



COVID-19 Procedures & Data

August 19, 2021

State Communications



NOTICE OF EMERGENCY RULE

DEPARTMENT OF EDUCATION

STATE BOARD OF EDUCATION

RULE No.: 6AER21-01

RULE TITLE: Pupil Attendance Records for COVID-19.

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Given the recent rise in COVID-19 infections, largely driven by the spread of the delta variant, and the impending start to the 2021-2022 school year, the Florida Department of Education has been working to assist the Florida Department of Health in the development of minimum protocols governing the control of COVID-19 in public schools. As school districts seek to impose new COVID-19 restrictions on students, emergency rulemaking is necessary here to protect the rights of students and their parents or guardians.

This rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to immediately execute rules and to take any additional agency action necessary, using all legal means available to ensure safety protocols for controlling the spread of COVID-19 in schools that (1) do not violate Floridians' constitutional freedoms; (2) do not violate parents' rights under Florida law to make health care decisions for their minor children; and (3) protect children with disabilities or health conditions who would be harmed by certain protocols, such as face masking requirements. The order, which is incorporated by reference, located at <https://www.fldoe.org/policy/state-board-of-edu/meetings/>, directs that any actions taken by school districts comply with the Parents' Bill of Rights, codified in Sections 1014.02 – 1014.06, Fla. Stat., and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Parental rights include the right to make health care decisions for minor children, unless prohibited by law and the right to direct the education and care of minor children. See, Section 1014.04, Fla. Stat. In order to ensure compliance with the law and state board rule, under Section 1008.32, Fla. Stat., the State Board of Education has authority to withhold from school districts state funds, discretionary grant funds, discretionary lottery funds or any other funds specified as eligible for this purpose by the legislature, until the district comes into compliance.

Many school districts have or are expected to implement "stay-home" directives for students who have been exposed to or who contracted COVID-19 for the upcoming school year. These directives will result in learning loss for students unless plans are enacted to continue learning during "stay-home" days. As a result, it is necessary to

amend the pupil attendance rule to set forth the requirements to count these days as an educational activity for the purpose of pupil attendance. Section 1003.23, Fla. Stat. provides that “[s]tudents may be counted in attendance only if they are actually present at school or are away from school on a school day and are engaged in an educational activity which constitutes a part of the school-approved instructional program for the student. While Rule 6A-1.044, Pupil Attendance Records, includes similar language, there is no criteria to establish “an educational activity which constitutes a part of the school-approved instructional program for the student.” Given that public schools throughout the state open in August and some open in less than one week, there is not sufficient time to proceed through normal rulemaking procedures before school starts in order to address the potential for learning loss to students under “stay-home” directives.

Based upon the foregoing and in compliance with the Governor’s executive order, the agency finds that the potential for learning loss for certain students when school starts in August, creates an immediate danger to the public health, safety and welfare of students and requires emergency action.

REASONS FOR CONCLUDING THAT PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES:

There are multiple reasons for concluding that the procedure used is fair under these circumstances. First, as noted above, because school begins in August, there is not sufficient time to adopt a rule through non-emergency means before the start of the 2021-22 school year. The Governor’s Executive Order 21-175—issued just days ago. Next, the agency has received multiple requests to clarify the protocols and processes schools should utilize when planning for reopening schools given the presence of COVID-19 and the varied health and educational needs of students. Further, the procedure is fair because the rule relies upon an order of the Governor, which is public, and the emergency rule was made public by publishing it on the Department’s website in an effort to reach interested persons prior to consideration by the State Board of Education. Finally, because the agency is headed by a board, rather than an individual, the rule will be considered at a public meeting before the State Board of Education, with the opportunity for public input prior to adoption. While this period is an abbreviated one, given the need to act quickly to avoid harm to students, the agency is of the opinion that the procedure utilized is fair to interested and affected persons.

SUMMARY OF THE RULE: The emergency rule provides criteria to avoid learning loss and consider a student in attendance, when under a “stay-home” directive due to COVID-19.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Jacob Oliva, Chancellor of Public Schools.

THE FULL TEXT OF THE EMERGENCY RULE IS:

6AER21-01 Pupil Attendance Records for COVID-19.

(1) Definitions. “Stay-home” directive means a public K-12 student who is under a quarantine order or is not physically present in school due to contact with, or the asymptomatic contraction of, COVID-19.

(2) In accordance with Rule 6A-1.044, Pupil Attendance Records, Fla. Admin. Code R., a pupil shall be deemed to be in attendance if actually present at school, or away from school on a school day and engaged in an educational activity which constitutes a part of the school-approved instructional program for that pupil.

