;

(b) Isolation during school activities; or

(c) Exclusion from any school-sponsored events or activities.

Rulemaking Authority 1003.22(3) FS. Law Implemented 1003.22(3) FS. History—New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE:



Scott A. Rivkees, MD
State Surgeon General

8/6/21

Date

Exhibit 4

Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

MEMORANDUM

TO: State Board of Education Members

FROM: Richard Corcoran

RE: Miami Dade Public Schools, Student Opt-Out Requirements

DATE: October 4, 2021

Based upon the following memorandum, I find there is probable cause that Miami Dade Public Schools (MDPS) acted contrary to the law by requiring students to wear a mask or face covering unless certain exceptions apply, such as a medical certification. Specifically, MDPS' policy violated the provisions of Rule 64DER21-12, Protocols for Controlling COVID-19 in School Settings and continues to violate Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings.

Background Information

On July 30, 2021, the Governor issued Executive Order Number 21-175, directing the Florida Department of Health (FDOH) and the Florida Department of Education (FDOE) to immediately execute rules and take any additional action necessary to ensure safety protocols for controlling the spread of COVID-19 in schools. The order requires that these protocols be consistent with the Parents' Bill of Rights and directs that action "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Moreover, the order directs the Commissioner of Education to pursue all legal means available to ensure school districts adhere to the law, including but not limited to withholding funds from noncompliant school boards.

On August 6, 2021, in response to the executive order, and after consultation with FDOE, the State's former Surgeon General, Scott Rivkees, as the head of FDOH, adopted an emergency rule establishing protocols for controlling the spread of COVID-19 in schools. Given the statutory duty of FDOH to implement protocols to prevent or limit the impact or spread of disease, the State's Surgeon General must be a licensed physician with advanced training or extensive experience in public health administration. *See* § 20.43(2), Fla. Stat. The rule provided for general protocols for public schools, protocols specific to symptomatic or COVID-19 positive students, protocols specific to students with exposure to COVID-19 and protocols for students with a prior COVID-19 infection. The portion of the rule addressing masks provided as

follows: **Students may wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.** *See* Rule 64DER21-12, Protocols for Controlling COVID-19 in School Settings, Florida Administrative Register, Vol. 47 / No. 153, August 9, 2021 (emphasis supplied).

Citing to the Parents' Bill of Rights, the notice for FDOH's emergency rule provided that "it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to allow for in-person education for their children."

On September 22, 2021, under the direction of the State's new Surgeon General, Dr. Joseph Ladapo, FDOH issued a revised rule to address controlling the spread of COVID-19 in school settings. Rule 64DER21-15 relaxes the requirements for quarantining asymptomatic students who have been exposed to COVID-19, and further clarifies the parental opt-out provision by providing that a "school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's **sole discretion.**" *See* Rule 64DER21-15, Florida Administrative Register, Vol. 47 / No. 185, September 23, 2021 (emphasis supplied). *See* Exhibit A.

The purpose of these changes is explained by FDOH in its notice for the new rule:

The Department [of Health] observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department [of Health] observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

Id.

Miami Dade Public Schools

On August 18, 2021, the Miami Dade School Board voted to authorize Superintendent Carvalho to temporarily require face coverings for all students, except those with medically endorsed accommodations, as defined in section 1003.22, Florida Statutes. *See* Exhibit B. Specifically, the district's FAQ Regarding COVID-19 states:

Will facial coverings be required at schools?

Face coverings are required for students, employees, parents, volunteers, and visitors while on school property and on school buses. Face coverings may be removed while outdoors as long as appropriate distance is maintained.

See Exhibit C.

On August 27, 2021, I wrote MDPS' superintendent and school board chair to notify them of my concern with their apparent non-compliance with Rule 64DER21-12 and to afford the district the opportunity to demonstrate compliance. *See* Exhibit D.

On September 1, 2021, MDPS' superintendent and board chair responded to me in writing, asserting that the district's policy is narrowly tailored, limited in scope, and necessary to achieve the compelling state interest of protecting students. *See* Exhibit E. The letter did not rescind the requirement for medical documentation in order for a student to opt-out of a mask mandate.

On September 23, 2021, due to the adoption of FDOH's new rule, I advised MDPS' superintendent and school board chair of Rule 64DER21-15, and afforded the district another opportunity to demonstrate compliance. *See* Exhibit F.

On September 24, 2021, MDPS responded by requesting an extension of time to provide a written response documenting how our district is complying with the new DOH rule. *See* Exhibit G. The letter did not rescind the requirement for medical documentation in order for a student to opt-out of a mask mandate.

In sum, the MDPS' policy requires all students, staff and visitors to wear face coverings on school property and on school buses, with limited exceptions. The policy precludes voluntary parental opt-out at the parent's or guardian's sole discretion.

The State Board of Education's Enforcement Authority

The State Board of Education's enforcement authority is found in section 1008.32, Florida Statutes. The statute provides that "[t]he State Board of Education shall oversee the performance of district school boards [...] in enforcement of all laws and rules." § 1008.32, Fla. Stat.

In enforcing the law, the statutory process prescribed therein requires that I first report my determination of probable cause to the State Board of Education. If the State Board then determines that a district school board is unwilling or unable to comply with either law or rule, the State Board is authorized to impose sanctions in order to secure compliance, including the withholding of funds and reporting to the Legislature.

Any argument that the State Board's authority to enforce these safety protocols interferes with any district school board's authority to operate and control schools should be summarily rejected. Indeed, the law in Florida is clear that the State Board's supervisory authority acts as a limitation on the operational authority of districts to operate, control and supervise public schools.

Looking to the Florida Constitution, there is a hierarchy under which a school board has local control, but in which the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a board's local powers, but such infringement is expressly contemplated and, in fact, encouraged by the very structure set by the Florida Constitution. *See Sch. Bd of Palm Beach Cty. v. Fla. Charter Educ. Found, Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017) (rejecting school board's argument that the State Board of Education's authority to approve a charter school application on appeal violates article IX, section 4(b)); *see also Sch. Bd of Collier Cty v. Fla. Dep't of Education*, 279 So. 3d 281 (Fla. 1st DCA 2019) (rejecting school

board's argument that statute requiring school boards to distribute a portion of capital millage revenue to charter schools violates article IX, section 4(b)).

Accordingly, any argument that the State Board of Education lacks the authority to enforce these school safety protocols should also be rejected. It has long been settled that rules have the force and effect of the law. *State v. Jenkins*, 469 So. 2d 733 (Fla. 1985); *Florida Livestock Board v. W.G. Gladden*, 76 So. 2d 291 (Fla. 1954). Rule 64DER21-15 derives authority from a statute in the educational code—specifically, section 1003.22(3), Florida Statutes—so while FDOH may *also* have enforcement authority, enforcement of school safety protocols falls squarely within the State Board of Education's authority to supervise the state's education system as a whole.

Conclusion

Every school board member and every school superintendent has a duty to comply with the law, whether they agree with it or not. While the district school board may not agree with the safety protocols set forth by the Surgeon General, the Surgeon General is the person who, under the law, sets protocols to control and mitigate COVID-19 in schools. The Office of the Attorney General relied upon these principles to reject any argument a school board could depart from FDOH's emergency rule based upon a disagreement with the protocols found in the rule. *See* AGO 2021-01, September 1, 2021. Disagreement with the protocols found in 64DER21-15 simply does not provide a school district with a basis to violate the rule, be it through medical requirements, attempts to tie mask requirements to fluctuating positivity rates, or through any other means.

All of this in mind, I hereby recommend that the State Board of Education use its enforcement powers to enforce the health protocols found in Emergency Rule 64DER21-15 and protect the right of parents to make both health and educational decisions on behalf of their children.

Should the State Board adopt my recommendation, I request that it consider the sanction of withholding state funds in an amount equal to 1/12 of all school board members' salaries, as well as withholding state funds in an amount equal to any federal grant funds awarded to MDPS for its noncompliance with Emergency Rule 64DER21-15.

EXHIBIT A

Notice of Emergency Rule

DEPARTMENT OF HEALTH

Division of Disease Control

RULE NO.: RULE TITLE:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Because of an increase in COVID-19 infections, largely due to the spread of the COVID-19 delta variant, prior to the beginning of the 2021-2022 school year, it is imperative that state health and education authorities continue to provide emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. In August 2021, all public schools in Florida began the 2021-2022 school year with in-person learning available for all students. The Department of Health adopted Emergency Rule 64DER21-12 on August 6, 2021. Since that time the Department has conducted a review of data for cases of COVID-19 positive school-aged children and data for school-aged children who have been in direct contact with a COVID-19 positive person. The Department observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

In order to permit students to continue in-person learning, to minimize the detriment to students and school personnel from the added burden of recurrent removal of students, and to benefit the overall welfare of students in Florida, it is necessary to provide updated emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. This emergency rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to ensure safety protocols for controlling the spread of COVID-19 in schools that (1) do not violate Floridians' constitutional freedoms; (2) do not violate parents' rights under Florida law to make health care decisions for their minor children; and (3) protect children with disabilities or health conditions who would be harmed by certain protocols, such as face masking requirements. The order directs that any COVID-19 mitigation actions taken by school districts comply with the Parents' Bill of Rights, and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19."

Because of the importance of in-person learning to educational, social, emotional and mental health, and welfare, removing healthy students from the classroom for lengthy quarantines should be limited. Under Florida law, parents and legal guardians have a fundamental right to direct the upbringing, education, health care, and mental health of their minor children and have the right to make health care decisions for their minor children. HB 241, Ch. 2021-199, Laws of Fla. Parents and legal guardians are uniquely situated to understand the health care, emotional, and educational needs of their minor children. In furtherance of the Florida Department of Health's authority to adopt rules governing the control of preventable communicable diseases—and because students benefit from in-person learning—it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to maximize the allowance of in-person education for their children. Unnecessarily removing students from in-person learning poses a threat to the welfare of children, including their social, emotional and educational developmental, and is not necessary absent illness.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule is necessary in light of the unnecessary exclusion of healthy students from in-person learning and the urgent need to provide updated COVID-19 guidance to school districts. Given the evolving nature of this novel disease and the potential for adverse impacts on school children resulting from the unnecessary exclusion of healthy children from in-person learning, there is a need to issue an immediately effective rule while the department promulgates a permanent rule through the non-emergency process.

SUMMARY: Emergency rule 64DER21-15 sets forth the procedures for controlling COVID-19 in school settings. Emergency rule 64DER21-15 repeals and replaces Emergency rule 64DER21-12 that was adopted on August 6, 2021.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Carina Blackmore, Florida Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1703, (850)245-4732.

THE FULL TEXT OF THE EMERGENCY RULE IS:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

(1) GENERAL PROTOCOLS AND DEFINITION. The following procedures shall be instituted to govern the control of COVID-19 in public schools:

(a) Schools will encourage routine cleaning of classrooms and high-traffic areas.

(b) Students will be encouraged to practice routine handwashing throughout the day.

(c) Students will stay home if they are sick.

(d) Schools may adopt requirements for students to wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's sole discretion.

(e) For purposes of this rule, "direct contact" means cumulative exposure for at least 15 minutes, within six feet.

(2) PROTOCOLS FOR SYMPTOMATIC OR COVID-19 POSITIVE STUDENTS. Schools will ensure students experiencing any symptoms consistent with COVID-19 or who have received a positive diagnostic test for COVID-19 shall not attend school, school-sponsored activities, or be on school property until:

(a) The student receives a negative diagnostic COVID-19 test and is asymptomatic; or

(b) Ten days have passed since the onset of symptoms or positive test result, the student has had no fever for 24 hours and the student's other symptoms are improving; or

(c) The student receives written permission to return to school from a medical doctor licensed under chapter 458, an osteopathic physician licensed under chapter 459, or an advanced registered nurse practitioner licensed under chapter 464.

(3) PROTOCOLS FOR STUDENTS WITH EXPOSURE TO COVID-19. Schools shall allow parents or legal guardians the authority to choose how their child receives education after having direct contact with an individual that is positive for COVID-19:

(a) Parents or legal guardians of students who are known to have been in direct contact with an individual who received a positive diagnostic test for COVID-19 may choose one of the following options:

1. Allow the student to attend school, school-sponsored activities, or be on school property, without restrictions or disparate treatment, so long as the student remains asymptomatic; or

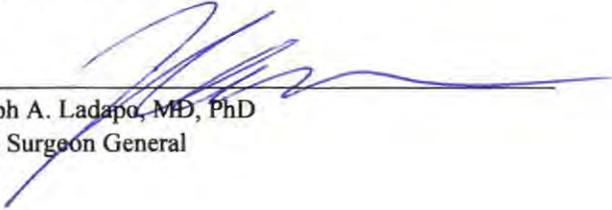
2. Quarantine the student for a period of time not to exceed seven days from the date of last direct contact with an individual that is positive for COVID-19.

(b) If a student becomes symptomatic following direct contact with an individual that has tested positive for COVID-19, or tests positive for COVID-19, the procedures set forth in subsection (2), above shall apply.

Rulemaking Authority 1003.22(3) FS. Law Implemented 1003.22(3) FS. History—New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE:



Joseph A. Ladapo, MD, PhD
State Surgeon General

9/22/21

Date

EXHIBIT B

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

Miami, Florida

Excerpts from Unofficial Minutes of August 18, 2021 School Board Meeting

		APPROVED`	Bid Opening Lists of June 17, 2021 and July 13, 2021.
		APPROVED	Minutes of July 14, 2021 Regular School Board meetings and First Budget Public Hearing of July 28, 2021.
121,428	<u>A-1</u>	HEARD	Superintendent’s Informational Reports to the Board on Selected Topics.
121,429	<u>A-2</u>	WAIVED/ SUSPENDED	Prohibitions outlined in Board Policies 5830, Student Fundraising, and 9700, Relations with Special Interest Groups, in order to allow fundraising and/or other charitable activities in support of relief efforts in response to the Haitian Earthquake disaster.
-----	<u>B-3</u>	WITHDREW	The approval of Resolution No. 21-033 of The School Board of Miami-Dade County, Florida, recognizing Winston Elliot Scot, retired United States Navy Captain and former National Aeronautics and Space Administration (NASA) Astronaut.
121,430	<u>B-4</u>	APPROVED*	Resolution No. 21-036 of The School Board of Miami-Dade County, Florida, recognizing Mr. Andres Asion. * Amended to include Dr. Steve Gallon III, Vice Chair; Dr. Marta Perez, Ms. Lucia Baez-Geller and Ms. Luisa Santos, School Board members; as co-sponsors of the item.
121,431	<u>B-6</u>	APPROVED*	Resolution No. 21-032 of The School Board of Miami-Dade County, Florida, recognizing Ms. Andrea Pita, a junior at School for Advanced Studies (SAS) West Campus, for organizing a service project known as “The Anxiety Kids.” * Amended to include Ms. Perla Tabares Hantman, Chair; Dr. Steve Gallon III, Vice Chair; Dr. Dorothy Bendross-Mindingall, Dr. Marta Perez, Dr. Lubby Navarro, Ms. Lucia Baez-Geller, Ms. Maria Teresa “Mari Tere” Rojas and Ms. Luisa Santos, School Board members; as co-sponsors of the item.
121,432	<u>B-7</u>	APPROVED*	Resolution No. 21-034 of The School Board of Miami-Dade County, Florida, recognizing Mark Zaher for his retirement after 36 years of dedicated service to the Miami-Dade County Public Schools. * Amended to include Ms. Perla Tabares Hantman, Chair; Dr. Dorothy Bendross-Mindingall; Dr. Marta Perez, Dr. Lubby Navarro, Ms. Lucia Baez-Geller, Ms. Maria Teresa “Mari Tere” Rojas and Ms. Luisa Santos, School Board members; as co-sponsors of the item.

-----	<u>B-8</u>	WITHDREW	The approval of Resolution No. 21-035 of The School Board of Miami-Dade County, Florida, recognizing the Adaptive Beach Days Program.
121,433	<u>D-19</u>	AUTHORIZED	The Superintendent to enter into a contractual services agreement between The School Board of Miami-Dade County, Florida, and Citizen's Crime Watch of Miami-Dade County, Inc., in an amount of \$71,000.
121,434	<u>D-20</u>	APPROVED	Personnel Action Listing 1146 with Instructional and Support Personnel appointments, reassignments, leaves, separations, retirements, and resignations from June 25, 2021 through July 15, 2021.
121,435	<u>D-21</u>	APPROVED	<ol style="list-style-type: none"> 1. Change of title and minimum qualifications to MEP position: Staff Specialist, Procurement, MEP pay grade 18 to Senior Purchasing Agent, MEP pay grade 18, Office of Procurement Management Services. 2. The recommendation for appointments and lateral transfers to be effective August 19, 2021, or as soon thereafter as can be facilitated, with the exception of the effective dates as noted throughout the item and authorize compensation adjustments, as delineated in the Official Agenda Item.
121,436	<u>D-23</u>	RATIFIED	The 2021-2024 Tentative Agreement Successor Contract with DCSAA effective July 1, 2021 through June 30, 2024.
121,437	<u>D-24</u>	RATIFIED	The 2021-2022 Tentative Agreement Reopener Contract with UTD effective July 1, 2020 through June 30, 2023.
121,438	<u>D-25</u>	RATIFIED	The 2021-2024 Tentative Agreement Successor Contract with AFSCME effective July 1, 2021 through June 30, 2024.
121439	<u>D-26</u>	APPROVED	<ol style="list-style-type: none"> 1. A non-recurring 3% supplement for 2020-2021 and a one-time stipend of one thousand five hundred (\$1,500) dollars for 2021-2022 for eligible CEP employees. 2. A non-recurring 3% supplement for all eligible MEP for 2020-2021 and a one-time stipend of one thousand five hundred (\$1,500) for 2021-2022 for principals, inclusive of the Governor's Relief Fund Bonus. Approve a one-time stipend of one thousand five hundred dollars (\$1,500) to all other eligible MEP employees for 2021-2022, matching the stipend provided to principals. Approve a salary adjustment for eligible school-site MEP of .57% or .76% for performance as required by law. 3. A one-time stipend of five hundred dollars (\$500) for all eligible MEP employees.

121,440 **D-55** **APPROVED**

1) The Superintendent's recommendation for approve the Superintendent's recommendation for disciplinary action, which has been agreed to by the employees.

A) Chondria N. Essix: suspension without pay from her position as Custodian at Georgia Jones-Ayers Middle School, for ten (10) calendar days, effective August 19, 2021.

B) John McMahon: suspension without pay from his position as Custodian at Georgia Jones-Ayers Middle School, for ten (10) calendar days, effective September 16, 2021.

2) That the School Board of Miami-Dade County, Florida, approve the Superintendent's recommendation for disciplinary action, pending the outcome of an administrative hearing or grievance/arbitration proceeding, if requested.

A) Dubraska Guevara: suspension without pay and initiation of dismissal proceedings from her position as Sergeant at North Operations Station 2, Miami-Dade Schools Police Department, effective August 19, 2021.

B) Yewande Smith: demotion from her position as Sergeant at North Operations Station 1, Miami-Dade Schools Police Department, to Police Officer, effective August 19, 2021.

121,441 **D-65** **APPROVED**

A. Four (4) charter contract amendments with:

1. BridgePrep Academy, Inc. d/b/a BridgePrep Academy of Village Green (MSID 3034) to (1) allow the school to expand grade levels.

2. Mater Academy, Inc., d/b/a -

a. Mater Academy East Middle School (MSID 6009),

b. Mater Academy East Charter High School (MSID 7037).

3. Somerset Academy, Inc., d/b/a Somerset Academy Charter High School (MSID 7042).

B. Approve a Reduction-in-Force/Layoff as needed, only to the extent described in the Official Agenda Item as Total Loss, in accordance with School Board Policies and applicable collective bargaining agreements.

121,442 **D-66** **AUTHORIZED**

The Superintendent:

A. To negotiate and execute a Second Amendment to the School of Hope

Performance-Based Agreement with KIPP Miami, Inc., on behalf of KIPP Miami-Liberty City based on the issues as reflected in the Proposed Second Amendment to PBA referenced herein; and

B. In collaboration with the School Board Attorney, to seek administrative dispute resolution, pursuant to section 1002.333(11)(c), F.S., in the event that the parties do not reach agreement on the issues as reflected in the Proposed Second Amendment to PBA referenced herein.

121,443	<u>D-67</u>	APPROVED	The attached list of out-of-county/out-of-state trips for the 2021-2022 school year for use in conjunction with School Board Policy 2340 – <i>Field and Other District-Sponsored Trips</i> .
121,444	<u>E-86</u>	RECEIVED/ FILED	<u>The School Board of Miami-Dade County, Florida Audit Plan and AU 260 Communication for the fiscal year ended June 30, 2021.</u>
121,445	<u>E-87</u>	RECEIVED/ FILED	The <u>Office of Management and Compliance its' 2021 - 2022 Audit Plan.</u>
121,446	<u>E-88</u>	RECEIVED/ FILED	The <u>Internal Audit Report – Selected Schools/Centers.</u>
121,447	<u>E-89</u>	RECEIVED/ FILED	<u>Audited Financial Statements for Five (5) Community – Based Organizations (CBOs).</u>
121,448	<u>E-141</u>	AWARDED	<ol style="list-style-type: none"> 1. Invitation To Bid No. ITB-20-058-MJ – School Bus Routes for Private Bus Companies, to establish contracts, at firm unit prices, as delineated in the Official Agenda Item. 2. Authorize Procurement Management Services to purchase up to the total estimated amount of \$8,304,000 for the initial contract term and an amount not to exceed \$2,768,000 for each subsequent one (1) year extension period.
121,449	<u>E-203</u>	APPROVED	Tentatively, for planning purposes, the following schedule of Board meeting dates for the period January-December 2022: January 12, February 9, March 9, March 30 (Instructional Materials Public Hearing), April 13, May 18, June 22, July 20, July 27 (First Budget Public Hearing), August 17, September 7 (Regular Meeting/Second Budget Public Hearing), October 19, November 22 (Organization Meeting/Regular School Board Meeting), and December 14. The final listing of meeting dates for 2022 will be established by the Board at the 2021 Organization Meeting scheduled for Tuesday, November 16, 2021. Furthermore, no fewer than two (2) Budget Workshops shall be scheduled between May and the First Budget Public Hearing in preparation for the Budget cycle.

121,450	<u>F-1</u>	AUTHORIZED	<p>The Superintendent to:</p> <ul style="list-style-type: none"> A) finalize negotiations and execute a Construction and Temporary Access Agreement (“Access Agreement”) between the School Board and the City of Miami Beach (“City”), as delineated in the Official Agenda; B) execute amendments to the Access Agreement within the authority granted to the Superintendent by the Board in the Access Agreement; and C) grant or deny all approvals or waivers required under the Access Agreement, including, without limitation, extending the term of the Access Agreement by up to six (6) additional months upon receipt of a written request from the City, placing the City in default, and canceling or terminating the Access Agreement, as may be applicable.
121,451	<u>F-2</u>	AUTHORIZED	<p>The Superintendent execute an amendment to Lease Agreement between KIPP Miami, Inc., a Florida not for profit corporation, and the School Board, for use of classroom and ancillary space at Madison Middle School, located at 3400 N.W. 87 Street, Unincorporated Miami-Dade County, Florida 33147, for the operation of a School of Hope charter school, all under, substantially, the terms and conditions noted in the agenda item.</p>
121,452	<u>F-3</u>	ACCEPTED	<ul style="list-style-type: none"> 1) From the County, the total amount of \$850,000, to be utilized for the construction of the Playfield Facility; 2) Waived Board Policy 7510 to allow the consumption of alcoholic beverages on the Multipurpose Facility site (strictly and specifically defined and limited to beer and wine), but not the sale, during Limited Events, as such term is defined in the Interlocal Agreement; and 3) Authorized the Superintendent to: <ul style="list-style-type: none"> a. finalize negotiations and execute an Interlocal Agreement by and between The School Board of Miami-Dade County, Florida, and Miami-Dade County (“County”), relating to facility enhancements at Miami Arts Studio 6-12 at Zelda Glazer (“School”), to provide for the construction by the County of a Multipurpose/Soundscape Facility (“Multipurpose Facility”) and joint use of the Multipurpose Facility, Playfield Facility and School Parking Lot, and under, substantially, the terms noted in the agenda item; b. negotiate and execute any other appropriate documents or agreements between the Board and County necessary to effectuate the implementation of the

Interlocal Agreement, as mutually agreed to by the Parties; and

- c. grant or deny all approvals required under the Interlocal Agreement, including executing amendments to the Interlocal Agreement within the authority granted him by the School Board, placing the County in default, and canceling or terminating the Interlocal Agreement, as may be applicable.

121,453	<u>F-40</u>	CONFIRMED/ APPROVED	B-1. Change Order Number 3 on Project Number 01654500. B-2. Change Order Number 2 on Project Number 01619400. B-3. Change Order Number 6 on Project Number 01892600. B-4. Change Order Number 5 on Project Number 01619800.
121,454	<u>F-41</u>	AWARDED	To Veitia Padron, Incorporated, the new 12-classroom addition project at West Homestead K-8 Center; Project Number 02099200; on the basis of the lowest adjusted Base Bid in the amount of \$3,737,436.78.
121,455	<u>F-58</u>	RECEIVED	The Miami-Dade County Public Schools Annual Safety-to-Life Inspection Documents.
121,456	<u>F-80</u>	APPROVED	The prequalification certificates for six (6) new, one (1) increase, and one (1) decrease contractor application for educational facilities construction, as listed on Attachment "A."
121,457	<u>G-1</u>	AMENDED	Board Policy 0155, <i>School Board Committees</i> , and authorize the Superintendent to file the policy with The School Board of Miami-Dade County, Florida, to be effective August 18, 2021.
121,458	<u>G-2</u>	AMENDED	Board Policy 9140, <i>Citizens' Advisory Committee Meetings</i> and Board Policy 9125, <i>Notice of District Advisory Committee Meetings</i> , and authorize the Superintendent to File the polices with The School Board of Miami-Dade a, to be effective August 18, 2021.
121,459	<u>G-4</u>	AUTHORIZED	The Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend School Board Policy 9215, <i>Direct-Support Organizations</i> .
-----	<u>G-5</u>	WITHDREW	The adoption of the Recommended Order of the Administrative Law Judge in its entirety as its Final Order in the case of <u>The School Board of Miami- Dade County, Florida v. Chermona Francois-Smith</u> , DOAH Case No. 21-0066TTS, sustaining the suspension of Respondent's employment as a teacher, without pay, for fifteen (15) workdays.

121,460	<u>H-3</u>	DIRECTED	<p>The Superintendent:</p> <ol style="list-style-type: none"> 1. Ensure that all Miami-Dade County Public School (M-DCPS) principals, staffs, and parents/guardians are informed of the requirements of House Bill 529 Moments of Silence in Public Schools; 2. Ensure that parents/guardians are informed and encouraged to have conversations with their children as to the best use of this time; 3. Provide an update on any specific actions taken, detailed tangible strategies used to communicate this information to M-DCPS principals, staffs, parents/guardians in multiple languages, and any applicable School Board policy amendment recommendations to be made, and presented to the Academics, Innovation, Evaluation and Technology Committee Meeting in September 2021, in preparation for implementation of HB 529 in the 2021-2022 school year; and 4. Initiate rulemaking, as necessary, to formalize this requirement in School Board policy.
121,461	<u>H-5</u>	ENDORSED	The month of September 2021 as National Suicide Prevention Awareness Month in Miami-Dade County Public Schools (M-DCPS).
121,462	<u>H-6</u>	DIRECTED	The Superintendent of Schools to assess and identify a fiscally responsible opportunity to include a financial recognition to Miami-Dade County Public Schools teachers for the upcoming school year, in light of the additional work associated to the implementation of the district's new Learning Management System (LMS). A report on this assessment must be provided to the Board at the Personnel, Student, School and Community Support Committee meeting of September 1, 2021.
121,463	<u>H-7</u>	DIRECTED	The Superintendent of Schools to review current School Board policies to ensure the Board's compliance with the provisions of the 2021 Florida Adopted Legislation HB 241 – <i>Parents' Bill of Rights</i> ; provide the Board a report of this review by October 1, 2021; amend any Board policies, as appropriate; and, if necessary, initiate rulemaking proceedings to develop a School Board policy pursuant to HB 241 in accordance with the Administrative Procedure Act to be presented at the School Board meeting of October 20, 2021, for initial reading.
121,464	<u>H-8</u>	RECOMMENDED	That the Superintendent review existing administrative directives and procedures and determine whether they need to be updated to ensure that all GOB vendors are paid on a timely basis and report back to the board during the October 20, 2021, meeting. This item also seeks to request that the Superintendent establish a

monthly report of all pending GOB related projects during the Facilities and Construction Committee meetings.

121,465	<u>H-9</u>	RECOGNIZED	Mr. Steven Ferreiro.
121,466	<u>H-10</u>	DIRECTED	<p>The Superintendent to:</p> <ol style="list-style-type: none">1. implement the competitive bidding process for all technology related hardware and software and, any procurement of goods and services that are funded through COVID-19 stimulus funds, including the American Rescue Plan Act of 2021 for expenditures that exceed \$50,000.00 single and \$100,000.00 aggregate;2. identify spending authority approved by the School Board for such procurements and purchases with American Rescue Plan Act of 2021 and/or related COVID-19 federal stimulus funds and include the total and/or not to exceed total costs of such procurement of goods and services purchased through the same; and3. provide an update on above actions to the School Board in writing that include but are not limited to what actions will be taken within the procurement process and by the Chief Procurement Officer regarding recommendations #1 and #2 no later than September 10, 2021.
121,467	<u>H-11</u>	ENDORSED	The 2021 International “Walk to School Day,” and implement the “WalkSafe” pedestrian safety program curriculum during the week of the event.
121,468	<u>H-12</u>	ENDORSED	Ethical Governance Day 2021” to take place on October 20, 2021, in Miami-Dade County Public Schools sponsored by the Miami-Dade County Commission on Ethics and Public Trust.
121,469	<u>H-13</u>	ENDORSED	Hispanic Heritage Month in Miami-Dade County Public Schools from September 15, 2021 through October 15, 2021.
121,470	<u>H-14</u>	DIRECTED	<p>The Superintendent to:</p> <ol style="list-style-type: none">1. annually increase, at each school, the number of secondary students participating in local, state, national, and international competitions;2. improve access to available information pertaining to academic competitions and enhance the flow of communication to school sites on an annual basis for the purpose of engaging more students in such activities;3. encourage all gifted programs that serve primary and intermediate grade level students to participate, on an annual basis, in at least one problem-solving or critical thinking skills contest;

4. require all secondary gifted programs to participate in at least one problem-solving or critical thinking skills contest on an annual basis;
5. explore the feasibility of providing stipends to teachers who prepare and coach students in out-of-school competitions;
6. explore securing donations or other outside sources of funding to support out-of-school competitions;
7. develop a plan to inform parents, students, and stakeholders of the gifted offerings in their feeder pattern;
8. develop a plan to provide professional development and re-certification to those gifted certified teachers who may require updated information and exposure to new teaching strategies; and
9. provide a response to the School Board no later than the School Board meeting of October 2021.

121,471 **H-15** **AUTHORIZED**

The Superintendent to:

1. explore the feasibility of adding extended learning afterschool programs districtwide for students;
2. review the possibility of compensating educators at their respective schools to teach extended learning classes;
3. consider and explore the feasibility of providing a nutritious meal to students during extended learning classes;
4. determine the cost of providing 1, 2 and 3; and
5. provide an update at the Academics, Innovation, Evaluation & Technology Committee in December 2021.

121,472 **H-16** **REAFFIRMED***

Its commitment to supporting post-secondary success for students by initiating the Framework for Post- Secondary Success and directing the Superintendent to:

1. Collect and organize district-wide and school-site baseline data sourced from National Clearinghouse reports on student post-secondary matriculation and persistence, differentiating between institution type (vocational/technical, military pathway, 2 year, 4 year, private, public, in-state, out-of-state, etc.), time to graduation, and institution/programs attended; and publish this data on dadeschools.net in an interactive, digestible, and user-friendly format for CAP

Advisors, school administration, student services, and the general public by March 2022;

2. Present the baseline data at the Academics, Innovation, Evaluation, and Technology Committee Meeting of March 2022;
3. Launch annual school-specific post-secondary reports, inclusive of all Clearinghouse data listed in Action Proposed 1 and SCOIR reports, including but not limited to application, enrollment, and other post-secondary plan trends, to site stakeholders and on dadeschools.net by July 2022 and by July 30th of every year thereafter;
4. Provide annual training and support for CAP Advisors to facilitate their understanding, analysis, and utilization of the annual post-secondary reports to inform practices and programming at their school sites with the intent of ultimately 1) increasing program enrollment to ensure all students have a viable post-secondary plan before graduating, 2) improving program fit to avoid issues of undermatching, and 3) maximizing the financial aid and institutional scholarships students are offered in the application process that minimize loan dependency; and
5. Create and implement a post-secondary advising curriculum with clear standards inclusive of an annual timeline with expected student/family/CAP advisor actions and outcomes by grade level no later than the start of the 2022-2023 school year. Utilize this guide to align all post-secondary planning efforts throughout M-DCPS and across community partner organizations.

* **Amended** to include Ms. Lucia Baez-Geller, School Board Member; as co-sponsors of the item.

121,473 **H-17** **DIRECTED***

The Superintendent to:

1. update procedures for COVID-19 related identification, notification, quarantine, and testing and confirm the process for COVID-19 testing for employees that confirm current positive or negative status;
2. update the implementation of the Board policies granting the Superintendent the authority to control communicable diseases and the spread of COVID-19, by authorizing the Superintendent to explore the feasibility of requiring temporarily require, in a manner consistent with School Board policies and based on local COVID-19 positivity rates, facial coverings for all students, except those with medically endorsed accommodations, as defined in s. 1003.22 of the Florida Statutes. In addition, the requirement shall apply to all

employees, contractors and visitors while inside M-DCPS school buildings ~~except for students whose parents exercise their right to affirmatively elect not to have their child wear facial coverings in school;~~ and while all students are on school buses. The Superintendent shall continuously review and assess local positivity rates and use such data and related information to modify and /or discontinue any established protocols and/or requirement for facial coverings. A written update shall be provided to the School Board on any modifications to protocols and/or requirement for facial coverings on a weekly basis.

3. explore the availability of cost neutral partnerships with entities, organizations, and/or municipalities for COVID-19 testing and vaccinations;
4. provide an updated communication plan and strategy for employees, parents, community stakeholders, and students regarding relevant and related COVID-19 procedures governing identification, notification, quarantine, testing and vaccinations;
5. update any criteria for determining the closure of individual schools for reasons related to COVID-19;
6. update procedures for contact tracing as appropriate;
7. update procedures and processes to monitor quarantined students pursuant to established CDC guidelines and/or requirements; and
8. provide an update to the Board on the above steps taken as well as any additional COVID-19 relevant information in (a) written update by August 19, 2021; (b) a presentation at the September 1, 2021, Personnel, Student, School & Community Support Committee meeting; (c) disseminate such presentation to employees, parents, community stakeholders, and students; and (d) ensure availability and access to such updates on the M-DCPS website.
9. Provide weekly, monthly and periodic reporting to the School Board and State Board of Education on any related matters determined to be noncompliant by the State Board of Education on a weekly, monthly or periodic basis, as may be necessary and /or required, pursuant to Florida Statute 1008.32.

* **Amended** as reflected above.

121,474 **H-18** **DIRECTED**

The Superintendent to:

1. re-establish an easily accessible M-DCPS COVID-19 Dashboard with data and relevant information that include but are not limited to the number of confirmed COVID-19 cases for overall school District and categorized by school and school level (elementary, middle, K-8, senior high, Adult/Alternative/Vocational), voting district, District/Region office, employees, students (where available/legal/appropriate), and contractors working on District/school facilities, to be active for the beginning of the 2021-2022 school year, where practicable; and
2. provide a status update in writing to the School Board no later than August 19, 2021.

121,475 **H-19** **DIRECTED**

The Superintendent to:

1. review the procurement practices and protocols of the District's Food and Nutrition Program as they specifically relate to the alignment and compliance with School Board Policy 6320.02, Small/Micro, Minority/Women, and Veteran Business Enterprise Programs;
2. provide an expenditure report for the fiscal years ending June 2018, 2019, and 2020, to determine the levels and amount of contracting with certified small/micro, minority/women, and veteran owned businesses; and
3. provide an update to the School Board no later than October 1, 2021.

121,476 **H-20**

The Superintendent to:

1. Review the establishment of a mental health service day in which students will be notified of the resources at their disposal and will be allowed to participate in interactive activities that will help boost their morale and destigmatize mental health;
2. Evaluate the possibility of providing M-DCPS students with a mental health hotline that is accessible twenty-four hours a day and seven days a week;
3. days a week;
4. Review the attainability of developing a mental health safe space within schools that can be made in the form of a lounge area and that should include the office of the school's official psychologist/therapist;
5. Assess the effectiveness of the mental health resources that are currently available to students;
6. Assess the effectiveness of the seminars/workshops school personnel attend to understand how to properly address a student who is in distress;

7. Assess the effectiveness of adding a five to ten- minute stress break during the school day so that students can be provided with time to decompress; and
8. to the Board at the November 17, 2021 School Board Meeting.

121,477 **H-21** **DIRECTED**

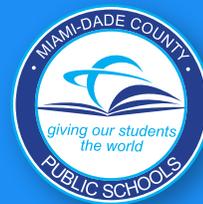
The Superintendent to explore and review the feasibility of addressing the role of the Student Advisor by:

1. Ensuring that the representatives of DSGA (including the Student Advisor) are formally introduced to the students in the district and that they meet with the president of SGA at every school at monthly DSGA meetings;
2. Establishing an initiative to notify the students of MDCPS of what DSGA is, of who the members of it are, and of how the members of it can be contacted (e.g., sending emails that contain this information to their Dade schools Email);
3. Adding a comment tab to the student portal so that the students of the district will be able to voice their concerns in an easy and efficient manner;
4. Reviewing policy 0141.1, which provides a description of the Student Advisor's role to the School Board, to ensure that it is aligned with current District practices for the selection of the Student Advisor;
5. Providing the appointed Student Advisor with an orientation on how school board meetings are conducted, how the tasks of the Student Advisor should be accomplished, and on the functions of the school board
6. Distributing a survey to the students of MDCPS to assess whether they know that there is student representation at the district level and whether they know how they can relay their concerns to their representatives; an
7. Requesting an end-of-the-year report from the members of DSGA that entails their accomplishments and will illustrate to the students of the district how they have been represented (similar to how the students of DSGA did in 2006), and report back to the Board at the Nov. 17, 2021 School Board Meeting.

Adjourned
/svl

EXHIBIT C

MOST FREQUENTLY ASKED QUESTIONS REGARDING COVID-19



Is my child required to have the COVID-19 vaccine to attend school?

The COVID-19 vaccine is not required to attend school; however, the District encourages eligible students to get vaccinated. Information on vaccinations for eligible students may be found at backtoschool.dadeschools.net.

Will facial coverings be required at schools?

Face coverings are required for students, employees, parents, volunteers, and visitors while on school property and on school buses. Face coverings may be removed while outdoors as long as appropriate distance is maintained.

What health and safety measures will be in place in schools and District facilities?

Employees and students will be encouraged to stay home if they are ill. Should they become ill during the school day, students will be separated from their peers, and their parents will be contacted to pick them up from school and seek medical care. All schools will be cleaned at the end of the school day, and restrooms will be cleaned frequently during school hours. Schools will continue using electrostatic germicide sprayers to disinfect rooms and hallways. Frequent handwashing will be encouraged, and hand sanitizing stations will remain throughout each school. Students will be seated 3 feet apart in classrooms, to the extent feasible, to promote physical distancing.

Do all schools have a health professional on site?

K-12 schools will continue to have a health professional on site during the 2021-2022 school year.

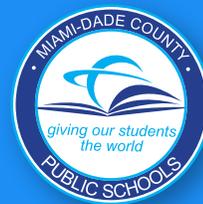
What personal behaviors are expected of all students?

1. Stay home if sick.
2. Sanitize hands with hand sanitizer that contains at least 60% alcohol upon entering the building.
3. Wash hands frequently or use hand sanitizer that contains at least 60% alcohol if soap and water are not available.
4. Avoid touching face and eyes.
5. Wash/sanitize hands after touching or removing facial covering.
6. Limit use of shared objects, such as physical education equipment, playground equipment, art supplies, toys, and games. Shared objects will be cleaned after each use.
7. Bring personal water bottles with water. Water fountains will be turned off and hydration stations will be made available for refills.
8. Follow all directions provided by teachers or administrators for the safety of the school community. It is especially important that students stay in the classrooms and spaces.
9. All persons must maximize physical distancing to the extent possible under the circumstances.
10. Face coverings are required for students, staff, and visitors when in the building. They may be removed during outdoor activities as long as appropriate distancing is maintained.
11. All student facial coverings must meet the requirements of the Code of Student Conduct and Policy 5511, Dress Code and School Uniform. Face coverings are apparel/accessory and must not include obscene, profane, drug-related, gang-related, or inflammatory messages or pictorial graphics. Face coverings which include inappropriate language that could be perceived as offensive, derogatory, threatening, or intimidating are strictly prohibited. Repeated display of such face coverings will constitute disciplinary measures as outlined in the Code of Student Conduct.

What mental health services are available for my child?

Information on mental health services available for students may be accessed at mentalhealthservices.dadeschools.net or by contacting the Department of Mental Health Services at 305-995-7100.

MOST FREQUENTLY ASKED QUESTIONS REGARDING COVID-19



What sanitization measures have been implemented to routinely clean schools and District facilities?

All schools will be cleaned at the end of the school day, with the exception of restrooms, which will be cleaned frequently during school hours. To aid in the daily cleaning, every school has been provided electrostatic germicide sprayers to disinfect rooms and hallways. Additionally, buses will be wiped down and cleaned between routes. Staff will use hospital-grade germicide when sanitizing.

What do parents need to do before sending their child to school?

Parents are asked to perform the At-Home Daily Health Screening each day to determine if it is safe to send their child to school.

What happens if a student arrives at school exhibiting COVID-like symptoms or becomes ill at school?

If a student becomes ill or exhibits symptoms of COVID-19 while at school, the student will be separated from other students and staff to the designated space identified as the Health Screening Area. If the student is not wearing a mask, the student will be required to put one on. The student will be monitored, and the District will contact the parent/guardian or, if needed, the emergency contacts. Parents/guardians and/or emergency contacts will be informed of the importance of the student being picked up immediately for the safety of the student and others.

What steps will be taken if a student tests positive for COVID-19?

If a student tests positive for COVID-19, contact investigation will be initiated in collaboration with the Florida Department of Health (FDOH) in Miami-Dade County. The student will also be required to self-isolate for 10 days.

If a student is confirmed by the FDOH in Miami-Dade as testing positive for COVID-19, what type of clearance is needed for the student to return to school?

The local health department will notify the District School Health Office (DSHO) when the student they confirmed was COVID-positive is cleared to return to school. The DSHO will then notify the school principal, who will in turn notify the student's parent/guardian.

If a student is asked to quarantine because they have been in close contact with someone who has tested positive for COVID-19, when will they be allowed to return to their school?

A fully vaccinated student will not need to quarantine and may remain at school provided they remain symptom-free since the current exposure to a COVID-19 confirmed positive or probable case, provide proof of vaccination and that the student is not residing in a group home. Other CDC testing requirements also apply. Students who are not eligible for vaccination or who are not fully vaccinated will be required to quarantine in accordance with 2021-2022 quarantine protocols, which may be accessed at backtoschool.dadeschools.net.

If you have been identified as being in close contact with someone who has tested positive for COVID-19 and are asked to quarantine, do other members of your household who attend or work at District schools have to quarantine as well?

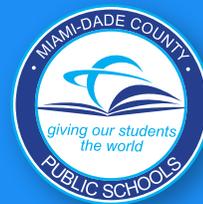
If the other household members did not come in direct contact with someone that tested positive, and the individual in quarantine does not have symptoms, other household members, including siblings, do not need to quarantine or isolate. However, if the individual in quarantine has symptoms or tests positive, all household members should contact their medical provider and get tested.

What is the criteria for closing an individual classroom or multiple ones versus an entire school due to one or more positive cases of COVID-19?

In many cases, the decision to close a classroom(s) or a school is the result of the close contact investigation. However, these determinations will be made on an individual school-by-school basis due to multiple factors that potentially impact the final decision. These factors include, but are not limited to:

- Number of COVID-19 positive cases of students and staff
- Potential exposure to other students and employees identified through contact tracing
- Ability to sanitize affected areas prior to the return of students and staff
- Potential for outbreak
- Cases that are linked within same school
- Ability to notify those impacted based on the day of the week and the time that the case was reported

MOST FREQUENTLY ASKED QUESTIONS REGARDING COVID-19



If a child must leave the school setting due to COVID-19, what steps will be taken to ensure the student remains engaged in learning?

Students asked to leave the school setting due to COVID-19 will be provided class assignments and contact information for instructional staff who may provide assistance.

What is the procedure to report a COVID-19 diagnosis in a household?

If anyone in the student's household tests positive for COVID-19, the student must follow the quarantine protocols detailed above.

What information is included in the dashboard and how often is the dashboard updated?

Dashboard data will be updated each work day and include confirmed cases at schools and work locations. Dashboard data entry is separate and apart from the immediate mitigation activities occurring at school sites, such as self-isolation for suspected/positive cases, the quarantining of employees and students who are close contacts, and the deep sanitization of all areas of the impacted school. The District COVID-19 Dashboard is not intended to be a real-time system for tracking self-reported employee and student confirmed cases. It is a lagging indicator and should not be interpreted as an immediate notification system of cases. Families and employees should not rely on the dashboard to learn about cases in their school or worksite as they will learn about self-reported cases from their school or worksite well ahead of that information being populated onto the dashboard.

How will students receive meals?

Breakfast and lunch procedures will be determined at each individual school site. Ideally, each school will be able to utilize their cafeteria and dining areas while providing for adequate spacing. The use of outdoor dining areas will be maximized whenever possible. Meal schedules will also be carefully coordinated to ensure an appropriate number of students are in the cafeteria at one time.

What safety and social distancing measures will be implemented on school buses?

Masks and/or face coverings will be required for all students and staff on board. Enhanced sanitization protocols will continue to be followed on all school buses.

Can parents or other visitors access schools?

To prevent the spread of COVID-19, visitor access will be limited and restricted to the main office. Visitors are not permitted to enter any District buildings under the following conditions:

1. The individual has any of the following symptoms: a temperature of 100.4 degrees or higher; shortness of breath; cough; loss of taste or smell; muscle aches; weakness; chills; nausea; vomiting; or any other symptoms of COVID-19;
2. The individual has tested positive for COVID-19;
3. The individual has been exposed to someone with symptoms of COVID-19;
4. The individual has been exposed to someone who has tested positive for COVID-19.

Any visitors permitted to enter District buildings will be subject to screening and must adhere to all District guidelines.

KESYON MOUN POZE PI SOUVAN KONSÈNAN COVID-19



Èske pitit mwen oblije pran vaksen COVID-19 pou li ale lekòl?

Vaksen COVID-19 la pa obligatwa pou timoun ale lekòl; sepandan, Distri lekòl la ankouraje elèv ki elijib yo pou yo pran vaksen. Nou ka jwenn enfòmasyon konsènan vaksen pou elèv ki elijib yo nan backtoschool.dadeschools.net.

Èske li obligatwa pou tout moun kouvri vizaj yo lè yo nan lekòl yo?

Kouvèti vizaj obligatwa pou elèv, pwofesè, paran, volontè, ak vizitè lè yo sou pwopriyete lekòl la e nan otobis lekòl yo. Yo kapab retire kouvèti pou vizaj yo lè yo deyò, a kondisyon yo kenbe yon distans ki apwopriye.

Ki mezi sante ak sekirite ki ap an plas nan lekòl yo ak etablisman Distri yo?

Nou ap ankouraje anplwaye ak elèv pou yo rete lakay si yo malad. Si gen elèv ki tonbe malad pandan jounen lekòl la, y ap separe yo avèk kamarad yo, e lekòl la ap kontakte paran yo pou yo vin chèche yo e mennen yo wè doktè. Nou ap netwaye tout lekòl nan fen jounen lekòl la, e n ap netwaye twalèt yo souvan nan moman lekòl ap fonksyone. Lekòl yo ap kontinye itilize vaporizatè elektrik pou dezenfekte salklas yo ansanm ak koulwa yo. Nou ap ankouraje lavaj men souvan, e n ap mete andwa pèmanan pou dezenfekte men nan chak lekòl. Elèv yo ap chita a yon distans 3 pye lè yo nan salklas, nan mezi posib, pou pwomote distans fizik.

