

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: Hillsborough County School District, Student Opt-Out Requirements

DATE: October 4, 2021

Based upon the following memorandum, I find there is probable cause that the Hillsborough County School Board (HCSB) 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, HCSB'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.

Hillsborough County School District

On August 16, 2021, HCSB posted notice of its intent to hold an emergency meeting on August 18, 2021, concerning its policy regarding face coverings for students and staff. HCSB held the meeting, therein voting to adopt an emergency rule which provides as follows:

- I. Subject to the medical exception below that a parent may choose to utilize to opt-out of this Rule, all individuals, including students, teachers, staff, and employees, shall wear a facial covering that covers both the nose and mouth at all times while at or inside any building, facility, or bus or other vehicle owned, leased, or operated by the School Board.
- II. **Medical Exemption.** A face mask will not be required when a face covering would cause an impairment due to an existing health condition

(medical certification required). In order for a student to claim an exemption due to an existing health condition, the district will require 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 description of the medical reason.

See Exhibit B. The face covering policy requires all students within HCSB schools, administrative facilities and vehicles to wear face coverings that cover the nose and mouth, and provides exceptions based only upon medical certification. The policy was set to expire on September 17, 2021; however, HCSB voted to extend the policy until October 15, 2021. *See* Exhibit C.

On August 27, 2021, I wrote HCSB'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 D.

On September 1, 2021, HCSB's superintendent and board chair responded to me in writing, asserting that HCSB's policy is in compliance with the FDOH's emergency rule because it allows exceptions to the mask mandate. *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 HCSB'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, HCSB's Superintendent Davis and Chair Gray responded to me in writing, again expressing doubt in the efficacy of the emergency rule and our attempts to enforce it, citing to ongoing litigation on the topic, and stating that the HCSB would discuss the issue again at its next meeting on October 5, 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 HCSB's face covering policy requires all students and employees to wear face coverings at or in HCSB facilities and transportation. Although the policy appears to provide some 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 the HCSB 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

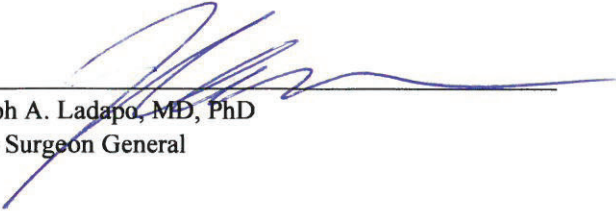
2. Quarantine the student for a period of time not to exceed seven days from the date of last direct contact with an individual that is positive for COVID-19.

(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 HILLSBOROUGH 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 Hillsborough 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, Hillsborough County Public Schools is the seventh largest school district in the United States with approximately 214,920 number of students and approximately 24,596 number of staff; and

WHEREAS, The School Board of Hillsborough 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 “Students 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 Hillsborough County; and

WHEREAS, As of August 18, 2021 the school district released the following information showing 10,384 students in isolation or in quarantine and 338 employees in isolation or quarantine; and

WHEREAS, Based on the large number of quarantines and cases, there was an immediate danger to public health, safety, and welfare that required emergency action; and

WHEREAS, The Chair of the School Board called an Emergency meeting of the School Board to immediately address the emergency; and

WHEREAS, The School Board of Hillsborough County met in Emergency session on August 18, 2021; and

WHEREAS, The School Board of Hillsborough County heard from the Hillsborough County Department of Health and medical experts and doctors from Tampa General Hospital; and

WHEREAS, The Hillsborough County Department of Health provided data about the spread of COVID-19 in Hillsborough County that is attached to this Rule as Exhibit A; and

WHEREAS, The first week of school in August 2020, 51 students and 17 staff reported a positive COVID-19 diagnosis; and

WHEREAS, The first week of school in August 2021, 307 students and 59 staff reported a positive COVID-19 diagnosis; and

WHEREAS, Of the approximately 214,920 number of students within the district, 14.7% are under the age of 12, and therefore, not eligible for the vaccine at this time (in addition to other, older students, who may not be able to take the vaccine for reasons unrelated to their age); and

WHEREAS, The doctors and medical experts from Tampa General testified that the wearing of masks and vaccines are the most effective tools for controlling the spread of COVID-19 in schools; and

WHEREAS, Vaccination and masks are the most effective practice to mitigate any type of transmission in the school setting. Masks protect the wearer and those around them by protecting against the transmission of large droplets from child to another.

WHEREAS, Mask usage is beneficial to keeping children in school for in-person learning because when two students both wear masks and one tests positive for COVID-19, this is not considered a close contact, thereby eliminating the need for the student who did not test positive for COVID-19 to quarantine; 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 7-day average positivity rate for COVID-19 in Hillsborough County as of August 14 is 21.73%; and

WHEREAS, On August 14, 2020, the 7-day average positivity rate in Hillsborough County was 8.65%; and

WHEREAS, The Re-opening Plan for Hillsborough County Public Schools in the 2020-2021 school year approved by the state had a mandatory facial covering requirement with an opt-out option for parents with a medical certification (The medical certification form is attached as Exhibit B); and

WHEREAS, The School Board of Hillsborough County adopted the same facial covering requirement previously approved by the state during a time when the positivity rate was much lower than it is currently (The Districts Reopening Plan for 20-21 is attached as Exhibit C); and

WHEREAS, The School Board's mandatory facial covering requirement from the Re-opening Plan for Schools in the 2020-2021 approved plan was found to be constitutional. *See Levonas, et al., v. Hillsborough County School Board, Florida and Superintendent Addison Davis*, Case No. 20-CA-6542 (Fla. 13th Cir. Ct., Dec. 15, 2020) (The case is attached as Exhibit D); and

WHEREAS, The district will honor, to the greatest extent possible, the medical exemptions of the students who opted out of the facial covering requirement last school year so those parents will not have to complete a new form; and

WHEREAS, The Emergency Rule executed by the Department of Health does not prohibit the requirement of a medical certification for opting out; and

WHEREAS, The Emergency Rule adopted by the School Board of Hillsborough County gives the decision opting out of the facial covering requirement to the parent with a medical certification; and

WHEREAS, Masks are not considered medical devices or medical treatment; (*See Levonas*); and

WHEREAS, The Center for Disease Control ("CDC") recommends children in schools wear facial coverings indoors (The CDC Guidelines are attached as Exhibit E).

NOW, THEREFORE, THE SCHOOL BOARD OF HILLSBOROUGH COUNTY ENACTS THE FOLLOWING EMERGENCY RULE PURSUANT TO SECTION 120.54 FLORIDA STATUTES:

- I. Subject to the medical exception below that a parent may choose to utilize to opt-out of this Rule, all individuals, including students, teachers, staff, and employees, shall wear a facial covering that covers both the nose and mouth at all times while at or inside any building, facility, or bus or other vehicle owned, leased, or operated by the School Board.
- II. **Medical Exemption.** A face mask will not be required when a face covering would cause an impairment due to an existing health condition (medical certification required). In order for a student to claim an exemption due to an existing health

condition, the district will require 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 description of the medical reason.