(3) Where an asymptomatic student is under a stay-home directive, the student may only be considered in attendance if the following criteria are met:

(a) The district has adopted procedures to continue the education of the student during the stay-home directive;

(b) These procedures rely upon continuing the student’s access to assignments and curriculum the student would be receiving were the student physically present in school; and

(c) Instructional personnel or administrative personnel, as defined in section 1012.01, F.S., must be available to assist the student with assignments and curriculum during the stay-home directive.

Rulemaking Authority 1001.02(1), (2)(n) FS. Law Implemented 1003.23 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:

NOTICE OF EMERGENCY RULE

DEPARTMENT OF EDUCATION

STATE BOARD OF EDUCATION

RULE No.: 6AER21-02

RULE TITLE: COVID-19 Hope Scholarship Transfer Procedures.

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Given the recent rise in COVID-19 infections, largely driven by the spread of the delta variant, and the impending start to the 2021-2022 school year, the Florida Department of Education has been working to assist the Florida Department of Health in the development of minimum protocols governing the control of COVID-19 in public schools. As public school districts seek to impose new COVID-19 restrictions on students, emergency rulemaking is necessary here to protect the rights of students and their parents or guardians.

This rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to immediately execute rules and to take any additional agency action as necessary, using all legal means available, to ensure safety protocols for controlling the spread of COVID-19 in schools that (1) do not violate Floridians' constitutional freedoms; (2) do not violate parents' rights under Florida law to make health care decisions for their minor children; and (3) protect children with disabilities or health conditions who would be harmed by certain protocols, such as face masking requirements. The Order, which is incorporated by reference, directs that any actions taken by school districts comply with the Parents' Bill of Rights, codified in Sections 1014.02 – 1014.06, Fla. Stat., and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Parental rights include the right to make health care decisions for minor children, unless prohibited by law, and the right to direct the education and care of minor children. See, Section 1014.04, Fla. Stat. In order to ensure compliance with the law and state board rule, under Section 1008.32, Fla. Stat., the State Board of Education has authority to withhold from school districts state funds, discretionary grant funds, discretionary lottery funds or any other funds specified as eligible for this purpose by the legislature, until the district comes into compliance.

Because of the importance of in-person learning to educational, social, emotional and mental well-being, it is important to protect parents' right to make health care decisions for their minor children at school and provide in-person education for their children. Unnecessarily isolating, quarantining, or subjecting children to physical COVID-19 constraints in schools poses a threat to developmental upbringing and should not occur absent a heightened showing of actual illness or serious risk of illness to other students.

The Hope Scholarship Program provides funding for a K-12 public school student to transfer to a private school or to another district in the state if the student has been subjected to harassment or other qualifying adverse, intimidating treatment at school. Applying the Hope Scholarship Program to instances where a child has been subjected to COVID-19 harassment will provide parents another means to protect the health and education of their child by moving their child to another school.

In light of the recent increase in COVID-19 infections, school districts throughout the state are contemplating adoption of additional COVID-19 restrictions. Given that public schools throughout the state open in August and some open in less than one week, there is not sufficient time to proceed through normal rulemaking procedures before school starts. Accordingly, the Department finds that there is an immediate danger to the health, safety and welfare of students that requires emergency action by the department.

REASONS FOR CONCLUDING THAT PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: First, as noted above, because the recent increase in COVID-19 cases has prompted school districts to consider imposing additional COVID-19-related requirements on students and because school begins in August, there is not sufficient time to adopt a rule through non-emergency means before the start of the 2021-22 school year. Second, the agency has received multiple inquiries about school district COVID-19 protocols, which currently vary from district to district and even from school to school. Third, the emergency rule relies upon an Order of the Governor, which is public, and the rule was published on the Department's website to reach interested persons prior to consideration by the State Board of Education. Finally, because the Department is headed by a board, rather than an individual, the rule will be considered at a public meeting before the State Board of Education, with the opportunity for public input prior to final adoption. While this period is an abbreviated one, given the need to act quickly, the Department concludes that the procedure utilized is fair to interested and affected persons.

SUMMARY OF THE RULE: The emergency rule provides a mechanism to transfer a child to a private school or another school district under a Hope Scholarship when a student is subjected to harassment in response to a school district's COVID-19 mitigation protocols.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Dr. Dakeyan C. Graham, Executive Director, Office of Independent Education and Parental Education.

THE FULL TEXT OF THE EMERGENCY RULE IS:

6AER21-02 COVID-19 Hope Scholarship Transfer Procedures.

(1) Definitions. “COVID-19 harassment” means any threatening, discriminatory, insulting, or dehumanizing verbal, written or physical conduct an individual student suffers in relation to, or as a result of, school district protocols for COVID-19, including masking requirements, the separation or isolation of students, or COVID-19 testing requirements, that have the effect of substantially interfering with a student’s educational performance, opportunities or benefits.

(2) A student who is subject to COVID-19 harassment is eligible for a Hope Scholarship under Rule 6A-6.0951, The Hope Scholarship Program, Fla. Admin. Code R.