Èske tout lekòl gen yon pwofesyonèl sante sou plas?

Lekòl K-12 yo pral kontinye gen yon pwofesyonèl sante sou plas pandan ane lekòl 2021-2022 a.

Ki konpòtman pèsònèl nou atann pou tout elèv?

1. Rete lakay si ou malad.
2. Dezenfekte men ak dezenfektan men ki gen omwen 60% alkòl lè ou antre nan bilding lekòl la.
3. Lave men souvan oubyen itilize dezenfektan men ki gen omwen 60% alkòl si pa gen savon ak dlo ki disponib.
4. Evite manyen figi ak je nou.
5. Lave/dezenfekte men nou apre nou fin touche oubyen retire kouvèti pou vizaj nou.
6. Limite itilizasyon objè moun pataje souvan, tankou ekipman edikasyon fizik, ekipman sou lakou rekreyasyon an, founiti klasik pou ar, objè pou jwe, ak jwèt. Nou ap netwaye objè plizyè moun itilize yo chak fwa yo fin sèvi ak yo.
7. Pote pwòp boutèy dlo ou ki kapab itilize plizyè fwa. Fontèn dlo yo ap fèmen e ap gen estasyon ki ap disponib pou replen boutèy dlo yo.
8. Suiv tout enstriksyon pwofesè oswa administratè yo bay pou sekirite kominote lekòl la. Li patikilyèman enpòtan pou elèv yo rete nan salklas ak espas yo asiyen yo.
9. Tout moun dwe kenbe yon maksimòm distans fizik, nan mezi posib selon sikonstans yo.
10. Kouvèti pou vizaj obligatwa pou elèv, anplwaye, ansanm ak vizitè lè yo nan bilding lekòl la. Yo kapab retire kouvèti pou vizaj yo lè yo deyò, a kondisyon yo kenbe yon distans ki apwopriye.
11. Tout kouvèti pou vizaj dwe konfòm ak egzijans Règleman pou Konduit Elèv la ansanm ak Règ 5511, Règleman pou Abiman ak Inifòm Lekòl. Kouvèti pou vizaj yo se abiman/aksèwa pou abiman yo ye, e yo pa dwe gen mesaj vilgè, pwofàn, ki gen rapò ak dwòg, gang, oubyen mesaj pwovokan oubyen imaj chokan. Nou entèdi avèk severite tout kouvèti pou vizaj ki gen langaj ki pa apwopriye, moun ka entèprete kòm langaj repiyan, ensiltan, menasan, entimidan. Lè yon elèv kontinye mete kalite kouvèti pou vizaj sa yo, sa ap lakoz nou pran mezi disiplinè, jan Règleman pou Konduit Elèv la mande sa.

Ki sèvis sante mantal ki disponib pou pitit mwen an?

Nou ka jwenn enfòmasyon sou sèvis sante mantal ki disponib pou elèv nan mentalhealthservices.dadeschools.net oubyen lè nou kontakte Depatman Sèvis Sante Mantal la nan 305-995-7100.

KESYON MOUN POZE PI SOUVAN KONSÈNAN COVID-19



Ki mezi sanitasyon nou ap aplike pou nou netwaye lekòl yo ak etablisman Distri yo regilyèman?

Nou netwaye tout lekòl yo nan fen jounen lekòl la, eksepte pou twalèt yo, n ap netwaye souvan pandan lekòl la ap fonksyone. Pou ede nan netwayaj k ap fèt nan lekòl yo chak jou, nou bay chak lekòl vaporizatè elektrik pou dezenfekte salklas yo ansanm ak koulwa yo. Anplis, n ap siye e netwaye otobis yo apre chak vwayaj. Anplwaye yo ap itilize pwodui netwayaj yo sèvi nan lopital yo lè y ap dezenfekte lekòl yo.

Kisa paran yo bezwen fè avan yo voye pitit yo lekòl?

Nou mande pou paran yo fè yon Depistaj Lakay yo Chak Jou pou detèmine si li pridan pou yo voye pitit yo lekòl.

Kisa k ap pase si yon elèv rive nan yon lekòl avèk sentòm ki sanble sentòm COVID oubyen li tonbe malad nan lekòl la?

Si yon elèv vin malad oubyen li gen siy COVID-19 pandan li nan lekòl la, y ap separe li avèk lòt elèv ak anplwaye yo, e y ap mete li nan espas ki fèt pou sa nan lekòl la yo rele Zòn Depistaj la. Si elèv la pa gen yon mask, y ap mande li pou l mete youn. Yo ap suiv elèv la, e Distri a ap kontakte paran/gadyen yo e, si sa nesèsè, moun ki sou lis kontak ijans elèv la. Nou ap enfòmè paran/gadyen e/oubyen moun ki sou lis kontak ijans elèv la konsènan enpòtans pou yo vin chèche elèv ki malad la imedyatman pou pwoteksyon elèv la ak lòt elèv yo.

Ki etap n ap pran si yon elèv teste pozitif pou COVID-19?

Si yon elèv teste pozitif pou COVID-19, n ap kòmanse investigasyon sou kontak yo an kolaborasyon avèk “Florida Department of Health (FDOH)” (Depatman Sante Florid) nan Miami-Dade County. Nou ap mande pou elèv la rete nan izolman tou pandan 10 jou.

Si yon elèv gen konfimasyon Depatman Sante Florid nan Miami-Dade li teste pozitif pou COVID-19, ki kalite atestasyon li bezwen pou l ka retounen lekòl?

Depatman sante lokal la ap notifiye “District School Health Office (DSHO)” (Biwo Sante Distri Lekòl) la lè elèv yo te konfime ki pozitif pou COVID la la gen yon atestasyon ki di li kapab retounen lekòl. DSHO ap notifiye direktè lekòl la, ki li menm ap notifiye paran/gadyen elèv la.

Si yo mande yon elèv pou l rete an karantèn paske l te gen kontak depre avèk yon moun ki teste pozitif pou COVID-19, kilè y ap ba li pèmisyon pou l retounen lekòl?

Yon elèv ki pran tout dòz vaksen li pap bezwen ale an karantèn e li ka rete nan lekòl la toutotan li pa gen okenn sentòm depi lè li te an kontak avèk moun ki konfime li gen COVID-19 la, oubyen ki petèt te ka gen maladi a, si elèv la bay prèv li te pran vaksen e li pap viv an gwoup ak lòt moun. Gen lòt kondisyon CDC ki ka aplike nan ka sa a tou. Elèv ki pa elijib pou vaksinasyon oubyen ki pako pran tout dòz vaksen li ap oblije ale an karantèn selon pwotokòl karantèn 2021-2022 a, nou ka jwenn nan backtoschool.dadeschools.net.

Si yo idantifye ou kòm yon moun ki te gen kontak depre avèk yon moun ki teste pozitif pou COVID-19 e yo mande pou w rete an karantèn, èske lòt moun lakay ou ki nan lekòl Distri a oubyen ki ap travay nan Distri lekòl la dwe rete an karantèn tou?

Si lòt moun nan kay la pa t gen kontak depre avèk yon moun ki teste pozitif, e moun ki an karantèn nan pa gen sentòm, lòt moun nan kay la, tankou frè/sè, pa bezwen ale an karantèn oubyen izole tèt yo. Sepandan, si moun ki an karantèn nan gen sentòm oubyen li teste pozitif, lòt moun ki nan kay la dwe kontakte doktè yo e yo dwe pran yon tès.

Selon ki kritè yo ka fèmen yon salklas oubyen plizyè salklas parapò ak fèmen yon lekòl akoz yon ka oubyen plizyè ka COVID-19?

Nan anpil ka, desizyon pou fèmen youn oubyen plizyè salklas se rezilta investigasyon konsènan kontak depre avèk moun ki enfekte. Sepandan, desizyon sa yo ap fèt sou yon baz endividyèl pou chak lekòl akoz gen anpil faktè ki ka gen enpak sou desizyon final la. Faktè sa yo gen ladan, men yo pa limite ak:

- Kantite ka elèv ak anplwaye ki teste pozitif pou COVID-19
- Posiblite pou gen lòt elèv ak anplwaye ki te ekspozè atravè idantifikasyon kontak yo
- Abilite pou dezenfekte bilding lekòl la avan elèv ak anplwaye retounen
- Posiblite pou gen gwo kontaminasyon
- Ka kontaminasyon ki fèt anndan lekòl la
- Abilite pou notifiye moun ki afekte yo, selon jou ak lè nan semèn nan yo te rapòte ka yo

KESYON MOUN POZE PI SOUVAN KONSÈNAN COVID-19



Si yon timoun dwe kite anviwònman lekòl la akòz COVID-19, kisa ki dwe fèt pou elèv sa a kapab kontinye aprann?

Elèv ki dwe kite anviwònman lekòl la akòz COVID-19 ap resevwa devwa pou klas li ansanm ak enfòmasyon sou kontak pwofesè ki kapab ede li.

Selon ki pwosedi yo dwe rapòte yon moun ki gen COVID-19 lakay li?

Si nenpòt moun nan kay kote elèv la rete a teste pozitif pou COVID-19, elèv la dwe suiv pwotokòl karantèn nou dekri anwo a.

Ki enfòmasyon ki nan tablo afichaj lekòl yo e chak konbyen tan yo mete yo ajou?

Nou mete enfòmasyon sou tablo afichaj yo chak jou travay e yo gen ladan ka konfime nan lekòl ak andwa travay yo. Antre done nan tablo afichaj la pa menm bagay avèk aktivite diminyasyon ki fèt imedyatman nan yon lekòl tankou izolasyon pèsònèl pou ka sispèk/ki pozitif yo, mete anplwaye ak elèv ki te gen kontak depre ak moun ki pozitif yo an karantèn, e dezenfekte an pwofondè tout kote nan lekòl ki konsène a. Sistèm tablo afichaj COVID-19 Distri pa fèt pou l prezante ka anplwaye ak elèv ki rapòte tèt yo an tan reyèl. Se yon endikatè ki travay lantman e yo pa dwe entèprete li kòm yon sistèm notifikasyon imedyat pou ka yo. Fanmi ak anplwaye pa dwe konte sou tablo afichaj la pou yo resevwa enfòmasyon konsènan ka nan lekòl yo oubyen nan andwa travay yo paske yo gen pou yo aprann enfòmasyon sou ka rapò pèsònèl yo byen alavans parapò ak sa ki afiche sou tablo afichaj la.

Kijan elèv yo ap resevwa manje?

Se lekòl yo endividyalman ki detèmine pwosedi pou dejne ak repa midi yo. Nou swete chak lekòl ap kapab itilize kafeterya ak espas pou moun manje a pandan y ap ofri elèv yo ase espas. Nou ap ogmante itilizasyon espas deyò pou manje nenpòt lè sa posib. Nou ap kowòdone orè repa yo avèk anpil swen, pou asire gen yon kantite elèv apwopriye nan kafeterya a chak fwa.

Ki mezi sekirite ak distans sosyal nou ap aplike nan otobis lekòl yo?

Mask ak/oubyen kouvèti pou vizaj ap obligatwa pou tout elèv ak anplwaye nan otobis yo. Nou ap kontinye mete bonjan pwotokòl sanitasyon pou moun suiv nan tout otobis lekòl yo.

Èske paran ak lòt vizitè ka antre nan lekòl yo?

Pou evite pwopagasyon COVID-19, n ap limite aksè pou vizitè yo ki pap ka rive pi lwen pase biwo prensipal la. Nou pap pèmèt vizitè antre nan bilding Distri a si yo reponn ak youn nan kondisyon sa yo:

1. Moun nan gen youn nan sentòm sa yo: yon tanperati 100.4 degre oubyen pi wo; souf kout; tous; pa pran gou oubyen sant; doule misk; feblès; frison; anvi vomi; vomisman oubyen nenpòt lòt sentòm COVID-19;
2. Moun nan teste pozitif pou COVID-19;
3. Moun nan te gen kontak avèk yon moun ki gen sentòm COVID-19;
4. Moun nan te gen kontak avèk yon moun ki teste pozitif pou COVID-19.

N ap mande nenpòt vizitè nou pèmèt antre nan bilding Distri a pou li pran yon depistaj e li dwe suiv tout direktiv Distri a.

PREGUNTAS MÁS FRECUENTES SOBRE LA COVID-19



¿Se requiere que mi hijo tenga la vacuna contra la COVID-19 para asistir a la escuela?

No se requiere la vacuna contra la COVID-19 para asistir a la escuela; sin embargo, el Distrito insta a los estudiantes elegibles a vacunarse. La información sobre las vacunas para los estudiantes elegibles se puede encontrar en backtoschool.dadeschools.net.

¿Se exigirán cubrimientos faciales en las escuelas?

Se requiere que los estudiantes, empleados, padres, voluntarios y visitantes se cubran la cara mientras se encuentren en la propiedad escolar y en los autobuses escolares. Las coberturas faciales se pueden quitar mientras se está al aire libre siempre que se mantenga la distancia adecuada.

¿Qué medidas de salud y seguridad se aplicarán en las escuelas y las instalaciones del Distrito?

Se insta a los empleados y estudiantes a quedarse en casa si están enfermos. Si se enferman durante la jornada escolar, los estudiantes serán separados de sus compañeros y se contactará a sus padres para que los recojan de la escuela y busquen atención médica. Todas las escuelas se limpiarán al final de la jornada escolar y los baños se limpiarán con frecuencia durante el horario escolar. Las escuelas continuarán usando rociadores de germicidas electrostáticos para desinfectar habitaciones y pasillos. Se fomentará el lavado de manos frecuente, y las estaciones de desinfección de manos permanecerán en todas las escuelas. Los estudiantes se sentarán a 3 pies de distancia en las aulas, en la medida de lo posible, para promover el distanciamiento físico.

¿Todas las escuelas tienen un profesional de la salud?

Las escuelas K-12 continuarán teniendo un profesional de la salud durante el curso escolar 2021-2022.

¿Qué comportamientos personales se esperan de todos los estudiantes?

1. Permanecer en casa si está enfermo.
2. Desinfectarse las manos con un desinfectante que contenga por lo menos un 60% de alcohol al entrar en algún edificio.
3. Lavarse las manos con frecuencia o utilizar un desinfectante de manos que contenga por lo menos un 60% de alcohol si no hay ni agua ni jabón disponibles.
4. Evitar tocarse la cara y los ojos.
5. Lavarse/desinfectarse las manos después de tocar o quitarse la cobertura facial.
6. Limitar el uso de objetos compartidos, como por ejemplo equipos de educación física, equipos de juegos, materiales de arte, juguetes y juegos. Los objetos compartidos se limpiarán después de cada uso.
7. Traer botellas de agua reutilizables. Las fuentes de agua se apagarán y las estaciones de hidratación estarán disponibles para recargar las botellas.
8. Seguir todas las instrucciones proporcionadas por los maestros o administradores para la seguridad de la comunidad escolar. Es especialmente importante que los estudiantes permanezcan en las aulas y espacios designados.
9. Maximizar el distanciamiento físico en la medida de lo posible dadas las circunstancias.
10. Se requiere que los estudiantes, el personal y los visitantes se cubran la cara cuando estén en el edificio. Pueden quitarse las coberturas faciales durante las actividades al aire libre siempre que se mantenga una distancia adecuada.
11. Todas las coberturas faciales de los estudiantes deben cumplir con los requisitos del Código de Conducta del Estudiante y la Política 5511, Código de Vestimenta y Uniforme Escolar. Las coberturas para el rostro son prendas o accesorios y no deben incluir mensajes o gráficos pictóricos obscenos, profanos, relacionados con drogas, pandillas o lenguaje inadecuado. Se prohíben estrictamente las coberturas de rostro que incluyan lenguaje inapropiado que pueda ser percibido como ofensivo, despectivo, amenazante o intimidante. La exhibición repetida de tales coberturas para el rostro conllevará medidas disciplinarias tal y como se describe en el Código de Conducta del Estudiante.

PREGUNTAS MÁS FRECUENTES SOBRE LA COVID-19



¿Qué servicios de salud mental están disponibles para mi hijo?

Se puede acceder a la información sobre los servicios de salud mental disponibles para los estudiantes en mentalhealthservices.dadeschools.net o comunicándose con el Departamento de Servicios de Salud Mental al 305-995-7100.

¿Qué medidas de desinfección se han implementado para la limpieza habitual de las escuelas y las instalaciones del Distrito?

Todas las escuelas se limpiarán al final de la jornada escolar, con la excepción de los baños, los cuales se limpiarán con frecuencia durante el horario escolar. Para ayudar con la limpieza diaria, a cada escuela se le ha proporcionado rociadores de germicidas electrostáticos para desinfectar las habitaciones y los pasillos. Además, los autobuses se limpiarán entre rutas. El personal usará germicida de grado de hospitalario cuando desinfecte los espacios.

¿Qué deben hacer los padres antes de enviar a su hijo a la escuela?

Se les pide a los padres que realicen un chequeo de salud diario en el hogar a sus hijos para determinar si es seguro enviarlo a la escuela.

¿Qué sucede si un estudiante llega a la escuela con síntomas similares a los de la COVID-19 o que sucede si se enferma en la escuela?

Si un estudiante se enferma o muestra síntomas de COVID-19 mientras está en la escuela, el estudiante será separado de otros estudiantes y del personal y se llevará al espacio designado como Área de Chequeo de Salud. Si el estudiante no está usando una cobertura facial, se le pedirá que se la ponga. El estudiante será vigilado y el Distrito se comunicará con el padre/tutor o, si es necesario, con los contactos de emergencia. Se informará a los padres/tutores y/o contactos de emergencia de la importancia de que el estudiante sea recogido inmediatamente para la seguridad del estudiante y de los otros alumnos.

¿Qué medidas se tomarán si un estudiante da positivo en la prueba de COVID-19?

Si un estudiante da positivo en la prueba de COVID-19, se iniciará una investigación de contacto en colaboración con el Departamento de Salud de Florida (FDOH, por sus siglas en inglés) en el condado de Miami-Dade. También se requerirá que el estudiante se aisle durante 10 días.

Si el FDOH de Miami-Dade confirma que un estudiante da positivo en la prueba de COVID-19, ¿qué tipo de autorización se necesita para que el estudiante regrese a la escuela?

El departamento de salud local notificará a la Oficina de Salud Escolar del Distrito (District School Health Office, DSHO por sus siglas en inglés) cuando se confirma que el estudiante que dio positivo puede regresar a la escuela. El DSHO luego notificará al director de la escuela, quien a su vez notificará al padre / tutor del estudiante.

Si se le pide a un estudiante que se ponga en cuarentena porque ha estado en contacto cercano con alguien que dio positivo en la prueba de COVID-19, ¿cuándo se le permitirá regresar a su escuela?

Un estudiante completamente vacunado no necesita ponerse en cuarentena y puede permanecer en la escuela siempre y cuando se cumpla lo siguiente: el estudiante no presente síntomas desde una exposición actual a un caso positivo o a un caso probable o confirmado de COVID-19; proporcione prueba de vacunación y proporcione prueba de que el estudiante no reside en un hogar grupal. También se aplican otros requisitos de prueba de los CDC. Los estudiantes que no sean elegibles para la vacunación o que no estén completamente vacunados deberán ponerse en cuarentena de acuerdo con los protocolos de cuarentena 2021-2022, a los que se puede acceder en backtoschool.dadeschools.net.

Si se le ha identificado por haber estado en contacto muy cercano con alguien que dio positivo en la prueba de COVID-19 y se le pide que se ponga en cuarentena, ¿otros miembros de su hogar que asisten o trabajan en las escuelas del Distrito también tienen que ponerse en cuarentena?

Si los otros miembros del hogar no entraron en contacto directo con alguien que dio positivo en la prueba, y la persona en cuarentena no tiene síntomas, otros miembros del hogar, entre ellos los hermanos, no necesitan ponerse en cuarentena o aislarse. Sin embargo, si la persona en cuarentena tiene síntomas o pruebas positivas, todos los integrantes de su hogar deben comunicarse con su médico y hacerse la prueba.

PREGUNTAS MÁS FRECUENTES SOBRE LA COVID-19



¿Cuáles son los criterios para cerrar un aula individual o varias aulas en lugar de cerrar una escuela completa debido a uno o más casos positivos de COVID-19?

En muchos casos, la decisión de cerrar un aula o una escuela es el resultado de una investigación de contacto cercano. Sin embargo, estas determinaciones se realizarán de forma individual, escuela por escuela, debido a múltiples factores que potencialmente influyen en la decisión final. Estos factores incluyen, entre otros:

- Número de casos positivos de COVID-19 en estudiantes y personal
- Posible exposición a otros estudiantes y empleados identificados a través del rastreo de contactos
- Capacidad para desinfectar las áreas afectadas antes del regreso de los estudiantes y el personal
- Potencial de brote
- Casos que están vinculados dentro de la misma escuela
- Posibilidad de notificar a los afectados según el día de la semana y la hora en que se informó el caso

Si un niño debe abandonar el entorno escolar debido a la COVID-19, ¿qué medidas se tomarán para garantizar que el estudiante siga participando en el aprendizaje?

A los estudiantes a los que se les solicite abandonar el entorno escolar debido a la COVID-19 se les proporcionarán los trabajos de clase e información de contacto del personal docente para poderle brindar asistencia.

¿Cuál es el procedimiento para informar sobre un diagnóstico de la COVID-19 en un hogar?

Si alguien en el hogar del estudiante da positivo en la prueba de COVID-19, el estudiante debe seguir los protocolos de cuarentena detallados anteriormente.

¿Qué información se incluye en el tablero y con qué frecuencia se actualiza?

Los datos del tablero de control se actualizan cada día laboral e incluyen casos confirmados en escuelas y lugares de trabajo. Sin embargo, la entrada de datos en el tablero está separada y va aparte de las actividades de mitigación inmediatas que ocurren en los sitios escolares, tales como el autoaislamiento para casos sospechosos/positivos, la cuarentena de empleados y estudiantes como contactos cercanos y la desinfección profunda de todas las áreas de la escuela afectada. El Tablero de Control del Distrito de la COVID-19 no está diseñado para ser un sistema en tiempo real que rastree los casos confirmados por los estudiantes y los empleados. Más bien, se trata de un indicador rezagado y no debe tomarse como un sistema de notificación inmediata de casos. Las familias y los empleados no deben confiar en el tablero para conocer los casos en su escuela o lugar de trabajo; sin embargo, sabrán sobre los casos autodeclarados de su escuela o lugar de trabajo mucho antes de que esa información se incluya en el tablero.

¿Cómo recibirán las comidas los estudiantes?

Los procedimientos para el desayuno y el almuerzo se determinarán en cada sitio escolar. Lo ideal será que cada escuela pueda utilizar sus áreas de comedor y cafetería con los requisitos de distancia adecuados. El uso de las áreas a modo de comedor al aire libre se optimizará siempre que sea posible. Los horarios de las comidas también se coordinarán cuidadosamente para garantizar que haya un número adecuado de estudiantes en la cafetería al mismo tiempo.

¿Qué medidas de seguridad y distanciamiento social se implementarán en los autobuses escolares?

Se exigirá el uso de mascarillas y/o coberturas faciales a todos los estudiantes y al personal a bordo. Se continuará con los protocolos de desinfección mejorados en todos los autobuses escolares.

¿Pueden los padres u otros visitantes acceder a las escuelas?

Para evitar la propagación de la COVID-19, el acceso de visitantes será limitado y se restringirá a la oficina principal. Los visitantes no pueden entrar a ningún edificio del Distrito bajo las siguientes condiciones:

1. Si el individuo tiene alguno de los siguientes síntomas: temperatura de 100,4 grados o más; dificultad para respirar, tos, pérdida del gusto o del olfato, dolores musculares, debilidad, escalofríos, náusea, vómitos o cualquier otro síntoma de la COVID- 19;
2. Si el individuo ha dado positivo en la prueba de COVID- 19;
3. Si el individuo ha estado expuesto a alguien con síntomas de COVID- 19;
4. Si el individuo ha estado expuesto a alguien que dio positivo en la prueba de COVID-19.

Cualquier visitante autorizado para entrar en los edificios del Distrito podrá ser sometido a un chequeo y debe cumplir con todas las normas del Distrito.

EXHIBIT D



Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

August 27, 2021

Mr. Alberto Carvalho
Superintendent
Miami-Dade County Public Schools
1450 NE Second Avenue
Miami, FL 33132

Ms. Perla Tabares Hantman
School Board Chair
Miami-Dade County Public Schools
1450 NE Second Avenue
Miami, FL 33132

Dear Superintendent Carvalho and Chair Tabares Hantman:

This letter is sent to express my grave concern regarding your district's response to the recently adopted Emergency Rule 64DER21-12 from the Florida Department of Health. This rule, issued on August 6, 2021, by the Florida Surgeon General, Dr. Scott Rivkees, explicitly requires that any mandated mask policy imposed by a district or school "must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask." The emergency rule does not require parents to submit medical documentation in order to opt-out.

Executive Order 21-175 directed the Florida Department of Health and the Florida Department of Education to execute rules to ensure safety protocols for controlling the spread of COVID-19 in schools. The Order directs further that any such action must "at minimum be in accordance with Florida's Parents' Bill of Rights and protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Because the Florida Department of Health, under section 1003.22(3), Florida Statutes, is the agency authorized to adopt rules governing the control of communicable diseases, the Florida Department of Health adopted an emergency rule establishing protocols for controlling COVID-19 in public schools. The rule provides, in part, as follows:

Students may wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.

Rule 64DER21-12(1)(d), Florida Administrative Register, Vol. 47/No. 153, August 9, 2021.

Recent reports in the media indicate that the Miami-Dade School Board has taken action inconsistent with the emergency rule by limiting or conditioning the parental ability to opt-out of a face covering or mask mandate. Section 1008.32, Florida Statutes, states, "The State Board of

Education shall oversee the performance of district school boards and the Florida College System institution board of trustees in enforcement of all laws and rules.” Further, section 1008.32(2)(a), Florida Statutes, states that the “Commissioner of Education may investigate allegations of noncompliance with law or state board rule and determine probable cause.”

Based on this authority, I am immediately initiating an investigation of non-compliance with the rule adopted by the Florida Department of Health on August 6, 2021. In commencing this investigation, I am demanding that you provide a written response by 5:00 p.m. on Wednesday, September 1, 2021, documenting how your district is complying with Florida Department of Health Emergency Rule 64DER21-12. Should you fail to document full compliance with this rule, in accordance with section 1008.32, Florida Statutes, I intend to recommend to the State Board of Education that the Department withhold funds in an amount equal to the salaries for all the members of the School Board, as well as other sanctions authorized by law, until the district comes into compliance.

Parents have a fundamental right to direct the upbringing, education and care of their minor children. The Department of Education will protect that right.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Corcoran", with a long horizontal flourish extending to the right.

Richard Corcoran
Commissioner

EXHIBIT E



Miami-Dade County Public Schools

giving our students the world

Superintendent of Schools

Alberto M. Carvalho

Miami-Dade County School Board

Perla Tabares Hantman, Chair

Dr. Steve Gallon III, Vice Chair

Lucia Baez-Geller

Dr. Dorothy Bendross-Mindingall

Christi Fraga

Dr. Lubby Navarro

Dr. Marta Pérez

Mari Tere Rojas

Luisa Santos

September 1, 2021

Mr. Richard Corcoran, Commissioner of Education
Florida Department of Education
Turlington Building
325 West Gaines Street, Suite 1514
Tallahassee, Florida 32399

Dear Commissioner Corcoran:

We received your letter of August 27, 2021, demanding that the School Board of Miami-Dade County, Florida ("School Board"), document its full compliance with Florida Department of Health Emergency Rule 64DER21-12, Protocols for Controlling COVID-19 in School Settings ("Rule 64DER21-12") by September 1, 2021. As you are aware, the Circuit Court of the Second Judicial Circuit in and for Leon County ("Court") **enjoined** administrative agencies from taking any enforcement actions stemming from the Governor's Executive Order 21-175. Consequently, your threatened enforcement of Rule 64DER21-12 is not permitted. We would also note, in any event, it is our position that we have been in compliance with Rule 64DER21-12 since it was issued, as well as recently adopted legislation including Florida Statute § 252.36(1)(c) and Florida Statutes, Chapter 1014, the "Parents' Bill of Rights."

As the Court ruled, it is *pursuant* to the Parents' Bill of Rights that school districts have the right to enact mask mandates in accordance with their constitutional duty under Article IX, § 1, of Florida's Constitution to provide safe, secure schools, as long as the mandates are reasonable, based on a compelling interest, are narrowly tailored, and are the least restrictive means available. Indeed, as the Court also held, it is actually the agency's infringement on a school district's right to enact such a mandate — *e.g.*, through prior restraints on local school board action — that violates the Parents' Bill of Rights and the Florida Constitution.¹

It is clear that the School Board has a compelling state interest in controlling a deadly communicable disease, like COVID-19. Accordingly, the School Board relied on the advice of medical and public health experts and exercised its duty to protect the lives and health of students and employees through the least restrictive means possible. Miami-Dade County Public Schools ("M-DCPS") remains in compliance with

¹ Any position expressed in this response is without prejudice to or limitation of any legal positions the School Board of Miami-Dade County may adopt in other legal proceedings. The School Board is currently challenging Rule 64DER21-12 through a petition to Florida's Third District Court of Appeal. *See School Board of Miami-Dade County, Florida v. Florida Department of Health and Scott A. Rivkees, as Surgeon General of Florida*, Case. No. 3D21-1748.

² Video of the Ad Hoc Medical and Public Health Experts Task Force's meeting of August 16, 2021, outlining its findings, is available online using the following link: <https://m-dcps.eduvision.tv/Default.aspx?q=3SfVi13wT7SR7CKAQLb7HfJBhsJkHGh7orwU%252f0YSe5KH%252bzxzuOxw%253d%253d>

the Parents' Bill of Rights and Article IX, § 1, by basing its local decision to "temporarily" require student facial coverings on the advice and recommendations of the Superintendent's Ad Hoc Medical and Public Health Experts Task Force², U.S. Centers for Disease Control and Prevention, Florida Department of Health³, and American Academy of Pediatrics. Additionally, M-DCPS is monitoring county-wide health data including community transmission, vaccine availability for children, hospitalizations and ICU admissions versus capacity, and positivity rate on a regular and consistent basis, and adjusting our approach based on local public health conditions.

The School Board voted on August 18, 2021, at a regularly scheduled meeting, to authorize the Superintendent of Schools, among other things, to temporarily require facial coverings for all students except those with medical exemptions, in a manner consistent with section 1003.22, Florida Statutes, School Board policy, and based on local COVID-19 positivity rates, as well as to continuously review and assess local positivity rates and use such data and related information to modify and/or discontinue any established protocols and/or requirement for facial coverings. See Excerpts from Unofficial Minutes of August 18, 2021, School Board Meeting, attached as "Exhibit A"; see also Miami-Dade School Board Policy 8453, *Control of Communicable Diseases*, attached as "Exhibit B." Rule 64DER21-12 generally requires an opt-out for parents but does not set forth the criteria or procedures for the opt-out. The establishment of criteria and procedures remains the responsibility of local school districts. Consequently, M-DCPS' **temporary requirement of facial coverings, with an opt-out for medical conditions** meets the requirements of Rule 64DER21-12.

Further, in conformity with Florida Statute § 252.36(1)(c) and the Florida Legislature's express intent that "during an extended public health emergency, such as the COVID-19 pandemic, there should be a presumption that K-12 public schools, to the greatest extent possible, should remain open **so long as the health and safety of students and school personnel can be maintained by specific public health mitigation strategies recommended by federal or state health agencies for educational settings**," the School Board has implemented a number of layered mitigation strategies. The health, safety and welfare of our students is our highest priority, and we will continue to uphold our constitutional duty to protect our students while respecting the rights of parents to make decisions about their children's health and upbringing.

Given the COVID-19 mitigation measures outlined herein, M-DCPS is in compliance with all applicable laws, rules and orders related to the operation of public schools. Further, based upon the Court's ruling, the initiation of an investigation regarding non-compliance with Rule 64DER21-12 is unwarranted. Therefore, we respectfully request your review and reconsideration of the matter referenced in your letter dated August 27, 2021.



Perla Tabares Hantman, Chair
The School Board of Miami-Dade County, Florida

Sincerely,



Alberto M. Carvalho
Superintendent of Schools

Attachments

cc: School Board Members
School Board Attorney

³ Florida Department of Health website: <https://floridahealthcovid-19.gov/prevention/> How do I prevent and prepare for COVID-19? How can I protect myself?

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA

Miami, Florida

Excerpts from Unofficial Minutes of August 18, 2021 School Board Meeting

		APPROVED`	Bid Opening Lists of June 17, 2021 and July 13, 2021.
		APPROVED	Minutes of July 14, 2021 Regular School Board meetings and First Budget Public Hearing of July 28, 2021.
121,428	<u>A-1</u>	HEARD	Superintendent's Informational Reports to the Board on Selected Topics.
121,429	<u>A-2</u>	WAIVED/ SUSPENDED	Prohibitions outlined in Board Policies 5830, Student Fundraising, and 9700, Relations with Special Interest Groups, in order to allow fundraising and/or other charitable activities in support of relief efforts in response to the Haitian Earthquake disaster.
-----	<u>B-3</u>	WITHDREW	The approval of Resolution No. 21-033 of The School Board of Miami-Dade County, Florida, recognizing Winston Elliot Scot, retired United States Navy Captain and former National Aeronautics and Space Administration (NASA) Astronaut.
121,430	<u>B-4</u>	APPROVED*	Resolution No. 21-036 of The School Board of Miami-Dade County, Florida, recognizing Mr. Andres Asion. * Amended to include Dr. Steve Gallon III, Vice Chair; Dr. Marta Perez, Ms. Lucia Baez-Geller and Ms. Luisa Santos, School Board members; as co-sponsors of the item.
121,431	<u>B-6</u>	APPROVED*	Resolution No. 21-032 of The School Board of Miami-Dade County, Florida, recognizing Ms. Andrea Pita, a junior at School for Advanced Studies (SAS) West Campus, for organizing a service project known as "The Anxiety Kids." * Amended to include Ms. Perla Tabares Hantman, Chair; Dr. Steve Gallon III, Vice Chair; Dr. Dorothy Bendross-Mindingall, Dr. Marta Perez, Dr. Lubby Navarro, Ms. Lucia Baez-Geller, Ms. Maria Teresa "Mari Tere" Rojas and Ms. Luisa Santos, School Board members; as co-sponsors of the item.
121,432	<u>B-7</u>	APPROVED*	Resolution No. 21-034 of The School Board of Miami-Dade County, Florida, recognizing Mark Zaher for his retirement after 36 years of dedicated service to the Miami-Dade County Public Schools. * Amended to include Ms. Perla Tabares Hantman, Chair; Dr. Dorothy Bendross-Mindingall; Dr. Marta Perez, Dr. Lubby Navarro, Ms. Lucia Baez-Geller, Ms. Maria Teresa "Mari Tere" Rojas and Ms. Luisa Santos, School Board members; as co-sponsors of the item.

-----	<u>B-8</u>	WITHDREW	The approval of Resolution No. 21-035 of The School Board of Miami-Dade County, Florida, recognizing the Adaptive Beach Days Program.
121,433	<u>D-19</u>	AUTHORIZED	The Superintendent to enter into a contractual services agreement between The School Board of Miami-Dade County, Florida, and Citizen's Crime Watch of Miami-Dade County, Inc., in an amount of \$71,000.
121,434	<u>D-20</u>	APPROVED	Personnel Action Listing 1146 with Instructional and Support Personnel appointments, reassignments, leaves, separations, retirements, and resignations from June 25, 2021 through July 15, 2021.
121,435	<u>D-21</u>	APPROVED	<ol style="list-style-type: none"> 1. Change of title and minimum qualifications to MEP position: Staff Specialist, Procurement, MEP pay grade 18 to Senior Purchasing Agent, MEP pay grade 18, Office of Procurement Management Services. 2. The recommendation for appointments and lateral transfers to be effective August 19, 2021, or as soon thereafter as can be facilitated, with the exception of the effective dates as noted throughout the item and authorize compensation adjustments, as delineated in the Official Agenda Item.
121,436	<u>D-23</u>	RATIFIED	The 2021-2024 Tentative Agreement Successor Contract with DCSAA effective July 1, 2021 through June 30, 2024.
121,437	<u>D-24</u>	RATIFIED	The 2021-2022 Tentative Agreement Reopener Contract with UTD effective July 1, 2020 through June 30, 2023.
121,438	<u>D-25</u>	RATIFIED	The 2021-2024 Tentative Agreement Successor Contract with AFSCME effective July 1, 2021 through June 30, 2024.
121439	<u>D-26</u>	APPROVED	<ol style="list-style-type: none"> 1. A non-recurring 3% supplement for 2020-2021 and a one-time stipend of one thousand five hundred (\$1,500) dollars for 2021-2022 for eligible CEP employees. 2. A non-recurring 3% supplement for all eligible MEP for 2020-2021 and a one-time stipend of one thousand five hundred (\$1,500) for 2021-2022 for principals, inclusive of the Governor's Relief Fund Bonus. Approve a one-time stipend of one thousand five hundred dollars (\$1,500) to all other eligible MEP employees for 2021-2022, matching the stipend provided to principals. Approve a salary adjustment for eligible school-site MEP of .57% or .76% for performance as required by law. 3. A one-time stipend of five hundred dollars (\$500) for all eligible MEP employees.

121,440 **D-55** **APPROVED**

1) The Superintendent's recommendation for approve the Superintendent's recommendation for disciplinary action, which has been agreed to by the employees.

A) Chondria N. Essix: suspension without pay from her position as Custodian at Georgia Jones-Ayers Middle School, for ten (10) calendar days, effective August 19, 2021.

B) John McMahon: suspension without pay from his position as Custodian at Georgia Jones-Ayers Middle School, for ten (10) calendar days, effective September 16, 2021.

2) That the School Board of Miami-Dade County, Florida, approve the Superintendent's recommendation for disciplinary action, pending the outcome of an administrative hearing or grievance/arbitration proceeding, if requested.

A) Dubraska Guevara: suspension without pay and initiation of dismissal proceedings from her position as Sergeant at North Operations Station 2, Miami-Dade Schools Police Department, effective August 19, 2021.

B) Yewande Smith: demotion from her position as Sergeant at North Operations Station 1, Miami-Dade Schools Police Department, to Police Officer, effective August 19, 2021.

121,441 **D-65** **APPROVED**

A. Four (4) charter contract amendments with:

1. BridgePrep Academy, Inc. d/b/a BridgePrep Academy of Village Green (MSID 3034) to (1) allow the school to expand grade levels.

2. Mater Academy, Inc., d/b/a -

a. Mater Academy East Middle School (MSID 6009),

b. Mater Academy East Charter High School (MSID 7037).

3. Somerset Academy, Inc., d/b/a Somerset Academy Charter High School (MSID 7042).

B. Approve a Reduction-in-Force/Layoff as needed, only to the extent described in the Official Agenda Item as Total Loss, in accordance with School Board Policies and applicable collective bargaining agreements.

121,442 **D-66** **AUTHORIZED**

The Superintendent:

A. To negotiate and execute a Second Amendment to the School of Hope

Performance-Based Agreement with KIPP Miami, Inc., on behalf of KIPP Miami-Liberty City based on the issues as reflected in the Proposed Second Amendment to PBA referenced herein; and

B. In collaboration with the School Board Attorney, to seek administrative dispute resolution, pursuant to section 1002.333(11)(c), F.S., in the event that the parties do not reach agreement on the issues as reflected in the Proposed Second Amendment to PBA referenced herein.

121,443	<u>D-67</u>	APPROVED	The attached list of out-of-county/out-of-state trips for the 2021-2022 school year for use in conjunction with School Board Policy 2340 – <i>Field and Other District-Sponsored Trips</i> .
121,444	<u>E-86</u>	RECEIVED/ FILED	<u>The School Board of Miami-Dade County, Florida Audit Plan and AU 260 Communication for the fiscal year ended June 30, 2021.</u>
121,445	<u>E-87</u>	RECEIVED/ FILED	The <u>Office of Management and Compliance its' 2021 - 2022 Audit Plan.</u>
121,446	<u>E-88</u>	RECEIVED/ FILED	The <u>Internal Audit Report – Selected Schools/Centers.</u>
121,447	<u>E-89</u>	RECEIVED/ FILED	<u>Audited Financial Statements for Five (5) Community – Based Organizations (CBOs).</u>
121,448	<u>E-141</u>	AWARDED	<ol style="list-style-type: none"> 1. Invitation To Bid No. ITB-20-058-MJ – School Bus Routes for Private Bus Companies, to establish contracts, at firm unit prices, as delineated in the Official Agenda Item. 2. Authorize Procurement Management Services to purchase up to the total estimated amount of \$8,304,000 for the initial contract term and an amount not to exceed \$2,768,000 for each subsequent one (1) year extension period.
121,449	<u>E-203</u>	APPROVED	Tentatively, for planning purposes, the following schedule of Board meeting dates for the period January-December 2022: January 12, February 9, March 9, March 30 (Instructional Materials Public Hearing), April 13, May 18, June 22, July 20, July 27 (First Budget Public Hearing), August 17, September 7 (Regular Meeting/Second Budget Public Hearing), October 19, November 22 (Organization Meeting/Regular School Board Meeting), and December 14. The final listing of meeting dates for 2022 will be established by the Board at the 2021 Organization Meeting scheduled for Tuesday, November 16, 2021. Furthermore, no fewer than two (2) Budget Workshops shall be scheduled between May and the First Budget Public Hearing in preparation for the Budget cycle.

121,450	<u>F-1</u>	AUTHORIZED	<p>The Superintendent to:</p> <ul style="list-style-type: none"> A) finalize negotiations and execute a Construction and Temporary Access Agreement (“Access Agreement”) between the School Board and the City of Miami Beach (“City”), as delineated in the Official Agenda; B) execute amendments to the Access Agreement within the authority granted to the Superintendent by the Board in the Access Agreement; and C) grant or deny all approvals or waivers required under the Access Agreement, including, without limitation, extending the term of the Access Agreement by up to six (6) additional months upon receipt of a written request from the City, placing the City in default, and canceling or terminating the Access Agreement, as may be applicable.
121,451	<u>F-2</u>	AUTHORIZED	<p>The Superintendent execute an amendment to Lease Agreement between KIPP Miami, Inc., a Florida not for profit corporation, and the School Board, for use of classroom and ancillary space at Madison Middle School, located at 3400 N.W. 87 Street, Unincorporated Miami-Dade County, Florida 33147, for the operation of a School of Hope charter school, all under, substantially, the terms and conditions noted in the agenda item.</p>
121,452	<u>F-3</u>	ACCEPTED	<ul style="list-style-type: none"> 1) From the County, the total amount of \$850,000, to be utilized for the construction of the Playfield Facility; 2) Waived Board Policy 7510 to allow the consumption of alcoholic beverages on the Multipurpose Facility site (strictly and specifically defined and limited to beer and wine), but not the sale, during Limited Events, as such term is defined in the Interlocal Agreement; and 3) Authorized the Superintendent to: <ul style="list-style-type: none"> a. finalize negotiations and execute an Interlocal Agreement by and between The School Board of Miami-Dade County, Florida, and Miami-Dade County (“County”), relating to facility enhancements at Miami Arts Studio 6-12 at Zelda Glazer (“School”), to provide for the construction by the County of a Multipurpose/Soundscape Facility (“Multipurpose Facility”) and joint use of the Multipurpose Facility, Playfield Facility and School Parking Lot, and under, substantially, the terms noted in the agenda item; b. negotiate and execute any other appropriate documents or agreements between the Board and County necessary to effectuate the implementation of the

Interlocal Agreement, as mutually agreed to by the Parties; and

- c. grant or deny all approvals required under the Interlocal Agreement, including executing amendments to the Interlocal Agreement within the authority granted him by the School Board, placing the County in default, and canceling or terminating the Interlocal Agreement, as may be applicable.

121,453	<u>F-40</u>	CONFIRMED/ APPROVED	B-1. Change Order Number 3 on Project Number 01654500. B-2. Change Order Number 2 on Project Number 01619400. B-3. Change Order Number 6 on Project Number 01892600. B-4. Change Order Number 5 on Project Number 01619800.
121,454	<u>F-41</u>	AWARDED	To Veitia Padron, Incorporated, the new 12-classroom addition project at West Homestead K-8 Center; Project Number 02099200; on the basis of the lowest adjusted Base Bid in the amount of \$3,737,436.78.
121,455	<u>F-58</u>	RECEIVED	The Miami-Dade County Public Schools Annual Safety-to-Life Inspection Documents.
121,456	<u>F-80</u>	APPROVED	The prequalification certificates for six (6) new, one (1) increase, and one (1) decrease contractor application for educational facilities construction, as listed on Attachment "A."
121,457	<u>G-1</u>	AMENDED	Board Policy 0155, <i>School Board Committees</i> , and authorize the Superintendent to file the policy with The School Board of Miami-Dade County, Florida, to be effective August 18, 2021.
121,458	<u>G-2</u>	AMENDED	Board Policy 9140, <i>Citizens' Advisory Committee Meetings</i> and Board Policy 9125, <i>Notice of District Advisory Committee Meetings</i> , and authorize the Superintendent to File the polices with The School Board of Miami-Dade a, to be effective August 18, 2021.
121,459	<u>G-4</u>	AUTHORIZED	The Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to amend School Board Policy 9215, <i>Direct-Support Organizations</i> .
-----	<u>G-5</u>	WITHDREW	The adoption of the Recommended Order of the Administrative Law Judge in its entirety as its Final Order in the case of <u>The School Board of Miami- Dade County, Florida v. Chermona Francois-Smith</u> , DOAH Case No. 21-0066TTS, sustaining the suspension of Respondent's employment as a teacher, without pay, for fifteen (15) workdays.

121,460	<u>H-3</u>	DIRECTED	<p>The Superintendent:</p> <ol style="list-style-type: none"> 1. Ensure that all Miami-Dade County Public School (M-DCPS) principals, staffs, and parents/guardians are informed of the requirements of House Bill 529 Moments of Silence in Public Schools; 2. Ensure that parents/guardians are informed and encouraged to have conversations with their children as to the best use of this time; 3. Provide an update on any specific actions taken, detailed tangible strategies used to communicate this information to M-DCPS principals, staffs, parents/guardians in multiple languages, and any applicable School Board policy amendment recommendations to be made, and presented to the Academics, Innovation, Evaluation and Technology Committee Meeting in September 2021, in preparation for implementation of HB 529 in the 2021-2022 school year; and 4. Initiate rulemaking, as necessary, to formalize this requirement in School Board policy.
121,461	<u>H-5</u>	ENDORSED	The month of September 2021 as National Suicide Prevention Awareness Month in Miami-Dade County Public Schools (M-DCPS).
121,462	<u>H-6</u>	DIRECTED	The Superintendent of Schools to assess and identify a fiscally responsible opportunity to include a financial recognition to Miami-Dade County Public Schools teachers for the upcoming school year, in light of the additional work associated to the implementation of the district's new Learning Management System (LMS). A report on this assessment must be provided to the Board at the Personnel, Student, School and Community Support Committee meeting of September 1, 2021.
121,463	<u>H-7</u>	DIRECTED	The Superintendent of Schools to review current School Board policies to ensure the Board's compliance with the provisions of the 2021 Florida Adopted Legislation HB 241 – <i>Parents' Bill of Rights</i> ; provide the Board a report of this review by October 1, 2021; amend any Board policies, as appropriate; and, if necessary, initiate rulemaking proceedings to develop a School Board policy pursuant to HB 241 in accordance with the Administrative Procedure Act to be presented at the School Board meeting of October 20, 2021, for initial reading.
121,464	<u>H-8</u>	RECOMMENDED	That the Superintendent review existing administrative directives and procedures and determine whether they need to be updated to ensure that all GOB vendors are paid on a timely basis and report back to the board during the October 20, 2021, meeting. This item also seeks to request that the Superintendent establish a

monthly report of all pending GOB related projects during the Facilities and Construction Committee meetings.