- a. The Face Covering Medical Exemption Form is attached hereto as Exhibit B.
- b. Students with an approved exemption from on file from the 2020-2021 school year are not required to file a new exemption form for the 2021-2022 school year.

III. **Duration of Emergency Rule.** This Emergency Rule was approved by the School Board on August 18, 2021, for the thirty-day period commencing on Thursday, August 19, 2021 through and including Friday, September 17, 2021.

IV. **Basis for Emergency Rule.** This Emergency Rule is based upon the School Board's findings at the Emergency Session held August 18, 2021, including, but not limited to, the number of students and staff in isolation and quarantine, the testimony from the doctors and medical experts from Tampa General and Florida Department of Health, who testified that the wearing of masks and vaccines are the most effective tools for controlling the spread of COVID-19 in schools, and the extremely concerning daily increase in students, teachers, and staff testing positive with COVID-19 or subject to quarantine.

EXHIBIT C



(/)

[Get Schooled \(/getschooled\)](#) | [Contact \(/contact/\)](#)

Select Language | ▼

Approved Board Meeting Minutes

HCPS publishes minutes of School Board meetings after Board approval. Although the online minutes do not include signatures, citizens may arrange to review the official documents by completing [public records request \(/pubrequest/\)](#) with the Communications Department.

[Back to Meeting List \(/board/minutes\)](#)

Print

MINUTES

SCHOOL BOARD OF HILLSBOROUGH COUNTY, FLORIDA

901 E. Kennedy Boulevard, Tampa

Thursday, September 9, 2021

The School Board of Hillsborough County, Florida, met in regular session Thursday, September 9, 2021, at 4 p.m., in the School Board Auditorium, 901 East Kennedy Boulevard, Tampa, with Superintendent Addison Davis and Board Members Nadia Combs, Lynn Gray, Stacy Hahn, Karen Perez, Melissa Snively (absent), Jessica Vaughn (remote), and Henry "Shake" Washington present. Chair Lynn Gray presided.

Others present:

Board Attorney: James Porter

District Attorney: Jeff Gibson

Chief of Staff: Michael McAuley

Deputy Superintendent/Chief Academic Officer: Terry Connor

Assistant Superintendents/Division Chiefs:

Business Services: Roe Johnson

Communications: Tanya Arja

Federal Programs, Grants & Administration: Tracye Brown

Diversity, Equity & Inclusion: Monica Verra-Tirado, Ed.D.

Human Capital: Dr. Marie Whelan

Information Technology: Tom Weeks

Innovation: Kim Bays

Operations: Chris Farkas

Strategic Planning & Partnerships: Van Ayres

Transformation Network: Shaylia McRae

Superintendent's Secretary (Recording): Marita Johnson

Approximately 50 people were in the audience, including other school district personnel along with media from News Channel 8 and Telemundo TV .

Call to Order: Meeting called to order at 4:02 p.m.

Moment of Silence and Pledge of Allegiance Moment of reflection followed by Vice Chair Hahn leading in the Pledge of Allegiance.

Withdrawn Items: 12.01

Adoption of the Agenda:

*Motion by Ms. Perez, second by Mr. Washington, to adopt the agenda***Motion carried.**

Board – Roll Call: Chair Gray declared a quorum with six Board Members present.

Approval of Minutes:

Motion by Mrs. Combs, second by Ms. Perez, to approve the following minutes:

- April 27, 2021 – School Board Recognition
- June 15, 2021 – School Board Workshop
- June 29, 2021 – School Board Workshop
- August 12, 2021 – School Board Workshop
- August 12, 2021 – School Board Meeting
- August 18, 2021 – School Board Emergency Meeting
- August 24, 2021 – School Board Meeting

Motion carried.

Board Guidelines:

Vice Chair Hahn read the guidelines into the record.

Speakers to Agenda Items:

Chair Gray read the guidelines for public comments. Board Members reached a consensus to allow two minutes for public comment.

<u>Speaker:</u>	<u>Topic</u>
James Castano	2021 Budget
Dr. Craig Newman	2021 Budget
Arlette Farrish	Mask mandate
Priscilla Vega	Masks
Louan Tolbert	Agenda
Fari Troya	Masks
Anika Verheijen	COVID safety
Wendy Myelle	Agenda item

Kelly C	Masks
Jason Ferger	6.07 & 6.09
Jason Miller	Masks
Karrin Perez	Masks
Mark Klutho	Waste
Damaris Bridges	2021 Budget
Amberlyn Rhodes	Agenda
Monica Martinez	Mask mandate
Debra Setzer	Safety
Laura Wheeler	Mask mandate
Jaime Patterson	Masks
Jill Paradise	Masks
Jennifer Collins	Masks
Laura Coulter	Mask mandate
Andi Arenas	Mask mandate
Jefferi Arenas	Mask mandate
Jacalyn Muir	Masks and quarantine
Jason Kimball	Masks
Sarah Edwards	Public health
Megan Collins	Masks
Alison Fernandez	School improvements
Ruth Nowland	Native American mascots
Shannon Durant	Native American mascots

Employee Input:(time certain 6:00 p.m.) None

RECOGNITIONS AND PROCLAMATIONS (Section A)

A01 Adoption of Proclamation - StartWith Hello Call to Action Week - September 20 - September 24, 2021 (Division of Innovation)

Mrs. Combs highlighted this item.

*Motion by Ms. Perez, second by Mr. Washington, to Adopt the Proclamation - Start With Hello Call to Action Week - September 20 -September 24, 2021. **Motion carried.***

- A02 Adoption of Proclamation -American Founders' Month and Celebrate Freedom Week in Florida, September 1, 2021, through September 30, 2021 (Academic Services)

Chair Gray highlighted this item.

*Motion by Ms. Perez, second by Mr. Washington, to Adopt the Proclamation -American Founders' Month and Celebrate Freedom Week in Florida, September 1, 2021, through September 30, 2021. **Motion carried.***

- A03 Adoption of Proclamation -National Suicide Prevention Awareness Month, September 2021 (Division of Innovation)

Ms. Perez highlighted this item.