(3) School District Parent Notification Requirements. Pursuant to the requirements of Section 1002.40(6), a school district must timely notify a parent of the Hope Scholarship program and provide the parent with a completed Hope Scholarship Notification Form, (Form IEPC-HS1), as provided in Rule 6A-6.0951, , Fla. Admin. Code R., when a parent reports COVID-19 Harassment. A parent whose child has, in the view of the parent, experienced COVID-19 Harassment, may submit Form IEPC-HS1 without regard to district notification.

(4) Hope Scholarship Application Procedure. To receive a Hope Scholarship, a parent must:

(a) Follow the procedures set forth in subsection (4) of Rule 6A-6.0951, Fla. Admin. Code R;

(b) Designate the Incident Type as “Harassment” on Form IEPC-HS1; and

(c) Write COVID-19 next to the Incident Type on the form.

(5) The nonprofit scholarship-funding organization shall confirm eligibility for each student and award all scholarships consistent with the requirements of section 1002.40, F.S., Rule 6A-6.0951, Fla. Admin. Code R., and this rule.

Rulemaking Authority 1001.02(2)(n), 1002.40(16) FS. Law Implemented 1002.40 FS. History –
New

Notice of Emergency Rule

DEPARTMENT OF HEALTH

Division of Disease Control

RULE NO.: RULE TITLE:

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

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

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

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

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

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

THE FULL TEXT OF THE EMERGENCY RULE IS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Relegation to certain physical locations;

(b) Isolation during school activities; or

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

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

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

EFFECTIVE DATE:



Scott A. Rivkees, MD
State Surgeon General



Date

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:

Principal Memos





Date: July 22, 2021
To: All Principals
From: John C. Palmerini, Deputy General Counsel
Office of Legal Services
Recipients: Area Superintendents, Assistant Principals
Subject: Student and Employee Vaccination Status

During the July 13, 2021 School Board meeting, a question arose regarding school administrators, instructional personnel, and support personnel asking about the vaccination status of students. Please remind your teachers and support personnel that it is impermissible to ask a student or other employees about their vaccination status. The only persons who should ask about the vaccination status of students and employees are administrators when requested to do so by the Florida Department of Health in Orange County for the purpose of determining what COVID-19 protocols need to be implemented. Senate Bill 2006, which was passed by the Legislature this year and was signed by the Governor, established §381.00316(3), Fla. Stat., which states as follows:

“An educational institution as defined in s. 768.38 may not require students or residents to provide any documentation certifying COVID-19 vaccination or post-infection recovery for attendance or enrollment, or to gain access to, entry upon, or service from such educational institution in this state.”

To reiterate, this statute does not prohibit school administrators from inquiring regarding the status of a student’s or employee’s vaccination status for health and safety emergencies to provide such information to the Florida Department of Health in Orange County. See 34 C.F.R. §99.36. Please contact School Health Services at 407-317-3409 for further guidance on any potential health and safety emergencies at your school location.

If I can be of further assistance, please contact me at john.palmerini@ocps.net or at 407-317-3411.



Orange County Public Schools

Date: July 29, 2021
To: All Principals
From: COVID-19 Task Force
Recipients: Designated COVID Contact/s
Subject: SY 2021-22 - COVID-19

Reminder: Administrators are responsible for inputting **all** positive COVID-19 cases they are made aware of into the *COVID-19 Case Management Intake Form* on SAP. All cases that were on campus within the 30-days prior to the positive test will be reported on the OCPS Dashboard.

The process for SY 2021-22 will continue to be the same, with continued reporting into the *COVID-19 Case Management Intake Form* on SAP, uploading of positive tests and seating charts for contact tracing. The Dashboard will zero out and start new counts for confirmed positives and active quarantines starting August 2, 2021. The previous years' dashboard data will be archived, but still available to the public.

If you have any questions please reach out to the COVID-19 Task Force:

- PROFESSIONAL STANDARDS: Lindsey Lipschutz, lindsey.lipschutz@ocps.net, x200-2479
- HEALTH SERVICES: John Zerega, john.zerega@ocps.net, x200-2609
- MEDIA RELATIONS: Sara Au, sara.au@ocps.net, x200-3458
- SAFETY & EMERGENCY MANAGEMENT: Rowland Welch, rowland.welch@ocps.net, X200-2033



Orange County Public Schools

Date: July 29, 2021
To: All Principals
From: Scott Howat
Chief Communications Officer
Shari Bobinski, Director
Media Relations
Recipients: Assistant Principals, COVID Contact Designee
Subject: COVID Communications 2021-22

Media Relations has updated the Connect Orange (CO) templates that schools and departments should use for COVID-19 notifications to staff and families. The scripts have been tightened to be shorter and the overall language has been updated for this school year.