121,465	<u>H-9</u>	RECOGNIZED	Mr. Steven Ferreiro.
121,466	<u>H-10</u>	DIRECTED	<p>The Superintendent to:</p> <ol style="list-style-type: none">1. implement the competitive bidding process for all technology related hardware and software and, any procurement of goods and services that are funded through COVID-19 stimulus funds, including the American Rescue Plan Act of 2021 for expenditures that exceed \$50,000.00 single and \$100,000.00 aggregate;2. identify spending authority approved by the School Board for such procurements and purchases with American Rescue Plan Act of 2021 and/or related COVID-19 federal stimulus funds and include the total and/or not to exceed total costs of such procurement of goods and services purchased through the same; and3. provide an update on above actions to the School Board in writing that include but are not limited to what actions will be taken within the procurement process and by the Chief Procurement Officer regarding recommendations #1 and #2 no later than September 10, 2021.
121,467	<u>H-11</u>	ENDORSED	The 2021 International “Walk to School Day,” and implement the “WalkSafe” pedestrian safety program curriculum during the week of the event.
121,468	<u>H-12</u>	ENDORSED	Ethical Governance Day 2021” to take place on October 20, 2021, in Miami-Dade County Public Schools sponsored by the Miami-Dade County Commission on Ethics and Public Trust.
121,469	<u>H-13</u>	ENDORSED	Hispanic Heritage Month in Miami-Dade County Public Schools from September 15, 2021 through October 15, 2021.
121,470	<u>H-14</u>	DIRECTED	<p>The Superintendent to:</p> <ol style="list-style-type: none">1. annually increase, at each school, the number of secondary students participating in local, state, national, and international competitions;2. improve access to available information pertaining to academic competitions and enhance the flow of communication to school sites on an annual basis for the purpose of engaging more students in such activities;3. encourage all gifted programs that serve primary and intermediate grade level students to participate, on an annual basis, in at least one problem-solving or critical thinking skills contest;

4. require all secondary gifted programs to participate in at least one problem-solving or critical thinking skills contest on an annual basis;
5. explore the feasibility of providing stipends to teachers who prepare and coach students in out-of-school competitions;
6. explore securing donations or other outside sources of funding to support out-of-school competitions;
7. develop a plan to inform parents, students, and stakeholders of the gifted offerings in their feeder pattern;
8. develop a plan to provide professional development and re-certification to those gifted certified teachers who may require updated information and exposure to new teaching strategies; and
9. provide a response to the School Board no later than the School Board meeting of October 2021.

121,471 **H-15** **AUTHORIZED**

The Superintendent to:

1. explore the feasibility of adding extended learning afterschool programs districtwide for students;
2. review the possibility of compensating educators at their respective schools to teach extended learning classes;
3. consider and explore the feasibility of providing a nutritious meal to students during extended learning classes;
4. determine the cost of providing 1, 2 and 3; and
5. provide an update at the Academics, Innovation, Evaluation & Technology Committee in December 2021.

121,472 **H-16** **REAFFIRMED***

Its commitment to supporting post-secondary success for students by initiating the Framework for Post- Secondary Success and directing the Superintendent to:

1. Collect and organize district-wide and school-site baseline data sourced from National Clearinghouse reports on student post-secondary matriculation and persistence, differentiating between institution type (vocational/technical, military pathway, 2 year, 4 year, private, public, in-state, out-of-state, etc.), time to graduation, and institution/programs attended; and publish this data on dadeschools.net in an interactive, digestible, and user-friendly format for CAP

Advisors, school administration, student services, and the general public by March 2022;

2. Present the baseline data at the Academics, Innovation, Evaluation, and Technology Committee Meeting of March 2022;
3. Launch annual school-specific post-secondary reports, inclusive of all Clearinghouse data listed in Action Proposed 1 and SCOIR reports, including but not limited to application, enrollment, and other post-secondary plan trends, to site stakeholders and on dadeschools.net by July 2022 and by July 30th of every year thereafter;
4. Provide annual training and support for CAP Advisors to facilitate their understanding, analysis, and utilization of the annual post-secondary reports to inform practices and programming at their school sites with the intent of ultimately 1) increasing program enrollment to ensure all students have a viable post-secondary plan before graduating, 2) improving program fit to avoid issues of undermatching, and 3) maximizing the financial aid and institutional scholarships students are offered in the application process that minimize loan dependency; and
5. Create and implement a post-secondary advising curriculum with clear standards inclusive of an annual timeline with expected student/family/CAP advisor actions and outcomes by grade level no later than the start of the 2022-2023 school year. Utilize this guide to align all post-secondary planning efforts throughout M-DCPS and across community partner organizations.

* **Amended** to include Ms. Lucia Baez-Geller, School Board Member; as co-sponsors of the item.

121,473 **H-17** **DIRECTED***

The Superintendent to:

1. update procedures for COVID-19 related identification, notification, quarantine, and testing and confirm the process for COVID-19 testing for employees that confirm current positive or negative status;
2. update the implementation of the Board policies granting the Superintendent the authority to control communicable diseases and the spread of COVID-19, by authorizing the Superintendent to explore the feasibility of requiring temporarily require, in a manner consistent with School Board policies and based on local COVID-19 positivity rates, facial coverings for all students, except those with medically endorsed accommodations, as defined in s. 1003.22 of the Florida Statutes. In addition, the requirement shall apply to all

employees, contractors and visitors while inside M-DCPS school buildings ~~except for students whose parents exercise their right to affirmatively elect not to have their child wear facial coverings in school; and while all students are on school buses.~~ The Superintendent shall continuously review and assess local positivity rates and use such data and related information to modify and /or discontinue any established protocols and/or requirement for facial coverings. A written update shall be provided to the School Board on any modifications to protocols and/or requirement for facial coverings on a weekly basis.

3. explore the availability of cost neutral partnerships with entities, organizations, and/or municipalities for COVID-19 testing and vaccinations;
4. provide an updated communication plan and strategy for employees, parents, community stakeholders, and students regarding relevant and related COVID-19 procedures governing identification, notification, quarantine, testing and vaccinations;
5. update any criteria for determining the closure of individual schools for reasons related to COVID-19;
6. update procedures for contact tracing as appropriate;
7. update procedures and processes to monitor quarantined students pursuant to established CDC guidelines and/or requirements; and
8. provide an update to the Board on the above steps taken as well as any additional COVID-19 relevant information in (a) written update by August 19, 2021; (b) a presentation at the September 1, 2021, Personnel, Student, School & Community Support Committee meeting; (c) disseminate such presentation to employees, parents, community stakeholders, and students; and (d) ensure availability and access to such updates on the M-DCPS website.
9. Provide weekly, monthly and periodic reporting to the School Board and State Board of Education on any related matters determined to be noncompliant by the State Board of Education on a weekly, monthly or periodic basis, as may be necessary and /or required, pursuant to Florida Statute 1008.32.

* **Amended** as reflected above.

121,474

H-18

DIRECTED

The Superintendent to:

1. re-establish an easily accessible M-DCPS COVID-19 Dashboard with data and relevant information that include but are not limited to the number of confirmed COVID-19 cases for overall school District and categorized by school and school level (elementary, middle, K-8, senior high, Adult/Alternative/Vocational), voting district, District/Region office, employees, students (where available/legal/appropriate), and contractors working on District/school facilities, to be active for the beginning of the 2021-2022 school year, where practicable; and
2. provide a status update in writing to the School Board no later than August 19, 2021.

121,475 **H-19** **DIRECTED**

The Superintendent to:

1. review the procurement practices and protocols of the District's Food and Nutrition Program as they specifically relate to the alignment and compliance with School Board Policy 6320.02, Small/Micro, Minority/Women, and Veteran Business Enterprise Programs;
2. provide an expenditure report for the fiscal years ending June 2018, 2019, and 2020, to determine the levels and amount of contracting with certified small/micro, minority/women, and veteran owned businesses; and
3. provide an update to the School Board no later than October 1, 2021.

121,476 **H-20**

The Superintendent to:

1. Review the establishment of a mental health service day in which students will be notified of the resources at their disposal and will be allowed to participate in interactive activities that will help boost their morale and destigmatize mental health;
2. Evaluate the possibility of providing M-DCPS students with a mental health hotline that is accessible twenty-four hours a day and seven days a week;
3. days a week;
4. Review the attainability of developing a mental health safe space within schools that can be made in the form of a lounge area and that should include the office of the school's official psychologist/therapist;
5. Assess the effectiveness of the mental health resources that are currently available to students;
6. Assess the effectiveness of the seminars/workshops school personnel attend to understand how to properly address a student who is in distress;

7. Assess the effectiveness of adding a five to ten- minute stress break during the school day so that students can be provided with time to decompress; and
8. to the Board at the November 17, 2021 School Board Meeting.

121,477 **H-21** **DIRECTED**

The Superintendent to explore and review the feasibility of addressing the role of the Student Advisor by:

1. Ensuring that the representatives of DSGA (including the Student Advisor) are formally introduced to the students in the district and that they meet with the president of SGA at every school at monthly DSGA meetings;
2. Establishing an initiative to notify the students of MDCPS of what DSGA is, of who the members of it are, and of how the members of it can be contacted (e.g., sending emails that contain this information to their Dade schools Email);
3. Adding a comment tab to the student portal so that the students of the district will be able to voice their concerns in an easy and efficient manner;
4. Reviewing policy 0141.1, which provides a description of the Student Advisor's role to the School Board, to ensure that it is aligned with current District practices for the selection of the Student Advisor;
5. Providing the appointed Student Advisor with an orientation on how school board meetings are conducted, how the tasks of the Student Advisor should be accomplished, and on the functions of the school board
6. Distributing a survey to the students of MDCPS to assess whether they know that there is student representation at the district level and whether they know how they can relay their concerns to their representatives; an
7. Requesting an end-of-the-year report from the members of DSGA that entails their accomplishments and will illustrate to the students of the district how they have been represented (similar to how the students of DSGA did in 2006), and report back to the Board at the Nov. 17, 2021 School Board Meeting.

Adjourned
/svl



Book	Policy Manual
Section	8000 Operations
Title	CONTROL OF COMMUNICABLE DISEASES
Code	po8453
Status	Active
Adopted	May 11, 2011
Last Revised	October 21, 2020

8453 - CONTROL OF COMMUNICABLE DISEASES

In order to protect the health and safety of the District community, the Superintendent shall adopt protocols for controlling communicable diseases that occur on School Board property, at a School Board activity, and on School Board provided transportation.

A. Communicable Diseases

Communicable diseases can often spread by direct, close, or casual contact with germs or parasites from another individual, or by respiratory (airborne) transmission through droplets from sneezing, coughing, or speaking. Epidemics are widespread occurrences of infectious diseases that are actively spreading and substantially exceeding expected cases. Epidemics can have pandemic risk potential based on their emergence, availability of therapeutics and/or vaccines, and public health impact. A pandemic is an epidemic that has spread over several countries or continents, usually affecting large numbers of people.

Commonly known communicable diseases include, but are not limited to, coronaviruses, chicken pox, diphtheria, scarlet fever, strep infections, whooping cough, mumps, measles, rubella, tuberculosis, influenza, pediculosis (head lice), ringworm, and any others designated by the Florida Department of Health, the United States Department of Health and Human Services, and/or the Centers for Disease Control and Prevention (CDC). Direct contact diseases are transmitted through body fluids and excretions, including but not limited to, HIV (human immunodeficiency virus), AIDS (acquired immune deficiency syndrome), AIDS related complex (condition), HAV, HBV, HCV (hepatitis A, B, C), and any others specified by the Florida Department of Health, the United States Department of Health and Human Services, and/or the CDC.

B. Control of Communicable Diseases

The Superintendent shall develop and implement administrative procedures for the control of communicable diseases, including but not limited to:

1. Instructing staff members and disseminating available and reliable information in the detection of common diseases and protocols for their prevention and control;
2. Requiring that employees immediately report to their supervisor any exposure, symptoms, diagnosis and/or positive test of any casual contact communicable disease identified by the Superintendent;
3. Isolating students and employees who have received a positive test result or may be infected with a communicable disease;
4. Preparing standards for the readmission of students and employees who have recovered from communicable diseases and no longer pose a risk of infection to others; and
5. Filing of reports as required by law and the Florida Department of Health.

During times of elevated communicable disease community spread, the Superintendent shall issue periodic guidance and directives aligned with the recommendations of public health officials and applicable government guidance and orders. During an outbreak of a communicable disease that can be transmitted by casual contact or in a respiratory or airborne manner, the Superintendent's directives may include mandatory protocols, including but not limited to, physical distancing, facial coverings, and/or other protective measures.

The Superintendent may develop programs for students and staff to understand the manner in which these diseases may be prevented and how they are transmitted. These programs should specify the risk factors involved, how to deal with those risks, and emphasize that these diseases are preventable if basic precautions are taken.

C. Enforcement of Safety Protocols for Controlling the Spread of Communicable Diseases

All individuals on Board property, at a Board activity, and on Board provided transportation shall comply with this policy. If a student refuses to comply, after being directed by a teacher or administrator to do so, the principal may issue discipline for a disruption to the educational process or orderly operation of a school prohibited by the Code of Student Conduct. In this instance, the student may be required to receive educational instruction via online or remote learning if the reassignment is determined necessary to protect the health and safety of the student or others.

Employees who violate this policy may be subject to disciplinary action in accordance with the applicable collective bargaining agreement and Board policies.

Members of the public, vendors, contractors, and other visitors should be informed of the application of this policy, and if they refuse to comply after being reminded, they may be denied entry to a Board facility or required to leave.

D. Confidentiality

The fact that any member of the District community has contracted a communicable disease will be maintained as confidential to the extent permitted by law and safe operation of schools. This policy is not intended to abridge the rights of students, staff members, and District community under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Individuals with Disabilities Education Act, or any other applicable federal or state law. Should a student be unable to attend school as a result of an illness under this policy, an alternative delivery of instruction shall be provided in conformity with available options allowed by law.

The Superintendent shall comply with all applicable Federal and State laws, executive orders, and health department regulations to update communicable disease protocols as necessary. Policy 5320, *Immunization*, establishes additional protocols for this purpose.

Effective 7/1/11
Revised 10/21/20

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Legal	F.S. 381.00315
	F.S. 1001.41
	F.S. 1001.42
	F.S. 1001.43
	F.S. 1006.07
	F.S. 1006.08
	F.S. 1006.09
	F.S. 1012.23
	F.S. 1012.27
	F.S. 1012.28

EXHIBIT F



Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

September 23, 2021

Mr. Alberto Carvalho
Superintendent
Miami-Dade County Public Schools
1450 NE Second Avenue
Miami, FL 33132

Ms. Perla Tabares Hantman
School Board Chair
Miami-Dade County Public Schools
1450 NE Second Avenue
Miami, FL 33132

Dear Superintendent Carvalho and Chair Tabares Hantman:

This letter is to advise you of the Department of Health's new emergency rule revising the "Protocols for Controlling COVID-19 in School Settings" and to provide you one more opportunity to come into compliance with the requirements established by the Department of Health.

A copy of the Department of Health's new rule, 64DER21-15, is attached. It revises the requirements for quarantining asymptomatic students who have been exposed to COVID-19 and further clarifies the parental opt-out provision to foreclose the erroneous interpretation that the parental opt-out permits a medical-only opt-out. That provision now provides that "... the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's **sole discretion.**" See, [Rule 64DER21-15\(1\)\(d\), Florida Administrative Register, Vol. 43 / No. 185](#), September 23, 2021 (emphasis supplied). The purpose of these changes is explained by the Department of Health in its notice for the new rule.

The Department [of Health] observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department [of Health] observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

Mr. Carvalho, Ms. Tabares Hantman
September 23, 2021
Page Two

I am continuing the investigation of your district's mask mandate that I notified you by letter of August 27, 2021. Based upon the authority provided to me under s. 1008.32(2)(a), Florida Statutes, I request that you provide a written response by 5:00 p.m. on September 24, 2021, documenting how your district is complying with that portion of the Department of Health's Emergency Rule 64DER21-15, that continues to give parents or legal guardians the sole discretion to opt a student out from a mask or face covering mandate.

As I have done before, if you fail to document full compliance, I intend to recommend to the State Board of Education that the Department of Education withhold funds in an amount equal to the salaries for all members of the School Board, as well as other sanctions authorized by law, for the period during which the district has been out of compliance.

Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Corcoran", with a long horizontal flourish extending to the right.

Richard Corcoran
Commissioner

EXHIBIT G



Miami-Dade County Public Schools

giving our students the world

Superintendent of Schools

Alberto M. Carvalho

Miami-Dade County School Board

Perla Tabares Hantman, Chair

Dr. Steve Gallon III, Vice Chair

Lucia Baez-Geller

Dr. Dorothy Bendross-Mindingall

Christi Fraga

Dr. Lubby Navarro

Dr. Marta Pérez

Mari Tere Rojas

Luisa Santos

September 24, 2021

Mr. Richard Corcoran, Commissioner of Education
Florida Department of Education
Turlington Building
325 West Gaines Street, Suite 1514
Tallahassee, Florida 32399

Re: Response to September 23, 2021, Letter Regarding Department of Health Emergency Rule 64DER21-15

Dear Commissioner Corcoran:

We are in receipt of your correspondence dated September 23, 2021, providing a copy of the New Department of Health Rule, which two days ago repealed and replaced Rule 64DER21-12.

As you may be aware, and as widely reported in the media, Miami-Dade County Public Schools (M-DCPS) relaxed certain COVID-19 procedures in schools this week, based on a steadily improving trend in local conditions. This action is consistent with School Board direction requiring a weekly review of community-wide COVID-19 indicators. Further, in anticipation of a continued improvement in local circumstances, the District has identified metrics which may soon lead to further relaxation of in-school protocols.

Additionally, M-DCPS continues to work with its Ad Hoc Medical and Public Health Experts Task Force ("Task Force") to develop and implement COVID-19 strategies to protect our students, teachers and staff. We believe that our District and community are moving in a positive direction toward controlling the spread of this virus through continued emphasis on the importance of vaccinations for all eligible individuals and we anxiously await vaccine availability for children under age 12.

We are in the process of analyzing the portion of the New DOH Rule regarding masks. As such, we respectfully request that you extend the date for us to provide you a written response documenting how our district is complying with that portion of the New DOH Rule¹, which authorizes schools to adopt requirements for students to wear masks or facial coverings as a mitigation measure.

Sincerely,

Perla Tabares Hantman, Chair
The School Board of Miami-Dade County, Florida

Alberto M. Carvalho
Superintendent of Schools

cc: School Board Members
School Board Attorney

¹ Any position expressed in this response is without prejudice to or limitation of any legal positions we may adopt in future correspondence or legal proceedings.

Exhibit 5

Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

MEMORANDUM

TO: State Board of Education Members

FROM: Richard Corcoran

RE: Leon County Schools, Student Opt-Out Requirements

DATE: October 4, 2021

Based upon the following memorandum, I find there is probable cause that Leon County Schools (LCS) acted contrary to the law by requiring students to wear a mask or face covering unless certain exceptions apply, such as a medical certification. Specifically, LCS' policy violated the provisions of Rule 64DER21-12, Protocols for Controlling COVID-19 in School Settings and continues to violate Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings.

Background Information

On July 30, 2021, the Governor issued Executive Order Number 21-175, directing the Florida Department of Health (FDOH) and the Florida Department of Education (FDOE) to immediately execute rules and take any additional action necessary to ensure safety protocols for controlling the spread of COVID-19 in schools. The order requires that these protocols be consistent with the Parents' Bill of Rights and directs that action "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Moreover, the order directs the Commissioner of Education to pursue all legal means available to ensure school districts adhere to the law, including but not limited to withholding funds from noncompliant school boards.

On August 6, 2021, in response to the executive order, and after consultation with FDOE, the State's former Surgeon General, Scott Rivkees, as the head of FDOH, adopted an emergency rule establishing protocols for controlling the spread of COVID-19 in schools. Given the statutory duty of FDOH to implement protocols to prevent or limit the impact or spread of disease, the State's Surgeon General must be a licensed physician with advanced training or extensive experience in public health administration. *See* § 20.43(2), Fla. Stat. The rule provided for general protocols for public schools, protocols specific to symptomatic or COVID-19 positive students, protocols specific to students with exposure to COVID-19 and protocols for students with a prior COVID-19 infection. The portion of the rule addressing masks provided as follows: **Students may wear masks or facial coverings as a mitigation measure; however,**

the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask. See Rule 64DER21-12, Protocols for Controlling COVID-19 in School Settings, Florida Administrative Register, Vol. 47 / No. 153, August 9, 2021 (emphasis supplied).

Citing to the Parents' Bill of Rights, the notice for FDOH's emergency rule provided that "it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to allow for in-person education for their children."

On September 22, 2021, under the direction of the State's new Surgeon General, Dr. Joseph Ladapo, FDOH issued a revised rule to address controlling the spread of COVID-19 in school settings. Rule 64DER21-15 relaxes the requirements for quarantining asymptomatic students who have been exposed to COVID-19, and further clarifies the parental opt-out provision by providing that a "school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's **sole discretion.**" See Rule 64DER21-15, Florida Administrative Register, Vol. 47 / No. 185, September 23, 2021 (emphasis supplied). See Exhibit A.

The purpose of these changes is explained by FDOH in its notice for the new rule:

The Department [of Health] observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department [of Health] observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

Id.

Leon County Schools

On August 9, 2021, I, as the Commissioner of Education, wrote the LCS' superintendent and board chair to notify them in writing of my concern with the district's apparent non-compliance with the Department of Health's previous rule, 64DER-21-12. Although Leon County Schools initially amended its mask policy, that decision was short lived.

On Sunday, August 22, 2021, Superintendent Hanna announced via a Facebook Live event that the district was reinstating mask requirements all students, with certain exceptions. The school board met and discussed the policy change on Monday, August 23, 2021. The district's website provides as follows:

Masks Required –

- Temporary use of masks is **required** for **Pre-K - 12th** grade students while indoors throughout the Leon County School District. Ex: In Class, transportation (buses), after school programs, etc. Masks are not required outside.
- For parents who want to opt their **Pre-K - 8th grade student(s)** out of the mask requirement **due to health concerns**, they will need to submit the Prek-8th mask opt-out form that has been **signed by a licensed medical provider**. The medical mask opt-out form is due by **Friday, August 27** to the student's school.
- For parents who want to opt their **9th - 12th grade student(s)** out of the mask requirement due to health concerns or individual freedoms, they will need to submit a parental mask opt-out form. The mask opt-out form is due by **Tuesday, August 17th** to the student's school.

See Exhibit B. The district's policy requires all students from Pre-K through 12th grade to wear a mask or face covering, and provides exceptions for Pre-K-8th grade based only upon medical certification signed by a licensed medical provider. Parents of 9th through 12th grade students may opt their children out of the mask requirement based on health concerns or individual freedoms. *See Exhibit C.*

On August 27, 2021, I wrote the LCS' superintendent and school board chair to notify them of my concern with the district's apparent non-compliance with Rule 64DER21-12 and to afford the district an opportunity to demonstrate compliance. *See Exhibit D.*

On September 1, 2021, LCS' superintendent and board chair responded to me in writing, asserting that the district's policy is narrowly tailored and necessary to achieve the compelling state interest of protecting students. *See Exhibit E.* The letter did not rescind the requirement for medical documentation in order for a student to opt-out of a mask mandate.

On September 23, 2021, due to the adoption of FDOH's new rule, I advised LCS' superintendent and school board chair of Rule 64DER21-15, and afforded the district another opportunity to demonstrate compliance. *See Exhibit F.*

On September 24, 2021, the LCS superintendent and board chair asked for additional time to respond through October 1, 2021. *See Exhibit G.* The letter did not rescind the requirement for medical documentation in order for a student to opt-out of a mask mandate.

In sum, the LCS' policy requires all students in pre-K through 8th grade to wear masks or face coverings inside district property and on district transportation. The policy precludes voluntary parental opt-out at the parent's or guardian's sole discretion.

The State Board of Education's Enforcement Authority

The State Board of Education's enforcement authority is found in section 1008.32, Florida Statutes. The statute provides that "[t]he State Board of Education shall oversee the performance of district school boards [...] in enforcement of all laws and rules." § 1008.32, Fla. Stat.

In enforcing the law, the statutory process prescribed therein requires that I first report my determination of probable cause to the State Board of Education. If the State Board then

determines that a district school board is unwilling or unable to comply with either law or rule, the State Board is authorized to impose sanctions in order to secure compliance, including the withholding of funds and reporting to the Legislature.

Any argument that the State Board's authority to enforce these safety protocols interferes with any district school board's authority to operate and control schools should be summarily rejected. Indeed, the law in Florida is clear that the State Board's supervisory authority acts as a limitation on the operational authority of districts to operate, control and supervise public schools.

Looking to the Florida Constitution, there is a hierarchy under which a school board has local control, but in which the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a board's local powers, but such infringement is expressly contemplated and, in fact, encouraged by the very structure set by the Florida Constitution. *See Sch. Bd of Palm Beach Cty. v. Fla. Charter Educ. Found, Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017) (rejecting school board's argument that the State Board of Education's authority to approve a charter school application on appeal violates article IX, section 4(b)); *see also Sch. Bd of Collier Cty v. Fla. Dep't of Education*, 279 So. 3d 281 (Fla. 1st DCA 2019) (rejecting school board's argument that statute requiring school boards to distribute a portion of capital millage revenue to charter schools violates article IX, section 4(b)).

Accordingly, any argument that the State Board of Education lacks the authority to enforce these school safety protocols should also be rejected. It has long been settled that rules have the force and effect of the law. *State v. Jenkins*, 469 So. 2d 733 (Fla. 1985); *Florida Livestock Board v. W.G. Gladden*, 76 So. 2d 291 (Fla. 1954). Rule 64DER21-15 derives authority from a statute in the educational code—specifically, section 1003.22(3), Florida Statutes—so while FDOH may *also* have enforcement authority, enforcement of school safety protocols falls squarely within the State Board of Education's authority to supervise the state's education system as a whole.

Conclusion

Every school board member and every school superintendent has a duty to comply with the law, whether they agree with it or not. While the district school board may not agree with the safety protocols set forth by the Surgeon General, the Surgeon General is the person who, under the law, sets protocols to control and mitigate COVID-19 in schools. The Office of the Attorney General relied upon these principles to reject any argument a school board could depart from FDOH's emergency rule based upon a disagreement with the protocols found in the rule. *See* AGO 2021-01, September 1, 2021. Disagreement with the protocols found in 64DER21-15 simply does not provide a school district with a basis to violate the rule, be it through medical requirements, attempts to tie mask requirements to fluctuating positivity rates, or through any other means.

All of this in mind, I hereby recommend that the State Board of Education use its enforcement powers to enforce the health protocols found in Emergency Rule 64DER21-15 and protect the right of parents to make both health and educational decisions on behalf of their children.

Should the State Board adopt my recommendation, I request that it consider the sanction of withholding state funds in an amount equal to 1/12 of all school board members' salaries, as well

as withholding state funds in an amount equal to any federal grant funds awarded to LCS for its noncompliance with Emergency Rule 64DER21-15.

EXHIBIT A

Notice of Emergency Rule

DEPARTMENT OF HEALTH

Division of Disease Control

RULE NO.: RULE TITLE:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Because of an increase in COVID-19 infections, largely due to the spread of the COVID-19 delta variant, prior to the beginning of the 2021-2022 school year, it is imperative that state health and education authorities continue to provide emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. In August 2021, all public schools in Florida began the 2021-2022 school year with in-person learning available for all students. The Department of Health adopted Emergency Rule 64DER21-12 on August 6, 2021. Since that time the Department has conducted a review of data for cases of COVID-19 positive school-aged children and data for school-aged children who have been in direct contact with a COVID-19 positive person. The Department observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

In order to permit students to continue in-person learning, to minimize the detriment to students and school personnel from the added burden of recurrent removal of students, and to benefit the overall welfare of students in Florida, it is necessary to provide updated emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. This emergency rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to ensure safety protocols for controlling the spread of COVID-19 in schools that (1) do not violate Floridians' constitutional freedoms; (2) do not violate parents' rights under Florida law to make health care decisions for their minor children; and (3) protect children with disabilities or health conditions who would be harmed by certain protocols, such as face masking requirements. The order directs that any COVID-19 mitigation actions taken by school districts comply with the Parents' Bill of Rights, and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19."

Because of the importance of in-person learning to educational, social, emotional and mental health, and welfare, removing healthy students from the classroom for lengthy quarantines should be limited. Under Florida law, parents and legal guardians have a fundamental right to direct the upbringing, education, health care, and mental health of their minor children and have the right to make health care decisions for their minor children. HB 241, Ch. 2021-199, Laws of Fla. Parents and legal guardians are uniquely situated to understand the health care, emotional, and educational needs of their minor children. In furtherance of the Florida Department of Health's authority to adopt rules governing the control of preventable communicable diseases—and because students benefit from in-person learning—it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to maximize the allowance of in-person education for their children. Unnecessarily removing students from in-person learning poses a threat to the welfare of children, including their social, emotional and educational developmental, and is not necessary absent illness.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule is necessary in light of the unnecessary exclusion of healthy students from in-person learning and the urgent need to provide updated COVID-19 guidance to school districts. Given the evolving nature of this novel disease and the potential for adverse impacts on school children resulting from the unnecessary exclusion of healthy children from in-person learning, there is a need to issue an immediately effective rule while the department promulgates a permanent rule through the non-emergency process.

SUMMARY: Emergency rule 64DER21-15 sets forth the procedures for controlling COVID-19 in school settings. Emergency rule 64DER21-15 repeals and replaces Emergency rule 64DER21-12 that was adopted on August 6, 2021.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Carina Blackmore, Florida Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1703, (850)245-4732.

THE FULL TEXT OF THE EMERGENCY RULE IS:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

(1) GENERAL PROTOCOLS AND DEFINITION. The following procedures shall be instituted to govern the control of COVID-19 in public schools:

(a) Schools will encourage routine cleaning of classrooms and high-traffic areas.

(b) Students will be encouraged to practice routine handwashing throughout the day.

(c) Students will stay home if they are sick.

(d) Schools may adopt requirements for students to wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's sole discretion.

(e) For purposes of this rule, "direct contact" means cumulative exposure for at least 15 minutes, within six feet.

(2) PROTOCOLS FOR SYMPTOMATIC OR COVID-19 POSITIVE STUDENTS. Schools will ensure students experiencing any symptoms consistent with COVID-19 or who have received a positive diagnostic test for COVID-19 shall not attend school, school-sponsored activities, or be on school property until:

(a) The student receives a negative diagnostic COVID-19 test and is asymptomatic; or

(b) Ten days have passed since the onset of symptoms or positive test result, the student has had no fever for 24 hours and the student's other symptoms are improving; or

(c) The student receives written permission to return to school from a medical doctor licensed under chapter 458, an osteopathic physician licensed under chapter 459, or an advanced registered nurse practitioner licensed under chapter 464.

(3) PROTOCOLS FOR STUDENTS WITH EXPOSURE TO COVID-19. Schools shall allow parents or legal guardians the authority to choose how their child receives education after having direct contact with an individual that is positive for COVID-19:

(a) Parents or legal guardians of students who are known to have been in direct contact with an individual who received a positive diagnostic test for COVID-19 may choose one of the following options:

1. Allow the student to attend school, school-sponsored activities, or be on school property, without restrictions or disparate treatment, so long as the student remains asymptomatic; or

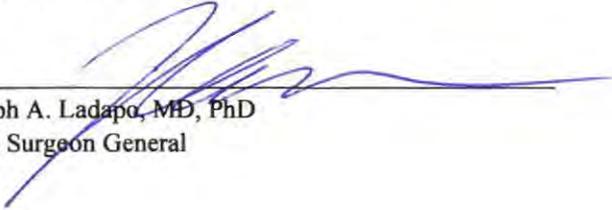
2. Quarantine the student for a period of time not to exceed seven days from the date of last direct contact with an individual that is positive for COVID-19.

(b) If a student becomes symptomatic following direct contact with an individual that has tested positive for COVID-19, or tests positive for COVID-19, the procedures set forth in subsection (2), above shall apply.

Rulemaking Authority 1003.22(3) FS. Law Implemented 1003.22(3) FS. History—New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE:



Joseph A. Ladapo, MD, PhD
State Surgeon General

9/22/21

Date

EXHIBIT B



For the 2021-2022 school year, we are looking forward to all of our students being back In Class, whether it's in-person, or at Leon County Virtual School.

Plan Highlights: Health & Safety

Masks Required –

- Temporary use of masks is **required** for **Pre-K - 12th** grade students while indoors throughout the Leon County School District. Ex: In Class, transportation (buses), after school programs, etc. Masks are not required outside.

- For parents who want to opt their **Pre-K - 8th grade student(s)** out of the mask requirement **due to health concerns**, they will need to submit the Prek-8th mask opt-out form that has been **signed by a licensed medical provider**. The medical mask opt-out form is due by **Friday, August 27** to the student's school.
- For parents who want to opt their **9th - 12th grade student(s)** out of the mask requirement due to health concerns or individual freedoms, they will need to submit a parental mask opt-out form. The mask opt-out form is due by **Tuesday, August 17**, to the student's school.
- Masks are a student's personal responsibility.
- Temporary use of masks is required for district employees when six feet of distancing cannot be maintained.
- Temporary use of masks is required for visitors, volunteers, mentors and outside vendors at all schools and district sites during the school day.
- Masks are one of many mitigation methods to help prevent COVID-19 transmission, but are not a substitute for vaccinations.
- Extra masks will be available at all school sites for students, employees, and visitors.
- Parents should initiate a request if they wish for help with compliance of mask wearing for their child.
- Schools and teachers will provide “reasonable assistance” to aid in student mask use.
- The administration should be involved and speak with parents and assist the student with wearing their mask if needed. The health department is available to provide families guidance and assistance on mask use.
- Staff will be encouraged to reduce stigma in classrooms for both masked and unmasked students.

LCS Mask Opt Out Form - Pk-8 ONLY (Medical)

BOARD CHAIR
Georgia "Joy" Bowen

BOARD VICE CHAIR
Darryl Jones



BOARD MEMBERS
Alva Swafford Striplin
Rosanne Wood
DeeDee Rasmussen

SUPERINTENDENT
Rocky Hanna

Dear Parent or Guardian:

COVID-19 is a respiratory illness spread mainly from person-to-person through respiratory droplets which are produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths and noses of people who are nearby or possibly be inhaled into the lungs. COVID-19 may be spread by people who are not showing symptoms which is why keeping exposed individuals separated from others is important.

Symptoms may appear several days after exposure to the virus. The _____ associated with COVID-19 are fever, cough, and difficulty breathing. If symptoms develop in your child, seek medical care, and get tested.

Leading health experts believe the best way to prevent illness is by limiting exposure to the virus by

- maintaining physical distance,
- using a mask when around others indoors,
- washing your hands often with soap and water for at least 20 seconds,
- routinely clean and disinfect frequently touched surfaces and
- other mitigating methods.

In order to keep ALL students safe and to prevent the spread of COVID-19 in our schools and classrooms, we are temporarily requiring ALL students, **Pre-K to grade 8**, to wear face masks while indoors. If this temporary requirement is an issue for you and your child because of health concerns, in order to opt-out, a licensed physician or psychologist **signature and medical stamp** is required on this form, OR you must submit a letter indicating approval by a licensed physician or psychologist on their official letterhead. *(Please attach the letter to this form with parent name and signature).*

Medical Opt Out from temporary mask requirement needed at school:

Name of Student _____ Date _____

Parent/Guardian Name _____ Parent/Guardian Name _____
(Printed) (Signature)

Physician/Psychologist Name _____ Physician/Psychologist Name _____
(Printed) (Signature AND Medical Stamp)

2757 W. Pensacola Street, Tallahassee, FL 32304 • Phone (850) 467-7100

"The Leon County School District does not discriminate against any person on the basis of sex (including transgender status, gender nonconforming, and gender identity), marital status, sexual orientation, race, religion, ethnicity, national origin, age, color, pregnancy, disability, military status, or genetic information."

Building the Future Together

If you are having trouble viewing the document, you may [download the document.](#)

LCS Mask Opt Out Form - 9-12 Only (Parent)

BOARD CHAIR
Georgia "Joy" Bowen

BOARD VICE CHAIR
Darryl Jones



BOARD MEMBERS
Alva Swafford Striplin
Rosanne Wood
DeeDee Rasmussen

Dear Parent or Guardian:

COVID-19 is a respiratory illness spread mainly from person-to-person through respiratory droplets which are produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths and noses of people who are nearby or possibly be inhaled into the lungs. COVID-19 may be spread by people who are not showing symptoms which is why keeping exposed individuals separated from others is important.

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Leading health experts believe the best way to prevent illness is by limiting exposure to the virus by

- maintaining physical distance,
- using a mask when around others indoors,
- washing your hands often with soap and water for at least 20 seconds,
- routinely clean and disinfect frequently touched surfaces and
- other mitigating methods.

In order to keep ALL students safe and to prevent the spread of COVID-19 in our schools and classrooms, we are temporarily requiring all **9th – 12th grade students** to wear face masks while indoors. If this temporary requirement is an issue for you and your child because of health concerns or individual freedoms you may complete the signature portion of this form and return it to your child's school.

In accordance with the Department of Health, Division of Disease Control Rule 64DER21-12, Emergency Rule Adoption Package, students K-12 will be permitted to Opt Out of a requirement to wear a mask.

My child, _____, will Opt Out of wearing a mask.

Parent/Guardian Signature _____ Date _____

2757 W. Pensacola Street, Tallahassee, FL 32304 • Phone (850) 467-7100

"The Leon County School District does not discriminate against any person on the basis of sex (including transgender status, gender nonconforming, and gender identity), marital status, sexual orientation, race, religion, ethnicity, national origin, age, color, pregnancy, disability, military status, or genetic information."

Building the Future Together

If you are having trouble viewing the document, you may [download the document.](#)

EXHIBIT C

BOARD CHAIR
BOARD CHAIRMAN
Georgia "Joy" Bowen

BOARD VICE CHAIR
BOARD VICE CHAIR
Maggie B. Lewis
Darryl Jones



BOARD MEMBERS
BOARD MEMBERS
Alva Swafford Striplin
Georgia "Joy" Bowen
Rosanne Wood
Dee Dee Rasmussen
Dee Dee Rasmussen

SUPERINTENDENT
SUPERINTENDENT
Willy McPherson III

Dear Parent or Guardian:

COVID-19 is a respiratory illness spread mainly from person-to-person through respiratory droplets which are produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths and noses of people who are nearby or possibly be inhaled into the lungs. COVID-19 may be spread by people who are not showing symptoms which is why keeping exposed individuals separated from others is important.

Symptoms may appear several days after exposure to the virus. The most common symptoms associated with COVID-19 are fever, cough, and difficulty breathing. If symptoms develop in your child, seek medical care, and get tested.

Leading health experts believe the best way to prevent illness is by limiting exposure to the virus by

- maintaining physical distance,
- using a mask when around others indoors,
- washing your hands often with soap and water for at least 20 seconds,
- routinely clean and disinfect frequently touched surfaces and
- other mitigating methods.

In order to keep ALL students safe and to prevent the spread of COVID-19 in our schools and classrooms, we are temporarily requiring ALL students, **Pre-K to grade 8**, to wear face masks while indoors. If this temporary requirement is an issue for you and your child because of health concerns, in order to opt-out, a licensed physician or psychologist **signature and medical stamp** is required on this form, OR you must submit a letter indicating approval by a licensed physician or psychologist on their official letterhead. *(Please attach the letter to this form with parent name and signature).*

Medical Opt Out from temporary mask requirement needed at school:

Name of Student _____ Date _____

Parent/Guardian Name _____
(Printed)

Parent/Guardian Name _____
(Signature)

Physician/Psychologist Name _____
(Printed)

Physician/Psychologist Name _____
(Signature AND Medical Stamp)

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BOARD CHAIR
BOARD CHAIRMAN
Georgia "Joy" Bowen
Fred Van

BOARD VICE CHAIR
BOARD VICE CHAIR
Maggie B. Lewis
Darryl Jones



BOARD MEMBERS
BOARD MEMBERS
Alva Swafford Striplin
Georgia "Joy" Bowen
Rosanne Wood
DeeDumpler
DeeDee Rasnitsky

SUPERINTENDENT
SUPERINTENDENT
Rocky Harford, III

Dear Parent or Guardian:

COVID-19 is a respiratory illness spread mainly from person-to-person through respiratory droplets which are produced when an infected person coughs, sneezes, or talks. These droplets can land in the mouths and noses of people who are nearby or possibly be inhaled into the lungs. COVID-19 may be spread by people who are not showing symptoms which is why keeping exposed individuals separated from others is important.

Symptoms may appear several days after exposure to the virus. The most common symptoms associated with COVID-19 are fever, cough, and difficulty breathing. If symptoms develop in your child, seek medical care, and get tested.

Leading health experts believe the best way to prevent illness is by limiting exposure to the virus by

- maintaining physical distance,
- using a mask when around others indoors,
- washing your hands often with soap and water for at least 20 seconds,
- routinely clean and disinfect frequently touched surfaces and
- other mitigating methods.

In order to keep ALL students safe and to prevent the spread of COVID-19 in our schools and classrooms, we are temporarily requiring all **9th – 12th grade students** to wear face masks while indoors. If this temporary requirement is an issue for you and your child because of health concerns or individual freedoms you may complete the signature portion of this form and return it to your child's school.

In accordance with the Department of Health, Division of Disease Control Rule 64DER21-12, Emergency Rule Adoption Package, students K-12 will be permitted to Opt Out of a requirement to wear a mask.

My child, _____, will Opt Out of wearing a mask.

Parent/Guardian Signature _____ Date _____

EXHIBIT D



Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

August 27, 2021

Mr. Rocky Hanna
Superintendent
Leon County Schools
2757 West Pensacola Street
Tallahassee, FL 32304

Ms. Georgia Bowen
School Board Chair
Leon County Schools
2757 West Pensacola Street
Tallahassee, FL 32304

Dear Superintendent Hanna and Chair Bowen:

This letter is sent to express my grave concern regarding your district's response to the recently adopted Emergency Rule 64DER21-12 from the Florida Department of Health. This rule, issued on August 6, 2021, by the Florida Surgeon General, Dr. Scott Rivkees, explicitly requires that any mandated mask policy imposed by a district or school "must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask." The emergency rule does not require parents to submit medical documentation in order to opt-out.

Executive Order 21-175 directed the Florida Department of Health and the Florida Department of Education to execute rules to ensure safety protocols for controlling the spread of COVID-19 in schools. The Order directs further that any such action must "at minimum be in accordance with Florida's Parents' Bill of Rights and protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Because the Florida Department of Health, under section 1003.22(3), Florida Statutes, is the agency authorized to adopt rules governing the control of communicable diseases, the Florida Department of Health adopted an emergency rule establishing protocols for controlling COVID-19 in public schools. The rule provides, in part, as follows:

Students may wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.

Rule 64DER21-12(1)(d), Florida Administrative Register, Vol. 47/No. 153, August 9, 2021.

Recent reports in the media indicate that the Leon School Board has taken action inconsistent with the emergency rule by limiting or conditioning the parental ability to opt-out of a face covering or mask mandate. Section 1008.32, Florida Statutes, states, "The State Board of

Education shall oversee the performance of district school boards and the Florida College System institution board of trustees in enforcement of all laws and rules.” Further, section 1008.32(2)(a), Florida Statutes, states that the “Commissioner of Education may investigate allegations of noncompliance with law or state board rule and determine probable cause.”

Based on this authority, I am immediately initiating an investigation of non-compliance with the rule adopted by the Florida Department of Health on August 6, 2021. In commencing this investigation, I am demanding that you provide a written response by 5:00 p.m. on Wednesday, September 1, 2021, documenting how your district is complying with Florida Department of Health Emergency Rule 64DER21-12. Should you fail to document full compliance with this rule, in accordance with section 1008.32, Florida Statutes, I intend to recommend to the State Board of Education that the Department withhold funds in an amount equal to the salaries for all the members of the School Board, as well as other sanctions authorized by law, until the district comes into compliance.

Parents have a fundamental right to direct the upbringing, education and care of their minor children. The Department of Education will protect that right.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Corcoran", with a long horizontal flourish extending to the right.

Richard Corcoran
Commissioner

EXHIBIT E

BOARD CHAIR
BOARD CHAIRMAN
Georgia "Joy" Bowen

BOARD VICE CHAIR
Maggie B. Lewis
Darryl Jones



SUPERINTENDENT
William J. Montford III
Rocky Hanna

BOARD MEMBERS
Alva Swafford Striplin
Rosarita Woodler
DeeDee Rasmussen

September 1, 2021

Commissioner Corcoran
Florida Department of Education
Turlington Building
325 West Gaines Street
Tallahassee, Florida 32399

Re: Response to August 27, 2021 Letter ("Letter")
Regarding Department of Health Emergency
Rule 64DER21-12 ("DOH Rule")

Dear Commissioner Corcoran:

Although we appreciate your "grave" concern regarding our technical compliance with the DOH Rule, our priority is protecting the health and safety of the over 34,000 students, 2,400 teachers and 4,300 employees in the Leon County Schools from a pandemic that has resulted in 43,979 deaths in Florida. So far this school year (from August 11 through August 31), we have had 532 students report a positive COVID-19 test (as opposed to 815 during the entire 2020-21 school year). Positivity rates in Leon County have been in the double digits since late July, and as of August 31, there were 141 patients with COVID-19 in Tallahassee Memorial Hospital, of which 8 are children (3 of whom are in the ICU). In August alone, we have lost 69 lives in Leon County, including two of our children.

We were very careful and deliberate in adopting our temporary, narrowly-tailored directive regarding masks and did our best to abide by all applicable guidelines, rules and laws, while advancing the district's compelling interest in protecting students, teachers and staff from a communicable, potentially deadly illness. Our decision was primarily based on the recommendations of the Centers of Disease

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Control (“CDC”), the American Academy of Pediatrics, and the American Medical Association, along with over 90% of the leading local pediatricians in Leon County. These experts clearly supported the need for the universal wearing of masks in pre-K through 8th grades (where most of the students are not eligible for vaccination), subject only to a written parental opt-out for health concerns (with a signature and medical stamp by a licensed physician or psychologist), and the wearing of masks in 9th through 12th grades subject to a written parental opt-out for health or individual freedom concerns (with no required medical certification). We note that the DOH Rule stresses the importance of in-person learning and says that “removing healthy students from the classroom for lengthy quarantines should be limited *at all costs*.” The purpose of our mask directive is to mitigate the spread of COVID-19 cases in our schools and prevent the unnecessary removal of students as a result of infection or close contact with an infected person, enabling us to continue to keep our schools open.

In your press release on Monday, you stated that “elected officials cannot pick and choose what laws they want to follow.” As noted below, we believe that we are following the DOH Rule based upon its actual language. In order for us to comply with your interpretation of the DOH Rule, we would need to ignore guidelines from the CDC, face federal lawsuits, and act contrary to the Florida Constitution and Florida Statutes. Thus, it is you that would be forcing us to “pick and choose” what laws to follow. Of course, federal law, the Florida Constitution and Florida Statutes all take precedence over a hastily enacted administrative rule.

The DOH Rule

We believe that we are in compliance with the DOH Rule, which, as you wrote in the Letter, says that schools “must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.” Although you are correct that the text of the DOH Rule “does not require parents to submit medical documentation in order to opt-out,” it also does not prohibit school districts from requiring such documentation. The DOH Rule does not dictate the procedures that school districts must follow for the opt-out or the criteria that are to be applied. Each individual school district has to determine the appropriate procedures and criteria for its district based upon local conditions, which is what we have done. This is consistent with Article IX, Section 4 of the Florida Constitution, which vests the responsibility and authority to “operate, control and supervise all free public schools within the school district” with the local school board. We therefore respectfully disagree with your interpretation of the DOH Rule and assertion that we are not in compliance.

Federal Guidelines and Law

In developing our mask directive, we focused on federal CDC guidelines, as updated on August 4, 2021:

Due to the circulating and highly contagious Delta variant, CDC recommends *universal indoor masking by all students* (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status.

<https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>. This same guidance was given by the American Academy of Pediatrics and the American Medical Association. On August 9, we also received a letter from Dr. Thomas Truman, co-signed by over 90% of the leading local pediatricians in Leon County, calling for masks to be worn by all pre-k through twelfth grade students.