*Motion by Ms. Perez, second by Mrs. Combs, to Adopt the Proclamation- National Suicide Prevention Awareness Month, September 2021. **Motion carried.***

Discussion: Ms. Perez

CONSENT AGENDA (Section B)

- 1.01 Master Inservice Plan and Annual Update Letter to the Florida Department of Education (FLDOE) Commissioner (Academic Services)
- 4.01 Personnel Consent Agenda (Human Capital)

4.01a Approve Administrative Appointments/Transfers (Chief of Schools)

Recommended Appointment	Position	Work Site	Effective Date	Transferring From
Jeanne Terry-Byrd	Principal	Brandon EPIC3	September 20, 2021	Assistant Principal for Student Affairs, Sumner High
Holly Magaditsch	Principal	Egypt Lake Elementary	September 20, 2021	Assistant Principal for Elementary Instruction, Egypt Lake Elementary
Erin Mellnick	Assistant Principal for Administration	Plant High School	September 20, 2021	Assistant Principal for Student Affairs, Plant High
Dr. Teresa Seits	Assistant Principal for Student Affairs	Coleman Middle School	September 20, 2021	Reading Coach, Pizzo K-8
Jason Pfeffer	Assistant Principal for Student Affairs	Mann Middle School	September 20, 2021	Assistant Principal for Curriculum, Bell Creek Academy
Lauren Kiernan	Assistant Principal for Elementary Instruction	Lithia Springs Elementary	September 20, 2021	Assistant Principal for Elementary Instruction, Gorrie Elementary
Renee Rybicki	Supervisor, Exceptional Student Education	Exceptional Student Education	September 20, 2021	District Resource Teacher, Exceptional Student Education
Henry C. Washington	Coordinator for African American & Multicultural Outreach	Family and Community Engagement- FACE (Diversity, Equity, & Inclusion)	September 20, 2021	Assistant Principal for Administration, Middleton High

- 6.01 Affiliate Partner Agreement with the Alliance for Young Artists & Writers, Inc. for the 2021-2022 School Year (Academic Services)
- 6.02 Agreement for Technical Services (ATS) with Mary Stoltz, Inc. ATS #1098-ATS-WA and LNX, Inc ATS #21100-ATS-WA to Provide Technology Support and Services to the Florida Instructional Materials Center for the Visually Impaired (FIMC-VI) (Diversity, Equity, and Inclusion)
- 6.03 Amendment Four to the Agreement with Embry-Riddle Aeronautical University (ERAU) to Continue Offerings of Aerospace-Related Dual-Enrollment Courses (Division of Innovation)
- 6.04R Budget Amendments for the Period Ending June 30, 2021 (Finance)

- 6.05R Annual Financial Report (AFR), to the Commissioner of Education for Fiscal Year Ending June 30, 2021 (Finance)
- 6.06 Disposal of Obsolete Tangible and Intangible Personal Property (Finance)
- 6.07 Invitation to Bid (ITB) #21065A-DST-IV, Mini Data Terminals (Division of Operations)
- 6.08 Agreement with the City of Tampa/Tampa Police Department for the 2021-2022 School Resource Officer Program (Security and Emergency Management)
- 6.09 Invitation to Bid (ITB) 21081A-MST-VT Fence Materials (Operations Division)
- 7.01 Approve the Lease Agreement for the Use of School Facilities with Mental Health Care, Inc dba Gracepoint (Operations Division)
- 7.02 Approve Guaranteed Maximum Price (GMP) No. Two for Wimauma Classroom Addition Project Number 19032 (Operations Division)
- 11.01 School Activity Fund Indebtedness for Fiscal Year End June 30, 2021, to be Carried Over into the Upcoming School Year (Auditing)

*Motion by Mrs. Combs, second by Vice Chair Hahn, to Approve the Consent Agenda. **Motion carried.***

Superintendent Comments/Suspended Agenda:

Superintendent Davis highlighted the following topics:

- Introduce New School and District-based Leaders
 - o Jeanne Terry-Byrd, Principal, Brandon EPIC3 Center
 - o Dr. Holly Magaditsch, Principal, Egypt Lake Elementary
- COVID-19 in HCPS

DISCUSSION AGENDA (Section C)

- 3.01 State of Florida Statewide Voluntary Pre-Kindergarten (VPK) Provider Contract Form OEL-VPK 20 with the Early Learning Coalition of Hillsborough County (ELCHC) for the 2021-2022 Fiscal Year (Federal Programs, Grants and Administration)

Superintendent Davis highlighted this item.

*Motion by Mr. Washington, second by Mrs. Combs, to Approve the State of Florida Statewide Voluntary Pre-Kindergarten (VPK) Provider Contract Form OEL-VPK 20 with the Early Learning Coalition of Hillsborough County (ELCHC) for the 2021-2022 Fiscal Year. **Motion carried.***

Discussion: Mrs. Combs and Vice Chair Hahn

- 11.02 Discussion About the District's Plan Regarding the Mandatory Facial Covering Requirement That Allows for a Parental Opt-Out Form with a Medical Certificate That Expires on September 7, 2021 (School Board) *moved up on the agenda*

Attorney Jim Porter highlighted this item and provided an update on the pending litigation. Tracye Brown, Chief of Federal Programs, Grants, and Administration, and Jennifer Sparano, COVID Commander, provided an update on the current status of COVID in the district.

*Chair Gray made a motion to extend the facial covering requirement established by the Board on August 18, 2021, for another 30 days until October 15, 2021. Further, at that time, we can revisit and reevaluate the situation. Second by Mrs. Vaughn. **Motion carried five to one, with Vice Chair Hahn opposed.***

Mrs. Vaughn made a motion to amend the current motion to allow the facial covering requirement established by the Board on August 18, 2021, for an additional 60 days instead of 30 days. Motion failed due to lack of a second.

Discussion: Mrs. Vaughn, Ms. Perez, Mrs. Combs, Chair Gray, Vice Chair Hahn, and Mr. Washington

CONSENT AGENDA ITEMS REMOVED FOR SEPARATE VOTE (Section D) None

INFORMATION ITEMS (Section E)

- 12.01 ~~Evaluation Feedback for the Superintendent (Human Capital)~~ **Withdrawn**

Chair Gray recessed the School Board Meeting and opened the Final Public Hearing on the Millage Rates and Budget at 5:12 p.m. Chair Gray closed the Final Public Hearing on the Millage Rates and Budget and reconvened the School Board Meeting at 6:02 p.m.

HEARINGS ON POLICY OR BUSINESS (Section F) time certain at 5:01 p.m.

01R Final Public Hearing on the Millage Rates and Budget for the 2021-2022 Fiscal Year (FY), Adopt the 2021-2022 Budget as Presented, Adopt the Final 2021-2022 Millage Rates, as Presented, Approve the Resolution Adopting the Final Millage Rates and Budget, Authorize Staff to Perform all Tasks to Ensure Compliance with Florida Statutes 200.065 Truth in Millage (TRIM) (Finance)

Roe Johnson, Chief Finance Officer, highlighted this item and recommended the following:

It is recommended that the Board adopt the state required local effort millage rate of 3.6010 mills.

It is recommended that the Board adopt the Discretionary Operating Millage Rate of 0.7480 mills.