The [CO Process flow chart](#) is blue for the 2021-22 school year to make it easy to know at quick glance that you are using the correct version (last year's was red and the summer's was orange). This process goes into effect August 2, and until the first day of school administrators should only notify staff members or any other group that has been on campus. NO schoolwide parent notifications should be sent before August 10.

The step-by-step instructions and script templates are available to you to use after you have documentation of a positive case of COVID-19 and after you fill out the *COVID-19 Case Management Intake Form* located on SAP. When you click on each step in the CO Process, you will be taken to the corresponding template directions and script.

Since these script templates can change according to new guidelines, mandates or best practices, please make sure you always click through the step links each time you need to send a CO message to be sure you're using the most updated version. When updated, the date at the top of the template will be changed.

As a reminder, schools should have established a process last year of reaching individuals who are not students or permanent staff members such as Itinerant Staff, City Year Volunteers, SROs, and substitutes and that needs to be continued this school year. Directions explaining how to [upload a new list](#) of people/contacts daily or create a standard list of support staff and edit by [adding or removing contacts](#) as needed are included in the templates. (For principals needing to create class/club/team notification lists, you should download a student ID# roster from Skyward and then upload those with the staff ID#s to School Messenger which will automatically link to the contact info for those contacts already on file.)

As always, if you have a situation that falls outside the usual examples outlined in the templates, or if you have any questions, please contact the Media Relations Office at 200-3458 and we will assist. After hours contact numbers are listed within the template directions as well, if needed.



Orange County Public Schools

Date: August 5, 2021
To: All Principals
From: Robert N. Waremburg, Senior Director
Procurement Services
Recipients: Administrators
Subject: Social Distancing and Mask Signage

Based on the recent message from Dr. Jenkins establishing new requirements for wearing masks, this communication is to provide you with printable art for signage to remind our students and staff to social distance when possible, face masks are required for all adults, and face masks are strongly encouraged for students. Printing Services will be producing permanent posters that will be delivered to all sites during the initial weeks of the school year. In the meantime, we have provided you with the printable art (see below) to expedite signage in schools. Please use this art and print your copies for your hallways, entrances and common areas. Once you received the Posters, you will be able to replace any of the signs you printed.

[Face Masks for Students Signage](#)

[Face Masks for Adults Signage](#)

[Social Distancing Signage](#)



Date: August 5, 2021
To: All Principals
From: COVID-19 Task Force
Recipients: Assistant Principals, COVID Contact Designee, Site Administrators
Subject: Important COVID Reminders

The following are essential reminders of COVID-19 Safety protocols for all school/site administrators as we start the school year:

You need to appoint your school contacts for the Florida Department of Health in Orange County [via this appointment form](#). **The deadline is the end of day Friday, August 6, 2021.**

What needs to be reported into the *COVID-19 Case Management Intake Form on SAP?*

- Students – all positive cases
- Employees – all symptomatic, close contact, and positive cases

Grid (included)

Administrators are responsible for entering all cases on campus with the support of FNS and Custodial Departments.

What about vaccination information?

Administrators will not need to collect vaccination cards in any form, however, if a person is vaccinated the date of their vaccination gets entered into the SAP intake form. The form asks if the person is fully vaccinated, Y/N, and the date of the person's last shot as confirmation. Fully vaccinated is defined as 2 weeks after an individual's second dose in a 2-dose series, such as the Pfizer or Moderna vaccines, or 2 weeks after a single-dose vaccine, such as Johnson & Johnson's Janssen vaccine.

Administrators are allowed to ask if staff are vaccinated in connection with contact tracing for the Florida Department of Health in Orange County. Please refer back to the [Legal Memo of 7/22](#).

How is employee pay affected by COVID-related absences?

Vaccinated individuals will be paid for COVID-related absences aligned with the MOU's (CTA and [OESPA](#)) and if approved by the Chief, the employee will be allowed to telework.

Unvaccinated individuals will need to use their sick leave and ARE NOT approved to telework. See the breakdowns of three examples below:

- **Unvaccinated, positive employee** – employee enters their sick leave for the 10 day(s) isolation period, and must exhaust this leave before entering any unpaid time.



Orange County Public Schools

- **Unvaccinated, symptomatic employee** – employee enters their sick leave until cleared with negative test or 10 day(s) isolation period, and must exhaust this leave before entering any unpaid time.
- **Unvaccinated, close contact employee**- employee enters their sick leave for the 10 day(s) quarantine period, and must exhaust this leave before entering any unpaid time.
- If you have a staff member who states they can't be vaccinated due to medial or religious reasons, please provide them with this link https://www.ocps.net/departments/legal_services/covid_19_information that explain religious or medical exemptions.

How are positive cases and quarantines being communicated this year?