In addition, as you are aware, several lawsuits have been filed throughout Florida by parents of disabled students asserting that school districts would violate the federal Individuals with Disabilities Education Act, the Americans with Disabilities Act and Section 504 of the Rehabilitation Act (the “Federal Disabilities Laws”) if they follow your interpretation of the DOH Rule. Although we are not taking any position as to the merits of the claims brought in the lawsuits, following your interpretation of the DOH Rule would potentially expose us to federal liability for violating the Federal Disabilities Laws, as well as require that we ignore CDC guidelines.

The Florida Constitution

Article IX, Section 1(a) of the Florida Constitution requires us to provide a “uniform, efficient, *safe*, secure, and high quality system of free public schools . . .” The requirement that a mask be worn by all students, staff and visitors prevents the spread of the COVID-19 virus as well as ensuring the safety of the mask wearer and also to. This is necessary to provide a “safe” environment for all students.

Florida Statutes

Your interpretation of the DOH Rule is also inconsistent with two Florida Statutes.

In the latest legislative session, section 252.36(1)(c), Florida Statutes, was amended to add the following language:

The Legislature intends that, during an extended public health emergency, such as the COVID-19 pandemic, there should be a presumption that K-12 public schools, to the greatest extent possible, should remain open so long as the health and safety of students and school personnel can be maintained by *specific public health mitigation strategies recommended by federal or state health agencies for educational settings*.

As noted above, the federal guidelines issued by the CDC have recommended universal wearing of face masks in schools by students, teachers and visitors, and the Legislature has expressly indicated its intent that we follow those mitigation strategies in order to keep our schools open.

Also in the last legislative session, the Legislature enacted Chapter 1014, Florida Statutes, entitled the Parents' Bill of Rights. The mask opt-out provision in the DOH Order was based upon this statute. However, section 1014.03 expressly *allows* school districts and other local governments to infringe upon parental rights if it can demonstrate "that such action is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means." That is precisely the situation here. The protection of students from COVID-19 by mitigating the spread of the virus is undoubtedly a compelling state interest.

Our directive is also narrowly tailored and cannot be done through less restrictive means. Our decision to implement our mask directive was not something that we took lightly. In fact, notwithstanding our fears regarding the increasing COVID-19 cases and the Delta variant, we began the school year on Wednesday, August 11 allowing parental opt-out for any reason for all grades. Unfortunately, during the first eight days of school, it became clear that the COVID-19 situation was far worse than we feared, with a large number of students reporting that they tested positive and an increasing positivity rate in Leon County. On August 21, a third grade student from one of our elementary schools died from COVID-19. Accordingly, beginning on August 23, we limited the ability for opt-outs in pre-k through 8th grades to health concerns attested to by a licensed physician or psychologist. We believe that our mask directive is a reasonable and necessary means to achieve our compelling interest in mitigating the deadly effects of COVID-19, and we narrowly tailored the directive by making it temporary and allowing opt-outs for pre-k through 8th grades for health concerns, and 9th through 12th grades for health and individual freedom concerns.¹

As I am sure you are aware, Judge John C. Cooper, in *McCarthy v. DeSantis*, Case. No. 21-CA-001382 (Fla. 2nd Cir. Ct.), ruled verbally from the bench on Friday, August 27, that enforcement of the DOH Rule violates section 1014.03. The court advised that it was enjoining enforcement of, and declaring null and void, any rule, policy, or enforcement action stemming from Executive Order 21-175, which would include the DOH Order. Judge Cooper indicated that he would be entering a written order this week.

Accordingly, for us to follow your interpretation of the DOH Rule, we would need to violate both of these newly enacted Florida Statutes.

¹ Moreover, the wearing of a mask is not a parental choice related to the health of a child; rather, it is a choice related to the health of every other student and teacher who may come in contact with the child.

The DOH Rule is Not Valid

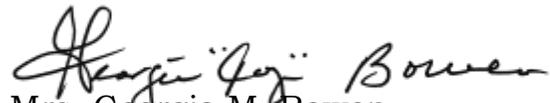
Finally, as you are also aware, petitions have been filed in the Third and Fourth District Courts of Appeal challenging the emergency nature by which the DOH Rule was enacted. The only stated justification for the alleged immediate danger to public health, safety and welfare (namely, the spread of COVID-19) does not support the portion of the DOH Rule relating to mask opt-outs. There was no immediate health or safety danger related to infringement of parental rights. Thus there was no reason that the mask opt-out provision could not have been promulgated through the normal, non-emergency rule-making process, with full public notice, input and transparency. We also understand that other challenges to the rule before the Division of Administrative Hearings are forthcoming, including claims that the mask opt-out portion of the rule is an invalid exercise of delegated legislative authority under section 120.52(8), Florida Statutes.

Conclusion

Based upon the foregoing, it is our belief that we are in compliance with the DOH Rule. We also believe that following your interpretation of the DOH Rule would be contrary to federal CDC guidance, expose us to lawsuits under various Federal disability laws, and violate the Florida Constitution and Florida Statutes. Accordingly, we respectfully request that you refrain from any enforcement actions.²

Sincerely,


Rocky Hanna
Superintendent
Leon County Schools


Mrs. Georgia M. Bowen
School Board Chair
The School Board of Leon
County, Florida

² Any position expressed in this response is without prejudice to or limitation of any legal positions we may adopt in other legal proceedings.

EXHIBIT F



Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

September 23, 2021

Mr. Rocky Hanna
Superintendent
Leon County Schools
2757 West Pensacola Street
Tallahassee, FL 32304

Ms. Georgia Bowen
School Board Chair
Leon County Schools
2757 West Pensacola Street
Tallahassee, FL 32304

Dear Superintendent Hanna and Chair Bowen:

This letter is to advise you of the Department of Health's new emergency rule revising the "Protocols for Controlling COVID-19 in School Settings" and to provide you one more opportunity to come into compliance with the requirements established by the Department of Health.

A copy of the Department of Health's new rule, 64DER21-15, is attached. It revises the requirements for quarantining asymptomatic students who have been exposed to COVID-19 and further clarifies the parental opt-out provision to foreclose the erroneous interpretation that the parental opt-out permits a medical-only opt-out. That provision now provides that "... the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's **sole discretion.**" See, [Rule 64DER21-15\(1\)\(d\), Florida Administrative Register, Vol. 43 / No. 185](#), September 23, 2021 (emphasis supplied). The purpose of these changes is explained by the Department of Health in its notice for the new rule.

The Department [of Health] observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department [of Health] observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

Mr. Hanna, Ms. Bowen
September 23, 2021
Page Two

I am continuing the investigation of your district's mask mandate that I notified you by letter of August 27, 2021. Based upon the authority provided to me under s. 1008.32(2)(a), Florida Statutes, I request that you provide a written response by 5:00 p.m. on September 24, 2021, documenting how your district is complying with that portion of the Department of Health's Emergency Rule 64DER21-15, that continues to give parents or legal guardians the sole discretion to opt a student out from a mask or face covering mandate.

As I have done before, if you fail to document full compliance, I intend to recommend to the State Board of Education that the Department of Education withhold funds in an amount equal to the salaries for all members of the School Board, as well as other sanctions authorized by law, for the period during which the district has been out of compliance.

Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Corcoran", with a stylized flourish at the end.

Richard Corcoran
Commissioner

EXHIBIT G

BOARD CHAIR
BOARD CHAIRMAN
Georgia "Joy" Bowen

BOARD VICE CHAIR
Maggie B. Lewis
Darryl Jones



BOARD MEMBERS
Alva Swafford Striplin
Rosanne Wood
Dee Dee Rasmussen

SUPERINTENDENT
William J. Montford III
Rocky Hanna

September 24, 2021

Commissioner Corcoran
Florida Department of Education
Turlington Building
325 West Gaines Street
Tallahassee, Florida 32399

Re: Response to September 23, 2021 Letter ("Letter")
Regarding Department of Health Emergency
Rule 64DER21-15 (the "New DOH Rule")

Dear Commissioner Corcoran:

Thank you for providing us with a copy of the New DOH Rule, which repealed and replaced Rule 64DER21-12 (the "Prior DOH Rule"). As we stated in our letter dated September 1, 2021, we believe that we were at all times in compliance with the Prior DOH Rule because we allowed parents of Pre-K through 8th grade students to opt their children out of the mask or face covering requirement by submitting medical documentation (and allowed parents of high school students to do so for any reason). The addition in the New DOH Rule of the language "at the parent or legal guardian's sole discretion," which was not included in the Prior DOH Rule, shows that we were at all times in compliance with the Prior DOH Rule.

We are in the process of analyzing the portion of the New DOH Rule regarding masks with respect to our current policy implementation in order to determine how to alter our procedures, if needed, so as to

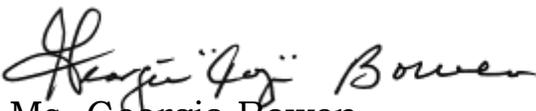
comply with the New DOH Rule, while at the same time protecting the health and safety of our students, teachers and staff. The New DOH Rule does not mandate implementation procedures that school districts must follow, and how to implement the New DOH Rule will involve some level of policy decisions that we need to present to the full School Board, which we will do next week.

We received your letter at 12:55 PM yesterday. Twenty nine hours is not a sufficient amount of time for us to analyze the New DOH Rule, develop policies and present them for consideration to the full School Board. As you know, the School Board is subject to the Government in the Sunshine Law and can only discuss school business at a noticed public meeting at which members of the public will be allowed to provide input.

Accordingly, we respectfully request that you extend the date for us to provide you a written response documenting how our district will comply with the mask portion of the New DOH Rule until 5:00 PM on Friday, October 1, 2021.¹

Sincerely,


Rocky Hanna
Superintendent
Leon County Schools


Ms. Georgia Bowen
School Board Chair
Leon County Schools

¹ Any position expressed in this response is without prejudice to or limitation of any legal positions we may adopt in future correspondence or legal proceedings.

Exhibit 6

Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

MEMORANDUM

TO: State Board of Education Members

FROM: Richard Corcoran

RE: Duval County School District, Student Opt-Out Requirements

DATE: October 4, 2021

Based upon the following memorandum, I find there is probable cause that the Duval County School Board (DCSB) acted contrary to the law by requiring students to wear a mask or face covering unless certain exceptions apply, such as a medical certification. Specifically, DCSB's policy violated the provisions of Rule 64DER21-12 and continues to violate Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings.

Background Information

On July 30, 2021, the Governor issued Executive Order Number 21-175, directing the Florida Department of Health (FDOH) and the Florida Department of Education (FDOE) to immediately execute rules and take any additional action necessary to ensure safety protocols for controlling the spread of COVID-19 in schools. The order requires that these protocols be consistent with the Parents' Bill of Rights and directs that action "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Moreover, the order directs the Commissioner of Education to pursue all legal means available to ensure school districts adhere to the law, including but not limited to withholding funds from noncompliant school boards.

On August 6, 2021, in response to the executive order, and after consultation with FDOE, the State's former Surgeon General, Scott Rivkees, as the head of FDOH, adopted an emergency rule establishing protocols for controlling the spread of COVID-19 in schools. Given the statutory duty of FDOH to implement protocols to prevent or limit the impact or spread of disease, the State's Surgeon General must be a licensed physician with advanced training or extensive experience in public health administration. *See* § 20.43(2), Fla. Stat. The rule provided for general protocols for public schools, protocols specific to symptomatic or COVID-19 positive students, protocols specific to students with exposure to COVID-19 and protocols for students with a prior COVID-19 infection. The portion of the rule addressing masks provided as follows: **Students may wear masks or facial coverings as a mitigation measure; however,**

the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask. *See* Rule 64DER21-12, Protocols for Controlling COVID-19 in School Settings, Florida Administrative Register, Vol. 47 / No. 153, August 9, 2021 (emphasis supplied).

Citing to the Parents' Bill of Rights, the notice for FDOH's emergency rule provided that "it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to allow for in-person education for their children."

On September 22, 2021, under the direction of the State's new Surgeon General, Dr. Joseph Ladapo, FDOH issued a revised rule to address controlling the spread of COVID-19 in school settings. Rule 64DER21-15 relaxes the requirements for quarantining asymptomatic students who have been exposed to COVID-19, and further clarifies the parental opt-out provision by providing that a "school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's **sole discretion.**" *See* Rule 64DER21-15, Florida Administrative Register, Vol. 47 / No. 185, September 23, 2021 (emphasis supplied). *See* Exhibit A.

The purpose of these changes is explained by FDOH in its notice for the new rule:

The Department [of Health] observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department [of Health] observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

Id.

Duval County School District

On August 22, 2021, DCSB posted notice of its intent to hold an emergency meeting on August 23, 2021, concerning amendment of its policy regarding student face coverings. DCSB held the meeting, therein voting to adopt the proposed amendment, which provides as follows:

I. Subject to the process that provides for a parent to opt out their student from this policy due to a medical, physical, or psychological condition evidenced by a medical certification [...] all students must wear a face covering that covers both the nose and the mouth at all times while inside a school or any administrative facility, inside a building for purposes of a school-related or school-sponsored events (except as provided in administrative guidance for District athletics and performing arts, which will be conspicuously posted at

District athletics and performing arts events), or on District-approved transportation.

II. **Opt-out/Exemptions.** A face covering will not be required when it would cause an impairment due to an existing health condition as evidenced by a medical certification. To claim an exemption/opt-out due to an existing health condition, the District will require a medical certification from a licensed health care provider that the student has a medical, physical, or psychological condition that prevents the student from being able to safely wear a face covering, and a description of the medical reason. This certification will be set forth on a form identified by a process and format by the District.

See Exhibit B. The DCSB's face covering policy appears to require all students within schools and administrative facilities to wear face coverings that cover the nose and mouth, and provides exceptions based only upon medical certification or DCSB's athletics and performing arts guidelines. This policy is in effect for a ninety (90)-day period, which began on September 7, 2021.

On August 27, 2021, I wrote DCSB's superintendent and school board chair to notify them of my concern with their apparent non-compliance with Rule 64DER21-12 and to afford the district the opportunity to demonstrate compliance. *See Exhibit C.*

On September 1, 2021, DCSB's superintendent and board chair responded to me in writing, asserting that DCSB's policy is in compliance with the FDOH's emergency rule because it allows exceptions to the mask mandate. *See Exhibit D.* The letter did not rescind the requirement for medical documentation in order for a student to opt-out of the district's mask mandate. Later, at its September 7, 2021, board meeting, the DCSB voted to approve an automatic suspension of the mask mandate if certain health data points were met; however, the DCSB action did not rescind the requirement for medical documentation in order for a student to opt-out of the mask mandate when it is being enforced. *See Exhibit E.*

On September 23, 2021, due to the adoption of FDOH's new rule, I advised DCSB's superintendent and school board chair of Rule 64DER21-15, and afforded the district another opportunity to demonstrate compliance. *See Exhibit F.*

On September 24, 2021, DCSB's Superintendent Greene and Chair Andersen responded to me in writing, requesting an extension of time to respond until September 30, 2021, as DCSB planned to call a special meeting for September 28, 2021, to discuss the rule and response, among other issues. *See Exhibit G.*

On September 30, 2021, Superintendent Greene and Chair Andersen provided a supplemental letter, explaining that DCSB's policy included a provision to allow the Superintendent to automatically suspend the mask mandate if certain data points were met, i.e., when the county's rolling seven-day positivity rate declined to 7.99% or less and the rolling seven-day new case count per 100,000 people, declined to 49.99% or fewer. *See Exhibit H.* The letter stated that the Superintendent planned to suspend the mask mandate the following week based on data received.

However, the Superintendent and Chair advised via letter on October 1, 2021, that the data received was in error and that the mask mandate would stay in place. *See* Exhibit I. These most recent letters demonstrate the underlying issue with DCSB’s policy—while it purports to have an automatic suspension provision, which should take effect upon the county having met certain health criteria—the underlying mask mandate (and requirement for medical documentation in order to opt-out from the same) remains in effect and may be enforced at any time certain data criteria are met. Furthermore, the letter did not rescind or modify the requirement for medical documentation in order for a student to opt-out of the mask mandate.

At present, DCSB’s mask policy requires all students within schools and administrative facilities to wear face coverings that cover the nose and mouth, and provides exceptions based only upon medical certification or DCSB’s athletics and performing arts guidelines. While the policy contains a suspension provision which deactivates the mandate if local positivity rates drop below a certain threshold, the policy automatically reinstates if positivity rates rise and precludes voluntary opt-out at the parent’s or guardian’s sole discretion.

The State Board of Education’s Enforcement Authority

The State Board of Education’s enforcement authority is found in section 1008.32, Florida Statutes. The statute provides that “[t]he State Board of Education shall oversee the performance of district school boards [...] in enforcement of all laws and rules.” § 1008.32, Fla. Stat.

In enforcing the law, the statutory process prescribed therein requires that I first report my determination of probable cause to the State Board of Education. If the State Board then determines that a district school board is unwilling or unable to comply with either law or rule, the State Board is authorized to impose sanctions in order to secure compliance, including the withholding of funds and reporting to the Legislature.

Any argument that the State Board’s authority to enforce these safety protocols interferes with any district school board’s authority to operate and control schools should be summarily rejected. Indeed, the law in Florida is clear that the State Board’s supervisory authority acts as a limitation on the operational authority of districts to operate, control and supervise public schools.

Looking to the Florida Constitution, there is a hierarchy under which a school board has local control, but in which the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a board’s local powers, but such infringement is expressly contemplated and, in fact, encouraged by the very structure set by the Florida Constitution. *See Sch. Bd of Palm Beach Cty. v. Fla. Charter Educ. Found, Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017) (rejecting school board’s argument that the State Board of Education’s authority to approve a charter school application on appeal violates article IX, section 4(b)); *see also Sch. Bd of Collier Cty v. Fla. Dep’t of Education*, 279 So. 3d 281 (Fla. 1st DCA 2019) (rejecting school board’s argument that statute requiring school boards to distribute a portion of capital millage revenue to charter schools violates article IX, section 4(b)).

Accordingly, any argument that the State Board of Education lacks the authority to enforce these school safety protocols should also be rejected. It has long been settled that rules have the force and effect of the law. *State v. Jenkins*, 469 So. 2d 733 (Fla. 1985); *Florida Livestock Board v.*

W.G. Gladden, 76 So. 2d 291 (Fla. 1954). Rule 64DER21-15 derives authority from a statute in the educational code—specifically, section 1003.22(3), Florida Statutes—so while FDOH may *also* have enforcement authority, enforcement of school safety protocols falls squarely within the State Board of Education’s authority to supervise the state’s education system as a whole.

Conclusion

Every school board member and every school superintendent has a duty to comply with the law, whether they agree with it or not. While the district school board may not agree with the safety protocols set forth by the Surgeon General, the Surgeon General is the person who, under the law, sets protocols to control and mitigate COVID-19 in schools. The Office of the Attorney General relied upon these principles to reject any argument a school board could depart from FDOH’s emergency rule based upon a disagreement with the protocols found in the rule. *See* AGO 2021-01, September 1, 2021. Disagreement with the protocols found in 64DER21-15 simply does not provide a school district with a basis to violate the rule, be it through medical requirements, attempts to tie mask requirements to fluctuating positivity rates, or through any other means.

All of this in mind, I hereby recommend that the State Board of Education use its enforcement powers to enforce the health protocols found in Emergency Rule 64DER21-15 and protect the right of parents to make both health and educational decisions on behalf of their children.

Should the State Board adopt my recommendation, I request that it consider the sanction of withholding state funds in an amount equal to 1/12 of all school board members’ salaries, as well as withholding state funds in an amount equal to any federal grant funds awarded to the DCSB for its noncompliance with Emergency Rule 64DER21-15.

EXHIBIT A

Notice of Emergency Rule

DEPARTMENT OF HEALTH

Division of Disease Control

RULE NO.: RULE TITLE:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Because of an increase in COVID-19 infections, largely due to the spread of the COVID-19 delta variant, prior to the beginning of the 2021-2022 school year, it is imperative that state health and education authorities continue to provide emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. In August 2021, all public schools in Florida began the 2021-2022 school year with in-person learning available for all students. The Department of Health adopted Emergency Rule 64DER21-12 on August 6, 2021. Since that time the Department has conducted a review of data for cases of COVID-19 positive school-aged children and data for school-aged children who have been in direct contact with a COVID-19 positive person. The Department observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

In order to permit students to continue in-person learning, to minimize the detriment to students and school personnel from the added burden of recurrent removal of students, and to benefit the overall welfare of students in Florida, it is necessary to provide updated emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. This emergency rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to ensure safety protocols for controlling the spread of COVID-19 in schools that (1) do not violate Floridians' constitutional freedoms; (2) do not violate parents' rights under Florida law to make health care decisions for their minor children; and (3) protect children with disabilities or health conditions who would be harmed by certain protocols, such as face masking requirements. The order directs that any COVID-19 mitigation actions taken by school districts comply with the Parents' Bill of Rights, and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19."

Because of the importance of in-person learning to educational, social, emotional and mental health, and welfare, removing healthy students from the classroom for lengthy quarantines should be limited. Under Florida law, parents and legal guardians have a fundamental right to direct the upbringing, education, health care, and mental health of their minor children and have the right to make health care decisions for their minor children. HB 241, Ch. 2021-199, Laws of Fla. Parents and legal guardians are uniquely situated to understand the health care, emotional, and educational needs of their minor children. In furtherance of the Florida Department of Health's authority to adopt rules governing the control of preventable communicable diseases—and because students benefit from in-person learning—it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to maximize the allowance of in-person education for their children. Unnecessarily removing students from in-person learning poses a threat to the welfare of children, including their social, emotional and educational developmental, and is not necessary absent illness.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule is necessary in light of the unnecessary exclusion of healthy students from in-person learning and the urgent need to provide updated COVID-19 guidance to school districts. Given the evolving nature of this novel disease and the potential for adverse impacts on school children resulting from the unnecessary exclusion of healthy children from in-person learning, there is a need to issue an immediately effective rule while the department promulgates a permanent rule through the non-emergency process.

SUMMARY: Emergency rule 64DER21-15 sets forth the procedures for controlling COVID-19 in school settings. Emergency rule 64DER21-15 repeals and replaces Emergency rule 64DER21-12 that was adopted on August 6, 2021.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Carina Blackmore, Florida Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1703, (850)245-4732.

THE FULL TEXT OF THE EMERGENCY RULE IS:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

(1) GENERAL PROTOCOLS AND DEFINITION. The following procedures shall be instituted to govern the control of COVID-19 in public schools:

(a) Schools will encourage routine cleaning of classrooms and high-traffic areas.

(b) Students will be encouraged to practice routine handwashing throughout the day.

(c) Students will stay home if they are sick.

(d) Schools may adopt requirements for students to wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's sole discretion.

(e) For purposes of this rule, "direct contact" means cumulative exposure for at least 15 minutes, within six feet.

(2) PROTOCOLS FOR SYMPTOMATIC OR COVID-19 POSITIVE STUDENTS. Schools will ensure students experiencing any symptoms consistent with COVID-19 or who have received a positive diagnostic test for COVID-19 shall not attend school, school-sponsored activities, or be on school property until:

(a) The student receives a negative diagnostic COVID-19 test and is asymptomatic; or

(b) Ten days have passed since the onset of symptoms or positive test result, the student has had no fever for 24 hours and the student's other symptoms are improving; or

(c) The student receives written permission to return to school from a medical doctor licensed under chapter 458, an osteopathic physician licensed under chapter 459, or an advanced registered nurse practitioner licensed under chapter 464.

(3) PROTOCOLS FOR STUDENTS WITH EXPOSURE TO COVID-19. Schools shall allow parents or legal guardians the authority to choose how their child receives education after having direct contact with an individual that is positive for COVID-19:

(a) Parents or legal guardians of students who are known to have been in direct contact with an individual who received a positive diagnostic test for COVID-19 may choose one of the following options:

1. Allow the student to attend school, school-sponsored activities, or be on school property, without restrictions or disparate treatment, so long as the student remains asymptomatic; or

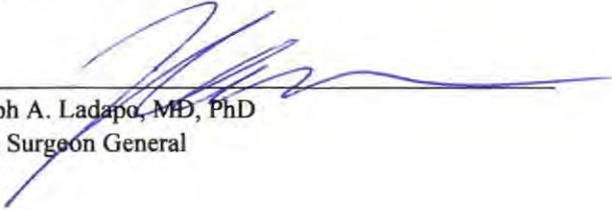
2. Quarantine the student for a period of time not to exceed seven days from the date of last direct contact with an individual that is positive for COVID-19.

(b) If a student becomes symptomatic following direct contact with an individual that has tested positive for COVID-19, or tests positive for COVID-19, the procedures set forth in subsection (2), above shall apply.

Rulemaking Authority 1003.22(3) FS. Law Implemented 1003.22(3) FS. History—New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE:



Joseph A. Ladapo, MD, PhD
State Surgeon General

9/22/21

Date

EXHIBIT B

EMERGENCY RULE OF THE SCHOOL BOARD OF DUVAL COUNTY

WHEREAS, Article IX, § 1 of the Florida constitution provides for a uniform, efficient, safe, secure, and high-quality system of free education; and

WHEREAS, To achieve a uniform, efficient, and safe school system, the Florida Constitution created school boards (Art. IX); and

WHEREAS, The Florida constitution grants the school boards the right to “operate, control and supervise all free public schools.” *See* Art. IX § 4 (Fla. Const.); and

WHEREAS, The School Board of Duval County, Florida (the “School Board”) is a duly elected body; and

WHEREAS The School Board is responsible for the “proper attention to health, safety, and other matters relating to the welfare of students.” Fla. Stat § 1001.42(8)(a); and

WHEREAS, The School Board also has supplemental powers to “adopt programs and policies to ensure appropriate response in emergency situations.” Fla. Stat. § 1001.43(7); and

WHEREAS Duval County Public Schools is one of the largest school districts in Florida;

WHEREAS, The School Board of Duval County values the health, safety, and welfare of its students and the District staff; and

WHEREAS, The Delta variant of COVID-19 has been shown to be highly transmissible; and

WHEREAS, the Governor of Florida issued Executive Order 21-175 which in part directed the Florida Department of Health and the Florida Department of Education to immediately execute emergency rule to

ensure safety protocols for controlling the spread of COVID-19 IN SCHOOLS; and

WHEREAS, The Florida Department of Health executed Emergency Rule 64DER21-12 which provides in part “Student may wear masks or facial covering as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask”; and

WHEREAS, The 2021-2022 school year began on August 10, 2021 in Duval County; and

WHEREAS, After only ten days of school, 815 cases of Covid-19 were reported to FDOH. Of those, 111 involved staff and 704 involved students who reported a positive Covid-19 result; and

WHEREAS, a total of 2498 cases were reported in total on the School’s dashboard for the 2020-2021 school year, meaning that in less than a week into the 2021-2022 school year beginning, DCPS was already at 19% of the total cases reported for the entire 2020-2021 school year;

WHEREAS, the Florida Department of Health has admittedly been unable to complete contact tracing, case investigations and timely notification to impacted families regarding the results of the investigation;

WHEREAS, of the 895 Covid-19 positive cases reported this year, only 106 cases have been completed and closed by FDOH;

WHEREAS, due to an immediate danger to public health, safety, and welfare that required emergency action, an Emergency meeting of the School Board was called by the Chair, as well as other Board members, to immediately address the emergency; and

WHEREAS, The School Board of Duval County heard from the Duval County Department of Health and medical experts and doctors at

numerous meetings predating the emergency meeting as well as at the August 23, 2021 emergency meeting; and

WHEREAS, The doctors and medical experts testified that the wearing of masks and vaccines are the most effective tools for controlling the spread of COVID-19 in schools; and

WHEREAS, Masks protect the wearer and those around them by protecting against the transmission of large droplets from one person to another; and

WHEREAS, Mask usage is beneficial to keeping children in school; and

WHEREAS, The U.S. Food & Drug Administration (“FDA”) previously stated: “There is no adequate, approved, and available alternative to the emergency use of face masks for source control by the general public ... to help prevent the spread of the virus due to face mask shortages during the COVID-19 pandemic”; and

WHEREAS, The Emergency Rule executed by the Department of Health does not prohibit the requirement of a medical certificate for opting out; and

WHEREAS, The Emergency rule adopted by the School Board of Duval County gives the decision opting out of the facial covering requirement to the parent with a medical certification; and

WHEREAS, The Center for Disease Control (“CDC”) recommends children in school wear facial coverings indoors.

NOW, THEREFORE, THE SCHOOL BOARD OF DUVAL COUNTY ENACTS THE FOLLOWING EMERGENCY RULE PURSUANT TO SECTION 120.54, FLORIDA STATUTES AND BOARD POLICY 2.25:

I. Subject to the process that provides for a parent to opt out their student from this policy due to a medical, physical, or psychological condition evidenced by a medical certification (see paragraph II), all students must wear a face covering that covers both the nose and the mouth at all times while inside a school or any administrative facility, inside a building for purposes of a school-related or school-sponsored events (except as provided in administrative guidance for District athletics and performing arts, which will be conspicuously posted at District athletics and performing arts events), or on District-approved transportation.

II. **Opt-out/Exemptions.** A face covering will not be required when it would cause an impairment due to an existing health condition as evidenced by a medical certification. To claim an exemption/opt-out due to an existing health condition, the District will require a medical certification from a licensed health care provider that the student has a medical, physical, or psychological condition that prevents the student from being able to safely wear a face covering, and a description of the medical reason. This certification will be set forth on a form identified by a process and format by the District.

III. **Duration of Emergency Rule.** The Emergency Rule was approved by the School Board on August 23, 2021, for a ninety (90) day period (except as set forth in paragraph IV) commencing on September 7, 2021.

IV. **Further action required.** The Superintendent shall develop procedures, to be approved by the Board on September 7, 2021, that

provide for certain health data points to result in an automatic suspension of this emergency policy while such policy is in effect.

V. Basis for Emergency Rule

This Emergency Rule approved is based upon the School Board's findings at the Emergency Meeting held August 23, 2021 including, but not limited to the number of students and staff in the DCPS reporting positive COVID-19 tests, FDOH's admitted inability to conduct timely case investigations which has a direct impact on the spread of the virus throughout our schools, and communication predating and occurring at the August 23, 2021 meeting from the professional health community.

VI. Procedural Fairness Afforded.

The meeting was properly noticed on August 22, 2021 at 1:00 p.m. and amended and reposted on August 23, 2021 at 9:00 a.m.

EXHIBIT C



Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

August 27, 2021

Dr. Diana L. Greene
Superintendent
Duval County Public Schools
1701 Prudential Drive
Jacksonville, FL 32207

Ms. Elizabeth Andersen
School Board Chair
Duval County Public Schools
1701 Prudential Drive
Jacksonville, FL 32207

Dear Superintendent Greene and Chair Andersen:

This letter is sent to express my grave concern regarding your district's response to the recently adopted Emergency Rule 64DER21-12 from the Florida Department of Health. This rule, issued on August 6, 2021, by the Florida Surgeon General, Dr. Scott Rivkees, explicitly requires that any mandated mask policy imposed by a district or school "must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask." The emergency rule does not require parents to submit medical documentation in order to opt-out.

Executive Order 21-175 directed the Florida Department of Health and the Florida Department of Education to execute rules to ensure safety protocols for controlling the spread of COVID-19 in schools. The Order directs further that any such action must "at minimum be in accordance with Florida's Parents' Bill of Rights and protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Because the Florida Department of Health, under section 1003.22(3), Florida Statutes, is the agency authorized to adopt rules governing the control of communicable diseases, the Florida Department of Health adopted an emergency rule establishing protocols for controlling COVID-19 in public schools. The rule provides, in part, as follows:

Students may wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.

Rule 64DER21-12(1)(d), Florida Administrative Register, Vol. 47/No. 153, August 9, 2021.

Recent reports in the media indicate that the Duval School Board has taken action inconsistent with the emergency rule by limiting or conditioning the parental ability to opt-out of a face covering or mask mandate. Section 1008.32, Florida Statutes, states, "The State Board of Education shall oversee the performance of district school boards and the Florida College System institution board of trustees in enforcement of all laws and rules." Further, section

1008.32(2)(a), Florida Statutes, states that the "Commissioner of Education may investigate allegations of noncompliance with law or state board rule and determine probable cause."

Based on this authority, I am immediately initiating an investigation of non-compliance with the rule adopted by the Florida Department of Health on August 6, 2021. In commencing this investigation, I am demanding that you provide a written response by 5:00 p.m. on Wednesday, September 1, 2021, documenting how your district is complying with Florida Department of Health Emergency Rule 64DER21-12. Should you fail to document full compliance with this rule, in accordance with section 1008.32, Florida Statutes, I intend to recommend to the State Board of Education that the Department withhold funds in an amount equal to the salaries for all the members of the School Board, as well as other sanctions authorized by law, until the district comes into compliance.

Parents have a fundamental right to direct the upbringing, education and care of their minor children. The Department of Education will protect that right.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Corcoran", with a long horizontal flourish extending to the right.

Richard Corcoran
Commissioner

EXHIBIT D



Dr. Diana Greene
Superintendent

1701 Prudential Drive | Jacksonville, FL 32207
904.390.2115 | Fax 904.390.2586
GreeneD@duvalschools.org | www.duvalschools.org

September 1, 2021

Commissioner Richard Corcoran
Florida Department of Education
325 W. Gaines St.
Tallahassee, FL 32399-0400

Dear Commissioner Corcoran,

This letter is in response to your August 27, 2021 demand for a written response documenting how the Duval County School Board (DCSB) is complying with Florida Department of Health Emergency Rule 64DER21-12. As an initial matter, the DCSB is in compliance with the Rule.

The DCSB passed its own Emergency Rule regarding face coverings (the “Mask Policy”) in light of dangerous and startling health conditions in its school district and the local community. The DCSB first considered a mask policy at its August 3, 2021, meeting. Since school had not yet started, the DCSB implemented a mask policy that it felt would sufficiently balance the safety of students with parents’ ability to opt students out of wearing masks. The policy strongly encouraged students to wear masks but allowed parent and guardians to opt students out of wearing a mask for any reason. However, once school started on August 10, 2021, additional facts and evidence came to light such that it became clear that allowing unconstrained opt-outs presented a clear and present danger to staff and students. It was then decided to revisit the mask issue at the Board’s August 23, 2021, meeting.

At the August 23, 2021, meeting, the DCSB enacted its current Mask Policy requiring all students to wear masks (with an opt-out described more fully below) because there were over 800 COVID-19 cases within the District after the first ten days of school. This number represented over 30% of total cases from the entire 2020-2021 school year. After three weeks of school, there are over 1600 COVID-19 cases in the District which represents 65% of the total cases from last year. Moreover, eleven District employees have died of COVID-19 related complications since the beginning of the 2020-2021 school year.

In addition, the Duval County Health Department (DCHD) is unable to complete contact tracing on all of the positive cases arising in the District. As of August 23, 2021, the DCHD had only been able to close out 106 of the 895 cases. Cases which have been closed out are those where the DCHD has been able to complete contract tracing to ensure students and staff who have been exposed to COVID-19 are properly notified of their exposure. Therefore, a significant number of students and staff who were and are being exposed to COVID-19 are not being quarantined, which further contributes to the rampant spread of COVID-19.

There was abundant testimony at prior meetings and workshops of the DCSB as well as at the DCSB's August 23, 2021, meeting¹ about the critical and compelling need for students and staff to wear masks in an effort to reduce the spread of COVID-19. Representatives from the Duval County Health Department, physicians from the local pediatric hospital, and many other licensed health care workers were adamant about the need for everyone to wear face coverings while inside a school or administrative building. In the face of such testimony and the rapid and widespread increase in infections, the DCSB was compelled to take action to protect the health of students and staff and create the best opportunity for our children to continue in-person education this

¹ The following physicians testified and answered questions from the Board at the August 23, 2021 meeting:

Dr. Mobeen Rathore

- Chair, Infection Prevention and Control Committee, Baptist Health System
- Hospital Epidemiologist and Chief, Pediatric Infectious Diseases and Immunology, Wolfson Children's Hospital

Dr. Sunil Joshi

- President, Duval County Medical Society Foundation

Ernesto "Tito" Rubio, MPH

- Interim Administrator/Health Officer Duval County

Dr. Jeffery Goldhagen

- Prof. Community Hospice of Northeast FL/Neviasser Family Professor in Pediatric Palliative Care Dept. of Pediatrics
- Chief Div. of Community and Societal Pediatrics
- Program Director, Community and Societal Pediatrics Fellowship – UF Health Jacksonville

school year. The DCSB is not relying solely on masks to help prevent the spread of COVID-19; it is implementing a multi-layered approach to providing all feasible COVID-19 mitigation measures.

It was not and is not the intent of the DCSB to violate any lawful rule of the Board of Education or the Department of Health. Indeed, the DCSB's Mask Policy complies with the Department of Health's Emergency Rule. As your letter appropriately states, that rule requires an option for "a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask," and the DSCP Mask Policy does exactly this. Paragraph 2 of the Mask Policy provides for "Opt-out/Exemptions." As the Emergency Rule requires, this paragraph provides a method for parents to opt students out of wearing a mask with a medical certification from a licensed health care provider that the student has a medical, physical, or psychological condition that prevents the student from being able to safely wear a face covering. The opt-out form is one page and requires only two signatures; it is not onerous. The DOH rule does not state the opt-out must be unlimited, or otherwise prevent schools from establishing parameters for the opt-out.

In a further effort to use reasonable and necessary actions that are narrowly tailored to further its compelling state interest, the DCSB also provided a generous lead time for parents and guardians to opt-out before the Mask Policy goes into effect. The Mask Policy was approved by the DCSB on August 23, 2021, but it does not go into effect until September 7, 2021. This provided parents and guardians two weeks to obtain the necessary signatures to opt out if appropriate.

In addition, the Mask Policy is temporary in nature. It is only in effect for ninety days and can be automatically suspended by the Superintendent without Board approval should certain health data points be met. The data points will be determined in consultation with the Florida Department of Health and local physicians based on transmission rate in the community. These measures and the ones cited above comply with both the Emergency Rule and the Parents' Bill of Rights. DCSB is committed to providing safe and in-person education this school year.

Sincerely,



Dr. Diana L. Greene



Board Chair Elizabeth Andersen

EXHIBIT E

September 7, 2021, Regular Board Meeting

Title

28. APPROVAL OF FACIAL COVERING SUSPENSION CRITERIA PURSUANT TO AN EMERGENCY RULE OF THE DUVAL COUNTY SCHOOL BOARD

Recommendation

That the School Board of Duval County, Florida accept the attached criteria developed in consultation with the Florida Department of Health-Duval and other local medical officials to automatically suspend the Board's Emergency Rule during the 90-day period the rule is in effect.

Description

On August 23, 2021 the School Board approved an Emergency Rule requiring all students to wear a face covering that covers both the nose and the mouth at all times while inside a school or any administrative facility, inside a building for purposes of a school-related or school-sponsored event (except as provided in administrative guidance for District athletics and performing arts, which will be conspicuously posted at District athletics and performing arts events), or on District-approved transportation. If a student has a medical, physical, or psychological condition that prevents him/her from safely wearing a face covering, his/her parent and/or guardian may opt their child out of this requirement by providing medical certification through the district's process which includes completion of a COVID-19 Face Covering Certification. Students who 1) submitted documentation containing substantially similar information to what is contained in the COVID-19 Covering Certification, and 2) the condition set forth in those documents still applies to the student due to a continuing condition, are not required to additionally submit the COVID-19 Face Covering Certification form for the 2021-2022 school year.

The Emergency Rule is effective September 7, 2021 for a ninety day period. Section IV of the Emergency Rule requires the Superintendent to develop procedures that provide for certain health data points that will result in an automatic suspension of the Emergency Rule during the 90-day period the rule is in effect.

Gap Analysis

The Superintendent has been directed to provide criteria for the Board's consideration at the September 7, 2021 Regular Board Meeting.

Previous Outcomes

None

Expected Outcomes

The Board will consider and approve the recommendation developed through collaboration with the Florida Department of Health and other local health experts.

Strategic Plan Goals and Principles

Guiding Principle V: DCPS will provide a culture and climate that improves academic, social, and emotional development.

Financial Impact

None.

Contact

Sonita Young, Chief of Staff, (904) 390-2590

Attachments

1. Transmission Rate BM

Pursuant to Section IV of the Board’s Emergency Rule regarding facial coverings, the mandatory mask requirement for Duval County Public Schools shall be immediately suspended when the level of community transmission of COVID-19 in Duval County, Florida reaches a “Moderate Level” on a 7-day rolling average. Transmission rate is defined by the Centers for Disease Control and Prevention (CDC) as:

	Low	Moderate	Substantial	High
New cases per 100,000 persons in the past 7 days	<10	10-49.99	50-99.99	≥100
Percentage of positive NAATs tests during the past 7 days	<5%	5-7.99%	8-9.99%	≥10.0%

EXHIBIT F



Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

September 23, 2021

Dr. Diana L. Greene
Superintendent
Duval County Public Schools
1701 Prudential Drive
Jacksonville, FL 32207

Ms. Elizabeth Andersen
School Board Chair
Duval County Public Schools
1701 Prudential Drive
Jacksonville, FL 32207

Dear Superintendent Greene and Chair Andersen:

This letter is to advise you of the Department of Health's new emergency rule revising the "Protocols for Controlling COVID-19 in School Settings" and to provide you one more opportunity to come into compliance with the requirements established by the Department of Health.

A copy of the Department of Health's new rule, 64DER21-15, is attached. It revises the requirements for quarantining asymptomatic students who have been exposed to COVID-19 and further clarifies the parental opt-out provision to foreclose the erroneous interpretation that the parental opt-out permits a medical-only opt-out. That provision now provides that "... the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's **sole discretion.**" See, [Rule 64DER21-15\(1\)\(d\), Florida Administrative Register, Vol. 43 / No. 185](#), September 23, 2021 (emphasis supplied). The purpose of these changes is explained by the Department of Health in its notice for the new rule.

The Department [of Health] observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department [of Health] observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

Dr. Greene, Ms. Andersen
September 23, 2021
Page Two

I am continuing the investigation of your district's mask mandate that I notified you by letter of August 27, 2021. Based upon the authority provided to me under s. 1008.32(2)(a), Florida Statutes, I request that you provide a written response by 5:00 p.m. on September 24, 2021, documenting how your district is complying with that portion of the Department of Health's Emergency Rule 64DER21-15, that continues to give parents or legal guardians the sole discretion to opt a student out from a mask or face covering mandate.

As I have done before, if you fail to document full compliance, I intend to recommend to the State Board of Education that the Department of Education withhold funds in an amount equal to the salaries for all members of the School Board, as well as other sanctions authorized by law, for the period during which the district has been out of compliance.

Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Corcoran", with a long horizontal flourish extending to the right.

Richard Corcoran
Commissioner

EXHIBIT G



Dr. Diana Greene
Superintendent

1701 Prudential Drive | Jacksonville, FL 32207
904.390.2115 | Fax 904.390.2586
GreeneD@duvalschools.org | www.duvalschools.org

September 24, 2021

Commissioner Richard Corcoran
Florida Department of Education
325 W. Gaines St.
Tallahassee, FL 32399-0400

Dear Commissioner Corcoran,

This letter is in response to your September 23, 2021, demand for a written response documenting how the Duval County School Board (“DCSB”) is complying with Florida Department of Health Emergency Rule 64DER21-15.

The DCSB first received your letter containing the demand the afternoon of Thursday, September 23, 2021. By the time all seven board members had read the letter, there were less than 24 hours to respond. For the reasons set forth below, the DCSB respectfully needs until Thursday, September 30, to respond to your letter.

Any decision made by this Board must comply with section 286.011, Florida Statutes. Compliance with the Sunshine Law would be most difficult to achieve today, given several of the DCSB members are currently attending an FSBA Certified Board Member Forum on Policy Governance in Kissimmee, Florida. To ensure compliance as well as a timely response, the DCSB has scheduled a special meeting on September 28, 2021, to discuss, among other issues, the new DOH Rule as well as a response to your letter. The Superintendent and Board members value additional time to consider and make decisions on these incredibly important issues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Diana L. Greene", enclosed in a thin black rectangular box.

Dr. Diana L. Greene

A handwritten signature in blue ink, appearing to read "Elizabeth Andersen", written in a cursive style.

Board Chair Elizabeth Andersen

EXHIBIT H



Dr. Diana Greene
Superintendent

1701 Prudential Drive | Jacksonville, FL 32207
904.390.2115 | Fax 904.390.2586
GreeneD@duvalschools.org | www.duvalschools.org

September 30, 2021

Commissioner Richard Corcoran
Florida Department of Education
325 W. Gaines St.
Tallahassee, FL 32399-0400

Dear Commissioner Corcoran,

This letter is in response to your September 23, 2021, demand for a written response documenting how the Duval County School Board (“DCSB”) is complying with Florida Department of Health Emergency Rule 64DER21-15.

The DCSB first received your letter containing the demand the afternoon of Thursday, September 23, 2021. By the time all seven board members had read the letter, there were less than 24 hours to respond, and several Board members were out of town receiving Board training. The DCSB respectfully requested until today to allow our Board to discuss the new DOH rule, in full compliance with the Sunshine Law. This discussion occurred on September 28, 2021.

For purposes of background information, the DCSB first implemented a mask policy requiring that masks be worn in July 2020, which continued until the end of the 2020-2021 school year. Prior to the issuance of Florida Department of Health Emergency Rule 64DER21-12, the DCSB considered the mask policy for the 2021-2022 school year on August 3, 2021. Since school had not yet started, the DCSB implemented a mask policy that it felt would sufficiently balance the safety of students with parents’ ability to opt students out of wearing masks. The policy strongly encouraged students to wear masks during the school day but also allowed for students to opt out of wearing a mask at the sole discretion of their parent/guardian. However, once school started on August 10, 2021, additional facts and evidence came to light such that it became clear that the policy in effect was not successfully protecting staff and students. It was then decided to revisit the mask policy at the Board’s August 23, 2021, meeting.

At the August 23, 2021 meeting, the DCSB enacted its Emergency Rule requiring all students to wear masks, but also provided for a method by which parents could opt

students out of wearing a mask with a medical certification from a licensed health care provider certifying that the student has a medical, physical, or psychological condition that prevents the student from being able to safely wear a face covering. The policy came about as a result of over 800 COVID-19 cases within the District after the first ten days of school. This number represented over 30% of total cases from the entire 2020-2021 school year. After three weeks of school, there were over 1600 COVID-19 cases in the District which represented 65% of the total cases from last year. The DCSB's policy decision was also based upon the fact that the Duval County Health Department was unable to complete contact tracing on all of the positive cases arising in the District. As of August 23, 2021, the DCHD had only been able to close out 106 of the 895 cases (closed out cases are those where the Duval County Health Department is able to complete contract tracing to ensure students and staff who have been exposed to COVID-19 are properly notified of their exposure).

In a further effort to take reasonable and necessary actions narrowly tailored to further a compelling government interest, the DCSB also provided sufficient lead time for parents and guardians to obtain an opt-out before the mask policy went into effect. The mask policy was approved by the DCSB on August 23, 2021, but did not go into effect until September 7, 2021. This provided parents and guardians two weeks to obtain the medical certification opt out if appropriate. In addition, the policy was the result of emergency rule-making, and therefore was only in effect for a maximum of ninety (90) days. Further, language was included to allow the Superintendent to automatically suspend the policy without Board approval should certain health data points be met. These data points were determined in consultation with the Florida Department of Health and local physicians based on transmission rate in the community and were presented by the Superintendent to the Board for approval on September 7, 2021. The data points provided that the emergency mask policy would be suspended when Duval County's rolling seven-day positivity rate declines to 7.99% or less and the rolling seven-day new case count per 100,000 people, declines to 49.99 or fewer.

Just today, the District was provided with preliminary information from the Duval County Health Department, that by tomorrow, October 1, it is expected that confirmed data will establish that Duval County has met the above criteria, allowing for automatic suspension of the emergency mask policy in effect. As a result, it is expected that as of October 4, 2021, the Superintendent will have suspended the emergency mask policy, and pursuant to Board policy, will exercise emergency authority granted to her under Board policy to reinstate the Board's prior policy language stating that masks are strongly encouraged and providing for an opt out at the parent/guardian's sole discretion. At the earliest opportunity, which will be October 5, the Superintendent will recommend to the Board that the same policy language be reinstated by the Board temporarily until such

time that a more permanent communicable disease policy is approved, which is expected to be in late October or early November.

In regard to quarantine protocols, the District has and will continue to follow the guidance of the Duval County Health Department, which currently align with those set forth in Florida Department of Health Emergency Rule 64DER21-15. This is not a statement, however, that the District agrees with such practices or has deemed them sufficient for ensuring the health of students and staff.