It is recommended that the Board adopt the Local Capital Improvement Millage Rate of 1.5000 mills.

It is recommended that the Board adopt the Debt Service Millage Rate of 0.000 mills.

*Motion by Mr. Washington, second by Mrs. Combs, to adopt the Fiscal Year 2021-2022 Millage Rates as presented. **Motion carried.***

Speakers: Mr. Klutho

Discussion: Mrs. Vaughn and Ms. Perez

*Motion by Vice Chair Hahn, second by Mrs. Combs, to adopt the Fiscal Year 2021-2022 Budget of \$3,378,805,961. **Motion carried.***

Speakers: Alison Fernandez

Mr. Klutho

Discussion: Ms. Perez, Mrs. Vaughn, Mrs. Combs, and Vice Chair Hahn

*Motion by Vice Chair Hahn, second by Mrs. Combs, to approve the Resolution Adopting the Fiscal Year 2021/2022 Millage Rates and the Fiscal Year 2021/2022 Budget. **Motion carried.***

Speakers: None

Discussion: None

BOARD MEMBER COMMENTS

Vice Chair Hahn, Mr. Washington, Mrs. Vaughn, Mrs. Combs, Ms. Perez, and Chair Gray

Adjournment – with no further business the meeting was adjourned at 7:34 p.m. (Audio and video recording on file.)

Lynn L. Gray, Chair

Attest:

Addison G. Davis, Superintendent

And Ex-Officio Secretary

HCPS publishes minutes of School Board meetings after Board approval. Although the online minutes do not include signatures, citizens may arrange to review the official documents by completing public records request (/pubrequest/) with the Communications Department.

Hillsborough County Public Schools

901 East Kennedy Boulevard Tampa, Florida 33602 USA - (813) 272-4000 (tel:(813)272-4000)



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(<https://getfortifyfl.com/>)

[Employee Login \(https://edconnect.sdhc.k12.fl.us/\)](https://edconnect.sdhc.k12.fl.us/)

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Continuous Notification of Nondiscrimination

Pursuant to Title VI, Title IX, Section 504/Title II and other civil rights regulations, the School District of Hillsborough County (District) does not discriminate nor tolerate harassment on the basis of race, color, ethnicity, national origin, religion, gender, gender identity, sexual orientation, age, disability, marital status, genetic information or pregnancy in its educational programs, services or activities, or in its hiring or employment practices; and it will take immediate action to eliminate such harassment, prevent its recurrence, and address its effects. The District also provides equal access to its facilities to the Boy Scouts and other patriotic youth groups, as required by the Boy Scouts of America Equal Access Act.

The following person has been designated to handle inquiries regarding non-discrimination policies: Dr. Pansy Houghton, Executive Officer, Compliance, 813-272-4000; pansy.houghton@sdhc.k12.fl.us; 901 E. Kennedy Blvd., Tampa, Florida 33602.

Website Accessibility Statement

The School District of Hillsborough County is committed to providing websites that are accessible to all of our stakeholders. If you use assistive technology (such as a screen reader, eye-tracking device, voice recognition software, etc.) and are experiencing difficulty accessing information on this site, the following person has been designated to handle inquiries or complaints related to the functionality or inaccessibility of online content: Dr. Pansy Houghton, Executive Officer, Compliance. 813-272-4000; pansy.houghton@sdhc.k12.fl.us; 901 E. Kennedy Blvd., Tampa, Florida 33602.

As required by Section 668.6076, Florida Statutes, you are hereby notified that: Under Florida law, e-mail addresses are public records. If you do not want your mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. History.--s. 1, ch. 2006-232.

EXHIBIT D



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

August 27, 2021

Mr. Addison Davis
Superintendent
Hillsborough County Public Schools
901 East Kennedy Boulevard
Tampa, FL 33602

Ms. Lynn Gray
School Board Chair
Hillsborough County Public Schools
901 East Kennedy Boulevard
Tampa, FL 33602

Dear Superintendent Davis and Chair Gray:

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 Hillsborough 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

School Board
Lynn L. Gray, Chair
Stacy A. Hahn, Ph.D., Vice Chair
Nadia T. Combs
Karen Perez
Melissa Snively
Jessica Vaughn
Henry "Shake" Washington



Superintendent of Schools
Addison G. Davis

September 1, 2021

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

Commissioner Corcoran,

We appreciate the opportunity to respond to your letter dated August 27, 2021, regarding the Emergency Rule concerning facial coverings recently adopted by the School Board of Hillsborough County using its statutory emergency rule making powers pursuant to Section 120.54 Fla. Stat.

We have attached Hillsborough's Emergency Rule, with a complete set of the attachments incorporated into the Emergency Rule. The Hillsborough County Emergency Rule is consistent with state law and with Florida Department of Health Rule 64DER21-12.

Your letter expresses concerns based on media reports related to paragraph (1)(d) of this rule. Florida Department of Health Rule 64DER21-12(1)(d) permits the use of masks or face coverings as a mitigation measure. Significantly, the Florida Department of Health Emergency Rule does not prohibit the requirement of a medical certificate for the parental opt-out option. While the rule requires schools to permit parents or legal guardians to opt-out on behalf of their student, the rule does not condition or limit the parameters the schools may apply for such opt-outs. This discretion rests with the local school board, which is empowered by the Florida Constitution, in Article IX, Section 4, with the governance of the local school district.

The School Board of Hillsborough County is complying with Florida Department of Health Rule 64DER21-12.

Even though Hillsborough's Emergency Rule is in compliance with state law and the Florida Department of Health Emergency Rule, Florida law bars the sanctions threatened in your letter. Notably, the Honorable John C. Cooper, a judge in the Second Judicial Circuit of Florida ruled on August 27, 2021 in the matter of McCarthy et. al v. Desantis:

"I grant a permanent injunction and enjoin defendants, except for the governor, from violating the Florida Parents' Bill of Rights by taking any action on whatever basis they take it, by taking any action effect a blanket ban on face mask mandates with no parent opt-out by local school boards." (emphasis added)

Judge Cooper further ruled:

"I also enjoin the defendants, but not the governor,....from enforcing the executive order and the policies it caused to be generated and any resulting policy or action which violates the Parents' Bill of Rights." (emphasis added)

Factual Background

The first day of the 21-22 school year began on August 10, 2021, in Hillsborough County. On August 18, 2021, the school district released information showing 10,384 students in isolation or quarantine, and 338 district employees in isolation or quarantine. During the first week of school in August 2021, 307 students and 59 staff reported a positive

COVID-19 diagnosis, compared to 51 students and 17 during the first week of school in August 2020 when facial coverings were mandated. Further, the 7-day average positivity rate for COVID-19 in Hillsborough County as of August 14, 2021 was 21.73%, compared to a 7-day average positivity rate of 8.65% on August 14, 2020, again, when facial coverings were mandated.