The [Communications Process](#) remains the same as last year, with the dashboard posted on www.ocps.net being updated nightly and notifications to staff members and parents when there is a possible exposure or quarantines. District offices and all schools follow the same process.

What supports are in place to assist administrators?

The OCPS COVID-19 Task Force Support presented a session at Preparedness Days last week, a Q&A session with the Florida Department of Health earlier this week, and will host a session for new administrators shortly. Please watch for an invitation coming soon.

As always, if you have any questions please reach out to anyone on the COVID-19 Task Force:

- PROFESSIONAL STANDARDS: Lindsey Lipschutz, lindsey.lipschutz@ocps.net, x200-2479
- HEALTH SERVICES: John Zerega, john.zerega@ocps.net, x200-2609
- MEDIA RELATIONS: Sara Au, sara.au@ocps.net, x200-3458
- SAFETY & EMERGENCY MANAGEMENT: Rowland Welch, rowland.welch@ocps.net, X200-2033

[New Grid Template](#)



Date: August 12, 2021
To: All Principals
From: John C. Palmerini, Deputy General Counsel
Office of Legal Services
Recipients: Area Superintendents, Principals, Assistant Principals
Subject: Florida Department of Education Emergency Rules

On August 6, 2021, the State Board of Education passed two emergency rules regarding school opening. This Memorandum will outline requirements of these emergency rules:

Student Attendance

The first emergency rule adopted is 6AER01-21 dealing with Student Attendance Records for COVID-19. The rule requires as follows:

1. The rule defines “stay-home directive” to mean a K-12 student who is under a quarantine order or a student who is not physically present in school due to contact with, or the asymptomatic contraction of, COVID-19. In Orange County, quarantine orders are issued by the Florida Department of Health in Orange County.
2. The rule states that a student is considered to be in attendance if the student is actually present at school, or away from school on a school day and engaged in an educational activity which constitutes part of the school-approved instructional program for the student. An example of a student being away from school engaged in an educational activity which constitutes a part of the school-approved instructional program is a school-sponsored field trip.
3. When an asymptomatic student is under a stay-home directive, the student may only be considered in attendance if the following criteria are met:
 - a. The District has adopted procedures to continue the education of the student during the stay-home directive. This would include allowing students to make up work assignments which were missed during an absence. Under Section 9 of [School Board Policy JE](#), a student has one day for each day of absence to make up work.
 - b. Students must have continued access to assignments and curriculum the student would be receiving if the student were physically present in school. Teachers may comply with this requirement by ensuring that all assignments are posted in Canvas and that all reading materials may be accessed online.
 - c. Instructional personnel or administrative personnel must be available to assist the student with assignments and curriculum during the stay-home directive. This rule **does not** require teachers or principals to teach lessons live during synchronous instruction or record lessons for asynchronous instruction. It does require teachers and/or administrators to respond to telephone messages or emails sent by students and/or their parents, just as any teacher would do in the case of an extended absence

for reasons other than COVID-19. Further information on these requirements will be provided via separate memorandum from Associate Superintendent Rob Bixler and Associate Superintendent Greg Moody.

Hope Scholarship Transfer Procedures

The second emergency rule is 6AER02-21 dealing with COVID-19 Hope Scholarship Transfer Procedures. The rule requires as follows:

1. The rule defines “COVID-19 harassment” as “any threatening, discriminatory, insulting, or dehumanizing verbal, written or physical conduct an individual student suffers in relation to, or as a result of, school district protocols for COVID-19, including masking requirements, the separation or isolation of students, or COVID-19 testing requirements, that have the effect of substantially interfering with a student’s educational performance, opportunities or benefits.” This definition would apply for students who are harassed for not wearing face masks as well as those students who are harassed for wearing face masks.
2. A student who is subject to COVID-19 harassment is eligible for a Hope Scholarship.
3. The District must timely notify a parent of the Hope Scholarship program when a parent reports COVID-19 harassment and must provide the parent with a completed Hope Scholarship Notification form, which can be found [here](#). Parents whose child, in the view of the parent, has experienced COVID-19 harassment, may submit the linked form without regard to district notification.
4. To receive a hope scholarship, the parent has to meet the requirements of Fla. Admin. Code R. 6A-6.0951(4) and must:
 - a. Apply to an eligible and participating SFO according to the Scholarship Funding Organization’s application procedures and deadlines. The application submitted by a parent must include, at a minimum, the following information:
 - i. the Student’s name, student’s Florida Education Identifier (FLEID), date of birth, gender, race, current public school district, current public school attended, grade level, parent’s name, telephone number, mailing address and email address.
 - ii. a completed Form IEPC-HS1 which must be submitted to the scholarship funding organization.
5. On the form, the parent must designate the Incident Type as “Harassment.”
6. On the form, the parent must write “COVID-19” next to the Incident Type of the Form.
7. Finally, the non-profit Scholarship Funding Organization shall confirm eligibility for students and shall award scholarships consistent with the requirements of §1002.40, Fla. Stat., and Fla. Admin. Code R. 6A-6.0951.