DCSB has taken every effort to allow for children to continue in-person education in a manner that protects the health of students and staff. The DCSB is pleased with the news received only today, that according to our local health expert, Duval County's transmission rates are such the children can be safely educated in person with a policy in place that strongly encourages masks, while also providing for a parent/guardian of the student to opt the student out of wearing a mask at the parent or legal guardian's sole discretion.

Sincerely,



Dr. Diana L. Greene



Board Chair Elizabeth Andersen

EXHIBIT I



Dr. Diana Greene
Superintendent

1701 Prudential Drive | Jacksonville, FL 32207
904.390.2115 | Fax 904.390.2586
GreeneD@duvalschools.org | www.duvalschools.org

October 1, 2021

Commissioner Richard Corcoran
Florida Department of Education
325 W. Gaines St.
Tallahassee, FL 32399-0400

Dear Commissioner Corcoran,

The Duval County School District (“District”) sent you a letter yesterday, September 30, 2021, containing information that the District has since learned was erroneous; the purpose of this letter is to correct that information.

As was discussed in the letter yesterday, when enacting its Emergency Rule requiring masks, the Duval County School Board (“DCSB”) included language to allow the Superintendent to automatically suspend the policy without Board approval should certain health data points be met. These data points were determined in consultation with the Florida Department of Health and local physicians based on transmission rate in the community and were presented by the Superintendent to the Board for approval on September 7, 2021. The data points provided that the emergency mask policy would be suspended when Duval County’s rolling seven-day positivity rate declines to 7.99% or less and the rolling seven-day new case count per 100,000 people, declines to 49.99 or fewer.

Yesterday, the District was advised by the Duval County Health Department that preliminary data revealed that Duval County met the automatic suspension criteria. As such, it was the Superintendent’s intent to suspend the Emergency Rule in effect beginning Monday, October 4, and exercise emergency authority granted to her pursuant to Board policy to reinstate the Board’s prior policy language stating that masks are strongly encouraged and providing for an opt out at the parent/guardian’s sole discretion. The Superintendent would have made this same recommendation to the Board on October 5, at the Board’s regularly scheduled meeting.

However, the Superintendent learned from the Duval County Health Department today, that an error in the estimations had been made, and that the estimated rolling seven-

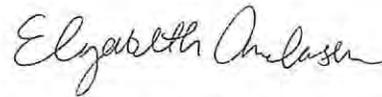
day new case count per 100,000 people *should have been 147* (a number which would need to be 49.99 or less to meet the automatic suspension criteria as set forth in the Emergency Rule). See attached correspondence between Ernesto G. Rubio, Interim Administrator/Health Officer, Duval County and Superintendent Diana Greene.

As stated yesterday, DCSB has taken every effort to allow for children to continue in-person education in a manner that protects the health of students and staff. While there was elation at the thought of such a decline in COVID cases, that moment was short-lived. A review of the official data indicates that students and staff in Duval County cannot yet be safely educated in person without requiring masks, especially considering quarantine requirements have been suspended.

Sincerely,



Dr. Diana L. Greene



Board Chair Elizabeth Andersen

Mairs, Rita

From: Greene, Diana L.
Sent: Friday, October 1, 2021 12:39 PM
To: *ALL School Board Members-A
Cc: Mairs, Rita; Pierce, Tracy A.; Trisotto, Elizabeth I.
Subject: FW: Weekly Florida COVID-19 Data Report
Attachments: 2021-10-01 Florida COVID Data.pdf

Board Members,

Please see the email below from FDOH-Duval and the attached documentation. Yesterday, FDOH informed us that the COVID-19 transmission data was expected to be in the moderate range. With the email below and today's official information, we learned that FDOH's prediction yesterday was incorrect and did not reflect the anticipated 100 point data swing. As indicated yesterday, we were waiting on official confirmation before taking any action. Based on the official numbers, we will not take any action on the current mask protocol in place according to the Board's Emergency Rule.

The attached data is not public until 5 pm. We will update our dashboard this afternoon with this new community transmission information and send information to families today clarifying new FDOH protocols for quarantining.

Kind regards,

Dr. Diana Greene
Superintendent
Duval County Public Schools
1701 Prudential Drive
Jacksonville, FL 32207
Tel: (904)390-2115
Fax: (904)390-2586



From: Greene, Diana L. <GreeneD@duvalschools.org>
Sent: Friday, October 1, 2021 10:51 AM
To: Rubio, Tito G. <Tito.Rubio@flhealth.gov>
Cc: Nichols, Antonio C <Antonio.Nichols@flhealth.gov>; Young, Sonita D. <youngs1@duvalschools.org>; Mairs, Rita <MairsR@duvalschools.org>
Subject: RE: Weekly Florida COVID-19 Data Report

Dear Mr. Rubio,

Thank you for the updated information and correction. I will inform the school board and convey your message that the information does not go live until 5:00 p.m.

Kind regards,

Dr. Diana Greene
Superintendent
Duval County Public Schools
1701 Prudential Drive
Jacksonville, FL 32207
Tel: (904)390-2115
Fax: (904)390-2586



From: Rubio, Tito G. <Tito.Rubio@flhealth.gov>
Sent: Friday, October 1, 2021 10:37 AM
To: Greene, Diana L. <GreeneD@duvalschools.org>
Cc: Nichols, Antonio C <Antonio.Nichols@flhealth.gov>
Subject: Fw: Weekly Florida COVID-19 Data Report

This message was sent from outside the district. Please do not click links or open attachments unless you recognize the source of this email and know the content is safe.

Dr. Greene,

Attached is the report that will be released today at 5:00 pm. I made an error in my estimations. For the 6-day period from September 24 to September 29 we had 1260 cases and an average of 210 cases per day. I gave you an estimated cases per 100,000 based on the daily average when it should have been total cases. I should have estimated a case per 100,000 to be 147.

Please accept my apologies for this dreadful error.

Tito

Ernesto G. Rubio, MPH | Administrator/Health Officer Citrus County; Interim Administrator/Health Officer Duval County

Florida Department of Health in Citrus

3700 W. Sovereign Path | Lecanto, Florida 34461- 8071 | Work: 352.513.6004 Cell: 352.302.5103



Follow us on Twitter @FLHealthCtrns

The Mission of the Department: *"To protect, promote and improve the health of all people in Florida through integrated state, county and community efforts"*

The Department's Vision Statement: *"Healthiest State in the Nation"*

The Department's Values: (ICARE)

Innovation: We search for creative solutions and manage resources wisely.

Collaboration: We use teamwork to achieve common goals & solve problems.

Accountability: We perform with integrity & respect.

Responsiveness: We achieve our mission by serving our customers & engaging our partners.

Excellence: We promote quality outcomes through learning & continuous performance improvement.

Please Note: Florida has a very broad public records law. Most written communications to or from state officials regarding state business are public records available to the public and media upon request. Your e-mail communications may therefore be subject to public disclosure.

From: HSD00-COVIDReports <COVIDReports@flhealth.gov>

Sent: Friday, October 1, 2021 7:23 AM

Subject: Weekly Florida COVID-19 Data Report

This report is embargoed until 5:00PM EST. Please do not distribute.

Good morning,

The weekly Florida COVID Data report is attached.

For questions about this report, please contact COVIDReports@flhealth.gov.

COVID Reports Team
Florida Department of Health

Exhibit 7

Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

MEMORANDUM

TO: State Board of Education Members

FROM: Richard Corcoran

RE: Orange County Public Schools, Student Opt-Out Requirements

DATE: October 4, 2021

Based upon the following memorandum, I find there is probable cause that Orange County Public Schools (OCPS) acted contrary to the law by requiring students to wear a mask or face covering unless certain exceptions apply, such as a medical certification. Specifically, OCPS' policy violated the provisions of Rule 64DER21-12, Protocols for Controlling COVID-19 in School Settings and continues to violate Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings.

Background Information

On July 30, 2021, the Governor issued Executive Order Number 21-175, directing the Florida Department of Health (FDOH) and the Florida Department of Education (FDOE) to immediately execute rules and take any additional action necessary to ensure safety protocols for controlling the spread of COVID-19 in schools. The order requires that these protocols be consistent with the Parents' Bill of Rights and directs that action "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Moreover, the order directs the Commissioner of Education to pursue all legal means available to ensure school districts adhere to the law, including but not limited to withholding funds from noncompliant school boards.

On August 6, 2021, in response to the executive order, and after consultation with FDOE, the State's former Surgeon General, Scott Rivkees, as the head of FDOH, adopted an emergency rule establishing protocols for controlling the spread of COVID-19 in schools. Given the statutory duty of FDOH to implement protocols to prevent or limit the impact or spread of disease, the State's Surgeon General must be a licensed physician with advanced training or extensive experience in public health administration. *See* § 20.43(2), Fla. Stat. The rule provided for general protocols for public schools, protocols specific to symptomatic or COVID-19 positive students, protocols specific to students with exposure to COVID-19 and protocols for students with a prior COVID-19 infection. The portion of the rule addressing masks provided as

follows: **Students may wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.** See Rule 64DER21-12, Protocols for Controlling COVID-19 in School Settings, Florida Administrative Register, Vol. 47 / No. 153, August 9, 2021 (emphasis supplied).

Citing to the Parents' Bill of Rights, the notice for FDOH's emergency rule provided that "it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to allow for in-person education for their children."

On September 22, 2021, under the direction of the State's new Surgeon General, Dr. Joseph Ladapo, FDOH issued a revised rule to address controlling the spread of COVID-19 in school settings. Rule 64DER21-15 relaxes the requirements for quarantining asymptomatic students who have been exposed to COVID-19, and further clarifies the parental opt-out provision by providing that a "school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's **sole discretion.**" See Rule 64DER21-15, Florida Administrative Register, Vol. 47 / No. 185, September 23, 2021 (emphasis supplied). See Exhibit A.

The purpose of these changes is explained by FDOH in its notice for the new rule:

The Department [of Health] observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department [of Health] observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

Id.

Orange County Public Schools

On August 24, 2021, the Orange County School Board directed the superintendent to mandate face masks for students while inside OCPS buildings and buses. This requirement will be in place through October 30, 2021. The district's COVID-19 Health and Safety Manual states:

- Per Board mandate, all students and visitors must wear face masks while inside school board buildings until October 30, 2021.
 - Students are also required to wear masks while in district vehicles including buses.
- Employees must wear face masks while inside school board buildings or vehicles and in the presence of another individual.

- Employees driving in a district vehicle by themselves or working in an office alone are not required to wear a mask.
- Face masks are not required outside of buildings on school board property.
- Students with a note from a medical doctor, nurse practitioner, or physician assistant and employees with a medical exemption are not required to wear a face mask.
 - Employees must submit exemption requests through the district's ADA office.
- Face masks will be made available at district facilities.

See Exhibit B, page 8. In sum, the district's policy requires all students and visitors to wear face masks through October 30, 2021, subject only to medical exemptions.

On August 27, 2021, I wrote OCPS' superintendent and school board chair to notify them of my concern with their apparent non-compliance with Rule 64DER21-12 and to afford the district the opportunity to demonstrate compliance. *See Exhibit C.*

On September 1, 2021, OCPS' superintendent and board chair responded to me in writing, asserting that the district's policy is narrowly tailored and necessary to achieve the compelling state interest of protecting students. *See Exhibit D.* The letter did not rescind the requirement for medical documentation in order for a student to opt-out of a mask mandate.

On September 23, 2021, due to the adoption of FDOH's new rule, I advised OCPS' superintendent and school board chair of Rule 64DER21-15, and afforded the district another opportunity to demonstrate compliance. *See Exhibit E.*

On September 24, 2021, OCPS' superintendent and board chair responded, stating that the district's mask policy would continue through October 30. *See Exhibit F.* The letter did not rescind the requirement for medical documentation in order for a student to opt-out of a mask mandate.

In sum, OCPS' policy requires all students, staff and visitors to wear face coverings inside school board buildings. Although the policy appears to provide a number of exceptions, the policy precludes voluntary parental opt-out at the parent's or guardian's sole discretion

The State Board of Education's Enforcement Authority

The State Board of Education's enforcement authority is found in section 1008.32, Florida Statutes. The statute provides that "[t]he State Board of Education shall oversee the performance of district school boards [...] in enforcement of all laws and rules." § 1008.32, Fla. Stat.

In enforcing the law, the statutory process prescribed therein requires that I first report my determination of probable cause to the State Board of Education. If the State Board then determines that a district school board is unwilling or unable to comply with either law or rule, the State Board is authorized to impose sanctions in order to secure compliance, including the withholding of funds and reporting to the Legislature.

Any argument that the State Board's authority to enforce these safety protocols interferes with any district school board's authority to operate and control schools should be summarily rejected.

Indeed, the law in Florida is clear that the State Board's supervisory authority acts as a limitation on the operational authority of districts to operate, control and supervise public schools.

Looking to the Florida Constitution, there is a hierarchy under which a school board has local control, but in which the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a board's local powers, but such infringement is expressly contemplated and, in fact, encouraged by the very structure set by the Florida Constitution. *See Sch. Bd of Palm Beach Cty. v. Fla. Charter Educ. Found, Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017) (rejecting school board's argument that the State Board of Education's authority to approve a charter school application on appeal violates article IX, section 4(b)); *see also Sch. Bd of Collier Cty v. Fla. Dep't of Education*, 279 So. 3d 281 (Fla. 1st DCA 2019) (rejecting school board's argument that statute requiring school boards to distribute a portion of capital millage revenue to charter schools violates article IX, section 4(b)).

Accordingly, any argument that the State Board of Education lacks the authority to enforce these school safety protocols should also be rejected. It has long been settled that rules have the force and effect of the law. *State v. Jenkins*, 469 So. 2d 733 (Fla. 1985); *Florida Livestock Board v. W.G. Gladden*, 76 So. 2d 291 (Fla. 1954). Rule 64DER21-15 derives authority from a statute in the educational code—specifically, section 1003.22(3), Florida Statutes—so while FDOH may *also* have enforcement authority, enforcement of school safety protocols falls squarely within the State Board of Education's authority to supervise the state's education system as a whole.

Conclusion

Every school board member and every school superintendent has a duty to comply with the law, whether they agree with it or not. While the district school board may not agree with the safety protocols set forth by the Surgeon General, the Surgeon General is the person who, under the law, sets protocols to control and mitigate COVID-19 in schools. The Office of the Attorney General relied upon these principles to reject any argument a school board could depart from FDOH's emergency rule based upon a disagreement with the protocols found in the rule. *See* AGO 2021-01, September 1, 2021. Disagreement with the protocols found in 64DER21-15 simply does not provide a school district with a basis to violate the rule, be it through medical requirements, attempts to tie mask requirements to fluctuating positivity rates, or through any other means.

All of this in mind, I hereby recommend that the State Board of Education use its enforcement powers to enforce the health protocols found in Emergency Rule 64DER21-15 and protect the right of parents to make both health and educational decisions on behalf of their children.

Should the State Board adopt my recommendation, I request that it consider the sanction of withholding state funds in an amount equal to 1/12 of all school board members' salaries, as well as withholding state funds in an amount equal to any federal grant funds awarded to OCPS for its noncompliance with Emergency Rule 64DER21-15.

EXHIBIT A

Notice of Emergency Rule

DEPARTMENT OF HEALTH

Division of Disease Control

RULE NO.: RULE TITLE:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Because of an increase in COVID-19 infections, largely due to the spread of the COVID-19 delta variant, prior to the beginning of the 2021-2022 school year, it is imperative that state health and education authorities continue to provide emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. In August 2021, all public schools in Florida began the 2021-2022 school year with in-person learning available for all students. The Department of Health adopted Emergency Rule 64DER21-12 on August 6, 2021. Since that time the Department has conducted a review of data for cases of COVID-19 positive school-aged children and data for school-aged children who have been in direct contact with a COVID-19 positive person. The Department observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

In order to permit students to continue in-person learning, to minimize the detriment to students and school personnel from the added burden of recurrent removal of students, and to benefit the overall welfare of students in Florida, it is necessary to provide updated emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. This emergency rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to ensure safety protocols for controlling the spread of COVID-19 in schools that (1) do not violate Floridians' constitutional freedoms; (2) do not violate parents' rights under Florida law to make health care decisions for their minor children; and (3) protect children with disabilities or health conditions who would be harmed by certain protocols, such as face masking requirements. The order directs that any COVID-19 mitigation actions taken by school districts comply with the Parents' Bill of Rights, and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19."

Because of the importance of in-person learning to educational, social, emotional and mental health, and welfare, removing healthy students from the classroom for lengthy quarantines should be limited. Under Florida law, parents and legal guardians have a fundamental right to direct the upbringing, education, health care, and mental health of their minor children and have the right to make health care decisions for their minor children. HB 241, Ch. 2021-199, Laws of Fla. Parents and legal guardians are uniquely situated to understand the health care, emotional, and educational needs of their minor children. In furtherance of the Florida Department of Health's authority to adopt rules governing the control of preventable communicable diseases—and because students benefit from in-person learning—it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to maximize the allowance of in-person education for their children. Unnecessarily removing students from in-person learning poses a threat to the welfare of children, including their social, emotional and educational developmental, and is not necessary absent illness.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule is necessary in light of the unnecessary exclusion of healthy students from in-person learning and the urgent need to provide updated COVID-19 guidance to school districts. Given the evolving nature of this novel disease and the potential for adverse impacts on school children resulting from the unnecessary exclusion of healthy children from in-person learning, there is a need to issue an immediately effective rule while the department promulgates a permanent rule through the non-emergency process.

SUMMARY: Emergency rule 64DER21-15 sets forth the procedures for controlling COVID-19 in school settings. Emergency rule 64DER21-15 repeals and replaces Emergency rule 64DER21-12 that was adopted on August 6, 2021.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Carina Blackmore, Florida Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1703, (850)245-4732.

THE FULL TEXT OF THE EMERGENCY RULE IS:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

(1) GENERAL PROTOCOLS AND DEFINITION. The following procedures shall be instituted to govern the control of COVID-19 in public schools:

(a) Schools will encourage routine cleaning of classrooms and high-traffic areas.

(b) Students will be encouraged to practice routine handwashing throughout the day.

(c) Students will stay home if they are sick.

(d) Schools may adopt requirements for students to wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's sole discretion.

(e) For purposes of this rule, "direct contact" means cumulative exposure for at least 15 minutes, within six feet.

(2) PROTOCOLS FOR SYMPTOMATIC OR COVID-19 POSITIVE STUDENTS. Schools will ensure students experiencing any symptoms consistent with COVID-19 or who have received a positive diagnostic test for COVID-19 shall not attend school, school-sponsored activities, or be on school property until:

(a) The student receives a negative diagnostic COVID-19 test and is asymptomatic; or

(b) Ten days have passed since the onset of symptoms or positive test result, the student has had no fever for 24 hours and the student's other symptoms are improving; or

(c) The student receives written permission to return to school from a medical doctor licensed under chapter 458, an osteopathic physician licensed under chapter 459, or an advanced registered nurse practitioner licensed under chapter 464.

(3) PROTOCOLS FOR STUDENTS WITH EXPOSURE TO COVID-19. Schools shall allow parents or legal guardians the authority to choose how their child receives education after having direct contact with an individual that is positive for COVID-19:

(a) Parents or legal guardians of students who are known to have been in direct contact with an individual who received a positive diagnostic test for COVID-19 may choose one of the following options:

1. Allow the student to attend school, school-sponsored activities, or be on school property, without restrictions or disparate treatment, so long as the student remains asymptomatic; or

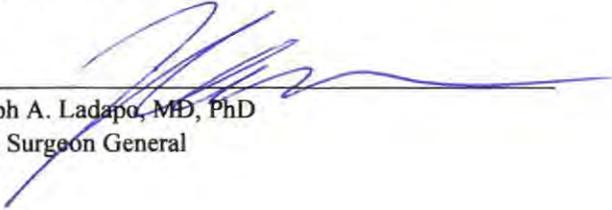
2. Quarantine the student for a period of time not to exceed seven days from the date of last direct contact with an individual that is positive for COVID-19.

(b) If a student becomes symptomatic following direct contact with an individual that has tested positive for COVID-19, or tests positive for COVID-19, the procedures set forth in subsection (2), above shall apply.

Rulemaking Authority 1003.22(3) FS. Law Implemented 1003.22(3) FS. History—New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE:



Joseph A. Ladapo, MD, PhD
State Surgeon General

9/22/21

Date

EXHIBIT B



COVID-19
HEALTH AND SAFETY
PROCEDURES GUIDE

2021-22 School Year



Orange County
Public Schools

August 27, 2021

Disclaimer

This manual contains general guidance to assist school and administrative sites in navigating health and safety considerations during the COVID-19 pandemic. It is intended for the use of district staff, rather than the public at-large. This manual is a supplement to the Injury/Illness section of the Emergency Procedures Manual for Schools and the Medical Emergencies section of the Emergency Procedures Manual for Administrative Sites.



Promoting risk reduction through a great culture of teaching.



Promoting a Healthy and Safe Learning Environment



To minimize the risk of exposure to COVID-19 for students, staff, and families across the school district, Orange County Public Schools (OCPS) encourages following appropriate health guidance.

2021-2022 Guidance Overview



- This manual contains standard COVID-19 safety-related procedures and protocols.
- Additional procedures and protocols may be in place based on programs and facility layouts.
- Staff are expected to follow best practices to reduce the spread of COVID-19 in their work areas.
- District administration will continue to monitor federal, state and local public health communication about COVID-19, coordinate with local health officials, and modify guidance as needed.

Record of Changes

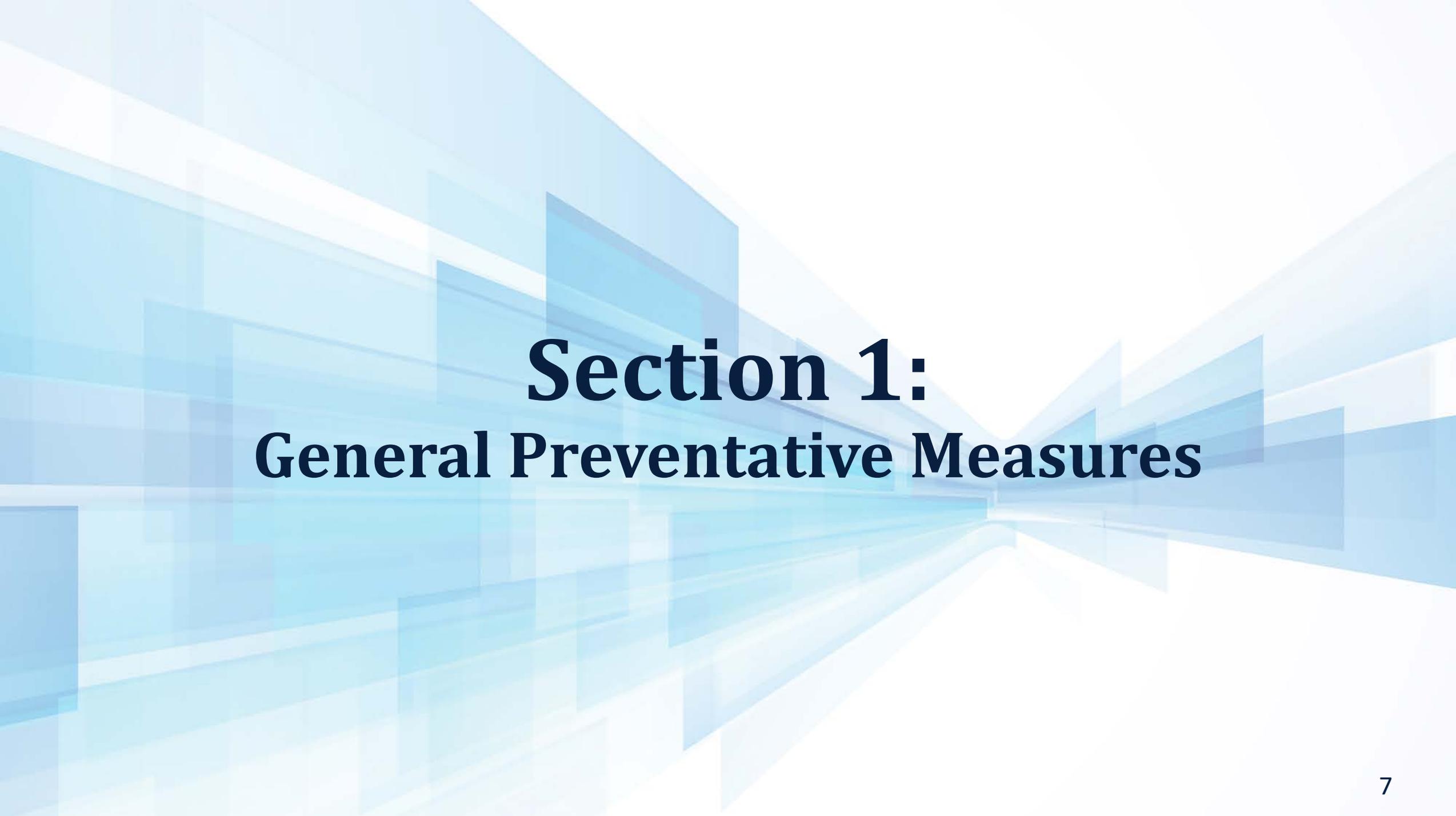


Changes from Previous Version	Date	Page
Updated information on page to comply with the Board universal mask mandate issued 8/24	8/25/21	8

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Section 1: General Preventative Measures

Personal Protective Equipment (PPE)

*Help Protect Yourself
and Others*

Reference [School Board Policy EBBA Disease Prevention; Face Coverings](#) for additional information regarding masks.



- Per Board mandate, all students and visitors must wear face masks while inside school board buildings until October 30, 2021.
 - Students are also required to wear masks while in district vehicles including buses
- Employees must wear face masks while inside school board buildings or vehicles and in the presence of another individual.
 - Employees driving in a district vehicle by themselves or working in an office alone are not required to wear a mask
- Face masks are not required outside of buildings on school board property.
- Students with a note from a medical doctor, nurse practitioner, or physician assistant and employees with a medical exemption are not required to wear a face mask.
 - Employees must submit exemption requests through the district's ADA office
- Face masks will be made available at district facilities.
- Individuals may choose to wear any of the following types of face masks:
 - Commercially produced, disposable masks
 - Reusable, cloth masks
 - Masks with clear panels
- Face masks must cover both the nose and mouth.
- Face masks with exhalation valves, neck gaiters, and neck buffs are not permitted.
- Face shields may be worn in conjunction with a face mask but cannot be used in lieu of a mask.
- Masks must comply with the dress code (cannot contain questionable language or symbols).
- Individuals should be reminded not to touch their masks and to wash their hands frequently.
- Individuals opting to wear reusable, cloth masks should ensure they are cleaned regularly.
- Disposable gloves should be replaced with handwashing or hand sanitizer unless required to perform job duties.

Hygiene Protocols

Hand Hygiene

Handwashing is one of the best ways to protect yourself and your family from getting sick.

After you have been in a public place and touched an item or surface that may be frequently touched by other people, such as door handles, tables, counter tops, chairs, sinks, shared pens, elevator buttons, and microphones, sanitize your hands before touching your eyes, nose, or mouth because that's how germs enter our bodies.



- You can help yourself and others stay safe, especially during these key times when you are likely to get and spread germs:
 - After entering a building or school
 - Before, during, and after eating food
 - Before and after handling papers that are not your own
 - Before and after treating a cut or wound
 - Before taking medication
 - After using the restroom
 - After blowing your nose, coughing, or sneezing
 - After handling your cellphone that has been placed on a table or other area that is not your own
 - After touching a recycling or garbage receptacle
- Steps to Wash Your Hands the Right Way:
 1. **Wet** your hands with clean, running water (warm or cold), turn off the tap, and apply soap.
 2. **Lather** your hands by rubbing them together with the soap. Lather the backs of your hands, between your fingers, and under your nails.
 3. **Scrub** your hands for at least 20 seconds. Need a timer? Hum the “Happy Birthday” song from beginning to end twice.
 4. **Rinse** your hands well under clean, running water.
- If soap and water are not readily available, district approved hand sanitizer that contains at least 60% alcohol can be used (for staff and older children who can safely use hand sanitizer).
- Contact your Custodial Services Area Manager to acquire additional handwashing supplies.



Health Monitoring

*Recognizing the
Signs and Symptoms*

Health monitoring and recognizing the signs and symptoms are crucial to help reduce the risk of spreading COVID-19.



- Encourage staff, students, volunteers and visitors planning to enter the school or facility to self-screen for symptoms of COVID-19 prior to coming onsite.
- Refrain from entering the school or facility if any of the following are present:
 - Symptoms of COVID-19
 - A temperature of 100.4° F or higher
 - Under evaluation for COVID-19 (for example, waiting for the results of a viral test to confirm infection)
 - Diagnosed with COVID-19 and not yet cleared to discontinue isolation

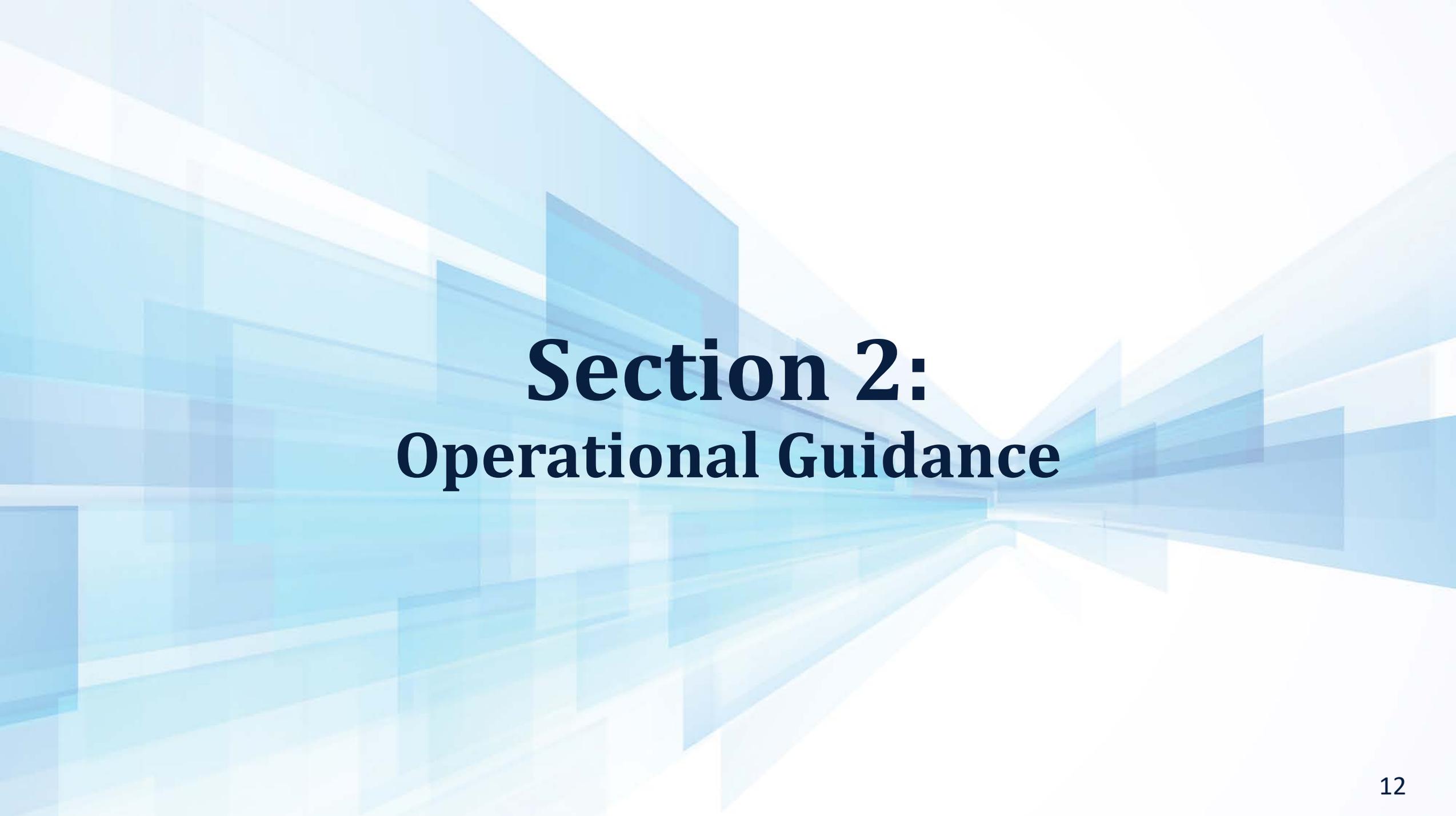
Absenteeism and Academic Continuity

*Monitor and Plan
for Absenteeism*

Monitor absenteeism of students and employees, cross-train staff, and create a roster of trained back-up staff to use in case of excessive employee absences due to illness.



- Review the usual absenteeism patterns at your school among both students and staff.
- School administrators should alert Professional Standards and local health officials about large increases in student and staff absenteeism, particularly if absences appear due to respiratory illnesses (like the common cold or the flu, which have symptoms similar to COVID-19).
- Review attendance and sick leave policies. Encourage students and staff to stay home when sick, even without documentation from a doctor.
- Identify critical job functions and positions, and plan for alternative coverage by cross-training staff within job description or classification.
- The district will provide further direction in the event a school or classroom needs to pivot to digital learning in order to support academic continuity.
- For individual students who may need to isolate or quarantine, schools will follow normal procedures for sick students.

The background features a series of overlapping, semi-transparent blue rectangular planes that create a strong sense of perspective, receding towards a bright white vanishing point in the distance. The planes are arranged in a grid-like pattern, with some appearing as walls and others as floors or ceilings, giving the impression of a modern, architectural space.

Section 2: Operational Guidance

Operational Guidance - Schools

Promote Safety and Preventative Measures

Continue encouraging measures to reduce the transmission of infectious diseases.



- **Buses**
 - Buses will be cleaned or disinfected as needed.
 - Bus windows should be lowered to improve air circulation.
 - If a student becomes ill during the day, he/she must not use group transportation to return home.
 - Contact your Transportation Area Manager for additional transportation guidance or resources.
- **Classrooms**
 - Classrooms will be cleaned or disinfected as needed.
 - Hand sanitizer is available as individuals enter the classroom.
 - Shared object use is discouraged without proper hand hygiene.
- **Common Areas**
 - Common areas will be cleaned or disinfected as needed.
 - Ensure bathrooms are stocked with proper handwashing products.
 - Existing plexiglass may remain in place.
- **Visitors and Volunteers**
 - Visitors and volunteers are allowed on campus; encourage visitors to self-screen for COVID-19 symptoms prior to coming onsite.
- **Meetings**
 - Virtual meetings are permitted when requested by parents or guardians.
 - In-person meetings require documentation indicating attendance and seating locations (seating charts).

Operational Guidance - Schools

Promote Safety and Preventative Measures

- School Clinics

- Staff and students with COVID-19 symptoms will immediately be taken to the Sick Room.
- Encourage staff and students planning to enter the school environment to self-screen prior to coming onsite. Do not attempt to enter the school if any of the following are present:
 - Symptoms of COVID-19
 - A temperature of 100.4° F or higher
 - Under evaluation for COVID-19 (for example, waiting for the results of a viral test to confirm infection)
 - Diagnosed with COVID-19 and not yet cleared to discontinue isolation

Continue encouraging measures to reduce the transmission of infectious diseases.



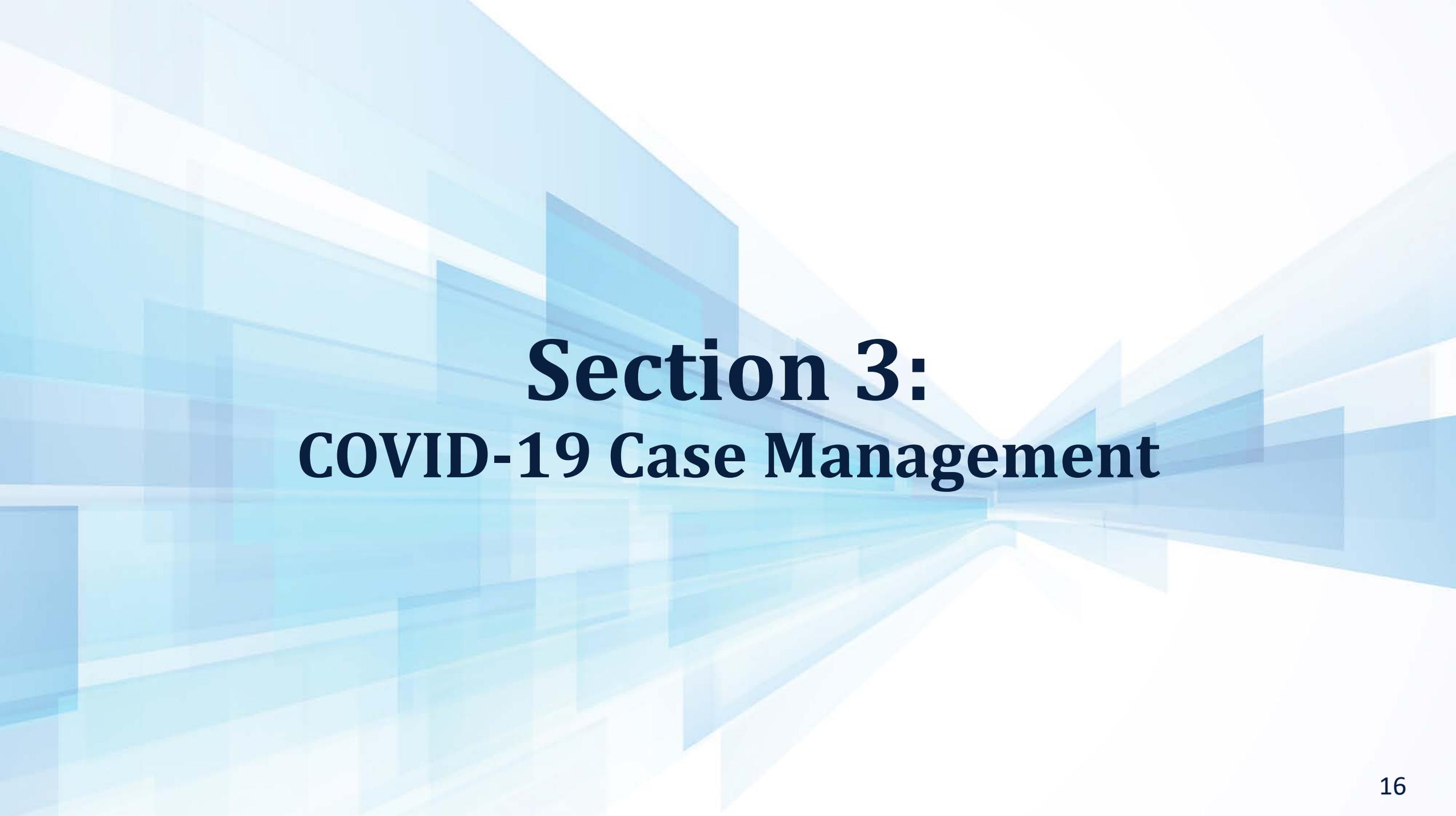
Operational Guidance – Administrative Sites

*Promote Safety and
Preventative Measures*

Sick employees should follow CDC-recommended steps. Employees should not return to work until the criteria to discontinue home isolation are met, in consultation with healthcare providers.



- **Offices**
 - Reinforce guidance that sick employees stay home.
 - Maintain a clean and sanitary workspace.
 - Practice good hand hygiene throughout the workday.
- **Vehicles**
 - Regularly clean and disinfect high touch surfaces in the vehicle.
- **Shared Equipment**
 - Equipment (copiers, microwaves, phones tools, etc.) should be cleaned and disinfected regularly.
- **Common Areas**
 - Common areas will be cleaned or disinfected as needed.
 - Bathrooms should be stocked with proper handwashing products.
 - Provide hand sanitizer in strategic locations.
 - Existing plexiglass may remain in place.
- **Visitors and Volunteers**
 - Visitors are allowed at facilities; encourage visitors to self-screen for COVID-19 symptoms prior to coming onsite.
- **Meetings**
 - Virtual meetings are allowed when possible.
 - In-person meetings require documentation indicating attendance and seating locations (seating charts).



Section 3: COVID-19 Case Management

Return Recommendations for District Staff and CTE Students

*Reviewed and Revised
in Accordance with FDOH-Orange*

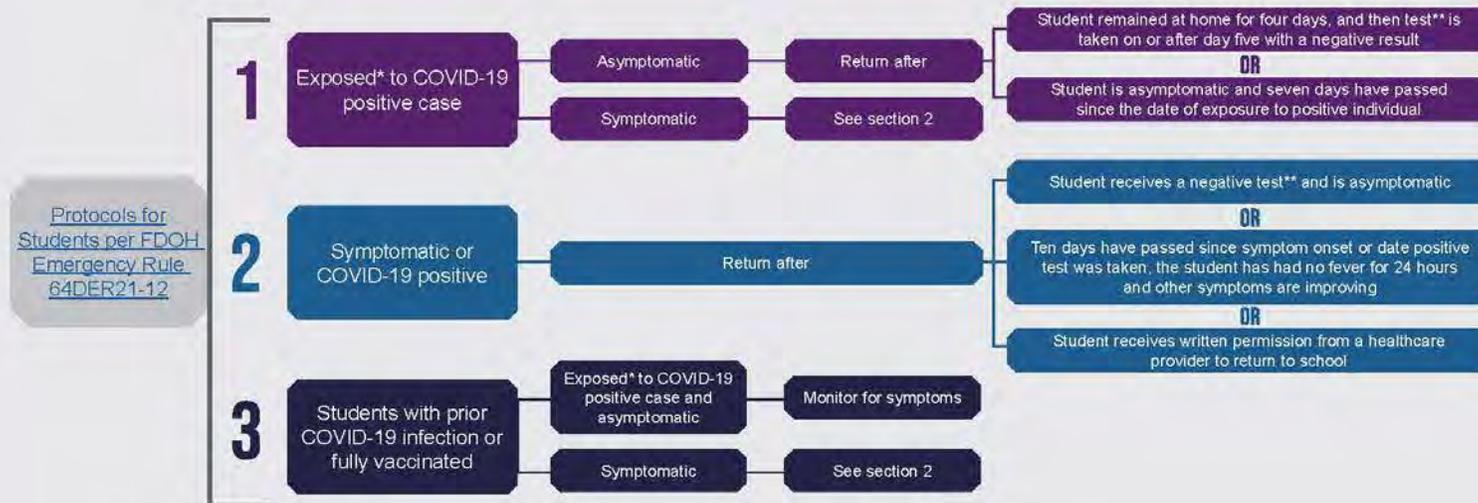
Case Type	Response
Confirmed Positive <ul style="list-style-type: none">Received a test stating that the individual has tested positive	<ul style="list-style-type: none">The individual will self-isolate for 10 days from start of symptoms or after receiving a positive test (whichever comes first).After the isolation period is over the individual must be symptom and fever free for 24 hours without the aid of medication prior to returning.Test-based strategies for returning are not implemented because individuals can test positive for the virus for up to 6 months after infection while the individual is not infectious.
Symptomatic (with no known exposure) <ul style="list-style-type: none">The individual is experiencing COVID-19 like symptoms and has not been known to be exposed to someone who has COVID-19	<ul style="list-style-type: none">If the individual takes a COVID test and the test is negative, the individual can return as soon as they feel better.If the individual does not take a COVID test, or the individual takes a COVID test and it is positive, they must self-isolate for 10 days from the start of symptoms. After the 10-day self-isolation period is over, the individual must be symptom and fever-free for 24 hours without the aid of medication prior to returning.The return recommendations for symptomatic individuals (with no known exposure) will be followed even if the individual is fully vaccinated (2 weeks after last dose).
Exposed Close Contact (secondary exposure) <ul style="list-style-type: none">Must be within 6 feet for 15 minutes (cumulative within a 24-hour period, with or without a mask) and deemed potentially exposed by the Florida Department of Health (FDOH)	<ul style="list-style-type: none">If the individual is considered exposed by FDOH-Orange they can return after a 10-day quarantine and being symptom and fever free for 24 hours without the aid of medication.If the individual was diagnosed with COVID-19 within the previous 90 days of exposure they do not need to quarantine.If symptoms develop during quarantine, the individual must wait 10 days after the onset of symptoms and be symptom and fever free for 24 hours without the aid of medication prior to returning.FDOH-Orange recommends that the individual get a test, but an individual who is an exposed close contact cannot test out of a 10-day quarantine.If a vaccinated individual is an exposed close contact then the current guidance produced by public health officials will be followed.

Return Recommendations for Pre-K - 12 Students

*Reviewed and Revised
in Accordance with FDOH-Orange*

PROTOCOLS FOR CONTROLLING COVID-19 2021-22 SCHOOL YEAR

STUDENTS



*Per CDC, exposure is close contact of six feet or less for 15 minutes or more.

**The test must be a SARS-COV-2 Viral Test (PCR or rapid antigen test).

Reporting COVID-19 Cases

*Developed and Reviewed in
Accordance with FDOH-Orange*



- If a student/visitor tests positive for COVID-19 or an employee tests positive, shows symptoms, or has been in close contact with COVID-19 (even if they are vaccinated) the following shall be completed:
 - The supervisor/administrator will complete the COVID-19 Case Management Intake Form.
 - The OCPS COVID-19 Task force will coordinate with FDOH-Orange to ensure the proper actions are taken.
- If any individual tests positive, or comes in close contact, or shows symptoms of COVID-19 the supervisor/administrator should coordinate with Custodial Services to disinfect areas in need.

Information to Support FDOH Contact Tracing

What is Investigative Case Support?

FDOH uses contact tracing to track COVID-19 exposures. Contact tracing is a highly scientific process, requiring specialized training. To assist FDOH contact tracing, OCPS will use investigative case support.



- Professional Standards and/or Health Services may request certain documents and information to support the FDOH contact tracing investigations.
- Information required to confirm a positive case:
 - Individual's Name
 - Date of Birth
 - Hard or electronic copy of COVID-19 testing results, if possible, or name and address of agency that conducted the testing
- Information to assist in tracing close contacts:
 - Classroom/lunchroom seating charts or workspace details
 - Individual class or work schedules
 - List of individuals who were within 6-feet for 15-minutes or more of the affected individual (consider cafeteria, after care, activities, sports, meetings, etc.)
 - Bus information

COVID-19 Vaccine and Testing

Information for Students and Staff

For current information on vaccines and testing, please visit:

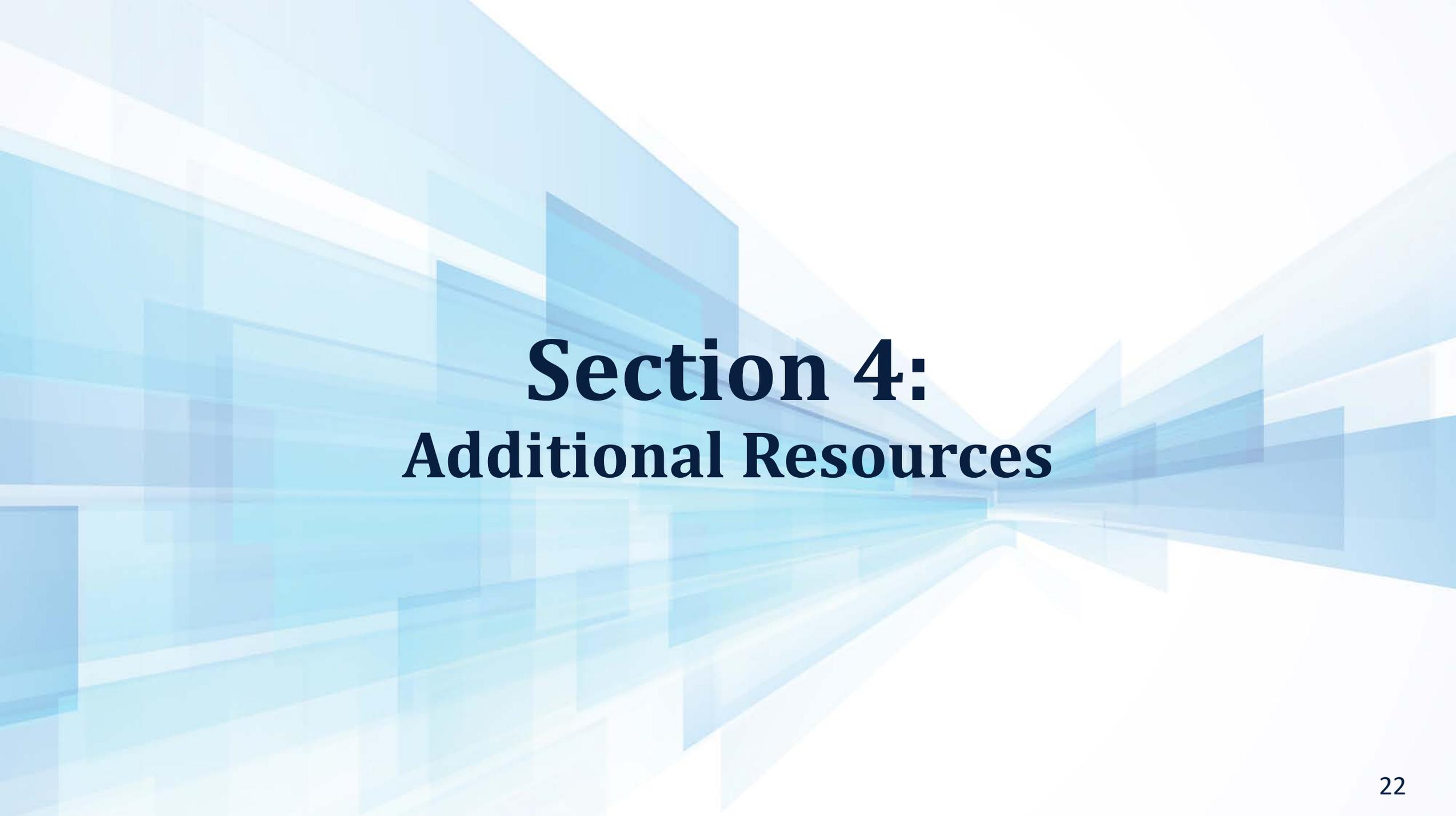
www.floridahealth.gov

www.ocfl.net/vaccine

www.ocps.net

- COVID-19 testing and vaccines are readily available to the public.
- Eligibility for the vaccine continues to be updated regularly by the CDC and other public health organizations.
- OCPS, in conjunction with FDOH-Orange, is opening up campuses to host vaccine events.
- Individuals who receive the COVID-19 vaccine **may** have a different quarantine length if they have come in close contact with COVID-19.
 - Individuals should contact FDOH to determine their level of exposure and vaccination which will dictate the need to quarantine.