Based on these statistics, the Chair of the Hillsborough County School Board called an Emergency Meeting of the School Board to address the immediate danger to public health, safety, and welfare. At the Emergency Meeting, the School Board heard testimony from the Florida Department of Health in Hillsborough and from medical experts and doctors from Tampa General Hospital. The medical experts and doctors testified that the wearing of masks and vaccines are the most effective tools for controlling the spread of COVID-19. Also, the Board considered the recommendations of the Center for Disease Control (CDC) which recommends children in schools wear facial coverings. It is important to note that Judge Cooper found that, “face mask policies that follow CDC guidance are at this point in time reasonable and consistent with the best scientific and medical opinion and guidance in the country at this time.”

Previously, facial coverings were mandated for the 20-21 school year as part of Hillsborough’s Reopening Plan. Hillsborough’s Reopening Plan was filed with and approved by the Florida Department of Education. The Reopening Plan, and specifically, the face-covering requirement was found to be constitutional. *See Levonas, et al. v. The School Board of Hillsborough County, Florida*, Case No. 2-CA-6542 Hillsborough County, Florida, December 15, 2020. A copy of the case is attached as Exhibit D in Hillsborough’s Emergency Rule.

The Board approved the following motion at the Emergency Meeting:

Based on the latest data on the impact of Covid on Hillsborough County Public Schools, there is an immediate danger to the public health, safety, and welfare. Therefore, I move that we reinstate the facial covering requirement found in the District’s Reopening Plan for the 20-21 school year previously approved by the state for all students, teachers, and staff of Hillsborough County Public Schools for 30 days starting tomorrow, August 19.

The action taken by the Hillsborough County School Board is consistent with the Reopening Plan for the 2020-2021 school year which the Department of Education had approved, and the Florida Parents' Bill of Rights.

Hillsborough's Emergency Rule is Working to Mitigate the Impact of COVID-19

Since implementing the Emergency Rule on August 18, 2021, student positivity has decreased by 23% and the quarantines and isolations have decreased by nearly 15%. This preliminary data suggests the Emergency Rule has been a critical component in combating the spread of COVID-19.

Florida Law

The Florida Constitution in Article IX, Section 4 provides that the responsibility and authority to “operate, control and supervise all free public schools within the school district” is within the power of the locally elected school board. The boundaries that govern the roles of the State Board and individual district school boards are further defined by Sections 1001.30 and 1001.32, Fla. Stat.

Section 1001.30, Fla. Stat., states in pertinent part as follows:

District unit.—... *Each district shall constitute a unit for the control, organization, and administration of schools. The responsibility for the actual operation and administration of all schools needed within the districts in conformity with rules and minimum standards prescribed by the state, and also the responsibility for the provision of any desirable and*

practicable opportunities authorized by law beyond those required by the state, *are delegated by law to the school officials of the respective districts. [Emphasis added].*

Section 1001.32, Fla. Stat., states in pertinent part as follows:

Management, control, operation, administration, and supervision.—

The district school system must be managed, controlled, operated, administered, and supervised as follows:

(1) DISTRICT SYSTEM.—The district school system shall be considered as a part of the state system of public education. All actions of district school officials shall be consistent and in harmony with state laws and with rules and minimum standards of the state board. District school officials, however, shall have the authority to provide additional educational opportunities, as desired, which are authorized, but not required, by law or by the district school board.

(2) DISTRICT SCHOOL BOARD.—In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, *district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.... [Emphasis added].*

Section 1001.30, Fla. Stat., requires district school boards to act "in conformity with rules and minimum standards prescribed by the state" and Section 1001.32, Fla. Stat., requires all actions of district school officials to "be consistent and in harmony with state laws and with rules and minimum standards of the state board." However, the State Board's supervisory rule-making authority is constrained, and defined by applicable law pursuant to Section 2, Article IX of the Florida Constitution.

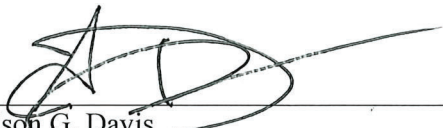
The Florida Legislature by adopting the "Parents' Bill of Rights", recently reaffirmed the ability of a district school board to take action that is "reasonable and necessary to achieve a compelling state interest" so long as the action is "narrowly tailored and is not otherwise served by a less restrictive means." *See* Section 1014.03, Fla. Stat. (2021). That is exactly what the School Board of Hillsborough County did by adopting its Emergency Rule.

As Judge Cooper recognized, the Florida Department of Health Emergency Rule is not enforceable to the extent it violates the Florida Parents' Bill of Rights, including Section 1014.03. And here, Hillsborough's Emergency Rule is authorized by Section 1014.03, in addition to the constitutional authority provided to the Hillsborough County School Board.

Conclusion

Hillsborough County's Emergency Rule is in full compliance with all state laws, including the Parents' Bill of Rights. Additionally, the order of Judge Cooper enjoins the State Board of Education and the Commissioner of Education from enforcing "the executive order and the policies it caused to be generated and any resulting policy or action which violates the Parents' Bill of Rights."

We appreciate the opportunity to respond to you, and we look forward to our continued professional relationship as we all focus on the health, safety and welfare of our students and families.



Addison G. Davis
Superintendent of Schools



Lynn L. Gray
School Board Chair

EXHIBIT F



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

September 23, 2021

Mr. Addison Davis
Superintendent
Hillsborough County Public Schools
901 East Kennedy Boulevard
Tampa, FL 33602

Ms. Lynn Gray
School Board Chair
Hillsborough County Public Schools
901 East Kennedy Boulevard
Tampa, FL 33602

Dear Superintendent Davis and Chair Gray:

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. Davis, Ms. Gray
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

School Board
Lynn L. Gray, Chair
Stacy A. Hahn, Ph.D., Vice Chair
Nadia T. Combs
Karen Perez
Melissa Snively
Jessica Vaughn
Henry "Shake" Washington



Superintendent of Schools
Addison G. Davis

September 24, 2021

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

Dear Commissioner Corcoran,

Please consider this a response to your letter dated September 23, 2021, regarding "Protocols for Controlling COVID-19 in School Settings." You requested a response by September 24, 2021, at 5:00 pm. Your letter specifically relates to the Department of Health's (DOH) new Emergency Rule 64DER21-15 which addresses quarantine and mask protocols in schools.

For your information, Hillsborough has adopted the quarantine protocols outlined in the DOH's new Emergency Rule.

The School Board of Hillsborough County exercised its powers and duties under the Florida Constitution and Florida Statutes to address an emergency situation in Hillsborough County by adopting an Emergency Rule requiring facial coverings on school sites with a parental medical opt-out on August 18, 2021. The Emergency Rule was in effect for 30 days and was extended until October 15, 2021. This was done specifically to protect the health, safety and welfare of our students, teachers, staff, and families, a major priority of our School Board. For your information, we are enclosing the letter we sent to you on September 1, 2021, which provides more detail about the local situation in Hillsborough and the School Board's actions.

