



**Office of the Superintendent**

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**The School Board of  
Broward County, Florida**

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Interim Superintendent of Schools

October 6, 2021

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

Dear Commissioner Corcoran:

On September 24, 2021 Broward County Public Schools (BCPS) sent correspondence advising you the School Board would schedule a Special School Board Meeting on October 5, 2021 to discuss the implications of the Department of Health's (DOH) newest emergency rule revising the "Protocols for Controlling COVID-19 in School Settings." Further, the correspondence committed to provide an update as to the outcome of that meeting no later than 5:00 p.m. on October 6, 2021. This letter serves to honor that commitment.

The Broward County School Board met on October 5, 2021 to review the newest DOH emergency rule, issued on September 22, 2021, and consider its implications on the District's health and safety policies and protocols for the 2021-2022 school year implemented in response to the COVID-19 pandemic.

In August BCPS communicated the District was following updated guidance issued by the CDC on August 5, 2021 on COVID-19 prevention in schools. Specifically, the guidance included the following language, "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>. As of the writing of this letter, this guidance has not changed.

After listening to the guidance from medical experts and reviewing current, local COVID-19 statistics, the School Board voted 8-1 to maintain its existing health and safety policies and protocols for now. Our plan to comply with the newest DOH emergency rule is to change the safety policies and protocols in the near future once the matrix of scientific data enables us to do so in a manner that will protect the health and safety of our students, teachers and other employees.

Emergency Rule 64DER21-15 from the Florida Department of Health specifically speaks to minimizing the unnecessary exclusion of healthy students from in-person learning. The District's actions referenced in your

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letter received on October 4, 2021 were taken for the explicit purpose of mitigating the spread of COVID-19 cases in our schools and preventing the unnecessary removal of students from school because of positive cases.

Additionally, BCPS has relied on the plain language of s. 1014.03, Florida Statutes (the Parents' Bill of Rights) to continue with the medical opt-out to the mask policy. That statute allows districts school boards to adopt regulations which may infringe on parental rights if the school board is able to demonstrate and 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." It is worth noting that the Parents' Bill of Rights does not grant rule making authority to the Department of Health nor the Department of Education.

Moreover, Emergency Rule 64DER-21-15 cites as its rule-making authority s. 1003.22 (3), Florida Statutes. That statutory provision reads in pertinent part that FDOH, after consultation with the FDOE, can adopt rules governing "the control of preventable communicable diseases." Masks have been identified by the CDC as a mitigation measure to help control the spread of COVID-19 in schools. The newly adopted emergency rule allowing parents to opt a student out of wearing a face covering at their "sole discretion" does nothing to control the spread of communicable diseases, and it is in direct conflict with its alleged source of authority.

Furthermore, the inclusion of the opt-out requirements in the new Emergency Rule violate the Administrative Procedures Act in that the opt-outs allowing parents to choose masks for their children, and to decide when to send their children to school after contact with a COVID-19 positive person are not linked to the "unnecessary exclusion of healthy students from in-person learning." It is unclear how the addition of "sole discretion" to the parent opt-out was necessary to control the immediate dangers of COVID-19. Therefore, the opt-outs were neither necessary nor narrowly tailored to address the stated immediate danger. The Rule does not cite to any growing or immediate health danger from COVID-19 or any explanation why emergency action was necessary. Thus, the Rule was improperly adopted as an emergency rule.

Article IX, Section 4(b) of the Florida Constitution provides:

The school board shall **operate, control and supervise** all free public schools within the school district and determine the rate of school district taxes within the limits prescribed herein.

(emphasis added)

The School Board has over 37,000 students with disabilities. A significant number of students with disabilities are students with medical conditions such as asthma, diabetes and cancer, whose immune systems are stressed or compromised. These students are at an increased risk of being infected with the COVID-19 virus without the protection of a mask requirement. The requirement that a mask be used by all students, staff and visitors alike, in accordance with the CDC, serves to ensure their safety as well as the safety of their peers and teachers. The mask requirement would ensure that the District does not run afoul of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and the Individual with Disabilities Education Act (IDEA), and that there is no unnecessary exclusion of students from in-person learning.

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The Broward School Board is currently a defendant in a complaint concerning the mask requirement. See Case 1:21-cv-22863-KMM Hayes, *et. al. v. Governor Ronald Dion Desantis, et. al.* (August 6, 2021). This complaint was filed by families with students who have disabilities and alleges ADA violations, specifically, the failure to provide access to a free appropriate public education. The named families allege, out of concern for the health and safety of their students, they cannot send their students safely to school absent a mask requirement in order to mitigate the airborne transmittal of COVID-19. Similarly, under the IDEA, the School Board is charged with educating students in the least restrictive environment. Without a mask mandate, families may be confronted with the choice of sending their medically compromised students into a school environment without reasonable precautions taken for the safety of their student or keeping them home. Students educated in the home setting when a public school setting is available violates the IDEA. Thus, a mask requirement would facilitate the School Board's role in educating *all* students within its district.

Prioritizing parent-choice over safety and the advice of health experts in the CDC and the American Academy of Pediatrics threatens the safety in schools and does not promote a secure environment for students; thus, it is in direct violation of the Florida Constitutional mandates of making "adequate provision shall be made by law for a uniform, efficient, safe, secure" educational environment.

The School Board continues to share the goals of the Florida Department of Education and the Board of Education to have students take advantage of in-person learning. The District firmly believes its mask mandate has reduced the number of positive cases in Broward Schools. We hope to be able to continue to work together for the benefit of the students and families in Broward Schools.

Regards,



Dr. Vickie L. Cartwright  
Interim Superintendent



Dr. Rosalind Osgood  
School Board Chair

cc: School Board Members