Section 4: Additional Resources

Additional Resources

References

The following includes resources where additional information on COVID-19 can be referenced.



- [Orange County Public Schools COVID-19 Vaccine Information](#)
- [Florida Department of Education-Emergency Response](#)
- [Florida Department of Health in Orange County](#)
- [Centers for Disease Control](#)

Additional Resources

District Contact Information

For any additional guidance and resources, please contact the appropriate district office. If you are unsure who to contact, call the district's main telephone line at 407-317-3200 or email questions@ocps.net.



- District Main Line: 407.317.3200
- Employee Hotline: 407.250.6269
- General Inquiries: questions@ocps.net
- District Website: www.ocps.net

EXHIBIT C



Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

August 27, 2021

Dr. Barbara Jenkins
Superintendent
Orange County Public Schools
445 West Amelia Street
Orlando, FL 32801

Ms. Teresa Jacobs
School Board Chair
Orange County Public Schools
445 West Amelia Street
Orlando, FL 32801

Dear Superintendent Jenkins and Chair Jacobs:

This letter is sent to express my grave concern regarding your district's response to the recently adopted Emergency Rule 64DER21-12 from the Florida Department of Health. This rule, issued on August 6, 2021, by the Florida Surgeon General, Dr. Scott Rivkees, explicitly requires that any mandated mask policy imposed by a district or school "must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask." The emergency rule does not require parents to submit medical documentation in order to opt-out.

Executive Order 21-175 directed the Florida Department of Health and the Florida Department of Education to execute rules to ensure safety protocols for controlling the spread of COVID-19 in schools. The Order directs further that any such action must "at minimum be in accordance with Florida's Parents' Bill of Rights and protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Because the Florida Department of Health, under section 1003.22(3), Florida Statutes, is the agency authorized to adopt rules governing the control of communicable diseases, the Florida Department of Health adopted an emergency rule establishing protocols for controlling COVID-19 in public schools. The rule provides, in part, as follows:

Students may wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.

Rule 64DER21-12(1)(d), Florida Administrative Register, Vol. 47/No. 153, August 9, 2021.

Recent reports in the media indicate that the Orange School Board has taken action inconsistent with the emergency rule by limiting or conditioning the parental ability to opt-out of a face covering or mask mandate. Section 1008.32, Florida Statutes, states, "The State Board of

Education shall oversee the performance of district school boards and the Florida College System institution board of trustees in enforcement of all laws and rules.” Further, section 1008.32(2)(a), Florida Statutes, states that the “Commissioner of Education may investigate allegations of noncompliance with law or state board rule and determine probable cause.”

Based on this authority, I am immediately initiating an investigation of non-compliance with the rule adopted by the Florida Department of Health on August 6, 2021. In commencing this investigation, I am demanding that you provide a written response by 5:00 p.m. on Wednesday, September 1, 2021, documenting how your district is complying with Florida Department of Health Emergency Rule 64DER21-12. Should you fail to document full compliance with this rule, in accordance with section 1008.32, Florida Statutes, I intend to recommend to the State Board of Education that the Department withhold funds in an amount equal to the salaries for all the members of the School Board, as well as other sanctions authorized by law, until the district comes into compliance.

Parents have a fundamental right to direct the upbringing, education and care of their minor children. The Department of Education will protect that right.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Corcoran', with a long horizontal flourish extending to the right.

Richard Corcoran
Commissioner

EXHIBIT D

CHAIR

Teresa Jacobs

VICE CHAIRMAN

Pam Gould (4)

MEMBERS

Angie Gallo (1)

Johanna López (2)

Linda Kobert (3)

Vicki-Elaine Felder (5)

Dr. Karen Castor Dentel (6)

Melissa Byrd (7)

SUPERINTENDENT

Dr. Barbara M. Jenkins

September 1, 2021

***Via Email Richard.Corcoran@fldoe.org
and U.S. First Class Mail***

The Honorable Commissioner Richard Corcoran
Florida Department of Education
325 W. Gaines St.
Tallahassee, FL 32399-0400

Re: Your letter dated August 27, 2021

Dear Commissioner Corcoran:

We are in receipt of your letter dated August 27, 2021, regarding the School Board of Orange County, Florida's ("School Board") direction to Superintendent Barbara M. Jenkins on August 24, 2021, to require masks in its schools, and only allowing those students with a medical note to opt out of wearing a mask. The School Board feels this action was necessary in order to protect the health, safety and welfare of its students, employees and visitors and for continuity of instruction.

The School Board had three primary tools by which to control the spread of the Covid-19 virus:

1. **Social distancing:** The Centers for Disease Control and Prevention ("CDC") recommends at least three feet of social distancing between students within the classroom to reduce transmission risk.

"In addition to universal indoor masking, CDC recommends schools maintain at least 3 feet of physical distance between students within classrooms to reduce transmission risk. When it is not possible to maintain a physical distance of at least 3 feet, such as when schools cannot fully re-open while maintaining these distances, it is especially important to layer multiple other prevention strategies, such as screening testing." [Guidance for COVID-19 Prevention in K-12 Schools | CDC](#)

As the State recognized in the June 11, 2020 document titled "Reopening Florida's Schools and the CARES Act", "Schools are designed to bring people together, creating shared learning spaces, enabling teachers to connect with students in-person, empowering students to collaborate and maximizing the value of a shared educational journey." [See Page 36 of the linked document.](#) Also, last year the

Department of Education (“DOE”) allowed Districts to have an innovative plan by allowing Districts to be fully compensated for teaching students online, thereby reducing the crowding in school buildings. This year, since all students are back on campus and no innovative option has been approved by DOE, the School Board cannot socially distance students to control the spread of Covid-19, thereby losing this crucial layer of prevention.

2. **Covid-19 vaccines:** According to the CDC, vaccines help control the spread of the virus and help prevent severe outcomes from the virus: “COVID-19 vaccines are effective at protecting you from COVID-19, especially severe illness and death. COVID-19 vaccines reduce the risk of people spreading the virus that causes COVID-19” [See this link](#). However, students under the age of 12 are not currently eligible for the vaccine, meaning control of the virus is especially difficult in elementary schools. Additionally, Districts are prohibited from requiring students to be vaccinated for Covid-19 for enrollment or attendance, or to gain access to, entry upon or service from such educational institution:

“An educational institution as defined in s. 768.38 may not require students or residents to provide any documentation certifying COVID-19 vaccination or post-infection recovery for attendance or enrollment, or to gain access to, entry upon, or service from such educational institution in this state. This subsection does not otherwise restrict educational institutions from instituting screening protocols consistent with authoritative or controlling government-issued guidance to protect public health.” Section 381.00316(3), Florida Statutes.

Further, unlike the original variant of the virus in 2020, this year’s Delta variant has broken through the existing vaccines, making control of the virus more difficult. Therefore, the second layer of protection is non-existent for approximately 52 percent of our student population and not fully effective for our entire student population.

3. **Masks:** The School Board is relying upon the August 5, 2021 guidance of the CDC: “Due to the circulating and highly contagious Delta variant, CDC recommends universal indoor masking by all students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status.” [See the CDC mask guidance here](#). The CDC was held by Judge John Cooper in the case of McCarthy v. DeSantis, Case No. 2021-CA-1382 to be the preeminent disease control organization in the United States and that reliance upon the CDC’s recommendations regarding mask wearing by School Boards is reasonable. The School Board, based upon the CDC guidance, determined mandatory masking for all persons except for those with medical exemptions was the best way for controlling the spread of Covid-19 in schools, especially in light of the highly contagious Delta variant. This is especially so when the other two tools to control the spread of the virus (social distancing and vaccines) have been rendered unavailable to the School Board by State actions and by the lack of an approved vaccine for students under 12 years of age.

The state of Florida and Orange County, Florida in particular are suffering from negative affects based upon the Delta variant. The School Board began the 2021-2022 school year on August 10, 2021. Initially, it allowed parents to opt out of wearing masks. After two weeks of reviewing Covid-19 positivity data, on August 24, 2021, the School Board directed the Superintendent to

require masks of all students and only allow parents to opt their students out of wearing masks based upon medical documentation.

As of August 26, 2021, the positivity rate in Orange County is 17.6 percent, with 9048 cases in the last week, and the number of new cases per 100,000 residents is 620.8. Additionally, in the 2020-2021 school year, Orange County Public Schools had 7,397 total positive cases for students, employees and vendors. As of September 1, 2021, Orange County Public Schools has 3,909 positive cases for students, employees, and vendors. This means Orange County Public Schools exceeded 52.8 percent of its total cases from 2020-2021 school year in the first 17 out of 180 days in the 2021-2022 school year. A link to the dashboard may be found [here](#).

Moreover, on August 23, 2021, the day before the School Board directed the Superintendent to change the mask mandate to only allow opt outs with medical documentation, the Florida Department of Health in Orange County reported that children ages 5 to 14 made up roughly 20% of all new Covid-19 cases in Orange County. [See the news report confirming these facts here](#).

The School Board determined, based on the prevalence of cases in the first 17 days of school, that it has a compelling interest in protecting the health, safety and welfare of students based upon the highly contagious Delta variant. See also, Section 1001.42(8), Florida Statutes, where the School Board is authorized to, “in accordance with the provisions of chapters 1003 and 1006, provide for the proper accounting for all students of school age, for the attendance and control of students at school, and for proper attention to health, safety, and other matters relating to the welfare of students.”

This response also relies upon the ruling of Judge Cooper in the case of [McCarthy v. DeSantis](#), from Friday, August 27, 2021, for its mask requirement. Judge Cooper ruled that, based upon Section 1014.03, Florida Statutes, the School Board is entitled to enact regulations, including mask mandates when “such action is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means.” Judge Cooper determined that DOE could not enforce Department of Health Emergency Rule 64DER21-12(1)(d) cited in your letter, nor could the Department of Education penalize School Boards for not following the Rule because the Rule violated the above statute.

The School Board’s action is narrowly tailored because it protects the students with health conditions making it difficult or impossible to wear a mask by allowing them to opt out, while requiring those who can wear the mask safely to do so in order to slow down the community spread of Covid-19. The policy is also narrowly tailored because it is limited in duration through October 30, 2021, at which time the School Board hopes that community transmission has decreased to the point where the School Board could safely allow mask wearing to be optional again.

The School Board did not provide its direction on August 24, 2021 lightly – it did so in light of the uncontrolled community spread of Covid-19 in Orange County. The School Board shares the goals of DOE to have students attend school in person as much as possible. Given the community spread at this time, mandatory masking is the only remaining tool for the School Board to ensure students stay in school as much as possible. Without such mitigations, an escalation of quarantines will be likely, and school closures inevitable, detracting from student learning time.

Please do not hesitate to contact us should you have any further questions or concerns.

Sincerely,


Teresa Jacobs, Chair
School Board of Orange County, Florida


Barbara M. Jenkins, Ed. D.
Superintendent

EXHIBIT E



Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

September 23, 2021

Dr. Barbara Jenkins
Superintendent
Orange County Public Schools
445 West Amelia Street
Orlando, FL 32801

Ms. Teresa Jacobs
School Board Chair
Orange County Public Schools
445 West Amelia Street
Orlando, FL 32801

Dear Superintendent Jenkins and Chair Jacobs:

This letter is to advise you of the Department of Health's new emergency rule revising the "Protocols for Controlling COVID-19 in School Settings" and to provide you one more opportunity to come into compliance with the requirements established by the Department of Health.

A copy of the Department of Health's new rule, 64DER21-15, is attached. It revises the requirements for quarantining asymptomatic students who have been exposed to COVID-19 and further clarifies the parental opt-out provision to foreclose the erroneous interpretation that the parental opt-out permits a medical-only opt-out. That provision now provides that ". . . the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's **sole discretion.**" See, [Rule 64DER21-15\(1\)\(d\), Florida Administrative Register, Vol. 43 / No. 185](#), September 23, 2021 (emphasis supplied). The purpose of these changes is explained by the Department of Health in its notice for the new rule.

The Department [of Health] observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department [of Health] observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

Dr. Jenkins, Ms. Jacobs
September 23, 2021
Page Two

I am continuing the investigation of your district's mask mandate that I notified you by letter of August 27, 2021. Based upon the authority provided to me under s. 1008.32(2)(a), Florida Statutes, I request that you provide a written response by 5:00 p.m. on September 24, 2021, documenting how your district is complying with that portion of the Department of Health's Emergency Rule 64DER21-15, that continues to give parents or legal guardians the sole discretion to opt a student out from a mask or face covering mandate.

As I have done before, if you fail to document full compliance, I intend to recommend to the State Board of Education that the Department of Education withhold funds in an amount equal to the salaries for all members of the School Board, as well as other sanctions authorized by law, for the period during which the district has been out of compliance.

Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Corcoran", with a long horizontal flourish extending to the right.

Richard Corcoran
Commissioner

EXHIBIT F

CHAIR

Teresa Jacobs

VICE CHAIRMAN

Pam Gould (4)

MEMBERS

Angie Gallo (1)

Johanna López (2)

Linda Kobert (3)

Vicki-Elaine Felder (5)

Dr. Karen Castor Dentel (6)

Melissa Byrd (7)

SUPERINTENDENT

Dr. Barbara M. Jenkins

September 24, 2021

***Via Email Richard.Corcoran@fldoe.org
and U.S. First Class Mail***

The Honorable Commissioner Richard Corcoran
Florida Department of Education
325 W. Gaines St.
Tallahassee, FL 32399-0400

Re: Your letter dated September 23, 2021

Dear Commissioner Corcoran:

We are in receipt of your letter dated September 23, 2021, and appreciate the opportunity to respond.

Regarding the School Board of Orange County, Florida's ("School Board") direction to Superintendent Barbara M. Jenkins to require masks in its schools, and only allow those students with a medical note to opt out of wearing a mask beginning August 31, 2021 and continuing to October 30, 2021, our School Board did not provide its direction to the superintendent lightly. It did so in light of the uncontrolled community spread of COVID-19 in Orange County and the concerns of many of our parents, particularly parents of students with special needs and students with autoimmune deficiencies. The School Board believed then, and still believes, this action is necessary for continuity of instruction and to protect the health, safety, and welfare of its students, employees, and visitors. The School Board also believes its action is a lawful exercise of the authority granted to it in §1014.03, Florida Statutes.

With respect to your statement in your September 23, 2021 letter, that the District has "one more opportunity to come into compliance with the requirements established by the Department of Health," this statement implies the District was found to have violated Florida Department of Health's ("FDOH") Emergency Rule 64DER21-12, signed by former Surgeon General Dr. Scott Rivkees on August 6, 2021 (hereinafter "August 6 Emergency Rule"). Such finding was never made.

You sent the District a letter on August 27, 2021, alleging the District was in violation of the August 6 Emergency Rule. The District responded that it did not believe it was in violation of the August 6 Emergency Rule based upon §1014.03,

Florida Statutes, and outlined the basis for its belief that the action taken was reasonable and necessary to achieve a compelling state interest and was narrowly tailored and could not be served by less restrictive means. The State Board of Education never entered a Final Order finding the School Board in violation of the August 6 Emergency Rule, which was repealed on September 22, 2021.

Regarding the substance of the FDOH's September 22, 2021 Emergency Rule 65DER21-15 (hereinafter "September 22 Emergency Rule"), the opt out at the parent's sole discretion conflicts with §1014.03, Florida Statutes, which allows school boards to pass regulations which may infringe on parental rights if the school boards demonstrate "that such action is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means." Based on our understanding of chapter 120, neither the FDOH nor the Florida Department of Education ("FDOE") has rule-making authority regarding the interpretation, implementation, or enforcement of chapter 1014, also known as the Parents' Bill of Rights. Therefore, our Board has relied on the plain language of §1014.03, Florida Statutes, in directing the superintendent to require temporary masks with a medical opt out.

As of the latest data from the FDOH, Orange County still has a positivity rate of 10.5 percent with 318.9 positive cases for 100,000 residents. The FDOH weekly report is [here](#). As a reminder, the Centers for Disease Control and Prevention ("CDC") considers any community with a positive rate above ten percent (10%) with more than 100 positive cases per 100,000 residents for a period of fourteen (14) days to be high community transmission. A copy of the CDC's Indicators and Thresholds for Community Transmission of Covid-19 is [here](#).

Further, the September 22 Emergency Rule cites §1003.22(3), Florida Statutes, as its rule-making authority. That provision of law allows the FDOH, after consultation with the FDOE, to adopt rules governing "the control of preventable communicable diseases." Masks have been identified by the CDC as a tool to help control the spread of COVID-19 in schools: "Due to the circulating and highly contagious Delta variant, CDC recommends universal indoor masking by all students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status." If masks are not worn in schools, especially in those schools with students too young to be vaccinated, then the spread of the virus will increase – it will not be controlled as required under §1003.22(3), Florida Statutes. Therefore, a provision allowing parents to opt their children out of wearing a mask does **not** control preventable communicable diseases. Additionally, while we view the August 6 Emergency Rule to be void based upon its withdrawal, the mitigation strategies outlined in our August 27, 2021 letter to you remain viable. We incorporate that letter by reference.

Moreover, we never contemplated that the FDOH would issue a new rule allowing students who have been in direct contact with individuals who are positive for COVID-19 to opt out of quarantining if they are asymptomatic. (See Section (3)(a)(1) of the September 22 Emergency Rule which allows parents to choose to allow students to attend school, school sponsored

activities, or be on school property, without restriction or disparate treatment, “so long as the student remains asymptomatic.”) As the CDC recognizes, symptoms do not appear for at least two (2) days after exposure and an infected individual does not have to be symptomatic to be infectious. Therefore, providing parents an opt out of quarantining their students who are known to be exposed and potentially infected with the virus, results in further spread of COVID-19. Reducing the effectiveness of the quarantine process, by allowing them to be optional, places a higher need to utilize available mitigation strategies such as universal masking.

As of the date of this response, the School Board intends to continue with its mask requirement through October 30, 2021, as a mitigation measure to prevent the spread of transmission of COVID-19 in the schools.

The School Board continues to share the goals of the FDOE to have students attend school in person as much as possible. We believe the School Board’s mask requirement has reduced the number of positive cases in our schools. The rate of community transmission in Orange County is still high under CDC standards. Universal masking is still necessary to ensure students stay in school as much as possible. Without such mitigations, an escalation of ill children will be likely, and school closures inevitable, detracting from student learning time.

Sincerely,



Teresa Jacobs, Chair
School Board of Orange County, Florida



Barbara M. Jenkins, Ed. D.
Superintendent

Exhibit 8

Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

MEMORANDUM

TO: State Board of Education Members

FROM: Richard Corcoran

RE: Broward County School District, Student Opt-Out Requirements

DATE: October 4, 2021

Based upon the following memorandum, I find there is probable cause that the Broward County School Board (BCSB) acted contrary to the law by requiring students to wear a mask or face covering unless certain exceptions apply, such as a medical certification. Specifically, BCSB's policy violated the provisions of Rule 64DER21-12 and continues to violate Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings.

Background Information

As you recall, on August 17, 2021, the State Board of Education (State Board) found that BCSB's mask policy did not comply with the Department of Health's former rule, Rule 64DER21-12, and implemented its enforcement authority by withholding funds from the district. *See Order of State Board of Education Under its Oversight and Enforcement Authority, DOE No. 2021-4024, attached as Exhibit A.* BCSB's policy requires students to wear a mask on school property unless certain exceptions apply and does not allow a parent to opt out a child unless the district determines one of its exceptions applies.

Prior to the State Board's action, the Governor issued Executive Order Number 21-175, directing the Florida Department of Health (FDOH) and the Florida Department of Education (FDOE) to immediately execute rules and take any additional action necessary to ensure safety protocols for controlling the spread of COVID-19 in schools. The Governor's order requires that these protocols be consistent with the Parents' Bill of Rights, codified in chapter 1014, and directs that action "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Moreover, the order directs the Commissioner of Education to pursue all legal means available to ensure school districts adhere to the law, including but not limited to withholding funds from noncompliant school boards.

On September 22, 2021, FDOH issued a revised rule, 64DER21-15, which relaxes the requirements for quarantining asymptomatic students who have been exposed to COVID-19, and further clarifies the parental opt-out provision by requiring that a school “must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian’s **sole discretion.**” *See* Rule 64DER21-15, Florida Administrative Register, Vol. 47 / No. 185, September 23, 2021 (emphasis supplied), attached as Exhibit B.

On September 23, 2021, I notified BCSB of Rule 64DER21-15 and requested written confirmation of the school district’s compliance with the revised FDOH rule. *See* Exhibit C.

On September 24, 2021, BCSB submitted a written response, requesting an extension until October 6, in order to allow the school board time to review the rule and its policies in light of the revised rule, at a public meeting scheduled for October 5, 2021. *See* Exhibit D. The letter did not rescind the requirement for medical documentation in order to opt-out of the mask mandate.

On September 28, 2021, BCSB announced that it had been awarded \$420,957 in Project SAFE grant funds by the USDOE. *See* Exhibit E. Although BCSB’s application has not been posted publicly, eligibility for this new grant program requires that the district implement CDC’s strategies for preventing COVID-19, including masking, if the district:

[h]as incurred or will incur a financial penalty imposed by its SEA or other State entity, such as a reduction in funding, including but not limited to reduction in salaries for school board members or superintendents, due to the implementation of one or more [CDC] strategies and

. . . . commits to maintain such strategy or strategies to the extent consistent with CDC guidance for the 2021-2022 school year.

See Exhibit F. The grant application also requires the following attestation:

By signing this document, the LEA Superintendent/chief executive officer (CEO) attests that the LEA has implemented such prevention strategy(ies) and that it will continue implementing the prevention strategy(ies) to the extent consistent with CDC guidance for the duration of the 2021-2022 school year.

Id.

In sum, the BCSB’s face covering policy requires all students, staff and visitors to wear face coverings on BCSB grounds and in BCSB vehicles. Although the policy appears to provide a number of exceptions, the policy precludes voluntary parental opt-out at the parent’s or legal guardian’s sole discretion. *See* Exhibit G.

The State Board’s Enforcement Authority

The State Board of Education’s enforcement authority is found in section 1008.32, Florida Statutes. The statute provides that “[t]he State Board of Education shall oversee the performance of district school boards [...] in enforcement of all laws and rules.” § 1008.32, Fla. Stat.

In enforcing the law, the statutory process prescribed therein requires that I, as Commissioner of Education, first report my determination of probable cause to the State Board of Education. If the State Board then determines that a district school board is unwilling or unable to comply with either law or rule, the State Board is authorized to impose sanctions in order to secure compliance, including the withholding of funds and reporting to the Legislature.

Any argument that the State Board's authority to enforce these safety protocols interferes with any district school board's authority to operate and control schools should be rejected. Indeed, the law in Florida is clear that the State Board's supervisory authority acts as a limitation on the operational authority of districts to operate, control and supervise public schools.

Looking to the Florida Constitution, there is a hierarchy under which a school board has local control, but in which the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a board's local powers, but such infringement is expressly contemplated and, in fact, encouraged by the very structure set by the Florida Constitution. *See Sch. Bd of Palm Beach Cty. v. Fla. Charter Educ. Found, Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017) (rejecting school board's argument that the State Board of Education's authority to approve a charter school application on appeal violates article IX, section 4(b)); *see also Sch. Bd of Collier Cty v. Fla. Dep't of Education*, 279 So. 3d 281 (Fla. 1st DCA 2019) (rejecting school board's argument that a statute requiring school boards to distribute a portion of capital millage revenue to charter schools violates article IX, section 4(b)).

Accordingly, any argument that the State Board of Education lacks the authority to enforce these school safety protocols should also be rejected. It has long been settled that rules have the force and effect of the law. *State v. Jenkins*, 469 So. 2d 733 (Fla. 1985); *Florida Livestock Board v. W.G. Gladden*, 76 So. 2d 291 (Fla. 1954). Rule 64DER21-15 derives authority from a statute in the educational code—specifically, section 1003.22(3), Florida Statutes—so while FDOH may *also* have enforcement authority, enforcement of school safety protocols falls squarely within the State Board of Education's authority to supervise the state's education system as a whole.

Conclusion

Every school board member and every school superintendent has a duty to comply with the law, whether they agree with it or not. While the district school board may not agree with the safety protocols set forth by the Surgeon General in rule, the Surgeon General is the person who, under the law, sets protocols to control and mitigate COVID-19 in schools. The Office of the Attorney General relied upon these principles to reject any argument a school board could depart from FDOH's emergency rule based upon a disagreement with the protocols found in the rule. *See*, AGO 2021-01, September 1, 2021. Disagreement with the protocols found in 64DER21-15 simply does not provide a school district with a basis to violate the rule, be it through medical requirements, attempts to tie mask requirements to fluctuating positivity rates, or through any other means.

All of this in mind, I hereby recommend that the State Board of Education use its enforcement powers to enforce the health protocols found in Emergency Rule 64DER21-15 and protect the right of parents to make both health and educational decisions on behalf of their children.

Should the State Board adopt my recommendation, I request that it consider the sanction of withholding state funds in an amount equal to 1/12 of all school board members' salaries, as well as withholding state funds in an amount equal to any federal grant funds awarded to the BCSB for its noncompliance with Emergency Rule 64DER21-15.

EXHIBIT A

STATE OF FLORIDA
STATE BOARD OF EDUCATION

DEPT OF EDUCATION
TALLAHASSEE FLA

2021 AUG 20 AM 9:35

FILED AGENCY CLERK

IN RE:

DOE No.: 2021-4024

BROWARD COUNTY SCHOOL BOARD,
STUDENT OPT-OUT REQUIREMENTS.

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

After having considered the determination of probable cause made by the Commissioner of Education, Richard Corcoran, along with an independent review of the documentary support for that determination, as well as public comment and discussions provided at the August 17, 2021, State Board of Education meeting, the State Board of Education implements its oversight authority under section 1008.32, Florida Statutes, as follows:

1. The State Board of Education authorized the Commissioner of Education to further investigate this matter and to take any and all action necessary to ensure that the State Board of Education satisfies its enforcement and other obligations under, among other things, chapters 1001 and 1008, Florida Statutes. These laws prevent the State Board of Education from ignoring intentional violations of state law or rules and compel action to enforce such violations.
2. As an initial finding, the State Board of Education finds that the School Board of Broward County's Face Coverings Policy 2170-E does not comply with Florida Department of Health Emergency Rule 64DER21-12, Protocols for Controlling COVID-19 in School Settings. That rule requires public schools to "allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask."

3. The State Board of Education finds that the School Board of Broward County's noncompliance and knowing failure to follow the law unlawfully denies Broward County parents and legal guardians of their right to make fundamental health and educational decisions for their children by choosing whether their children should be masked in public schools.
4. Based on these findings, it is hereby ordered that the School Board of Broward County must document compliance with Florida Department of Health Emergency Rule 64DER21-12 by allowing a parent or legal guardian of a student to opt-out the student from wearing a face covering or mask, without requiring a medical reason, approval from a medical professional or any additional requirement to support the request.
5. The School Board of Broward County has 48 hours from receipt of this order to document compliance as set forth in this order. If the School Board of Broward County demonstrates compliance by this deadline, then no further action is needed.
6. If the School Board of Broward County fails to timely document compliance within 48 hours from receipt of this order, the School Board of Broward County must provide to the Commissioner of Education, no later than 48 hours after receipt of this order, information confirming the current annual compensation provided to all school board members.
7. Upon receipt of the annual compensation information for the school board members mentioned above, and continuing until the School Board of Broward County demonstrates compliance with the law, the Florida Department of Education is directed to begin withholding from state funds, on a monthly basis, an amount equal to 1/12 of the total annual compensation of the school board, as an initial step. Monthly withholding must continue until the School Board of Broward County demonstrates compliance, the State Board of Education withdraws this order, or when the emergency rule expires or is

withdrawn. If the School Board of Broward County fails to provide the requested compensation information within the 48 hour period, the Florida Department of Education shall withhold state funds based on the most recent appropriations estimate until the school board provides the current estimate. The School Board of Broward County members who voted to impose the unlawful mask mandate are:

Dr. Rosalind Osgood

Laurie Rich Levinson

Donna P. Korn

Debra Hixon

Ann Murray

Patricia Good

Sarah Leonardi

Nora Rupert

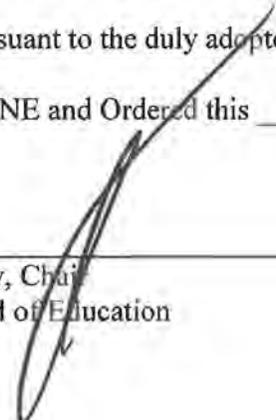
8. In complying with this order, the School District of Broward County may not reduce any expenditures other than those related to compensation for school board members. Further, the School District of Broward County may not permit the reduction of funds based upon this order to impact student services or teacher pay.
9. Upon the School Board of Broward County's failure to timely document compliance within 48 hours of receipt of this order, the Broward County School Superintendent shall certify, upon request of the Commissioner of Education, an updated report documenting any instance of the School District of Broward County's enforcement of the unlawful face covering mandate policy against a student, including, but not limited to, instances of a student being sent home, reassigned, disciplined, suspended, isolated, stigmatized, warned or harassed because of the student's failure to comply with the School Board of Broward

County's unlawful face covering mandate policy. Such report shall include the student's name and grade, parent's name(s) and home address. If the School District of Broward County does not have any instances of enforcement to report, the Broward County School Superintendent shall submit a certified report asserting such fact. This request from the Commissioner of Education shall be continuous in nature until the Broward County School Superintendent can certify and establish full compliance.

10. Upon the School Board of Broward County's failure to timely document compliance within 48 hours of receipt of this order, the Commissioner of Education shall monitor and report at each subsequent meeting of the State Board of Education as to the School Board of Broward County's compliance with Florida Department of Health Emergency Rule 64DER21-12 and this order, and provide recommendations to the State Board of Education as necessary to mandate further reporting related to noncompliance or further withholding of state funds due to continued noncompliance, pursuant to the State Board of Education's oversight and enforcement authority within section 1008.32, Florida Statutes.

11. The State Board of Education may continue to review findings of the Commissioner of Education as he continues his investigation, and retains the right and duty to impose additional sanctions and take additional enforcement action, as necessary, to bring the School Board of Broward County into compliance and better serve Florida's families pursuant to the duly adopted resolutions of that date.

DONE and Ordered this 20th day of August 2021.



Tom Grady, Chair
State Board of Education



Ben Gibson, Vice Chair
State Board of Education

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 20, 2021, the foregoing was filed with the Agency Clerk of the Florida Department of Education, and that a true and correct copy of the foregoing has been furnished via email and U.S. Mail to:

Dr. Vickie Cartwright, Interim Broward County School Superintendent
Vc@browardschools.com
600 SE Third Avenue
Ft. Lauderdale, Florida 33301

Dr. Rosalind Osgood, Chair, School Board of Broward County
dr.rosalind.osgood@browardschools.com
600 SE Third Avenue
Ft. Lauderdale, Florida 33301


AGENCY CLERK

Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

MEMORANDUM

TO: State Board of Education Members

FROM: Commissioner Richard Corcoran

RE: Broward County School District, Student Opt-Out Requirements

DATE: August 17, 2021

Based upon the attached memorandum, I find there is probable cause that the School Board of Broward County and the district's superintendent, Vickie Cartwright, acted contrary to the law, specifically, the provisions of 64DER21-12, Protocols for Controlling COVID-19 in School Settings and the Parents' Bill of Rights, found in ss. 1014.02-1014.06, Fla. Stat., by requiring students to wear a face covering or masking, unless certain exceptions apply, such as a medical certification or an IEP team recommendation, as provided in Broward County School Board Policy 2170 in order to opt-out of the district's mask mandate.

Background Information

On July 30, 2021, the Governor issued Executive Order Number 21-175, directing the Florida Department of Health and the Florida Department of Education to immediately execute rules and to take any additional action necessary to ensure safety protocols for controlling the spread of COVID-19 in schools. The executive order requires that these protocols be consistent with the Parents' Bill of Rights and directs that agency action "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Moreover, the order directs the Commissioner of Education to pursue all legal means available to ensure school districts adhere to Florida law, including but not limited to withholding state funds from noncompliant school boards...."

On August 6, 2021, in response to the executive order, and after consultation with the Florida Department of Education, the Florida Department of Health adopted an emergency rule establishing protocols for controlling the spread of COVID-19 in schools. The rule was adopted by the state's Surgeon General, Scott Rivkees, as the head of the Florida Department of Health. Given the statutory duty of the Florida Department of Health to implement protocols to prevent or limit the impact or spread of disease, the state's Surgeon General must be a licensed physician with advanced training or extensive experience in public health administration. (See Section

20.43(2), Fla. Stat.) The emergency rule provides for general protocols for public schools, protocols specific to symptomatic or COVID-19 positive students, protocols specific to students with exposure to COVID-19 and protocols for students with prior a COVID-19 infection. The general procedures for public schools are as follows:

- (a) Schools should encourage routine cleaning of classrooms and high-traffic areas.
- (b) Student should be encouraged to practice routine handwashing throughout the day.
- (c) Students should stay home if they are sick.
- (d) Students may wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.**

See, 64DER21-12, Protocols for Controlling COVID-19 in School Settings, Florida Administrative Register, Vol. 47, No. 153 (August 9, 2021).

Citing to the Parents' Bill of Rights, the notice for the Department of Health's emergency rule provides that "it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to allow for in-person education for their children."

Broward County School District

Broward County School District's Face Coverings Policy, 2170-E, provides as follows:

Subject to the exceptions set forth below, each student, employee, visitor, vendor or other person are always required to properly wear a face covering while at or inside a school/facility, or other vehicle owned, leased or operated by The School Board. . .

The policy provides for exceptions to the face covering policy for all persons as well as for students. All persons are exempt based upon medical certification, when outdoors with physical distancing, when necessary for identification or if the person is an infant. There are six exceptions to the mask requirement that are limited to students, such as when school administration or an IEP/504 team authorizes it, during meal times, during strenuous physical activity or during musical or theatrical performances. .

On August 10, 2021, I, as the Commissioner of Education, wrote Broward's superintendent and school board chair to notify the district in writing of my concern with the district's non-compliance with the Department of Health's emergency rule. This letter was sent only after multiple communications with the district, seeking to obtain compliance, were unsuccessful. My letter advised that the "emergency rule does not require parents to submit medical documentation from a physician or a nurse practitioner in order to opt-out [of a mask mandate] and any such requirement is inconsistent with the emergency rule." My letter quotes the emergency rule's requirement that any mandated mask policies imposed by a district or a school "must allow for a

parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.” In order to avoid implementing the State Board of Education’s enforcement authority, I directed that the school district demonstrate compliance by 5:00 p.m. on August 13, 2021

On August 10, 2021, the School Board of Broward County held a special meeting and voted eight to one to follow the Department of Health’s emergency rule, except for 64DER21-12(1)(d), which provides that a school must allow a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask. Instead, the district voted that face coverings would continue to be mandatory based on Broward’s Face Covering Policy 2170-E..

On August 13, 2021, Broward’s superintendent and school board chair responded to me in writing, expressing both disagreement with the Department of Health’s emergency rule and asserting that its policy is in compliance with the Department of Health’s emergency rule because Broward’s policy allows exceptions to the mask mandate.

The State Board of Education’s Enforcement Authority

The State Board of Education’s enforcement authority is found in Section 1008.32, Fla. Stat. The statute provides that “[t]he State Board of Education shall oversee the performance of district school boards...in enforcement of all laws and rules.”

The statutory process requires that I, as the Commissioner of Education, report my determination of probable cause to the State Board of Education. If the State Board of Education determines that a district is unwilling or able to comply with the law or state board rule, it is authorized to impose sanctions in order to secure compliance, including the withholding of funds and reporting to the legislature.

Any argument that the State Board of Education’s authority to enforce these safety protocols interferes with the school board’s authority to operate and control schools, should be rejected. The State Board of Education’s supervisory authority acts as a limitation on the operational authority of districts to operate, control and supervise public schools.

The Florida Constitution therefore creates a hierarchy under which a school board has local control, but the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a school board’s local powers, but such infringement is expressly contemplated – and in fact encouraged by the very nature of supervision by the Florida Constitution.

Sch. Bd of Palm Beach Cty. v. Fla. Charter Educ. Found, Inc., 213 So. 3d 356, 360 (Fla. 4th DCA 2017) (rejecting local school board’s argument that the State Board of Education’s authority to approve a charter school application on appeal violates article IX, section 4(b)); see, also, *Sch. Bd of Collier Cty v. Fla. Dep’t of Education*, 279 So. 3d 281 (Fla. 1st DCA 2019) (rejecting local school board’s argument that statute requiring school boards to distribute a portion of capital millage revenue to charter schools violates article IV, section 4(b) since state

constitution contemplates state educational authorities could infringe on school board's local powers).

Any argument that the State Board of Education lacks the authority to enforce these school safety protocols should also be rejected. It has long been settled that rules have the force and effect of the law. *State v. Jenkins*, 469 So. 2d 733 (Fla. 1985); *Florida Livestock Board v. W.G. Gladden*, 76 So. 2d 291 (Fla. 1954). The emergency rule derives its authority from a statute found in the educational code, specifically Section 1003.22(3), Fla. Stat. While the Florida Department of Health may also have enforcement authority, enforcement of school safety protocols falls squarely within the Florida Department of Education's authority to supervise the system as a whole.

Conclusion

Every school board member and every school superintendent have a duty to comply with the law, whether they agree with it or not. While the district may not agree with the safety protocols set forth by the Surgeon General in the emergency rule, the Surgeon General is the person who, under the law, sets protocols to control COVID-19 in schools.

As a result, I recommend that the State Board of Education use its enforcement powers to enforce the health protocols found in Emergency Rule 64DER21-12 and protect the right of parents to make health and educational decisions for their children.

EXHIBIT B

Notice of Emergency Rule

DEPARTMENT OF HEALTH

Division of Disease Control

RULE NO.: RULE TITLE:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Because of an increase in COVID-19 infections, largely due to the spread of the COVID-19 delta variant, prior to the beginning of the 2021-2022 school year, it is imperative that state health and education authorities continue to provide emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. In August 2021, all public schools in Florida began the 2021-2022 school year with in-person learning available for all students. The Department of Health adopted Emergency Rule 64DER21-12 on August 6, 2021. Since that time the Department has conducted a review of data for cases of COVID-19 positive school-aged children and data for school-aged children who have been in direct contact with a COVID-19 positive person. The Department observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

In order to permit students to continue in-person learning, to minimize the detriment to students and school personnel from the added burden of recurrent removal of students, and to benefit the overall welfare of students in Florida, it is necessary to provide updated emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. This emergency rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to ensure safety protocols for controlling the spread of COVID-19 in schools that (1) do not violate Floridians' constitutional freedoms; (2) do not violate parents' rights under Florida law to make health care decisions for their minor children; and (3) protect children with disabilities or health conditions who would be harmed by certain protocols, such as face masking requirements. The order directs that any COVID-19 mitigation actions taken by school districts comply with the Parents' Bill of Rights, and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19."

Because of the importance of in-person learning to educational, social, emotional and mental health, and welfare, removing healthy students from the classroom for lengthy quarantines should be limited. Under Florida law, parents and legal guardians have a fundamental right to direct the upbringing, education, health care, and mental health of their minor children and have the right to make health care decisions for their minor children. HB 241, Ch. 2021-199, Laws of Fla. Parents and legal guardians are uniquely situated to understand the health care, emotional, and educational needs of their minor children. In furtherance of the Florida Department of Health's authority to adopt rules governing the control of preventable communicable diseases—and because students benefit from in-person learning—it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to maximize the allowance of in-person education for their children. Unnecessarily removing students from in-person learning poses a threat to the welfare of children, including their social, emotional and educational developmental, and is not necessary absent illness.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule is necessary in light of the unnecessary exclusion of healthy students from in-person learning and the urgent need to provide updated COVID-19 guidance to school districts. Given the evolving nature of this novel disease and the potential for adverse impacts on school children resulting from the unnecessary exclusion of healthy children from in-person learning, there is a need to issue an immediately effective rule while the department promulgates a permanent rule through the non-emergency process.

SUMMARY: Emergency rule 64DER21-15 sets forth the procedures for controlling COVID-19 in school settings. Emergency rule 64DER21-15 repeals and replaces Emergency rule 64DER21-12 that was adopted on August 6, 2021.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Carina Blackmore, Florida Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1703, (850)245-4732.

THE FULL TEXT OF THE EMERGENCY RULE IS:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

(1) GENERAL PROTOCOLS AND DEFINITION. The following procedures shall be instituted to govern the control of COVID-19 in public schools:

(a) Schools will encourage routine cleaning of classrooms and high-traffic areas.

(b) Students will be encouraged to practice routine handwashing throughout the day.

(c) Students will stay home if they are sick.

(d) Schools may adopt requirements for students to wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's sole discretion.

(e) For purposes of this rule, "direct contact" means cumulative exposure for at least 15 minutes, within six feet.

(2) PROTOCOLS FOR SYMPTOMATIC OR COVID-19 POSITIVE STUDENTS. Schools will ensure students experiencing any symptoms consistent with COVID-19 or who have received a positive diagnostic test for COVID-19 shall not attend school, school-sponsored activities, or be on school property until:

(a) The student receives a negative diagnostic COVID-19 test and is asymptomatic; or

(b) Ten days have passed since the onset of symptoms or positive test result, the student has had no fever for 24 hours and the student's other symptoms are improving; or

(c) The student receives written permission to return to school from a medical doctor licensed under chapter 458, an osteopathic physician licensed under chapter 459, or an advanced registered nurse practitioner licensed under chapter 464.

(3) PROTOCOLS FOR STUDENTS WITH EXPOSURE TO COVID-19. Schools shall allow parents or legal guardians the authority to choose how their child receives education after having direct contact with an individual that is positive for COVID-19:

(a) Parents or legal guardians of students who are known to have been in direct contact with an individual who received a positive diagnostic test for COVID-19 may choose one of the following options:

1. Allow the student to attend school, school-sponsored activities, or be on school property, without restrictions or disparate treatment, so long as the student remains asymptomatic; or

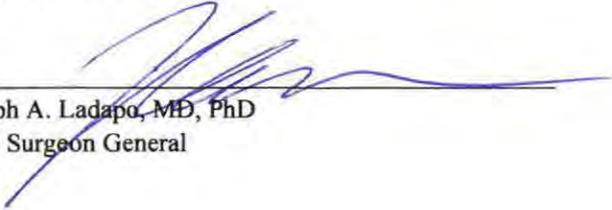
2. Quarantine the student for a period of time not to exceed seven days from the date of last direct contact with an individual that is positive for COVID-19.

(b) If a student becomes symptomatic following direct contact with an individual that has tested positive for COVID-19, or tests positive for COVID-19, the procedures set forth in subsection (2), above shall apply.

Rulemaking Authority 1003.22(3) FS. Law Implemented 1003.22(3) FS. History—New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE:



Joseph A. Ladapo, MD, PhD
State Surgeon General

9/22/21

Date

EXHIBIT C



Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

September 23, 2021

Dr. Vickie Cartwright
Superintendent
Broward County Schools
600 SE Third Avenue
Ft. Lauderdale, Florida 33301

Dr. Rosalind Osgood
School Board Chair
Broward County Schools
600 SE Third Avenue
Ft. Lauderdale, Florida 33301

Dear Superintendent Cartwright and Chair Osgood:

This letter is to advise you of the Department of Health's new emergency rule revising the "Protocols for Controlling COVID-19 in School Settings" and to provide you one more opportunity to come into compliance with the requirements established by the Department of Health.

A copy of the Department of Health's new rule, 64DER21-15, is attached. It revises the requirements for quarantining asymptomatic students who have been exposed to COVID-19 and further clarifies the parental opt-out provision to foreclose the erroneous interpretation that the parental opt-out permits a medical-only opt-out. That provision now provides that "... the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's **sole discretion.**" See, [Rule 64DER21-15\(1\)\(d\), Florida Administrative Register, Vol. 43 / No. 185](#), September 23, 2021 (emphasis supplied). The purpose of these changes is explained by the Department of Health in its notice for the new rule.

The Department [of Health] observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department [of Health] observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

Dr. Cartwright, Dr. Osgood
September 23, 2021
Page Two

I am continuing the investigation of your district's mask mandate that I notified you by letter of August 10, 2021. Based upon the authority provided to me under s. 1008.32(2)(a), Florida Statutes, I request that you provide a written response by 5:00 p.m. on September 24, 2021, documenting how your district is complying with that portion of the Department of Health's Emergency Rule 64DER21-15, that continues to give parents or legal guardians the sole discretion to opt a student out from a mask or face covering mandate.

As I have done before, if you fail to document full compliance, I intend to recommend to the State Board of Education that the Department of Education withhold funds in an amount equal to the salaries for all members of the School Board, as well as other sanctions authorized by law, for the period during which the district has been out of compliance.

Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Corcoran", with a long horizontal flourish extending to the right.

Richard Corcoran
Commissioner

EXHIBIT D



Office of the Superintendent
Dr. Vickie L. Cartwright,
Interim Superintendent of Schools
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301
phone: 754-321-2600 • fax: 754-321-2701
Supl_Cartwright@browardschools.com
browardschools.com

**The School Board of
Broward County, Florida**

Dr. Rosalind Osgood, Chair
Laurie Rich Levinson, Vice Chair

Lori Alhadeff
Patricia Good
Debra Hixon
Donna P. Korn
Sarah Leonardi
Ann Murray
Nora Rupert

Dr. Vickie L. Cartwright
Interim Superintendent of Schools

September 24, 2021

Commissioner Corcoran
Florida Department of Education
Turlington Building
325 West Gaines Street
Tallahassee, Florida 32399

Dear Commissioner Corcoran:

Please accept this correspondence in response to your letter dated September 23, 2021, received at 12:51 p.m. Broward County Public Schools (BCPS) is aware of the Department of Health's new emergency rule revising the "Protocols for Controlling COVID-19 in School Settings."

Recognizing the new emergency rule was just distributed to Superintendents by the Chancellor of Public Schools on Wednesday, September 22, 2021, there has not yet been an opportunity for the School Board to meet, while following all public meeting requirements, to discuss the new emergency rule and its implications on the District's existing COVID policies and protocols.