The Florida Constitution in Article IX, Section 4 provides that the responsibility and authority to "operate, control and supervise all free public schools within the school district" is within the power of the locally elected school board. The boundaries that govern the roles of the State Board and individual district school boards are further defined by Sections 1001.30 and 1001.32, Fla. Stat.

Section 1001.30, Fla. Stat., states in pertinent part as follows:

District unit... Each district shall constitute a unit for the control, organization, and administration of schools. The responsibility for the actual operation and administration of all schools needed within the districts in conformity with rules and minimum standards prescribed by the state, and also the responsibility for the provision of any desirable and practicable opportunities authorized by law beyond those required by the state, are delegated by law to the school officials of the respective districts. [Emphasis added].

Section 1001.32, Fla. Stat., states in pertinent part as follows:

Management, control, operation, administration, and supervision.—

The district school system must be managed, controlled, operated, administered, and supervised as follows:

(1) DISTRICT SYSTEM.—The district school system shall be considered as a part of the state system of public education. All actions of district school officials shall be consistent and in harmony with state laws and with rules and minimum standards of the state board. District school officials, however, shall have the authority to provide additional educational opportunities, as desired, which are authorized, but not required, by law or by the district school board.

(2) DISTRICT SCHOOL BOARD.—In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, *district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.... [Emphasis added].*

Section 1001.30, Fla. Stat., requires district school boards to act "in conformity with rules and minimum standards prescribed by the state" and Section 1001.32, Fla. Stat., requires all actions of district school officials to "be consistent and in harmony with state laws and with rules and minimum standards of the state board." However, the State Board's supervisory rule-making authority is constrained, and defined by applicable law pursuant to Section 2, Article IX of the Florida Constitution.

The Florida Legislature by adopting the "Parents' Bill of Rights", recently reaffirmed the ability of a district school board to take action that is "reasonable and necessary to achieve a compelling state interest" so long as the action is "narrowly tailored and is not otherwise served by a less restrictive means." *See* Section 1014.03, Fla. Stat. (2021). That is exactly what the School Board of Hillsborough County did by adopting its Emergency Rule. The Emergency Rule is only in effect until October 15, 2021.

The School Board heard testimony from the Florida Department of Health in Hillsborough and from medical experts and doctors from Tampa General Hospital. The medical experts and doctors testified that the wearing of masks and vaccines are the most effective tools for controlling the spread of COVID-19. Also, the Board considered the recommendations of the Center for Disease Control (CDC) which recommends children in schools wear facial coverings. It is important to note that the Honorable Judge John C. Cooper, a judge in the Second Judicial Circuit of Florida in the matter of *McCarthy et. al v. Desantis*: found that, "face mask policies that follow CDC guidance are at this point in time reasonable and consistent with the best scientific and medical opinion and guidance in the country at this time." Judge Cooper also recognized the duties and powers of local elected school boards.

Previously, facial coverings were mandated for the 2020-21 school year as part of Hillsborough's Reopening Plan. Hillsborough's Reopening Plan was filed with and approved by the Florida Department of Education. The Reopening Plan, and specifically, the face-covering requirement was found to be constitutional. *See Levonas, et al. v. The School Board of Hillsborough County, Florida*, Case No. 2-CA-6542 Hillsborough County, Florida, December 15, 2020.

Since implementing the Emergency Rule on August 18, 2021, student positivity has decreased as has the number of people in quarantine and isolation. This data suggests the Emergency Rule requiring facial coverings has been a critical component in combating the spread of COVID-19.

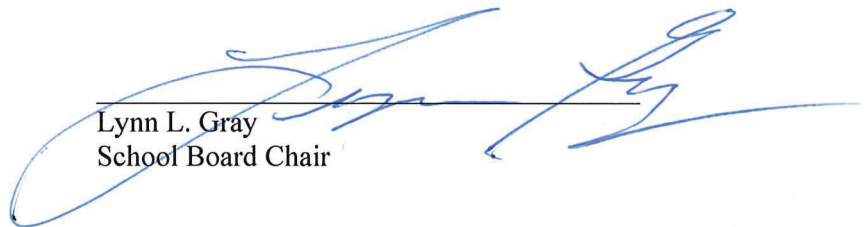
It is important to note that the Emergency Rule adopted by the School Board of Hillsborough County on August 18, 2021, and extended on September 9, 2021 to October 15, 2021, was approved at a time when Florida Department of Health Rule 64DER21-12 was in effect. Hillsborough has always maintained that we were in full compliance of that Rule and Florida law as we adopted a facial covering requirement with a parental opt-out with a medical certificate. A new Emergency Rule has been issued, and you acknowledge in your September 23, 2021, letter that the new Emergency Rule was issued to “clarify” the parental opt-out provision. Emergency Rule 64DER21-15 contains a provision that places the decision of whether a student wears a face covering within “sole discretion of the parent or legal guardian.” That provision was not in the repealed Emergency Rule and further shows that Hillsborough has been in compliance with DOH Rule 64DER21-12.—there would have been no reason to issue DOH Rule 64DER21-15 if the previous Rule had prohibited a requirement of a medical certificate for a parental opt-out. Nevertheless, we will carefully review our current facial covering Emergency Rule-- set to expire on October 15, 2021 --to ensure it complies with recently issued DOH Emergency Rule 64DER21-15 and all relevant Florida laws.

We have scheduled this issue for discussion at our next Board meeting on October 5, 2021.

Respectfully,



Addison G. Davis
Superintendent of Schools



Lynn L. Gray
School Board Chair

Attachment

c: Florida State Board of Education Members
Matthew Mears, General Counsel, Florida Department of Education
Hillsborough County School Board Members
Jim Porter, School Board Attorney
Jeff Gibson, HCPS District Attorney

School Board
Lynn L. Gray, Chair
Stacy A. Hahn, Ph.D., Vice Chair
Nadia T. Combs
Karen Perez
Melissa Snively
Jessica Vaughn
Henry "Shake" Washington



Superintendent of Schools
Addison G. Davis

September 1, 2021

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

Commissioner Corcoran,

We appreciate the opportunity to respond to your letter dated August 27, 2021, regarding the Emergency Rule concerning facial coverings recently adopted by the School Board of Hillsborough County using its statutory emergency rule making powers pursuant to Section 120.54 Fla. Stat.

We have attached Hillsborough's Emergency Rule, with a complete set of the attachments incorporated into the Emergency Rule. The Hillsborough County Emergency Rule is consistent with state law and with Florida Department of Health Rule 64DER21-12.