Please contact me at john.palmerini@ocps.net or at 407-317-3411 for further assistance.



Date: August 12, 2021
To: All Principals
From: Amy Envall, General Counsel
Office of Legal Services
Recipients: Staff Handling the Hope Scholarship Notification
Subject: Hope Scholarship Program and COVID-19 Protocol

A. Hope Scholarship Summary and FLDOE Emergency Rule 6AER21-02

The Hope Scholarship Program (Program) provides a parent/guardian of a public school student, who was subjected to an “incident,” the opportunity to enroll their child in an eligible private school, as funded through stepupforstudents.org, or transfer their child to another public school with available capacity. The “incidents” detailed under the Program include: battery; harassment; hazing; bullying; kidnapping; physical attack; robbery; sexual offenses; threat or intimidation; fighting at school; **and, new this year, COVID-19 harassment (see 6AER21-02)**. “COVID-19 harassment” is defined as “any threatening, discriminatory, insulting, or dehumanizing verbal, written, or physical conduct an individual student suffers in relation to, or as a result of school district protocols for COVID-19, including masking requirements, the separation or isolation of students, or COVID-19 testing requirements, that have the effect of substantially interfering with a student’s educational performance, opportunities or benefits.”

B. Hope Scholarship Step-by-Step

1. The school becomes aware of an incident, either by it occurring on campus, or the student/parent/guardian/community member notifying the school
2. Notification of the Hope Scholarship shall be provided to the parent/guardian of the alleged victim once notification is received. **NOTE: The incident does NOT have to be substantiated**
3. Schools should utilize the draft template language in an email to the parent/guardian for notification (attached to this memo)
4. Principal/Designee enters the Hope Scholarship information into Skyward under “Unknown Perp” (staff who enter discipline information into Skyward are trained separately)
5. Parent/guardian requests the school to fill out the IEPC-HS1 form (attached to this memo)
6. Principal/Designee fills out the IEPC-HS1 form to include the alleged victim’s information, the alleged incident information, signature and contact information
7. If the allegation is related to COVID-19, the Principal/Designee should check “Harassment” under “Incident Information” and handwrite “COVID-19” on the form
8. Parent/guardian can use the IEPC-HS1 form to apply for tuition assistance through the State; can take the IEPC-HS1 form to Student Enrollment and choose an OCPS school with available capacity; or can elect to go to another Florida county.
9. The form is only valid for the current school year through June 30th.

C. Attachments

[Hope Scholarship Template Email 2021-2022](#) [Hope Scholarship FAQs 2021-2022](#)
[IEPC-HS1 Hope Scholarship Notification Form](#) [IEPC-HS1 Hope Scholarship Notification Form \(Spanish\)](#)



Orange County Public Schools

Date: August 12, 2021
To: All Principals
From: Alysia Leonard, Senior Instructional Process Specialist
Curriculum and Digital Learning
Rob Bixler, Associate Superintendent
Curriculum and Digital Learning
Recipients: Principals and Assistant Principals
Subject: Face Mask Opt Out Process

As you are aware, OCPS has implemented a face mask requirement for all students unless the parent chooses to opt out of the requirement. To assist with identifying students whose parents have opted out of the mask requirement, a flag and indicator have been added to Skyward.

A parent should send a note indicating opt out option to their child's homeroom teacher or first period teacher. Once teacher has received note, they should send the note to the registrar.

Registrars/administrators will add the Health Condition Code of "Mask Opt Out (MAO)" to a student in Skyward. Once entered, this code will display a student indicator in Student Management and Educator Access+ for teachers. Please refer to the [Mask Opt Out Skyward Reference Sheet](#) for additional information. This information should be entered by Wednesday, August 11, 2021.

This indicator code will be the sole source of identifying who has opted out of the mask requirement. Once they have submitted parental note to their homeroom or first period teacher, students should not be asked if they have opted out nor required to show note again. If a child is outside of a classroom and is not wearing a mask, it is assumed they have opted out of the mask requirement. As a reminder, we will be respectful of parent choice regarding mask requirement and any harassment or shaming will be dealt with through Code of Student Conduct or Professional Standards.

For additional questions or information, please contact Alysia Leonard, Senior Instructional Process Specialist (alysia.leonard@ocps.net).