The next regularly scheduled School Board meeting is scheduled for Tuesday, October 12, 2021. The School Board is also meeting for a Workshop on October 5, 2021. Although no formal actions (votes) are taken at Workshops, a Special School Board Meeting is being scheduled to occur on October 5, 2021, immediately before the Workshop for the purpose of discussing the implications of the new emergency rule and review the potential need to revise the District's existing COVID policies and protocols. The outcome of this Special School Board Meeting will potentially have an impact on the District's ability to document compliance with the new emergency rule. As such, it is our intention to provide further written correspondence documenting the District's compliance with the new emergency rule no later than 5:00 p.m. on October 6, 2021.

Regards,

Dr. Vickie L. Cartwright
Interim Superintendent

Dr. Rosalind Osgood
School Board Chair

cc: School Board Members

EXHIBIT E



NewsRelease

OFFICE OF COMMUNICATIONS

600 SE Third Avenue
Fort Lauderdale, FL 33301
754-321-2300
browardschools.com

DATE: September 28, 2021

CONTACT: Katherine Koch, Chief Communications Officer, 754-321-2300, bcps.pio@browardschools.com

Broward County Public Schools is Awarded Federal Project Safe Grant for State Sanctions Related to COVID-19

Broward County Public Schools (BCPS) has been awarded \$420,957 in federal funding from the U.S. Department of Education (USDOE) Project Safe grant. The USDOE notified Broward County School Board Chair Dr. Rosalind Osgood and Interim Superintendent Dr. Vickie L. Cartwright on Tuesday, September 28, that the District's grant application has been approved.

The Project Safe grant reimburses school districts that are financially penalized by state governments for implementing strategies to prevent the spread of COVID-19 in schools, such as requiring masks. The Broward County School Board voted to uphold its current Facial Covering Policy on July 28, 2021, due to the rise in COVID-19 conditions across the community at that time.

In August 2021, the Florida Department of Education began withholding \$35,080 each month from the District's funding allocation. This amount represents 1/12 of all nine Broward County School Board members' annual salaries. To date, \$70,160 has been withheld by the state, with the most recent funding withheld on Friday, September 24.

"We are grateful for the support of the federal government in helping us continue to protect our students and staff from COVID-19," said Interim Superintendent Dr. Cartwright. "I support our School Board for their focus on doing what is in the best interest of our families to ensure our schools continue to provide safe and healthy learning environments."

"Every student across the country deserves the opportunity to return to school in-person safely this fall, and every family should be confident that their school is implementing policies that keep their children safe," said U.S. Secretary of Education Miguel Cardona. "We should be thanking districts for using proven strategies that will keep schools open and safe, not punishing them. We stand with the dedicated educators doing the right thing to protect their school communities, and this program will allow them to continue that critical work of keeping students safe."

To date, BCPS is one of two Florida school districts to receive the Project Safe grant.

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ABOUT BROWARD COUNTY PUBLIC SCHOOLS

"Committed to educating all students to reach their highest potential."

Broward County Public Schools (BCPS) is the sixth largest school district in the nation and the second largest in the state of Florida. BCPS is Florida's first fully accredited school system since 1962. BCPS has nearly 261,500 students and approximately 110,000 adult students in 241 schools, centers and technical colleges, and 93 charter schools. BCPS serves a diverse student population, with students representing 170 different countries and 147 different languages. To connect with BCPS, visit browardschools.com, follow us on Twitter @browardschools, on Facebook at facebook.com/browardschools.com and download the free BCPS mobile app.

EXHIBIT F

**U.S. Department of Education
Fiscal Year 2021 and 2022**

**Application for the
Project to Support America’s Families and Educators
(Project SAFE) Grant Program**

CFDA Number: 84.184N



**OMB Number: 1810-0763
Expiration Date: 03/31/2022**

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0763. Public reporting burden for this collection of information is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain benefit under Section 4631(a)(1)(B) of the ESEA. If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact Amy Banks, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3E257, Washington, D.C., 20202 or email ProjectSAFE@ed.gov directly.

PROGRAM INFORMATION

Purpose

The Project to Support America's Families and Educators (Project SAFE) grant program is intended to improve students' safety and well-being by providing funding to local educational agencies (LEAs) that adopt and implement strategies to prevent the spread of the Novel Coronavirus Disease 2019 (COVID-19) consistent with guidance from the Centers for Disease Control and Prevention (CDC), and that are financially penalized for doing so by their State educational agency (SEA) or other State entity. Project SAFE is funded under the School Safety National Activities authority in Section 4631(a)(1)(B) of the Elementary and Secondary Education Act (ESEA) (20 U.S.C. 7281).

Eligibility

Eligible applicants: LEAs

An LEA is eligible for Project SAFE if it:

(a) Has adopted a policy to implement and is implementing one or more of the strategies recommended in the CDC's [Guidance for COVID-19 Prevention in K-12 Schools](#), as may be updated. The most recent guidance incorporates the following strategies:

- (i) Promoting vaccination;
- (ii) Consistent and correct mask use;
- (iii) Physical distancing;
- (iv) Screening testing to promptly identify cases, clusters, and outbreaks;
- (v) Ventilation;
- (vi) Handwashing and respiratory etiquette;
- (vii) Staying home when sick and getting tested;
- (viii) Contact tracing, in combination with isolation and quarantine; and
- (ix) Cleaning and disinfection;

(b) Has incurred or will incur a financial penalty imposed by its SEA or other State entity, such as a reduction in funding, including but not limited to reduction in salaries for school board members or superintendents, due to implementation of one or more strategies described in paragraph (a); and

(c) To protect the safety and well-being of students, has continued at the time of application to implement such strategy or strategies for which the penalty was imposed and commits to maintain such strategy or strategies to the extent consistent with CDC guidance for the 2021-2022 school year.

Absolute Priority

The Department will consider only applications that meet the Project SAFE absolute priority:

Supporting LEAs' and local education leaders' efforts to improve student safety and well-being in LEAs that have been financially penalized by their SEA or other State entity for adopting and implementing strategies consistent with CDC guidance to prevent the spread of COVID-19.

Under this absolute priority, the Department awards funds to support activities to improve student safety and well-being by advancing strategies consistent with CDC guidance to reduce transmission of COVID-19 in schools by addressing the harmful impact of disruptive State penalties imposed on the LEA for implementing CDC guidance. These activities could include, for example, activities to facilitate the continued implementation of strategies aligned with CDC guidance, despite the State-imposed penalty, and/or to maintain LEA and school stability, such as by enabling the LEA to maintain activities and/or staffing levels or compensation that would otherwise be negatively impacted or reduced due to financial penalties levied on the LEA for implementing strategies aligned with CDC guidance, including but not limited to a reduction in salaries for the superintendent or school board members.

Project SAFE applicants will demonstrate that they meet the absolute priority by proposing a project budget that meets the priority.

Project Period

Up to 12 months. The Department may structure an LEA's award based on the timing of any anticipated future financial penalty.

Budget Request

The total amount of Project SAFE funds an LEA requests must not exceed the amount of the financial penalty for adopting and implementing CDC guidance that the LEA incurred or will incur during the project period (up to 12 months). The Department may fund awards in whole, or in part, at its sole discretion, and may establish a maximum grant award level through a notice in the Federal Register in order to serve as many eligible applicants as possible. The Department may also structure an LEA's award based on the timing of any anticipated future financial penalty.

Timeline

Applications will be reviewed by program staff and approved on a rolling, expedited basis contingent on the availability of funding.

Program Contact

For additional information, please contact Amy Banks at ProjectSAFE@ed.gov.

APPLICATION INSTRUCTIONS

To compete for a Project SAFE award, an LEA must submit to the Department the following information:

- A completed cover sheet that includes the signature of the Superintendent or chief executive officer (CEO) of the LEA or their authorized representative. *(Part A of the Application)*
- Required Documentation and Related Assurances that includes the Signature of the Superintendent or CEO of the LEA or their authorized representative. *(Part B of the Application)*
 - Including attached copies of:
 - The enacted LEA policy that demonstrates that the LEA has adopted one or more strategies as recommended in the CDC's Guidance for COVID-19 Prevention in K-12 Schools available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>, as listed in the eligibility requirements;
 - The SEA or other State entity notification of a financial penalty levied due to the LEA's adoption of such strategy or strategies, which includes the amount and duration of such penalty (to the extent available); and
 - Any other documentation necessary to describe the amount of the financial penalty specified in the notification from the SEA or other State entity that has already been levied at the time of the application and the anticipated amount of any future financial penalty that will be levied during the 12-month period beginning on the date of application.
- Budget. *(Part C of the Application)*
- Other assurances and certifications. *(Part D of the Application)*

Application Submission Information

Application submissions to the Department will be considered on an ongoing basis.

Please submit your Application, including required attachments, to the Department as follows:

Email an electronic version of your Application in a .PDF (PortableDocument Format) to Amy Banks at ProjectSAFE@ed.gov.

PROJECT SAFE

LOCAL EDUCATIONAL AGENCY

PART A: APPLICATION COVER SHEET

LEA:	CFDA Number: 84.184N
Legal Name:	DUNS Number:
LEA Superintendent or chief executive officer (CEO):	Mailing Address:

LEA Contact for Project SAFE: Position and Office: Mailing Address: Telephone: Email address:

To the best of my knowledge and belief, all the information and data in this application are true and correct. I acknowledge and agree that the failure to comply with all Assurances and commitments in this application, and any other applicable law or regulation may result in liability under the False Claims Act, 31 U.S.C. § 3729, *et seq.*; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and 18 USC § 1001, as appropriate.

LEA Superintendent/chief executive officer (CEO) or Authorized Representative (Typed Name):

Telephone:

Signature of LEA Superintendent/chief executive officer (CEO) or Authorized Representative: _____ Date: _____

PART B: REQUIRED DOCUMENTATION AND RELATED ASSURANCES

The [LEA Superintendent/chief executive officer (CEO) or their authorized representative] assures that it is submitting with this Application an electronic copy of the following documents and certifies that they are accurate and complete:

- The enacted LEA policy that demonstrates that the LEA has adopted one or more strategies as recommended in the CDC’s Guidance for COVID-19 Prevention in K-12 Schools, as listed in the eligibility requirements;
- The SEA or other State entity notification of a financial penalty levied due to the LEA’s adoption of such strategy or strategies, which includes the amount and duration of such penalty (to the extent available); and
- Any other documentation necessary to describe the amount of the financial penalty specified in the notification from the SEA or other State entity that has already been levied at the time of the application and the anticipated amount of any future financial penalty that will be levied during the 12-month period beginning on the date of application.

By signing this document, the LEA Superintendent/chief executive officer (CEO) attests that the LEA has implemented such prevention strategy(ies) and that it will continue implementing the prevention strategy(ies) to the extent consistent with CDC guidance for the duration of the 2021-2022 school year.

By signing this document, the LEA superintendent/CEO assures that the LEA will not draw down any Project SAFE grant funds until such time as the LEA incurs the above referenced financial penalty imposed by the State.

By signing this document, the LEA superintendent/CEO assures that the LEA will not provide reimbursement for any individual salary in an amount greater than the reduction to that individual salary.

LEA Superintendent/chief executive officer (CEO) or Authorized Representative (Printed Name):

Signature:	Date:
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PART C: BUDGET

The Department requests the following:

1. The amount of the financial penalty the LEA has already incurred at the time of application.
2. The anticipated amount of the financial penalty the LEA will incur within the 12-month period following the date of application.
3. A brief description of the documentation the LEA has submitted, as required in Part B of the application, to describe the amount of the financial penalty.
4. The total amount requested by the LEA, which must not exceed the sum of (1) and (2) above.
5. The proposed project budget that addresses the absolute priority.

PART D: OTHER ASSURANCES AND CERTIFICATIONS

The [LEA Superintendent/chief executive officer (CEO) or their authorized representative] assures or certifies the following:

1. The LEA will comply with all applicable assurances in OMB Standard Forms 424B (Assurances for Non-Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood hazards; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
2. With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; the LEA will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 C.F.R. Part 82, Appendix B).
3. The LEA will comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) requirements in Subpart D—Post-Federal Award Requirements (2 CFR §§200.300-345) and Subpart E—Cost Principles (2 CFR §§200.400-475).
4. The LEA will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 75, 77, 81, 82, 84, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

LEA Superintendent/chief executive officer (CEO) or Authorized Representative (Printed Name):

Signature:	Date:
------------	-------

EXHIBIT G

2170 FACE COVERINGS

PURPOSE:

ONE OF THE SCHOOL BOARD'S HIGHEST PRIORITIES IS TO ENSURE THE HEALTH AND SAFETY OF ITS COMMUNITY INCLUDING EMPLOYEES, STUDENTS AND THE PUBLIC. THE CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC) AND THE FLORIDA DEPARTMENT OF HEALTH (FDOH) ADVISE THAT PEOPLE WHO MAY BE INFECTED WITH COVID-19 (WHETHER SYMPTOMATIC OR PRE-SYMPTOMATIC) PLAY AN IMPORTANT PART IN REDUCING COMMUNITY SPREAD. THE USE OF FACE COVERING BY EVERYONE CAN LIMIT RELEASE OF INFECTED DROPLETS WHEN TALKING, COUGHING, AND/OR SNEEZING.

I. RULES:

- A. **Subject to the EXCEPTIONS set forth below**, each student, employee, visitor, vendor or other person shall properly wear a face covering while at or inside a school campus, district facility, a vehicle owned, leased or operated by The School Board or a school/district sponsored activity. **Proper wearing of an approved face covering, means the face covering should cover both the nose and mouth of the person and should fit snugly against the sides of the person's face with no gaps. This includes:**

Musical and Theatrical Performances: A face covering will be required for all individuals while playing a musical instrument or performing or rehearsing for a choral or theatrical performance. This includes the singing of the National Anthem, school alma maters, or other songs.

1. **EXCEPTIONS:** A face covering will not be required in the following instances:
- a. **For All (Students, Employees, Vendors and Visitors):**
- i. **Infants:** A face covering shall not be required for persons younger than two (2) years of age;
 - ii. **Outdoors with Physical Distancing:** A face covering shall not be required for persons outside of any school district building or vehicle provided that such person maintains physical distancing (six (6) feet minimum distance) from other persons. However, a face covering shall be worn during change of classes even if it involves use of outside areas; or,
 - iii. **Identification:** Administrators, security staff and other appropriate employees may ask someone to *briefly* remove their face covering to verify their identity. Physical distance will be observed during these requests, whenever possible.

b. **For Students:**

- i. **Students with Approval:** A face covering shall not be required for a student if the student's IEP or 504 team, after receiving a certification from a health care provider that the student has a medical, physical or psychological contraindication that prevents the person from being able to safely wear an approved face covering, authorizes the student to remove her/his face covering during an activity provided that the student maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering. Face shields should be considered when granting an accommodation for not wearing an approved face covering;
- ii. **Regularly Scheduled Mealtimes:** A face covering shall not be required for any student inside or outside a school district facility or a school/district sponsored activity while student is eating during a planned mealtime provided that the student maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering.
- iii. **Strenuous Physical Activity:** A face covering shall not be required for any student outside of any school, district building, or at a school/district sponsored activity while the student is engaged in strenuous physical activity provided that the student maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering. Students participating in indoor physical activities are required to wear a face covering, including weight rooms and physical education classes;
- iv. **Extracurricular Athletic Team Activities:** Students actively participating in indoor or outdoor practice or competition are not required to wear face coverings;
- v. **During Receipt of Health Care:** A face covering shall not be required for any student inside or outside any school district facility or building when removal of the face covering is necessary for the student to receive health care or to undergo a health care examination from authorized health care personnel; or,
- vi. **Demanding Circumstances:** A face covering will not be required if a student is experiencing acute trouble breathing, is unconscious

or incapacitated. A staff member may remove the student's mask if the student is unable.

c. For Employees:

- i. Employees with Approval:** An employee may request a reasonable accommodation under the Americans with Disabilities Act (ADA) and other statutes, through the Office of Equal Educational Opportunities, if the employee has a medical, physical or psychological contraindication that prevents the person from being able to wear an approved face covering. Face shields should be considered when granting an accommodation for not wearing an approved face covering. A face covering may not be required when the school district official supervising an employee authorizes the employee to remove her/his face covering when wearing a face covering would create a safety risk to the person as determined by local, state, or federal regulators or workplace safety guidelines. If this occurs, the employee must maintain physical distancing (six (6) feet minimum) from other persons;
- ii. Regularly Scheduled Mealtimes:** A face covering shall not be required for any employee inside or outside a school district facility or at a school/district sponsored activity while the employee is eating during a planned mealtime provided that the employee maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering;
- iii. Strenuous Physical Activity:** A face covering shall not be required for any employee outside of any school, district building or school/district sponsored activity while such employee is engaged in strenuous physical activity provided that the employee maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering. Employees participating in indoor physical activities are required to wear a face covering including weight rooms and physical education classes;
- iv. Extracurricular Athletic Team Activities:** Employees participating in indoors or outdoors practice or competition (coaching) are required to wear face coverings at all times; or,
- v. Demanding Circumstances:** A face covering will not be required if a person is experiencing acute trouble breathing, is unconscious or incapacitated. A staff member may remove the employee's mask if the employee is unable.

d. Visitors and Vendors:

- i. Outdoors with Physical Distancing:** A face covering shall not be required for persons outside of any school district building or vehicle provided that such person maintains physical distancing (six (6) feet minimum distance) from other persons;
- ii. Regularly Scheduled Mealtimes:** A face covering shall not be required for any person inside or outside a school district facility while such person is eating during a planned mealtime;
- iii. Strenuous Physical Activity:** A face covering shall not be required for any person outside of any school, district building or at a school/district sponsored activity while such person is engaged in strenuous physical activity. Visitors participating in indoor physical activities are required to wear a face covering; or,
- iv. Extracurricular Athletic Team Activities:** Visitors participating in indoors or outdoors practice or competition are required to wear face coverings at all times; or,
- v. Demanding Circumstances:** A face covering will not be required if a person is experiencing acute trouble breathing, is unconscious or incapacitated. A staff member may remove a visitor's mask if the visitor is unable.

2. FACE COVERING TYPES (Students, Vendors and Visitors): All students, visitors and vendors must supply and wear their own face coverings while at or inside a school district campus/facility or inside a school district vehicle. All students, visitors and vendors must properly maintain their face covering. The following face covering types are approved for compliance with this policy by persons other than school district employees:

- a. Commercially Produced Surgical Masks:
- b. Cloth Face Masks: That have two or more layers of washable, breathable fabric. The U.S. Center for Disease Control has issued instructions on how to make a cloth face covering at:
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html>

3. FACE COVERING TYPES (Employees): The School District will have face coverings available at all district facilities and in all vehicles, including school buses. All school district employees must wear face coverings while in a school district campus/facility or inside a school district vehicle.

4. **FACE COVERINGS NOT IN COMPLIANCE: (Students, Employees, Vendors and Visitors):** Students, employees, visitors or vendors who wear one of the following type of face coverings **will not** be in compliance with this policy:
 - a. Face masks that are made of fabric that makes it hard to breathe, for example vinyl;
 - b. Face masks that have inhale/exhalation valves or vents; or,
 - c. Gaiters.

5. **LIMITED FACE SHIELD USE:** Face shields are less effective than commercial and cloth face coverings and may not be used by any persons to comply with this policy **except** under the following limited circumstances:
 - a. **In Addition to a Face Covering:** When used in addition to an approved face covering to protect eyes, as well;

 - b. **Medical Certification:** A face shield may be worn in lieu of other approved face coverings by students and/or employees who are observing physical distancing and the need for such an accommodation is provided through the process described in paragraphs I. A. 1. b. i. or I. A. 1. c. i.; or,
 - c. **Instruction:** Face shields may be used by school district employees in situations where physical distancing is observed and it is important for students to see how the instructor pronounces words (e.g., English Learners, early childhood instruction, speech therapy, foreign language, etc.) and/or an instructor may wear a clear mask when it is important for a student to observe the instructors mouth.

B. LIMITATIONS/ENFORCEMENT:

1. **NO STUDENT or EMPLOYEE:** shall wear a face covering that has markings that are suggestive, revealing, indecent¹, associated with gangs or cults, encourage the use of drugs, alcohol, or violence, or support discrimination on the basis of age, color, ethnicity, gender, gender identity, gender expression, linguistic differences, marital status, national origin, race, religion, socioeconomic background, sexual orientation, physical appearance, or any other basis while on a school campus district building or a school/district sponsored activity.

2. **EMPLOYEES:** All employees are expected to comply with the face covering requirements above for the health and safety of themselves, their colleagues, students and others. Employees who do not comply should be reminded of the policy. If they refuse to comply, after being reminded the employee may be

¹ Indecent, suggestive, and revealing refer to exposure of private body parts and/or pictures or words with a sexual connotation.

disciplined according to their respective Collective Bargaining Agreement or other School Board Policies for insubordination. Additionally, face coverings shall not be worn that promote a political party, political ideas, and/or an individual seeking elected office.

3. **STUDENTS:** All students are expected to follow face covering requirements while in school or school sponsor activities/events for the health and safety of themselves, school staff, and others. Students who do not comply should be reminded of the policy and the student's parent will be called. If a student blatantly disregards the health and safety of others and/or refuses to comply with wearing a face covering, discipline will be in accordance with the Code of Student Conduct. Additionally, face coverings may be worn to promote an individual seeking elected office, to support political ideas, as long as they do not cause a substantial disruption to the educational environment.
4. **VISITORS:** Members of the public and visitors will be reminded that face coverings are required while at or inside a District school/facility. A visitor will not be admitted to a District school/facility without wearing a face covering. If a visitor blatantly disregards the health and safety of others and/or refuses to wear a face covering, they will be asked to leave the school facility.

II. DELEGATION OF AUTHORITY:

In consultation with and guidance from public health officials, the Superintendent has the authority to determine when the Face Covering Policy will be implemented and when it will no longer be required. Further, as new face coverings are developed and produced the Superintendent is authorized to change the types of face coverings that would be both in compliance and not in compliance with this policy.

SPECIFIC AUTHORITY: Section 1001.41(1), (2) and (3), Florida Statutes.

LAW IMPLEMENTED: Sections 1001.42(4) and (8), 1003.31, 1012.23 and 1012.27(1) and (7), Florida Statutes.

Policy Adopted as Emergency Policy: August 19, 2020

Policy Adopted: December 15, 2020

Exhibit 9

Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

MEMORANDUM

TO: State Board of Education Members

FROM: Richard Corcoran

RE: Alachua County School District, Student Opt-Out Requirements

DATE: October 4, 2021

Based upon the following memorandum, I find there is probable cause that the Alachua County School Board (ACSB) acted contrary to the law by requiring students to wear a mask or face covering unless certain exceptions apply, such as a medical certification. Specifically, ACSB's policy violated the provisions of Rule 64DER21-12 and continues to violate Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings.

Background Information

As you recall, on August 17, 2021, the State Board of Education (State Board) found that ACSB's mask policy did not comply with the Department of Health's former rule, Rule 64DER21-12, and implemented its enforcement authority by withholding funds from the district. *See Order of State Board of Education Under its Oversight and Enforcement Authority, DOE No. 2021-4023, attached as Exhibit A.* ACSB's policy requires students to wear a mask on school property unless certain exceptions apply and does not allow a parent to opt out a child unless the district determines one of its exceptions applies.

Prior to the State Board's action, the Governor issued Executive Order Number 21-175, directing the Florida Department of Health (FDOH) and the Florida Department of Education (FDOE) to immediately execute rules and take any additional action necessary to ensure safety protocols for controlling the spread of COVID-19 in schools. The Governor's order requires that these protocols be consistent with the Parents' Bill of Rights, codified in chapter 1014, and directs that action "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Moreover, the order directs the Commissioner of Education to pursue all legal means available to ensure school districts adhere to the law, including but not limited to withholding funds from noncompliant school boards.

On September 17, 2021, ACSB applied for a Project SAFE grant from the United States Department of Education. *See* Exhibit B. Eligibility for this new grant program requires that the district implement CDC’s strategies for preventing COVID-19, including masking, if the district:

[h]as incurred or will incur a financial penalty imposed by its SEA or other State entity, such as a reduction in funding, including but not limited to reduction in salaries for school board members or superintendents, due to the implementation of one or more [CDC] strategies and

. . . . commits to maintain such strategy or strategies to the extent consistent with CDC guidance for the 2021-2022 school year.

Id. The grant application includes the following attestation by ACSB’s Superintendent Simon:

By signing this document, the LEA Superintendent/chief executive officer (CEO) attests that the LEA has implemented such prevention strategy(ies) and that it will continue implementing the prevention strategy(ies) to the extent consistent with CDC guidance for the duration of the 2021-2022 school year.

Id.

On September 22, 2021, FDOH issued a revised rule, 64DER21-15, which relaxes the requirements for quarantining asymptomatic students who have been exposed to COVID-19, and further clarifies the parental opt-out provision by requiring that a school “must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian’s **sole discretion.**” *See* Rule 64DER21-15, Florida Administrative Register, Vol. 47 / No. 185, September 23, 2021 (emphasis supplied), attached as Exhibit C.

On September 23, 2021, I notified ACSB of Rule 64DER21-15 and requested written confirmation of the school district’s compliance with the revised FDOH rule. *See* Exhibit D.

Also on September 23, 2021, the United States Department of Education announced that it had awarded ACSB \$147,719 in Project SAFE grant funds. *See* Exhibit E, Exhibit F.

On September 24, 2021, ACSB submitted a written response, requesting an extension until October 6, in order to allow the school board time to review the rule and its policies in light of the revised rule, at a public meeting scheduled for October 5, 2021. *See* Exhibit G. The letter did not rescind the requirement for medical documentation in order to opt-out of the mask mandate.

In sum, the ACSB’s face covering policy requires all students, staff and visitors to wear face coverings on ACSB grounds and in ACSB vehicles. Although the policy appears to provide a number of exceptions, the policy precludes voluntary parental opt-out at the parent’s or legal guardian’s sole discretion. *See* Exhibit H.

The State Board’s Enforcement Authority

The State Board of Education’s enforcement authority is found in section 1008.32, Florida

Statutes. The statute provides that “[t]he State Board of Education shall oversee the performance of district school boards [...] in enforcement of all laws and rules.” § 1008.32, Fla. Stat.

In enforcing the law, the statutory process prescribed therein requires that I, as Commissioner of Education, first report my determination of probable cause to the State Board of Education. If the State Board then determines that a district school board is unwilling or unable to comply with either law or rule, the State Board is authorized to impose sanctions in order to secure compliance, including the withholding of funds and reporting to the Legislature.

Any argument that the State Board’s authority to enforce these safety protocols interferes with any district school board’s authority to operate and control schools should be rejected. Indeed, the law in Florida is clear that the State Board’s supervisory authority acts as a limitation on the operational authority of districts to operate, control and supervise public schools.

Looking to the Florida Constitution, there is a hierarchy under which a school board has local control, but in which the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a board’s local powers, but such infringement is expressly contemplated and, in fact, encouraged by the very structure set by the Florida Constitution. *See Sch. Bd of Palm Beach Cty. v. Fla. Charter Educ. Found, Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017) (rejecting school board’s argument that the State Board of Education’s authority to approve a charter school application on appeal violates article IX, section 4(b)); *see also Sch. Bd of Collier Cty v. Fla. Dep’t of Education*, 279 So. 3d 281 (Fla. 1st DCA 2019) (rejecting school board’s argument that a statute requiring school boards to distribute a portion of capital millage revenue to charter schools violates article IX, section 4(b)).

Accordingly, any argument that the State Board of Education lacks the authority to enforce these school safety protocols should also be rejected. It has long been settled that rules have the force and effect of the law. *State v. Jenkins*, 469 So. 2d 733 (Fla. 1985); *Florida Livestock Board v. W.G. Gladden*, 76 So. 2d 291 (Fla. 1954). Rule 64DER21-15 derives authority from a statute in the educational code—specifically, section 1003.22(3), Florida Statutes—so while FDOH may *also* have enforcement authority, enforcement of school safety protocols falls squarely within the State Board of Education’s authority to supervise the state’s education system as a whole.

Conclusion

Every school board member and every school superintendent has a duty to comply with the law, whether they agree with it or not. While the district school board may not agree with the safety protocols set forth by the Surgeon General in rule, the Surgeon General is the person who, under the law, sets protocols to control and mitigate COVID-19 in schools. The Office of the Attorney General relied upon these principles to reject any argument a school board could depart from FDOH’s emergency rule based upon a disagreement with the protocols found in the rule. *See*, AGO 2021-01, September 1, 2021. Disagreement with the protocols found in 64DER21-15 simply does not provide a school district with a basis to violate the rule, be it through medical requirements, attempts to tie mask requirements to fluctuating positivity rates, or through any other means.

All of this in mind, I hereby recommend that the State Board of Education use its enforcement powers to enforce the health protocols found in Emergency Rule 64DER21-15 and protect the right of parents to make both health and educational decisions on behalf of their children.

Should the State Board adopt my recommendation, I request that it consider the sanction of withholding state funds in an amount equal to 1/12 of all school board members' salaries, as well as withholding state funds in an amount equal to any federal grant funds awarded to the ACSB for its noncompliance with Emergency Rule 64DER21-15.

EXHIBIT A

STATE OF FLORIDA
STATE BOARD OF EDUCATION

DEPT OF EDUCATION
TALLAHASSEE FLA

2021 AUG 20 AM 9:35

FILED AGENCY CLERK

IN RE:

DOE No.: 2021-4023

ALACHUA COUNTY SCHOOL BOARD,
STUDENT OPT-OUT REQUIREMENTS.

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

After having considered the determination of probable cause made by the Commissioner of Education, Richard Corcoran, along with an independent review of the documentary support for that determination, as well as public comment and discussions provided at the August 17, 2021, State Board of Education meeting, the State Board of Education implements its oversight authority under section 1008.32, Florida Statutes, as follows:

1. The State Board of Education authorized the Commissioner of Education to further investigate this matter and to take any and all action necessary to ensure that the State Board of Education satisfies its enforcement and other obligations under, among other things, chapters 1001 and 1008, Florida Statutes. These laws prevent the State Board of Education from ignoring intentional violations of state law or rules and compel action to enforce such violations.
2. As an initial finding, the State Board of Education finds that the School Board of Alachua County's requirement for medical documentation to opt-out of masking does not comply with Florida Department of Health Emergency Rule 64DER21-12, Protocols for Controlling COVID-19 in School Settings. That rule requires public schools to "allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask."

3. The State Board of Education finds that the School Board of Alachua County's noncompliance and knowing failure to follow the law unlawfully denies Alachua County parents and legal guardians of their right to make fundamental healthcare and educational decisions for their children by choosing whether their children should be masked in public schools.
4. Based on these findings, it is hereby ordered that the School Board of Alachua County must document compliance with Florida Department of Health Emergency Rule 64DER21-12 by allowing a parent or legal guardian of a student to opt-out the student from wearing a face covering or mask, without requiring a medical reason, approval from a medical professional or any additional requirement to support the request.
5. The School Board of Alachua County has 48 hours from receipt of this order to document compliance as set forth in this order. If the School Board of Alachua County demonstrates compliance by this deadline, then no further action is needed.
6. If the School Board of Alachua County fails to timely document compliance within 48 hours from receipt of this order, the School Board of Alachua County must provide to the Commissioner of Education, no later than 48 hours after receipt of this order, information confirming the current annual compensation provided to all school board members.
7. Upon receipt of the annual compensation information for the School Board of Alachua County members mentioned above, and continuing until the School Board of Alachua County demonstrates compliance with the law, the Florida Department of Education is directed to begin withholding from state funds, on a monthly basis, an amount equal to 1/12 of the total annual compensation of the school board, as an initial step. Monthly withholding must continue until the School Board of Alachua County demonstrates

compliance, the State Board of Education withdraws this order, or when the rule expires or is withdrawn. If the School Board of Alachua County fails to provide the requested compensation information within the 48 hour period, the Florida Department of Education shall withhold state funds based on the most recent appropriations estimate until the School Board of Alachua County provides the current estimate. The Alachua County School Board members who voted to impose the unlawful mask mandate are:

Dr. Leanetta McNealy

Tina Certain

Dr. Gunnar F. Paulson

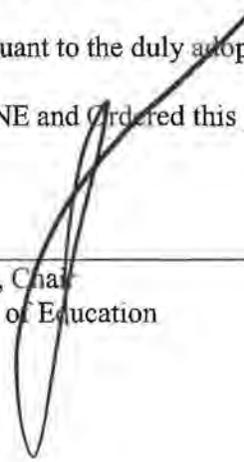
Robert P. Hyatt

8. In complying with this order, the School District of Alachua County may not reduce any expenditures other than those related to compensation for school board members. Further, the School District of Alachua County may not permit the reduction of funds based upon this order to impact student services or teacher pay.
9. Upon the School Board of Alachua County's failure to timely document compliance within 48 hours of receipt of this order, the Alachua County School Superintendent shall certify, upon request of the Commissioner of Education, an updated report documenting any instance of the School District of Alachua County's enforcement of the unlawful face covering mandate policy against a student, including, but not limited to, instances of a student being sent home, reassigned, disciplined, suspended, isolated, stigmatized, warned or harassed because of the student's failure to comply with the School Board of Alachua County's unlawful face covering mandate policy. Such report shall include the student's name and grade, parent's name(s) and home address. If the School District of Alachua

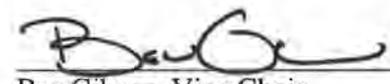
County does not have any instances of enforcement to report, the Alachua County School Superintendent shall submit a certified report asserting such fact. This request from the Commissioner of Education shall be continuous in nature until the Alachua County School Superintendent can certify and establish full compliance.

10. Upon the School Board of Alachua County's failure to timely document compliance within 48 hours of receipt of this order, the Commissioner of Education shall monitor and report at each subsequent meeting of the State Board of Education as to the School Board of Alachua County's compliance with Florida Department of Health Emergency Rule 64DER21-12 and this order, and provide recommendations to the State Board of Education as necessary to mandate further reporting related to noncompliance or further withholding of state funds due to continued noncompliance, pursuant to the State Board of Education's oversight and enforcement authority within section 1008.32, Florida Statutes.
11. The State Board of Education may continue to review findings of the Commissioner of Education as he continues his investigation, and retains the right and duty to impose additional sanctions, and take additional enforcement action, as necessary, to bring the School Board of Alachua County into compliance and better serve Florida's families pursuant to the duly adopted resolutions of that date.

DONE and Ordered this 20th day of August, 2021.



Tom Grady, Chair
State Board of Education



Ben Gibson, Vice Chair
State Board of Education

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 20, 2021, the foregoing was filed with the Agency Clerk of the Florida Department of Education, and that a true and correct copy of the foregoing has been furnished via email and U.S. Mail to:

Ms. Carlee Simon, Alachua County School Superintendent
simonce@gm.sbac.edu
620 East University Avenue
Gainesville, FL 32601-5448

Ms. Leanetta McNealy, Chair, School Board of Alachua County
mcnealy@gm.sbac.edu
620 East University Avenue
Gainesville, FL 32601-5448


AGENCY CLERK

Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

MEMORANDUM

TO: State Board of Education Members

FROM: Commissioner Richard Corcoran

RE: Alachua County School District, Student Opt-Out Requirements

DATE: August 17, 2021

Based upon the attached memorandum, I find there is probable cause that the School Board of Alachua County and the district's superintendent, Carlee Simon, acted contrary to the law, specifically, the provisions of 64DER21-12, Protocols for Controlling COVID-19 in School Settings and the Parents' Bill of Rights, found in ss. 1014.02-1014.06, Fla. Stat., by requiring parents to provide documentation from a medical doctor, osteopathic physician, or a licensed nurse practitioner in order to opt-out of the district's mask mandate.

Background Information

On July 30, 2021, the Governor issued Executive Order Number 21-175, directing the Florida Department of Health and the Florida Department of Education to immediately execute rules and to take any additional action necessary to ensure safety protocols for controlling the spread of COVID-19 in schools. The executive order requires that these protocols be consistent with the Parents' Bill of Rights and directs that agency action "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Moreover, the order directs the Commissioner of Education to pursue all legal means available to ensure school districts adhere to Florida law, including but not limited to withholding state funds from noncompliant school boards...."

On August 6, 2021, in response to the executive order, and after consultation with the Florida Department of Education, the Florida Department of Health adopted an emergency rule establishing protocols for controlling the spread of COVID-19 in schools. The rule was adopted by the state's Surgeon General, Scott Rivkees, as head of the Florida Department of Health. Given the statutory duty of the Florida Department of Health to implement protocols to prevent or limit the impact or spread of disease, the state's Surgeon General must be a licensed physician with advanced training or extensive experience in public health administration. (See Section 20.43(2), Fla. Stat.) The emergency rule provides for general protocols for public schools,

protocols specific to symptomatic or COVID-19 positive students, protocols specific to students with exposure to COVID-19, and protocols for students with a prior COVID-19 infection. The general procedures for public schools are as follows:

- (a) Schools should encourage routine cleaning of classrooms and high-traffic areas.
- (b) Students should be encouraged to practice routine handwashing throughout the day.
- (c) Students should stay home if they are sick.
- (d) Students may wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.**

See, 64DER21-12, Protocols for Controlling COVID-19 in School Settings, Florida Administrative Register, Vol. 47, No. 153 (August 9, 2021).

Citing to the Parents' Bill of Rights, the notice for the Department of Health's emergency rule provides that "it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to allow for in-person education for their children."

Alachua County School District

On August 4, 2021, prior to issuance of the Department of Health's emergency rule, Superintendent Simon issued a message stating in part that,

[i]n keeping with our Face Coverings Policy, families may request that their child opt-out of wearing a mask by submitting a form signed by a doctor.

The district's face covering policy allows for certain exceptions for students, as well as breaks when masks can be removed. (See Alachua County Public Schools, Policy 8450.01 – Protective Facial Coverings During Pandemic/Epidemic Events.)

On August 6, 2021, despite the emergency rule setting protocols for schools that allow a parent to opt-out their child from masking requirements, Alachua County Public Schools issued a notice that a mask requirement would remain in place for students for the first two weeks of school. The notice provides that in order to opt-out a student from the mask requirement, the parent must use the Student Mask Opt-Out Medical Exemption form. This form requires that (1) a medical doctor, a licensed osteopathic physician or a licensed nurse practitioner disclose the medical condition or diagnosis of the student, (2) the student must be under the medical professional's care, and (3) the medical professional must indicate that the student cannot wear a mask or face shield in order to exempt the student from masking.

On August 9, 2021, I, as the Commissioner of Education, wrote Alachua's superintendent and school board chair to notify the district in writing of my concern with the district's non-

compliance with the Department of Health's emergency rule. This letter was sent only after communications with the district, seeking to obtain compliance, were unsuccessful. My letter advised that the "emergency rule does not require parents to submit medical documentation from a physician or a nurse practitioner in order to opt-out [of a mask mandate] and any such requirement is inconsistent with the emergency rule." In order to avoid implementing the State Board of Education's enforcement authority, I directed that the district demonstrate compliance by 5:00 p.m. on August 10, 2021.

On August 10, 2021, the superintendent and school board chair responded in writing, expressing disagreement with the Department of Health's emergency rule. The letter did not rescind the requirement for medical documentation in order for a student to opt-out of a mask mandate.

The State Board of Education's Enforcement Authority

The State Board of Education's enforcement authority is found in Section 1008.32, Fla. Stat. The statute provides that "[t]he State Board of Education shall oversee the performance of district school boards...in enforcement of all laws and rules."

The statutory process requires that I, as the Commissioner of Education, report my determination of probable cause to the State Board of Education. If the State Board of Education determines that a district is unwilling or able to comply with the law or state board rule, it is authorized to impose sanctions in order to secure compliance, including the withholding of funds and reporting to the legislature.

Any argument that the State Board of Education's authority to enforce these safety protocols interferes with the school board's authority to operate and control schools, should be rejected. The State Board of Education's supervisory authority acts as a limitation on the operational authority of districts to operate, control and supervise public schools.

The Florida Constitution therefore creates a hierarchy under which a school board has local control, but the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a school board's local powers, but such infringement is expressly contemplated – and in fact encouraged by the very nature of supervision by the Florida Constitution.

Sch. Bd of Palm Beach Cty. v. Fla. Charter Educ. Found, Inc., 213 So. 3d 356, 360 (Fla. 4th DCA 2017) (rejecting local school board's argument that the State Board of Education's authority to approve a charter school application on appeal violates article IX, section 4(b)); see, also, *Sch. Bd of Collier Cty v. Fla. Dep't of Education*, 279 So. 3d 281 (Fla. 1st DCA 2019) (rejecting local school board's argument that statute requiring school boards to distribute a portion of capital millage revenue to charter schools violates article IV, section 4(b) since state constitution contemplates state educational authorities could infringe on school board's local powers).

Any argument that the State Board of Education lacks the authority to enforce these school safety protocols should also be rejected. It has long been settled that rules have the force and effect of the law. *State v. Jenkins*, 469 So. 2d 733 (Fla. 1985); *Florida Livestock Board v. W.G. Gladden*, 76 So. 2d 291 (Fla. 1954). The emergency rule derives its authority from a statute found in the educational code, specifically Section 1003.22(3), Fla. Stat. While the Department of Health may also have enforcement authority, enforcement of school safety protocols falls squarely within the Florida Department of Education's authority to supervise the system as a whole.

Conclusion

Every school board member and every school superintendent have a duty to comply with the law, whether they agree with it or not. While the district may not agree with the safety protocols set forth by the Surgeon General in the emergency rule, the Surgeon General is the person who, under the law, sets protocols to control COVID-19 in schools.

As a result, I recommend that the State Board of Education use its enforcement powers to enforce the health protocols found the Emergency Rule 64DER21-12 and protect the right of parents to make health and educational decisions for their children.

EXHIBIT B

**U.S. Department of Education
Fiscal Year 2021 and 2022**

**Application for the
Project to Support America’s Families and Educators
(Project SAFE) Grant Program**

CFDA Number: 84.184N



**OMB Number: 1810-0763
Expiration Date: 03/31/2022**

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1810-0763. Public reporting burden for this collection of information is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The obligation to respond to this collection is required to obtain or retain benefit under Section 4631(a)(1)(B) of the ESEA. If you have any comments concerning the accuracy of the time estimate, suggestions for improving this individual collection, or if you have comments or concerns regarding the status of your individual form, application or survey, please contact Amy Banks, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3E257, Washington, D.C., 20202 or email ProjectSAFE@ed.gov directly.

PROGRAM INFORMATION

Purpose

The Project to Support America's Families and Educators (Project SAFE) grant program is intended to improve students' safety and well-being by providing funding to local educational agencies (LEAs) that adopt and implement strategies to prevent the spread of the Novel Coronavirus Disease 2019 (COVID-19) consistent with guidance from the Centers for Disease Control and Prevention (CDC), and that are financially penalized for doing so by their State educational agency (SEA) or other State entity. Project SAFE is funded under the School Safety National Activities authority in Section 4631(a)(1)(B) of the Elementary and Secondary Education Act (ESEA) (20 U.S.C. 7281).

Eligibility

Eligible applicants: LEAs

An LEA is eligible for Project SAFE if it:

(a) Has adopted a policy to implement and is implementing one or more of the strategies recommended in the CDC's [Guidance for COVID-19 Prevention in K-12 Schools](#), as may be updated. The most recent guidance incorporates the following strategies:

- (i) Promoting vaccination;
- (ii) Consistent and correct mask use;
- (iii) Physical distancing;
- (iv) Screening testing to promptly identify cases, clusters, and outbreaks;
- (v) Ventilation;
- (vi) Handwashing and respiratory etiquette;
- (vii) Staying home when sick and getting tested;
- (viii) Contact tracing, in combination with isolation and quarantine; and
- (ix) Cleaning and disinfection;

(b) Has incurred or will incur a financial penalty imposed by its SEA or other State entity, such as a reduction in funding, including but not limited to reduction in salaries for school board members or superintendents, due to implementation of one or more strategies described in paragraph (a); and

(c) To protect the safety and well-being of students, has continued at the time of application to implement such strategy or strategies for which the penalty was imposed and commits to maintain such strategy or strategies to the extent consistent with CDC guidance for the 2021-2022 school year.

Absolute Priority

The Department will consider only applications that meet the Project SAFE absolute priority:

Supporting LEAs' and local education leaders' efforts to improve student safety and well-being in LEAs that have been financially penalized by their SEA or other State entity for adopting and implementing strategies consistent with CDC guidance to prevent the spread of COVID-19.

Under this absolute priority, the Department awards funds to support activities to improve student safety and well-being by advancing strategies consistent with CDC guidance to reduce transmission of COVID-19 in schools by addressing the harmful impact of disruptive State penalties imposed on the LEA for implementing CDC guidance. These activities could include, for example, activities to facilitate the continued implementation of strategies aligned with CDC guidance, despite the State-imposed penalty, and/or to maintain LEA and school stability, such as by enabling the LEA to maintain activities and/or staffing levels or compensation that would otherwise be negatively impacted or reduced due to financial penalties levied on the LEA for implementing strategies aligned with CDC guidance, including but not limited to a reduction in salaries for the superintendent or school board members.

Project SAFE applicants will demonstrate that they meet the absolute priority by proposing a project budget that meets the priority.

Project Period

Up to 12 months. The Department may structure an LEA's award based on the timing of any anticipated future financial penalty.

Budget Request

The total amount of Project SAFE funds an LEA requests must not exceed the amount of the financial penalty for adopting and implementing CDC guidance that the LEA incurred or will incur during the project period (up to 12 months). The Department may fund awards in whole, or in part, at its sole discretion, and may establish a maximum grant award level through a notice in the Federal Register in order to serve as many eligible applicants as possible. The Department may also structure an LEA's award based on the timing of any anticipated future financial penalty.

Timeline

Applications will be reviewed by program staff and approved on a rolling, expedited basis contingent on the availability of funding.

Program Contact

For additional information, please contact Amy Banks at ProjectSAFE@ed.gov.

APPLICATION INSTRUCTIONS

To compete for a Project SAFE award, an LEA must submit to the Department the following information:

- A completed cover sheet that includes the signature of the Superintendent or chief executive officer (CEO) of the LEA or their authorized representative. *(Part A of the Application)*
- Required Documentation and Related Assurances that includes the Signature of the Superintendent or CEO of the LEA or their authorized representative. *(Part B of the Application)*
 - *Including attached copies of:*
 - *The enacted LEA policy that demonstrates that the LEA has adopted one or more strategies as recommended in the CDC's Guidance for COVID-19 Prevention in K-12 Schools available at <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>, as listed in the eligibility requirements;*
 - *The SEA or other State entity notification of a financial penalty levied due to the LEA's adoption of such strategy or strategies, which includes the amount and duration of such penalty (to the extent available); and*
 - *Any other documentation necessary to describe the amount of the financial penalty specified in the notification from the SEA or other State entity that has already been levied at the time of the application and the anticipated amount of any future financial penalty that will be levied during the 12-month period beginning on the date of application.*
- Budget. *(Part C of the Application)*
- Other assurances and certifications. *(Part D of the Application)*

Application Submission Information

Application submissions to the Department will be considered on an ongoing basis.

Please submit your Application, including required attachments, to the Department as follows:

Email an electronic version of your Application in a .PDF (PortableDocument Format) to Amy Banks at ProjectSAFE@ed.gov.

PROJECT SAFE

LOCAL EDUCATIONAL AGENCY

PART A: APPLICATION COVER SHEET

LEA: Alachua

CFDA Number: 84.184N

Legal Name: School Board of Alachua County

DUNS Number: 156470163

LEA Superintendent or chief executive officer (CEO): Carlee Simon, PhD.

Mailing Address: 620 E University Avenue
Gainesville FL 32601

LEA Contact for Project SAFE: Carlee Simon, PhD.

Position and Office: Superintendent

Mailing Address: 620 E University Avenue,
Gainesville, FL 32601

Telephone: 352-955-7546

Email address: simonce@gm.sbac.edu

To the best of my knowledge and belief, all the information and data in this application are true and correct. I acknowledge and agree that the failure to comply with all Assurances and commitments in this application, and any other applicable law or regulation may result in liability under the False Claims Act, 31 U.S.C. § 3729, *et seq.*; OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and 18 USC § 1001, as appropriate.

