



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

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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.

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**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

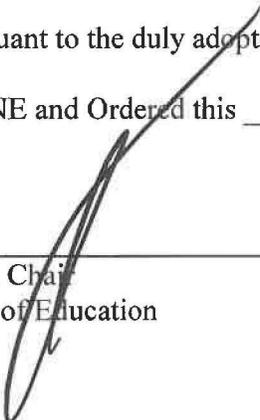
8. In complying with this order, the School District of Broward County may not reduce any expenditures other than those related to compensation for school board members. Further, the School District of Broward County may not permit the reduction of funds based upon this order to impact student services 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 20<sup>th</sup> 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](mailto: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](mailto:dr.rosalind.osgood@browardschools.com)  
600 SE Third Avenue  
Ft. Lauderdale, Florida 33301

  
AGENCY CLERK

Tom Grady, *Chair*  
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Ryan Petty  
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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

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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

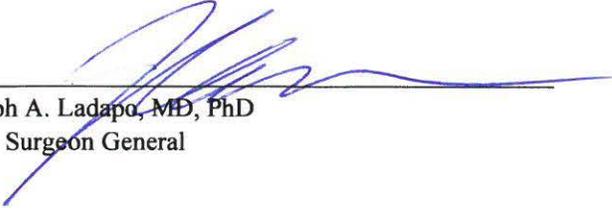
2. Quarantine the student for a period of time not to exceed seven days from the date of last direct contact with an individual that is positive for COVID-19.

(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  
[Supt\\_Cartwright@browardschools.com](mailto:Supt_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 Leonard  
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](mailto: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.

###

### **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](http://browardschools.com), follow us on Twitter @browardschools, on Facebook at [facebook.com/browardschools.com](https://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](mailto: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](mailto: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](mailto: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:
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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:
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# **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, indecent<sup>1</sup>, 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

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<sup>1</sup> 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