Your letter expresses concerns based on media reports related to paragraph (1)(d) of this rule. Florida Department of Health Rule 64DER21-12(1)(d) permits the use of masks or face coverings as a mitigation measure. Significantly, the Florida Department of Health Emergency Rule does not prohibit the requirement of a medical certificate for the parental opt-out option. While the rule requires schools to permit parents or legal guardians to opt-out on behalf of their student, the rule does not condition or limit the parameters the schools may apply for such opt-outs. This discretion rests with the local school board, which is empowered by the Florida Constitution, in Article IX, Section 4, with the governance of the local school district.

The School Board of Hillsborough County is complying with Florida Department of Health Rule 64DER21-12.

Even though Hillsborough's Emergency Rule is in compliance with state law and the Florida Department of Health Emergency Rule, Florida law bars the sanctions threatened in your letter. Notably, the Honorable John C. Cooper, a judge in the Second Judicial Circuit of Florida ruled on August 27, 2021 in the matter of McCarthy et. al v. Desantis:

"I grant a permanent injunction and enjoin defendants, except for the governor, from violating the Florida Parents' Bill of Rights by taking any action on whatever basis they take it, by taking any action effect a blanket ban on face mask mandates with no parent opt-out by local school boards." (emphasis added)

Judge Cooper further ruled:

"I also enjoin the defendants, but not the governor,....from enforcing the executive order and the policies it caused to be generated and any resulting policy or action which violates the Parents' Bill of Rights." (emphasis added)

Factual Background

The first day of the 21-22 school year began on August 10, 2021, in Hillsborough County. On August 18, 2021, the school district released information showing 10,384 students in isolation or quarantine, and 338 district employees in isolation or quarantine. During the first week of school in August 2021, 307 students and 59 staff reported a positive

COVID-19 diagnosis, compared to 51 students and 17 during the first week of school in August 2020 when facial coverings were mandated. Further, the 7-day average positivity rate for COVID-19 in Hillsborough County as of August 14, 2021 was 21.73%, compared to a 7-day average positivity rate of 8.65% on August 14, 2020, again, when facial coverings were mandated.

Based on these statistics, the Chair of the Hillsborough County School Board called an Emergency Meeting of the School Board to address the immediate danger to public health, safety, and welfare. At the Emergency Meeting, the School Board heard testimony from the Florida Department of Health in Hillsborough and from medical experts and doctors from Tampa General Hospital. The medical experts and doctors testified that the wearing of masks and vaccines are the most effective tools for controlling the spread of COVID-19. Also, the Board considered the recommendations of the Center for Disease Control (CDC) which recommends children in schools wear facial coverings. It is important to note that Judge Cooper found that, “face mask policies that follow CDC guidance are at this point in time reasonable and consistent with the best scientific and medical opinion and guidance in the country at this time.”

Previously, facial coverings were mandated for the 20-21 school year as part of Hillsborough’s Reopening Plan. Hillsborough’s Reopening Plan was filed with and approved by the Florida Department of Education. The Reopening Plan, and specifically, the face-covering requirement was found to be constitutional. *See Levonas, et al. v. The School Board of Hillsborough County, Florida*, Case No. 2-CA-6542 Hillsborough County, Florida, December 15, 2020. A copy of the case is attached as Exhibit D in Hillsborough’s Emergency Rule.

The Board approved the following motion at the Emergency Meeting:

Based on the latest data on the impact of Covid on Hillsborough County Public Schools, there is an immediate danger to the public health, safety, and welfare. Therefore, I move that we reinstate the facial covering requirement found in the District’s Reopening Plan for the 20-21 school year previously approved by the state for all students, teachers, and staff of Hillsborough County Public Schools for 30 days starting tomorrow, August 19.

The action taken by the Hillsborough County School Board is consistent with the Reopening Plan for the 2020-2021 school year which the Department of Education had approved, and the Florida Parents' Bill of Rights.

Hillsborough's Emergency Rule is Working to Mitigate the Impact of COVID-19

Since implementing the Emergency Rule on August 18, 2021, student positivity has decreased by 23% and the quarantines and isolations have decreased by nearly 15%. This preliminary data suggests the Emergency Rule has been a critical component in combating the spread of COVID-19.

Florida Law

The Florida Constitution in Article IX, Section 4 provides that the responsibility and authority to “operate, control and supervise all free public schools within the school district” is within the power of the locally elected school board. The boundaries that govern the roles of the State Board and individual district school boards are further defined by Sections 1001.30 and 1001.32, Fla. Stat.

Section 1001.30, Fla. Stat., states in pertinent part as follows:

District unit.—... *Each district shall constitute a unit for the control, organization, and administration of schools. The responsibility for the actual operation and administration of all schools needed within the districts in conformity with rules and minimum standards prescribed by the state, and also the responsibility for the provision of any desirable and*

practicable opportunities authorized by law beyond those required by the state, *are delegated by law to the school officials of the respective districts. [Emphasis added]*.

Section 1001.32, Fla. Stat., states in pertinent part as follows:

Management, control, operation, administration, and supervision.—

The district school system must be managed, controlled, operated, administered, and supervised as follows:

(1) DISTRICT SYSTEM.—The district school system shall be considered as a part of the state system of public education. All actions of district school officials shall be consistent and in harmony with state laws and with rules and minimum standards of the state board. District school officials, however, shall have the authority to provide additional educational opportunities, as desired, which are authorized, but not required, by law or by the district school board.

(2) DISTRICT SCHOOL BOARD.—In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, *district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law.... [Emphasis added]*.

Section 1001.30, Fla. Stat., requires district school boards to act "in conformity with rules and minimum standards prescribed by the state" and Section 1001.32, Fla. Stat., requires all actions of district school officials to "be consistent and in harmony with state laws and with rules and minimum standards of the state board." However, the State Board's supervisory rule-making authority is constrained, and defined by applicable law pursuant to Section 2, Article IX of the Florida Constitution.

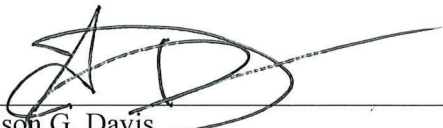
The Florida Legislature by adopting the "Parents' Bill of Rights", recently reaffirmed the ability of a district school board to take action that is "reasonable and necessary to achieve a compelling state interest" so long as the action is "narrowly tailored and is not otherwise served by a less restrictive means." *See* Section 1014.03, Fla. Stat. (2021). That is exactly what the School Board of Hillsborough County did by adopting its Emergency Rule.

As Judge Cooper recognized, the Florida Department of Health Emergency Rule is not enforceable to the extent it violates the Florida Parents' Bill of Rights, including Section 1014.03. And here, Hillsborough's Emergency Rule is authorized by Section 1014.03, in addition to the constitutional authority provided to the Hillsborough County School Board.