Orange County Public Schools

Date: August 12, 2021
To: All Principals
From: COVID-19 Task Force
Recipients: Assistant Principals, COVID Contact Designee
Subject: New FDOH Processes

Due to [Emergency Rule 64DER21-12](#) issued 8/6/21 by Governor DeSantis, the Florida Department of Health and the State Board of Education, the Florida Department of Health in Orange County (FDOH-Orange) has worked with the OCPS COVID-19 Task Force to update processes and procedures for **students**. Please note this new process is being applied to **students** retroactively by FDOH-Orange to those already in isolation/quarantine before the Emergency Rule went into effect to be congruent with new policy.

Only individuals who are identified by FDOH-Orange and/or are on the daily FDOH-Orange "School Name Exclusion List" should be excluded from the school. Normal clinic procedures for individuals exhibiting COVID-19 symptoms, or those of any other illness, will still be followed. FDOH-Orange requests that parents who have a positive case in the home contact the call center (407-723-5004) for contact tracing. That list also now includes additional fields to assist in navigating this new process, in addition to definitions to help you understand the newly introduced terms.

Please be advised, this memo does NOT outline the entire procedure process, **ONLY THE SPECIFIC CHANGES FOR STUDENTS** that have taken effect due to the Emergency Rule.

- Section 2-A of the Emergency Rule allows students experiencing COVID symptoms or who have tested positive to come back to school if they subsequently have no symptoms and test negative.
 - Per FDOH-Orange, the test must be a SARS-COV-2 Viral Test (PCR or rapid antigen test). Home test must include a telehealth service affiliated with the manufacturer of the test. The telehealth provider must confirm the person's identity, observe the specimen collection and testing procedures, and confirm the test result.
 - Parent emails the negative test result to a newly set up email address (the email address will be on the letter sent to the family) with FDOH-Orange.
 - The revised "Guidance for COVID-19 Positive Persons Letter" explains this information to the parent.
 - If the parent of a student in isolation presents a negative test to you at the school and has not sent it to FDOH-Orange, you should not allow them into the school and refer them back to the clearance process steps outlined in their letter. If a parent needs assistance scanning the paper copy of their test to send to FDOH-Orange, you can assist them, but in this situation the school will need to ensure the parent receives the reply. A parent can also call the FDOH-Orange call center at (407) 723-5004 to confirm a negative lab result.



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- If a parent states they have already sent in their negative test to FDOH-Orange and you haven't yet seen the update on your list, you should let them know this is not an instantaneous process.
- As soon as clearance is determined, the school designated contact will be cc'd on the email from FDOH-Orange to the parent. If the parent did not use an email to submit their child's negative test, the school will receive the clearance directly, but in this situation the school will need to ensure the parent receives the reply.
- Please remind parents that FDOH-Orange makes all decisions regarding quarantine length and duration, not the school.
- Section 2-C allows for a student who has COVID symptoms or a positive diagnostic test result to return to school with a healthcare provider's note.
 - The parent accompanies the child to school with their healthcare provider's note and goes directly to the sick clinic where the school nurse or school health assistant reviews the note and, upon review, gives the student a pass to return to class.
 - This note will then be shared with the FDOH-Orange investigator working on that case with the school, so they are aware of the update.
 - Per the Emergency Rule, the note must be from a doctor or nurse practitioner.
 - If you have any questions about the note, please call Student Health Services.
- Section 3-A allows for a student who is an exposed close contact to return to school if they are asymptomatic, remained at home for 4 days and then received a negative test result on or after the 5th day.
 - Per FDOH-Orange, the test must be a SARS-COV-2 Viral Test (PCR or rapid antigen test). Home test must include a telehealth service affiliated with the manufacturer of the test. The telehealth provider must confirm the person's identity, observed the specimen collection and testing procedures, and confirm the test result.
 - Parent emails the negative test result to a newly set up email address (the email address will be on the letter sent to the family) with FDOH-Orange.
 - The revised "Student Close Contact Letter" explains this information to the parent.
 - The "*School Name* Exclusion List" now includes a Minimum Exclusion Date and a Maximum Exclusion Date so that you can know at a glance what the possibilities for return dates may be for any student in quarantine. FDOH has included definitions of these dates for you in the spreadsheet as a reminder.
 - If the parent of a student in quarantine presents a negative test to you at the school and has not sent it to FDOH-Orange, you should not allow them into the school and refer them back to the clearance process steps outlined in their letter. If a parent needs assistance scanning the paper copy of their test to send to FDOH-Orange, you can assist them, but in this situation the school will need to ensure the parent receives the reply. A parent can also call the FDOH-Orange call center at (407) 723-5004 to confirm a negative lab result.
 - If a parent states they have already sent in their negative test to FDOH-Orange and you haven't yet seen the update on your list, you should let them know this is not an instantaneous process.
 - As soon as clearance is determined, the school designated contact will be cc'd on the email from FDOH-Orange to the parent. If the parent did not use an email to submit



Orange County Public Schools

their child's negative test, the school will receive the clearance directly, but in this situation the school will need to ensure the parent receives the reply.