LEA Superintendent/chief executive officer (CEO) or Authorized Representative (Typed Name):

Carlee Simon, PhD., Superintendent

Telephone: **352-955-7546**

Signature of LEA Superintendent/chief executive officer (CEO) or Authorized Representative:

Date: **9/17/21**



PART B: REQUIRED DOCUMENTATION AND RELATED ASSURANCES

The [LEA Superintendent/chief executive officer (CEO) or their authorized representative] assures that it is submitting with this Application an electronic copy of the following documents and certifies that they are accurate and complete:

- The enacted LEA policy that demonstrates that the LEA has adopted one or more strategies as recommended in the CDC’s Guidance for COVID-19 Prevention in K-12 Schools, as listed in the eligibility requirements;
- The SEA or other State entity notification of a financial penalty levied due to the LEA’s adoption of such strategy or strategies, which includes the amount and duration of such penalty (to the extent available); and
- Any other documentation necessary to describe the amount of the financial penalty specified in the notification from the SEA or other State entity that has already been levied at the time of the application and the anticipated amount of any future financial penalty that will be levied during the 12-month period beginning on the date of application.

By signing this document, the LEA Superintendent/chief executive officer (CEO) attests that the LEA has implemented such prevention strategy(ies) and that it will continue implementing the prevention strategy(ies) to the extent consistent with CDC guidance for the duration of the 2021-2022 school year.

By signing this document, the LEA superintendent/CEO assures that the LEA will not draw down any Project SAFE grant funds until such time as the LEA incurs the above referenced financial penalty imposed by the State.

By signing this document, the LEA superintendent/CEO assures that the LEA will not provide reimbursement for any individual salary in an amount greater than the reduction to that individual salary.

LEA Superintendent/chief executive officer (CEO) or Authorized Representative (Printed Name):

Signature: 	Date: 9/17/2021
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Commissioner Richard Corcoran Announces the Withholding of Funds in Alachua and Broward Counties for their Continued Violation of State Law

August 30, 2021

FDOE Press Office

850-245-0413

DOEPRESSOFFICE@fldoe.org

Commissioner Richard Corcoran Announces the Withholding of Funds in Alachua and Broward Counties for their Continued Violation of State Law

~ State will continue to fight for parent rights ~

Tallahassee, Fla., August 30, 2021 – Today, Commissioner of Education Richard Corcoran announced that the Florida Department of Education has withheld the monthly school board member salaries in Alachua and Broward County, as directed by the State Board of Education. Each district has implemented a mandatory face mask policy that violates parental rights by not allowing a parent or legal guardian to opt-out their child, as required by Florida Department of Health Emergency Rule 64DER21-12. The withholding of funds will continue monthly until each school board complies with state law and rule.

“We’re going to fight to protect parent’s rights to make health care decisions for their children. They know what is best for their children. What’s unacceptable is the politicians who have raised their right hands and pledged, under oath, to uphold the Constitution but are not doing so. Simply said, elected officials cannot pick and choose what laws they want to follow,” **said Commissioner of Education Corcoran.**

On August 20, 2021, the State Board of Education issued the Alachua and Broward County school districts with an Order demanding that they comply with state statute and rule; however, both districts refuse to comply. Each county is also prohibited from reducing any expenditures other than those related to compensation for school board members, and clearly states each district may not permit the reduction of funds to impact student services or teacher pay.

The Commissioner of Education and State Board of Education retain the right and duty to impose additional sanctions and take additional enforcement action to bring each school district into compliance with state law and rule.

Read More News...

STATE OF FLORIDA
STATE BOARD OF EDUCATION

IN RE:

DOE No.: 2021-4023

ALACHUA COUNTY SCHOOL BOARD,
STUDENT OPT-OUT REQUIREMENTS.

DEPT OF EDUCATION
TALLAHASSEE FLA

2021 AUG 20 AM 9:35

FILED AGENCY CLERK

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

After having considered the determination of probable cause made by the Commissioner of Education, Richard Corcoran, along with an independent review of the documentary support for that determination, as well as public comment and discussions provided at the August 17, 2021, State Board of Education meeting, the State Board of Education implements its oversight authority under section 1008.32, Florida Statutes, as follows:

1. The State Board of Education authorized the Commissioner of Education to further investigate this matter and to take any and all action necessary to ensure that the State Board of Education satisfies its enforcement and other obligations under, among other things, chapters 1001 and 1008, Florida Statutes. These laws prevent the State Board of Education from ignoring intentional violations of state law or rules and compel action to enforce such violations.
2. As an initial finding, the State Board of Education finds that the School Board of Alachua County's requirement for medical documentation to opt-out of masking does not comply with Florida Department of Health Emergency Rule 64DER21-12, Protocols for Controlling COVID-19 in School Settings. That rule requires public schools to "allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask."

3. The State Board of Education finds that the School Board of Alachua County's noncompliance and knowing failure to follow the law unlawfully denies Alachua County parents and legal guardians of their right to make fundamental healthcare and educational decisions for their children by choosing whether their children should be masked in public schools.
4. Based on these findings, it is hereby ordered that the School Board of Alachua County must document compliance with Florida Department of Health Emergency Rule 64DER21-12 by allowing a parent or legal guardian of a student to opt-out the student from wearing a face covering or mask, without requiring a medical reason, approval from a medical professional or any additional requirement to support the request.
5. The School Board of Alachua County has 48 hours from receipt of this order to document compliance as set forth in this order. If the School Board of Alachua County demonstrates compliance by this deadline, then no further action is needed.
6. If the School Board of Alachua County fails to timely document compliance within 48 hours from receipt of this order, the School Board of Alachua County must provide to the Commissioner of Education, no later than 48 hours after receipt of this order, information confirming the current annual compensation provided to all school board members.
7. Upon receipt of the annual compensation information for the School Board of Alachua County members mentioned above, and continuing until the School Board of Alachua County demonstrates compliance with the law, the Florida Department of Education is directed to begin withholding from state funds, on a monthly basis, an amount equal to 1/12 of the total annual compensation of the school board, as an initial step. Monthly withholding must continue until the School Board of Alachua County demonstrates

compliance, the State Board of Education withdraws this order, or when the rule expires or is withdrawn. If the School Board of Alachua County fails to provide the requested compensation information within the 48 hour period, the Florida Department of Education shall withhold state funds based on the most recent appropriations estimate until the School Board of Alachua County provides the current estimate. The Alachua County School Board members who voted to impose the unlawful mask mandate are:

Dr. Leanetta McNealy

Tina Certain

Dr. Gunnar F. Paulson

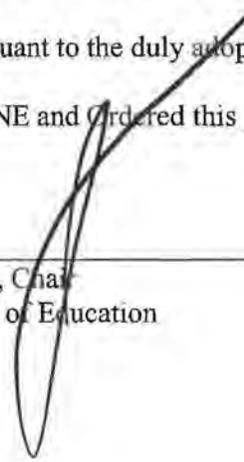
Robert P. Hyatt

8. In complying with this order, the School District of Alachua County may not reduce any expenditures other than those related to compensation for school board members. Further, the School District of Alachua County may not permit the reduction of funds based upon this order to impact student services or teacher pay.
9. Upon the School Board of Alachua County's failure to timely document compliance within 48 hours of receipt of this order, the Alachua County School Superintendent shall certify, upon request of the Commissioner of Education, an updated report documenting any instance of the School District of Alachua County's enforcement of the unlawful face covering mandate policy against a student, including, but not limited to, instances of a student being sent home, reassigned, disciplined, suspended, isolated, stigmatized, warned or harassed because of the student's failure to comply with the School Board of Alachua County's unlawful face covering mandate policy. Such report shall include the student's name and grade, parent's name(s) and home address. If the School District of Alachua

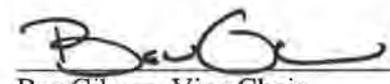
County does not have any instances of enforcement to report, the Alachua County School Superintendent shall submit a certified report asserting such fact. This request from the Commissioner of Education shall be continuous in nature until the Alachua County School Superintendent can certify and establish full compliance.

10. Upon the School Board of Alachua County's failure to timely document compliance within 48 hours of receipt of this order, the Commissioner of Education shall monitor and report at each subsequent meeting of the State Board of Education as to the School Board of Alachua County's compliance with Florida Department of Health Emergency Rule 64DER21-12 and this order, and provide recommendations to the State Board of Education as necessary to mandate further reporting related to noncompliance or further withholding of state funds due to continued noncompliance, pursuant to the State Board of Education's oversight and enforcement authority within section 1008.32, Florida Statutes.
11. The State Board of Education may continue to review findings of the Commissioner of Education as he continues his investigation, and retains the right and duty to impose additional sanctions, and take additional enforcement action, as necessary, to bring the School Board of Alachua County into compliance and better serve Florida's families pursuant to the duly adopted resolutions of that date.

DONE and Ordered this 20th day of August, 2021.



Tom Grady, Chair
State Board of Education



Ben Gibson, Vice Chair
State Board of Education

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 20, 2021, the foregoing was filed with the Agency Clerk of the Florida Department of Education, and that a true and correct copy of the foregoing has been furnished via email and U.S. Mail to:

Ms. Carlee Simon, Alachua County School Superintendent
simonce@gm.sbac.edu
620 East University Avenue
Gainesville, FL 32601-5448

Ms. Leanetta McNealy, Chair, School Board of Alachua County
mcnealy@gm.sbac.edu
620 East University Avenue
Gainesville, FL 32601-5448


AGENCY CLERK



Book	Policy Manual
Section	8000 Operations
Title	PROTECTIVE FACIAL COVERINGS DURING PANDEMIC/EPIDEMIC EVENTS
Code	po8450.01
Status	Active
Adopted	October 20, 2020

8450.01 - PROTECTIVE FACIAL COVERINGS DURING PANDEMIC/EPIDEMIC EVENTS

During times of elevated communicable disease community spread (pandemic or epidemic), the Superintendent will issue periodic guidance through School Board plans/resolution(s) in alignment with public health officials and/or in accordance with government edicts and including any Pandemic Plan developed by the District's Pandemic Response Team. (See also Policy 8420.01 - *Epidemics and Pandemics*.)

School settings can be a source of community spread. Wearing face masks/coverings is especially important during these times and can help mitigate the risk of exposure from person to person.

As such, during times of elevated communicable disease community spread, the Superintendent may activate this policy by notifying the school community, requiring all school staff, volunteers and visitors (including vendors) to wear appropriate face masks/coverings on school grounds unless it is unsafe to do so or where doing so would significantly interfere with the Districts educational or operational processes.

Face masks/coverings will be provided by the District to employees and students, as necessary. Individuals may elect to wear their own face coverings if they meet the requirements of this policy as well as any requirements issued by State or local health departments.

In addition, **the Board may require students to wear a face mask** unless they are unable to do so for a health, sensory, or developmental reason. Efforts will be made to reduce any social stigma for a student who, for medical or developmental reasons, cannot and should not wear a mask. Children in kindergarten and below will be educated, encouraged and expected to wear face coverings, but failure to wear a face covering will not prohibit their attendance if they are unable to wear a face covering at all times.

If face masks/coverings are required, and no exception is applicable, students who refuse to wear a face mask/covering, in accordance with policies of the Board, may be reassigned by the Superintendent to an online/virtual learning environment if the Superintendent determines that reassignment is necessary to protect the health and safety of the student or others.

All students and staff are required to wear masks while being transported on District school buses or other modes of school transportation.

School nurses or staff who care for individuals with symptoms consistent with those of a communicable disease must use appropriate personal protective equipment (PPE), provided by the school, in accordance with OSHA standards.

When facial masks/coverings are required by the Board, and no exception has been applied, staff members who violate this policy shall be subject to disciplinary action in accordance with policies of the Board or applicable collective bargaining agreement.

Use of Mask/Face Covering

Face coverings/mask should:

- A. fully cover the mouth, nose, and chin;

D. for individuals who have difficulty wearing a face mask/covering for documented health, sensory, or developmental reasons.

If employees receive approval from the District administration after discussing their request not to wear a face mask/covering/shield due to a physical, mental or developmental health condition, and/or if wearing a mask/covering/shield would lead to a medical emergency or would introduce significant safety concerns, the District administration may also discuss other possible accommodations for the staff member. Such discussion shall follow Board policies and guidelines under the ADA.

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Legal	F.S. 120.54(4)
	F.S. 120.81
	F.S. 286.011
	F.S. 286.0114
	F.S. 1001.32
	F.S. 1001.33
	F.S. 1001.41
	F.S. 1001.42
	F.S. 1001.43

Last Modified by Tammy R Shroyer on December 9, 2020

	<p>Mrs. Certain-What is being recommended in the plan for students? Cowles responded</p> <p>Mrs. Certain asked Mr. Hyatt-Masking at the start of the school for some period of time.</p> <p>Mr. Hyatt- No need to get political and we have to respect that the Governor has executive authority but we can start out by responding the facts to the people who are living this everyday. At the end of two weeks we can see what the numbers are as Dr. McNealy stated.</p> <p>Mr. Hyatt, Moved that we accept the plan as written with the addition of mandating masks for students for the first two weeks of school revisit it during the august 17th meeting. Mrs. Certain seconded.</p> <p>Certain-yes Paulson-yes Hyatt-yes McNealy-yes</p> <p>Motion passed 4-0</p> <p>Dr. McNealy with an evaluation for moving forward.</p>
<p>CITIZEN INPUT</p>	<p>Kristen Thompson-wants a mask mandate Anna Prizzia- Thank you for adding the mask mandate and we support you Crystal Tessman-in favor of mask mandate read a statement being sent to Desantis on behalf of ACEA. Brittany bregaman-alacua county medical society Dr.-favor of the mask mandate and ask that we mask for a month David Kaplan-in favor of mask mandate Carmen Ward ACEA President-want to thank the educators for surviving the pandemic last year. Megan- more time than two weeks and in favor of the mask mandate Tahari-not in favor of masks Dr. Rasmussen-in favor of mask mandate more than two weeks though Tracy Amberbride- in favor of mask mandate Molly-not in favor of masks Mary Benedict-safe return without a mask mandate Tina Days- in favor of masks Sarah Rockwell-in favor mask mandate Austin- in favor of masks Daughter of Curry-in favor of masks Isaac Steinberg-in favor of masks Mother of four sons-not in favor of masks Megan Mansell- not in favor of masks Nicole Carlisle-not in favor of masks Laura Beck-in favor of the mask mandate</p>

	<p>Meredith-in favor of the mask mandate and more than two weeks Taylor Novak-in favor of masks</p>
BOARD DISCUSSION	<p>Mrs. Certain-Thank you for all the medical experts for coming out. Wants to have a safe work and learning environment. We need to continue our current methods and feels strongly we should extend this out to Sept. 17. Asked Dr. Simon if a teacher goes out does the whole class have to be quarantined? Simon responded.</p> <p>Dr. Paulson-Does not want to waste the two weeks we have. Whether we like it or not we are dealing with a political governor. In favor of the bargaining unit. We need to have a plan and get to work. Can eSchool be more like digital academy? Requested a committee be established to work on finding solutions/options for the mask situation. In addition we need to look at what since last spring has happened with our eSchool and how we can work with the state to solve the masking problem.</p> <p>Mr. Hyatt-This is big for everybody I'd love to extend time but we have real things happening in Tallahassee. Use this time to find further mitigation.</p> <p>Dr. McNealy-Thank you to the scientist and the medical doctors and that you stayed the whole time if you have an hour a week to come into the schools to help us. Kudos to Prescott for getting this plan together.</p> <p>Mr. Delaney- explore additional options and see what is going on within the district and what is happening in the community.</p> <p>Mr. Cowles-Clarified the motion that was on the floor</p> <p>Dr. Mark Atkinson-in favor of mask mandate</p>
BOARD MEMBER/SUPERINTENDENT REQUESTS	<p>Dr. Simon-Canvas courses are up to date for quarantine period. students spots will be held in the magnet program if you chose eschool until there is a vaccine for under 12. Invited the medical providers back to the August 17th meeting. Thank you to the staff for making it through the year and summer and working hard. Thank you to the students who will be masking for the next two weeks.</p>
ADJOURNMENT	<p>Meeting adjourned at 9:40 p.m.</p>

THE SCHOOL BOARD OF ALACHUA COUNTY, FLORIDA
 APPROVED MINUTES OF
 REGULAR SCHOOL BOARD MEETING

August 17, 2021

The School Board of Alachua County, Florida, met in regular session, duly called at 6:00 p.m. at the Alachua County Administration Building, 12 SE 1st Street, Gainesville, Florida Present were: Leanetta McNealy, Chairman; Tina Certain, Vice-Chairman; Rob Hyatt, and Gunnar Paulson, members; Carlee Simon, Superintendent and Board Attorney David Delaney.

The meeting was called to order by Chairman McNealy along with the Pledge of Allegiance.

ADOPTION OF AGENDA	<p><u>Motion by Mr. Hyatt</u> <u>Seconded by Mrs. Certain</u></p> <p><u>Moved to approve the agenda for the August 17 2021, Board meeting.</u></p> <p>The question was called. <u>Upon Vote: Motion passed 4-0</u></p>
APPROVAL OF MINUTES	<p><u>Motion by Mrs. Certain</u> <u>Seconded by Mr. Hyatt</u></p> <p><u>Moved to approve minutes for the August 3, 2021, Special School Board meeting and public hearing for tentative budget and millage.</u></p> <p>The question was called. <u>Upon Vote: Motion passed 4-0</u></p> <p><u>Motion by Mrs. Certain</u> <u>Seconded by Dr. Paulson</u></p> <p>Dr. Paulson requested a statement be included from the August 3 2021 meeting.</p> <p><u>Moved to approve minutes for the August 3, 2021, Regular School Board Meeting.</u></p> <p>The question was called. <u>Upon Vote: Motion passed 4-0</u></p> <p><u>Motion by Dr. Paulson</u> <u>Seconded by Mr. Hyatt</u></p> <p><u>Moved to approve minutes for the August 4, 2021, Regular school board workshop.</u></p> <p>The question was called. <u>Upon Vote: Motion passed 4-0</u></p>
BOARD MEMBER/SUPERINTENDENT ANNOUNCEMENTS	<p>Dr. Simon- Congratulated Eastside’s Pam Bedford who was named the 2021 educator of the year by the American Culinary Foundation.</p> <p>Mrs. Certain-Thanked Facilities in reference to getting Metcalfe open for the first day of school.</p>

	<p>Dr. Paulson- What was the state of emergency. Commissioner Cornell responded.</p> <p>Mrs. Certain-asked was it 42 days total or 42 days at any given time and Commissioner Cornell responded 42 days in total.</p> <p>Dr. McNealy-After the 42 days if we are still in an emergency state would you be able to extend the emergency order. Commissioner Cornell stated no not under the current legislation.</p> <p>Prescott Cowles went over current school COVID data.</p> <p>Paulson- It would be interesting if you could give us information where the spikes are and where the vaccines are? What's the quarantine timeline? If you get a test done it's either 5 or 7 days for quarantine? Cowles responded.</p> <p>Dr. Simon we are concerned with parent choices as we have had parents test positive and send their kids to school. We appreciated that the masks were there to reduce the contagion and the quarantines. Addressed families who were watching and or listening and asked that if you are positive please don't send your children to school or if they are exhibiting symptoms please don't send them to school either.</p> <p>Mr. Hyatt moved that we extend the current mask mandate for Alachua County Public Schools for students K-12 for an additional 8 weeks.</p> <p>Seconded by Mrs. Certain</p>
<p>CITIZEN INPUT</p>	<p>Citizens shared input in person and over the phone regarding whether or not they were in favor of the mask mandate, parents having the right to choose for their children and transportation pay.</p>
<p>BOARD DISCUSSION</p>	<p>Mr. Hyatt-We received two weeks ago compelling testimonies about the conditions we face in Alachua County. We should be laser focused on what is happening here and what we can do to mitigate the spread of the virus right here.</p> <p>Dr. Paulson-What I said August 3 is we should have got together and got a plan and see what we can do. There are different ways to look at freedom. We're elected to run our schools, so why did the Governor make things so hard that we couldn't do it example taking Digital Academy option away</p> <p>Mrs. Certain-Thanked all the citizens who called and emailed and those who came out to the meeting and the medical community with their support. I feel that this decision is a public health issue. Shared some stories regarding COVID positive cases. This issue is life or death and I will lose my salary over that.</p>

PART C: BUDGET

1. Amount of financial penalty incurred as of 9/17/2021:

Salaries: **\$13,429**

This amount does not include benefits. Benefits are not affected by the penalty. It is for 4 Board Member salaries @ \$3,357.25 each per month x 11 months. The first month was not affected by the penalty.

2. Anticipated amount of financial penalty for 12 month period after application:

Salaries: **\$134,290**

3. The Alachua County School District has attached documentation as required in Part B the following:

- The notice from the State of Florida the type and amount of penalty to be withheld from Alachua County School Board salaries for upholding a mask mandate for students attending public schools in the County.
- The Board Policy from 2020 for a mask mandate. The mask mandate policy references both employees and students. The mandate for students is approved by the Board, whereas the mandate for employees is approved by the Superintendent.
- Board meeting minutes from two meetings –

8/3/21 where the Board approved the mask mandate for students effective through 8/17; and

8/17/21 where the Board approved to extend the mask mandate for students for 8 weeks whereas they will revisit the mask mandate and whether to extend further.

4. The total amount requested by the LEA: **\$147,719**
5. The proposed project budget enables the LEA to maintain compensation that would otherwise be negatively impacted/reduced due to financial penalties levied on the LEA for Implementing strategies aligned with CDC guidance (reduction in salaries for school board members).

PART D: OTHER ASSURANCES AND CERTIFICATIONS

The [LEA Superintendent/chief executive officer (CEO) or their authorized representative] assures or certifies the following:

1. The LEA will comply with all applicable assurances in OMB Standard Forms 424B (Assurances for Non-Construction Programs), including the assurances relating to the legal authority to apply for assistance; access to records; conflict of interest; merit systems; nondiscrimination; Hatch Act provisions; labor standards; flood hazards; historic preservation; protection of human subjects; animal welfare; lead-based paint; Single Audit Act; and the general agreement to comply with all applicable Federal laws, executive orders and regulations.
2. With respect to the certification regarding lobbying in Department Form 80-0013, no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making or renewal of Federal grants under this program; the LEA will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," when required (34 C.F.R. Part 82, Appendix B).
3. The LEA will comply with the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) requirements in Subpart D—Post-Federal Award Requirements (2 CFR §§200.300-345) and Subpart E—Cost Principles (2 CFR §§200.400-475).
4. The LEA will comply with the provisions of all applicable acts, regulations and assurances; the following provisions of Education Department General Administrative Regulations (EDGAR) 34 CFR parts 75, 77, 81, 82, 84, 97, 98, and 99; the OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485; and the Uniform Guidance in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474.

LEA Superintendent/chief executive officer (CEO) or Authorized Representative (Printed Name):

Signature: 	Date: 9/17/2021
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EXHIBIT C

Notice of Emergency Rule

DEPARTMENT OF HEALTH

Division of Disease Control

RULE NO.: RULE TITLE:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Because of an increase in COVID-19 infections, largely due to the spread of the COVID-19 delta variant, prior to the beginning of the 2021-2022 school year, it is imperative that state health and education authorities continue to provide emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. In August 2021, all public schools in Florida began the 2021-2022 school year with in-person learning available for all students. The Department of Health adopted Emergency Rule 64DER21-12 on August 6, 2021. Since that time the Department has conducted a review of data for cases of COVID-19 positive school-aged children and data for school-aged children who have been in direct contact with a COVID-19 positive person. The Department observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

In order to permit students to continue in-person learning, to minimize the detriment to students and school personnel from the added burden of recurrent removal of students, and to benefit the overall welfare of students in Florida, it is necessary to provide updated emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. This emergency rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to ensure safety protocols for controlling the spread of COVID-19 in schools that (1) do not violate Floridians' constitutional freedoms; (2) do not violate parents' rights under Florida law to make health care decisions for their minor children; and (3) protect children with disabilities or health conditions who would be harmed by certain protocols, such as face masking requirements. The order directs that any COVID-19 mitigation actions taken by school districts comply with the Parents' Bill of Rights, and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19."

Because of the importance of in-person learning to educational, social, emotional and mental health, and welfare, removing healthy students from the classroom for lengthy quarantines should be limited. Under Florida law, parents and legal guardians have a fundamental right to direct the upbringing, education, health care, and mental health of their minor children and have the right to make health care decisions for their minor children. HB 241, Ch. 2021-199, Laws of Fla. Parents and legal guardians are uniquely situated to understand the health care, emotional, and educational needs of their minor children. In furtherance of the Florida Department of Health's authority to adopt rules governing the control of preventable communicable diseases—and because students benefit from in-person learning—it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to maximize the allowance of in-person education for their children. Unnecessarily removing students from in-person learning poses a threat to the welfare of children, including their social, emotional and educational developmental, and is not necessary absent illness.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule is necessary in light of the unnecessary exclusion of healthy students from in-person learning and the urgent need to provide updated COVID-19 guidance to school districts. Given the evolving nature of this novel disease and the potential for adverse impacts on school children resulting from the unnecessary exclusion of healthy children from in-person learning, there is a need to issue an immediately effective rule while the department promulgates a permanent rule through the non-emergency process.

SUMMARY: Emergency rule 64DER21-15 sets forth the procedures for controlling COVID-19 in school settings. Emergency rule 64DER21-15 repeals and replaces Emergency rule 64DER21-12 that was adopted on August 6, 2021.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Carina Blackmore, Florida Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1703, (850)245-4732.

THE FULL TEXT OF THE EMERGENCY RULE IS:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

(1) GENERAL PROTOCOLS AND DEFINITION. The following procedures shall be instituted to govern the control of COVID-19 in public schools:

(a) Schools will encourage routine cleaning of classrooms and high-traffic areas.

(b) Students will be encouraged to practice routine handwashing throughout the day.

(c) Students will stay home if they are sick.

(d) Schools may adopt requirements for students to wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's sole discretion.

(e) For purposes of this rule, "direct contact" means cumulative exposure for at least 15 minutes, within six feet.

(2) PROTOCOLS FOR SYMPTOMATIC OR COVID-19 POSITIVE STUDENTS. Schools will ensure students experiencing any symptoms consistent with COVID-19 or who have received a positive diagnostic test for COVID-19 shall not attend school, school-sponsored activities, or be on school property until:

(a) The student receives a negative diagnostic COVID-19 test and is asymptomatic; or

(b) Ten days have passed since the onset of symptoms or positive test result, the student has had no fever for 24 hours and the student's other symptoms are improving; or

(c) The student receives written permission to return to school from a medical doctor licensed under chapter 458, an osteopathic physician licensed under chapter 459, or an advanced registered nurse practitioner licensed under chapter 464.

(3) PROTOCOLS FOR STUDENTS WITH EXPOSURE TO COVID-19. Schools shall allow parents or legal guardians the authority to choose how their child receives education after having direct contact with an individual that is positive for COVID-19:

(a) Parents or legal guardians of students who are known to have been in direct contact with an individual who received a positive diagnostic test for COVID-19 may choose one of the following options:

1. Allow the student to attend school, school-sponsored activities, or be on school property, without restrictions or disparate treatment, so long as the student remains asymptomatic; or

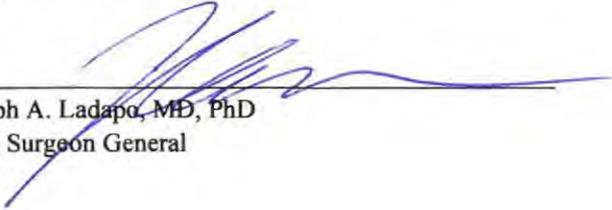
2. Quarantine the student for a period of time not to exceed seven days from the date of last direct contact with an individual that is positive for COVID-19.

(b) If a student becomes symptomatic following direct contact with an individual that has tested positive for COVID-19, or tests positive for COVID-19, the procedures set forth in subsection (2), above shall apply.

Rulemaking Authority 1003.22(3) FS. Law Implemented 1003.22(3) FS. History—New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE:



Joseph A. Ladapo, MD, PhD
State Surgeon General

9/22/21

Date

EXHIBIT D



Tom Grady, *Chair*
Ben Gibson, *Vice Chair*
Members
Monesia Brown
Marva Johnson
Ryan Petty
Andy Tuck
Joe York

September 23, 2021

Dr. Carlee Simon
Superintendent
Alachua County Schools
620 East University Avenue
Gainesville, Florida 32601

Dr. Leanetta McNealy
School Board Chair
Alachua County Schools
620 East University Avenue
Gainesville, Florida 32601

Dear Superintendent Simon and Chair McNealy:

This letter is to advise you of the Department of Health's new emergency rule revising the "Protocols for Controlling COVID-19 in School Settings" and to provide you one more opportunity to come into compliance with the requirements established by the Department of Health.

A copy of the Department of Health's new rule, 64DER21-15, is attached. It revises the requirements for quarantining asymptomatic students who have been exposed to COVID-19 and further clarifies the parental opt-out provision to foreclose the erroneous interpretation that the parental opt-out permits a medical-only opt-out. That provision now provides that ". . . the school must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's **sole discretion.**" See, [Rule 64DER21-15\(1\)\(d\), Florida Administrative Register, Vol. 43 / No. 185](#), September 23, 2021 (emphasis supplied). The purpose of these changes is explained by the Department of Health in its notice for the new rule.

The Department [of Health] observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department [of Health] observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

Dr. Simon, Dr. McNealy
September 23, 2021
Page Two

I am continuing the investigation of your district's mask mandate that I notified you by letter of August 9, 2021. Based upon the authority provided to me under s. 1008.32(2)(a), Florida Statutes, I request that you provide a written response by 5:00 p.m. on September 24, 2021, documenting how your district is complying with that portion of the Department of Health's Emergency Rule 64DER21-15, that continues to give parents or legal guardians the sole discretion to opt a student out from a mask or face covering mandate.

As I have done before, if you fail to document full compliance, I intend to recommend to the State Board of Education that the Department of Education withhold funds in an amount equal to the salaries for all members of the School Board, as well as other sanctions authorized by law, for the period during which the district has been out of compliance.

Thank you for your prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Corcoran", with a long horizontal flourish extending to the right.

Richard Corcoran
Commissioner

EXHIBIT E

U.S. Department of Education Awards Project SAFE Funds to Florida School District Following State-Imposed Penalty for Implementing COVID-19 Safety Measures

SEPTEMBER 23, 2021

Contact: Press Office, (202) 401-1576, press@ed.gov (<mailto:press@ed.gov>)

Today, the U.S. Department of Education awarded the School Board of Alachua County \$147,719 in funding under the new Project to Support America's Families and Educators (Project SAFE) grant program. This is the first award under Project SAFE, and funding will support the Florida school district's efforts to protect students as they return to safe, in-person learning despite the state's actions to prohibit implementation of strategies to limit the spread of COVID-19, consistent with science-based guidance from the Centers for Disease Control and Prevention (CDC). The Project SAFE program was [announced \(https://www.ed.gov/news/press-releases/us-department-education-announces-new-grant-program-provide-funding-school-districts-being-penalized-implementing-covid-safety-measures\)](https://www.ed.gov/news/press-releases/us-department-education-announces-new-grant-program-provide-funding-school-districts-being-penalized-implementing-covid-safety-measures) as part of President Biden's [COVID-19 Action Plan \(https://www.whitehouse.gov/covidplan/\)](https://www.whitehouse.gov/covidplan/) to combat COVID-19 and safely reopen schools for in-person learning. As part of the program, school districts have been able to apply to the Department of Education to restore funding withheld by state leaders—such as salaries for school board members or superintendents who have had their pay cut—when a school district implemented strategies to help prevent the spread of COVID-19 in schools.

"We should be thanking districts for using proven strategies that will keep schools open and safe, not punishing them. We stand with the dedicated educators in Alachua and across the country doing the right thing to protect their school communities, and with today's first-ever award under Project SAFE, we are further enabling educators to continue that critical work," said U.S. Secretary of Education Miguel Cardona. "With these grants, we're making sure schools and communities across the country that are committed to safely returning to in-person learning know that we have their backs. I commend Alachua for protecting its students and educators, and I look forward to working with them to provide students their best year yet. Every student across the country deserves the opportunity to return to school in-person safely this fall, and every family should be confident that their school is implementing policies that keep their children safe."

The Project SAFE program promotes student safety and well-being by providing funding to school districts that were financially penalized by an entity in their state for implementing the CDC's science-based strategies to prevent the spread of COVID-19. The funding will help districts keep these measures in place and maintain district and school stability despite the financial penalty. Prior to the creation of the Project SAFE program, President Biden announced that if a state cuts the funding to a local school district for implementing CDC-

recommended prevention strategies like universal masking, the school district may use funds from the American Rescue Plan (ARP) to fill those gaps. School districts can begin spending their ARP funds right away, including to reimburse for any allowable cost dating back to when the national emergency for COVID-19 was declared.

Beyond the resources in the American Rescue Plan, the Project SAFE program makes additional funding available to help local school districts fill gaps when funding has been withheld by their state for implementing COVID safety measures. ProjectSAFE is funded under the School Safety National Activities authority in Section 4631(a)(1)(B) of the Elementary and Secondary Education Act (ESEA). Today's announcement marks the first Project SAFE grant award since the program was launched.

CDC recommends universal indoor masking for all teachers, staff, students, and visitors to K-12 schools, regardless of vaccination status, and that children should return to full-time, in-person learning with layered prevention strategies in place to reduce potential for transmission at school. Alachua County Public Schools (ACPS) first adopted a policy that required students and district employees to wear masks on school grounds in October 2020. Consistent with CDC guidance, on Aug. 3, 2021, the ACPS School Board voted to require students and staff to wear masks during the first two weeks of school, then voted to extend this policy on Aug. 17, 2021. Shortly after the extension, the Florida State Board of Education informed ACPS that it would be subject to financial penalties due to these policies. With the Project SAFE grant funds, Alachua County Public Schools will be able to stabilize district staffing and compensation levels necessary to keep CDC recommended strategies in place and to promote student safety for its nearly 30,000 students.

"Students deserve the opportunity to return to school in-person safely this fall, and our nation's superintendents must have not only the authority to make the decisions about what that reopening looks like, but also freedom from unnecessarily political and punitive retaliation from their state leaders," said Dan Domenech, executive director of AASA, the School Superintendents Association. "Superintendents bear the ultimate responsibility and accountability for those decisions, and AASA will always support the leadership decisions of superintendents on behalf of their districts, students, and staff. We applaud Project SAFE in its work to support school districts where leaders are making the best decisions for their students, staff, and community despite objectionable state obstacles."

Educators, leaders, and parents are working hand-in-hand in communities across the nation to keep students and school communities safe—and the Biden Administration will do everything it can to support them doing right by children. The Biden Administration remains committed to supporting educators as they work to return to in-person learning safely, and the President's plan makes clear we will take on those working to block or undermine these efforts. Other school districts that have had a financial penalty imposed by their state for implementing CDC-recommended strategies to prevent the spread of COVID-19 can learn more about Project SAFE and apply for funds from the program at <https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/the-project-to-support-americas-families-and-educators-project-safe/> (<https://oese.ed.gov/offices/office-of-formula-grants/safe-supportive-schools/the-project-to-support-americas-families-and-educators-project-safe/>).

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EXHIBIT F



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The Project to Support America's Families and Educators (Project SAFE)

CFDA NUMBER 84.184N
PROGRAM TYPE Discretionary/Competitive Grant

The Project to Support America's Families and Educators (Project SAFE) grant program is intended to improve students' safety and well-being by providing funding to local educational agencies (LEAs) that adopt and implement strategies to prevent the spread of the Novel Coronavirus Disease 2019 (COVID-19) consistent with guidance from the Centers for Disease Control and Prevention (CDC), and that are financially penalized for doing so by their State educational agency (SEA) or other State entity.

Approved Applications

Local Educational Agency	Grant Application	Total Award Amount
School Board of Alachua County	PDF	\$147,719

Contact Information

Amy Banks
U.S. Department of Education
400 Maryland Avenue, SW, room
3E257
Washington, DC 20202-6450

202-453-6704

E-mail

The Project to Support America's Families and Educators (Project SAFE)

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Last Modified: 09/24/2021

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EXHIBIT G

BOARD MEMBERS

Tina Certain
Robert P. Hyatt
Leannetta McNealy, Ph.D.
Gunnar F. Paulson, Ed.D.
Mildred Russell

SUPERINTENDENT OF SCHOOLS

Carlee Simon, Ph.D.



An 'A-rated' District

Mission Statement: We are committed to the success of every student!

District Office
620 East University Avenue
Gainesville, Florida
32601-5498

www.sbac.edu
(352) 955-7300

September 24, 2021

Commissioner Corcoran,

This letter is in response to your September 23, 2021 request that we provide a written response by 5:00 p.m. on September 24, 2021, documenting how our District is complying with the portion of the Department of Health's Emergency Rule 64DER21-15 addressing mask mandates.

As a District, we continue to be concerned with the risk that the spread of COVID-19, particularly the highly contagious Delta variant, poses to the students and staff in Alachua County Public Schools. While we are encouraged by the recent trends in our community, we are not yet in a position to safely lift the mask mandate that we currently have in place. The District's current mask requirement expires on October 19, 2021. This requirement for students to wear masks was put in place by the Alachua County School Board. To comply with the Sunshine Law, any modifications will need to be addressed in a meeting that is open to the public and allows for public input. The earliest opportunity for a meeting in that setting is October 5, 2021. Therefore, we would request an extension for this response until October 6, 2021 so that we can provide you the requested information once the Board has had the opportunity to discuss the matter.

We have questions and concerns regarding the implementation of 64DER21-15. The local rates of transmission have very recently decreased in our community, and we are working with our local experts in pediatrics, immunology, virology, epidemiology, emergency medicine, and public health to navigate through this changing landscape. Before making changes to our policies and procedures, we believe that the input of these experts is essential to ensuring the safety and well-being of our students, staff, and the community as a whole. We will be requesting that these experts attend our October 5, 2021 Board meeting to ensure that our Board has the most up-to-date guidance regarding strategies to curb continued spread of the virus and the logistics on safely meeting our obligations to the standards of the State Board in addition to our federal requirements under the Individuals with Disabilities Education Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act. The CDC recommends universal indoor masking by all students (age 2 and older), staff, teachers, and visitors to K-12 schools, regardless of vaccination status.

In addition, we have continued concerns regarding the potential loss of staff and students due to the reduction in COVID-19 mitigation strategies. When you and I spoke earlier this week at the FADSS meeting about the potential loss of workforce as a result of the lifting of the mask mandate, you stated that the Department of Education would offer support to our District. We would like to know specifically what supports you are able to offer us as we will be unable to sustain our basic operations if we have staff resign over this issue. Furthermore, we are concerned about families that want a mask mandate and will remove their students from school prior to FTE week in October 2021. We want all families to feel safe in our schools, and the funding concerns from the withdrawal of students would exacerbate the challenges we have in meeting the needs of our families. Losing staff and/or students due to resignation

or withdrawal would have an enormous impact on our District and would impede our focus on providing high-quality education in a face-to-face setting.

We have utilized the Hope Scholarship as a parent opt-out, in part based on the Board of Education's own statements when adopting their Emergency Rules in August 2021.

Matthew Mears, General Counsel for the Florida Department of Education:

As transcribed, "The rule that we're voting on here is very simple and what it does - there's already a Hope Scholarship program in place. That program, since 2018, has allowed parents whose students are harassed to opt-out; it gives them an option. They qualify for a Hope Scholarship."

And later, "That's 100% in keeping with the right of a parent to direct the education and health of their children. So that's what we're voting on. All this does is just define 'COVID-19 Harassment.' Harassment's already in the rule, that's already defined. But because this is a new issue, we wanted to provide clarity and show that it has to - there has to be a connective, has to impact the education of the child."

Board of Education Vice Chair Ben Gibson:

As transcribed, "And I applaud staff for all the time that they have spent working on this. It's - we worked with, with Health, they passed a rule - or they have a rule, that was released this morning - dealing with health, dealing with the masking requirement. And now, we're passing a rule here relating to education and the Hope Scholarship. But the two rules, they do work together, I think."

And later, "But I think from the standpoint this rule, and although I appreciate that we are dealing with the educational component, this rule has to be read in conjunction with the Department of Health rule that was released this morning."

And finally, "And I think, that distinction between our rule that we're passing here today, and the Department of Health rule, and seeing how those two rules work together in line with the Governor's executive order and his leadership on this issue, I think it's important, Chair, for the public to understand that as we move forward."

Given that we have encouraged families to apply for and access the Hope Scholarship pursuant to Rule 6AER21-02, we believe that we are still in compliance with the rules when looked at together with the Department of Health emergency rules, which was the stated intent by the Board of Education. As the emergency rules were created simultaneously and meant to be read and used in conjunction, we have taken the necessary steps to comply.

Again, we appreciate the Department of Education's clarification that the Hope Scholarship voucher can be used as a means of preserving parents' rights and providing them an avenue to exercise their sole discretion to 'opt-out' of our district's mask policy. We also remain grateful for the opportunity it provides to students who would like to attend schools that provide universal mask mandates. However, we must say that we object to the use of a legal term such as "Harassment" to describe a mask requirement.

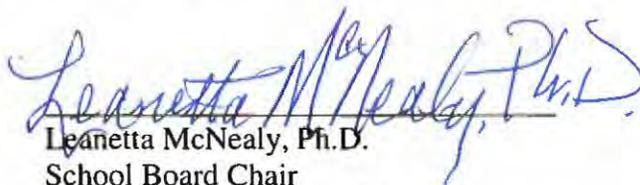
As you are aware, the various bans on mask mandates have sparked considerable litigation and other legal questions across the country. Much of this litigation is still ongoing. For instance, our District is currently defending a federal lawsuit brought by parents claiming that our COVID-19 mitigation strategies do not go far enough to provide a free, appropriate public education to special needs students.

At this time, we are respectfully requesting a brief extension to this response so that we can have the opportunity to consult with our local medical experts and bring all relevant information, including the updated Department of Health rule, to our Board at a meeting that is open to the public and allows for public input. The meeting is scheduled on October 5, 2021 at 6:00 p.m. We should be able to provide a response on October 6, 2021 to your specific requests following Board input/action on October 5, 2021.

Sincerely,



Carlee Simon, Ph.D.
Superintendent
Alachua County Public Schools



Leannetta McNealy, Ph.D.
School Board Chair
Alachua County Public Schools

EXHIBIT H



Book	Policy Manual
Section	8000 Operations
Title	PROTECTIVE FACIAL COVERINGS DURING PANDEMIC/EPIDEMIC EVENTS
Code	po8450.01
Status	Active
Adopted	October 20, 2020

8450.01 - PROTECTIVE FACIAL COVERINGS DURING PANDEMIC/EPIDEMIC EVENTS

During times of elevated communicable disease community spread (pandemic or epidemic), the Superintendent will issue periodic guidance through School Board plans/resolution(s) in alignment with public health officials and/or in accordance with government edicts and including any Pandemic Plan developed by the District's Pandemic Response Team. (See also Policy 8420.01 - *Epidemics and Pandemics*.)

School settings can be a source of community spread. Wearing face masks/coverings is especially important during these times and can help mitigate the risk of exposure from person to person.

As such, during times of elevated communicable disease community spread, the Superintendent may activate this policy by notifying the school community, requiring all school staff, volunteers and visitors (including vendors) to wear appropriate face masks/coverings on school grounds unless it is unsafe to do so or where doing so would significantly interfere with the Districts educational or operational processes.

Face masks/coverings will be provided by the District to employees and students, as necessary. Individuals may elect to wear their own face coverings if they meet the requirements of this policy as well as any requirements issued by State or local health departments.

In addition, the Board may require students to wear a face mask unless they are unable to do so for a health, sensory, or developmental reason. Efforts will be made to reduce any social stigma for a student who, for medical or developmental reasons, cannot and should not wear a mask. Children in kindergarten and below will be educated, encouraged and expected to wear face coverings, but failure to wear a face covering will not prohibit their attendance if they are unable to wear a face covering at all times.

If face masks/coverings are required, and no exception is applicable, students who refuse to wear a face mask/covering, in accordance with policies of the Board, may be reassigned by the Superintendent to an online/virtual learning environment if the Superintendent determines that reassignment is necessary to protect the health and safety of the student or others.

All students and staff are required to wear masks while being transported on District school buses or other modes of school transportation.

School nurses or staff who care for individuals with symptoms consistent with those of a communicable disease must use appropriate personal protective equipment (PPE), provided by the school, in accordance with OSHA standards.

When facial masks/coverings are required by the Board, and no exception has been applied, staff members who violate this policy shall be subject to disciplinary action in accordance with policies of the Board or applicable collective bargaining agreement.

Use of Mask/Face Covering

Face coverings/mask should:

- A. fully cover the mouth, nose, and chin;
- B. fit snugly against the side of the face so there are no gaps;
- C. not create difficulty breathing while worn; and
- D. be held securely through either a tie, elastic, etc., to prevent slipping.

Facial masks/coverings generally should not include surgical masks or respirators unless medically indicated (as those should be reserved for healthcare workers) or masks designed to be worn for costume purposes. Additionally, facial masks/coverings with respiration valves or vents are prohibited.

All employee facial masks/coverings shall meet the requirements of the appropriate dress/staff grooming policies (Policy 1216/Policy 3216/Policy 4216). All student facial masks/coverings shall meet the requirements of the appropriate Student Code of Conduct and Policy 5511 - *Code of Student Conduct - Dress and Grooming*.

Any person may be required to temporarily remove a face mask or covering when instructed to do so for identification or security purposes. Failure to comply with such a request violates this policy and may lead to disciplinary or other action.

Exceptions

Exceptions to the use of masks/face coverings include:

- A. To promote the social and emotional health of students who may struggle wearing a face covering for several hours, schools will provide students with opportunities for breaks where they can remove their face covering while maintaining appropriate distancing and while under supervision.
- B. Wearing a face covering is not required while eating or drinking.
- C. Persons who have difficulty breathing or suffer sensory issues due to a documented medical or psychological issue will not be required to wear a face covering. If appropriate, they will be asked to wear a clear face shield, unless wearing the face shield would also cause breathing or sensory issues. Documentation from a medical provider must be on file before a person will be excused from this face covering requirement.
- D. Persons communicating with hearing-impaired individuals who need to see the other person's mouth to communicate will not be required to wear a face covering.
- E. Teachers, staff members, and students, at the direction of the teacher, may remove their face coverings when wearing them would impede instruction. Students participating in extra-curricular activities, like athletics or marching band, where the wearing of face coverings is not practicable or may create a health risk will not be required to wear face coverings during the activity but must still follow any and all safety procedures in place for the activity. The District will follow all FHSAA guidance for athletic activities.
- F. When facial masks/coverings in the school setting are prohibited by law or regulation, are in violation of documented industry standards, or are in violation of the school's documented safety policies.
- G. When a staff member works alone in an assigned work area or when social distancing outside is maintained, as determined by an adult staff member.

The Board may be required to provide written justification to the local health officials upon request explaining why a staff member is not required to wear a facial covering in the school. Therefore, if any exceptions are made to the requirement for facial coverings, the request for such exception must be submitted in writing to the individual's supervisor with appropriate medical documentation provided. A decision on the request will be provided in writing.

All medical, sensory, or developmental exceptions to the face mask/covering requirement must be supported by appropriate medical documentation which includes an indication whether a face shield may be worn even if a face mask/covering cannot be.

Use of Face Shields

Face shields that wrap around the face and extend below the chin may be permitted as an alternative to face masks/coverings with permission of the Superintendent as the Board recognizes that face shields may be useful in some situations, including:

- A. when interacting with students, such as those with disabilities, where communication could be impacted;
- B. when interacting with English-language learners or when teaching a foreign language;
- C. settings where face masks/coverings might present a safety hazard (i.e. science labs); or
- D. for individuals who have difficulty wearing a face mask/covering for documented health, sensory, or developmental reasons.

If employees receive approval from the District administration after discussing their request not to wear a face mask/covering/shield due to a physical, mental or developmental health condition, and/or If wearing a mask/covering/shield would lead to a medical emergency or would introduce significant safety concerns, the District administration may also discuss other possible accommodations for the staff member. Such discussion shall follow Board policies and guidelines under the ADA.

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Legal	F.S. 120.54(4)
	F.S. 120.81
	F.S. 286.011
	F.S. 286.0114
	F.S. 1001.32
	F.S. 1001.33
	F.S. 1001.41
	F.S. 1001.42
	F.S. 1001.43

Last Modified by Tammy R Shroyer on December 9, 2020