Conclusion

Hillsborough County's Emergency Rule is in full compliance with all state laws, including the Parents' Bill of Rights. Additionally, the order of Judge Cooper enjoins the State Board of Education and the Commissioner of Education from enforcing "the executive order and the policies it caused to be generated and any resulting policy or action which violates the Parents' Bill of Rights."

We appreciate the opportunity to respond to you, and we look forward to our continued professional relationship as we all focus on the health, safety and welfare of our students and families.



Addison G. Davis
Superintendent of Schools



Lynn L. Gray
School Board Chair

School Board Meeting

COVID UPDATE

September 21 , 2021



Hillsborough County
PUBLIC SCHOOLS
Preparing Students for Life

HCPS COVID-19 Data- Impact

August 18 – 10,722 Impacted (4.48%) *Mask mandate instituted*

August 20 – 13,485 Impacted (5.61%) *Greatest number of students and employees impacted*

September 8 – 5,647 Impacted (2.33%) *47% decrease in impact from 8/18; 58% decrease in impact from 8/20*

September 20 – 2,640 Impacted (1.09%) 75% decrease in impact from 8/18; 80% decrease in impact from 8/20



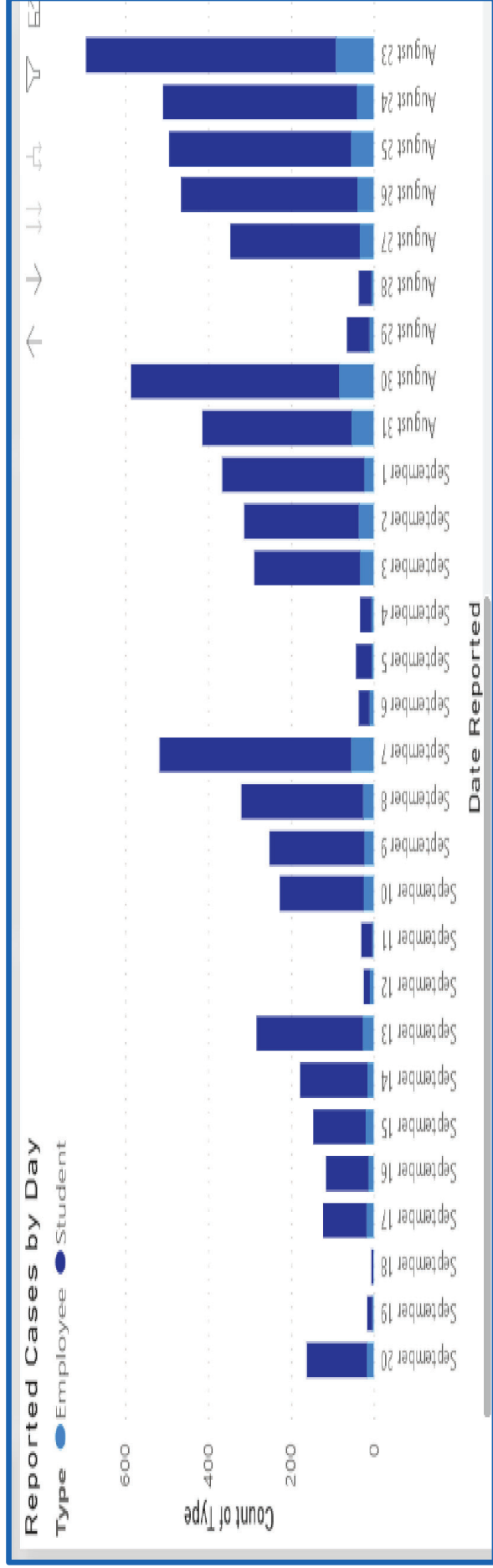
HCPS COVID-19 Data- Student Cases

August 18 – 398 Student Cases *Mask mandate instituted*

August 23 – 601 Student Cases *Highest number of student cases in 2021-22*

September 8 – 277 Student Cases *30% decrease in student cases from 8/18; 54% decrease in student cases from 8/23*

September 20 – 145 Student Cases 64% decrease in student cases from 8/18; 76% decrease in student cases from 8/23



Vaccine Clinics

SEPTEMBER 18 & 19 (9AM-3PM) DOSE 1

OCTOBER 9 & 10 (9AM-3PM) DOSE 2

Freedom High School
 Plant City High School
 Robinson High School

SEPTEMBER 25 & 26 (9AM-3PM) DOSE 1

OCTOBER 16 & 17 (9AM-3PM) DOSE 2

East Bay High School
 Newsome High School
 Tampa Bay Tech High School

Pediatric Vaccinations

12- 19 years old

Vaccination	148,955 Eligible 9/6/21	148,955 Eligible 9/15/21	Change	Percentage 9/6/21	Percentage 9/15/21	Change
One Dose	70,788	74,474	+3,686	48%	50%	+2%
Fully Vaccinated	55,412	60,576	+5,164	37%	41%	+4%
Unvaccinated	78,167	74,481	-3,686	52%	50%	-2%



Vaccine Clinics

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**Total Impact = Number of Quarantines and Isolations out of 243,109
(Employees and Students Combined)**

September 8 = 5,647
September 9 = 5,594
September 10 = 5,580
September 11 = 4,874
September 12 = 4,470
September 13 = 3,816
September 14 = 4,327
September 15 = 4,291
September 16 = 3,961
September 17 = 3,829
September 18 = 3,404
September 19 = 3,072
September 20 = 2,640

75% decrease- Down 8,082 employees and students when comparing 9/20 (2,640) to 8/18 (10,722)

80% decrease- Down 10,845 from our highest impact day (isolations and quarantines for employees and students) on 8/20 (13,485) compared to 9/20 (2,640)

Student Positive Cases

September 8 = 277
September 9 = 229
September 10 = 202
September 11 = 26 (Saturday)
September 12 = 15 (Sunday)
September 13 = 256
September 14 = 163
September 15 = 126
September 16 = 103
September 17 = 105
September 18 = 5 (Saturday)
September 19 = 12 (Sunday)
September 20 = 145

64% decrease- Down 253 cases when comparing 9/20 (145) to 8/18 (398)

76% decrease- Down 324 cases from highest day on 8/23 (601 cases) compared to 9/20 (145)

****Additional Information****

From 8/27 to 9/8

370 students quarantined due to school exposure tested positive during or after quarantine

341 students quarantined due to home exposure tested positive during or after quarantine

24 employees quarantined due to work exposure tested positive during or after quarantine

34 employees quarantined due to home exposure tested positive during or after quarantine

From 9/9 to 9/20

145 students quarantined due to school exposure tested positive during or after quarantine

182 students quarantined due to home exposure tested positive during or after quarantine

5 employees quarantined due to work exposure tested positive during or after quarantine

17 employees quarantined due to home exposure tested positive during or after quarantine