- Please remind parents that FDOH-Orange makes all decisions regarding quarantine length and duration, not the school.

As always, if you have any questions please reach out to anyone on the COVID-19 Task Force:

- PROFESSIONAL STANDARDS: Lindsey Lipschutz, lindsey.lipschutz@ocps.net, x200-2479
- HEALTH SERVICES: John Zerega, john.zerega@ocps.net, x200-2609
- MEDIA RELATIONS: Sara Au, sara.au@ocps.net, x200-3458
- SAFETY & EMERGENCY MANAGEMENT: Rowland Welch, rowland.welch@ocps.net, X200-2033



Date: August 12, 2021
To: All Principals
From: Rob Bixler, Associate Superintendent
Curriculum and Digital Learning
Greg Moody, Associate Superintendent
School Choice Services
Recipients: All staff
Subject: Procedures for Instructional Continuity

Procedures to continue learning in the event of a stay-home directive

If a student is placed on a stay-home directive, students will engage in daily learning until they return to face-to-face instruction. Common tools include, but are not limited to:

- Pre-recorded videos of lessons/demonstrations using Canvas Studio or a third-party
- Canvas discussion boards
- Canvas quizzes
- Canvas assignments
- Google Assignments
- Studymate
- Student-paced Nearpod lessons
- Paper packet of make-up work

Teachers may, but are NOT required, to provide one-way audio/video access to a live lesson(s) using Microsoft Teams+Swivl with no access to chat, reactions, microphone, or camera enabled.

In the event the district is required to close an entire school and/or a grade level(s), the district will provide further guidance.

Attendance

In accordance with Rule 6AER21-01 Pupil Attendance Records for COVID-19, Fla. Admin. Code R., where an ***asymptomatic*** student is under a stay-home directive, the student may only be considered in attendance *if* the following criteria are met:

- **The district has adopted procedures to continue learning during the stay-home directive**
 - OCPS students will be expected to log-on to Canvas daily during normal school hours to engage in lessons/content posted by their teacher and submit assignments.
 - Teachers will need to ensure that they have a way of monitoring that students have logged into their Canvas course daily, such as a form in the Canvas course for attendance.
 - Teachers are to take attendance daily. They will follow the standard procedures of marking a student as an unexcused absence or not entered.

- **The procedures rely upon continuing student access to assignments and curriculum the student would be receiving were they physically present in school**
 - OCPS teachers will post lessons, content and/or assignments as they would have if students were physically present in school.

- **Instructional personnel and administrative personnel must be available to assist students with assignments and curriculum during the stay-home directive**
 - OCPS teachers will post on their Canvas course homepage how students can get in touch with them for assistance with assignments and curriculum. This can include student-to-teacher communication through features of centrally adopted platforms including:
 - OCPS email (using student and teacher OCPS email addresses)
 - Canvas Inbox messages
 - Microsoft Teams chat
 - Microsoft Teams meeting
 - Phone call using information on file in Skyward

If a student meets all three requirements for being in attendance during a stay-home directive, principals will ensure communication between teacher and attendance clerk to ensure the quarantine attendance code is entered. Once the quarantine code is released by the state, an email will be sent to all attendance clerks. Until the new code is released by the state, schools will enter “J” for students who are under the stay-home directive and meet the aforementioned criteria. For secondary schools, this must be entered in every period. At this time, the code of “J” should not be used for any other purpose until otherwise directed.

Please note that if a student becomes symptomatic for any reason, then the student will not be considered in attendance and the school and teacher will follow the normal procedures for a sick student who is absent.

Procedures to practice with ALL students

To ensure instructional continuity, in the event of unforeseen disruptions to face-to-face learning, please ensure that all teachers have access to the five basic digital learning skills. Those skills include:

- 1) How to login to LaunchPad
- 2) How to access the “My Backpack” on LaunchPad to view their e-textbooks
- 3) How to access their Canvas course and submit assignments
- 4) How to join a Microsoft Teams meeting from their Canvas course
- 5) How to participate in a teacher-paced and self-paced Nearpod lesson

The link to guides for skills above can be accessed [here](#).



Date: August 13, 2021
To: All Principals
From: Amy Envall, General Counsel
Sarah Kopesky, Staff Attorney
Recipients: Staff who handles custody matters
Subject: Parent Disagreement and Face Coverings for Students

Parent Disagreement and Face Coverings for Students

Currently, each student is required to wear a face covering unless his/her parent opts out of the requirement in writing. Our office has received several inquiries from schools regarding who makes the decision to opt out if parents are in disagreement over whether their child should wear a face covering. The following is our recommendation:

- If the parents were **never married** and there are **no court orders/court pleadings pending**, then pursuant to [Section 744.301, Florida Statutes](#), the mother is presumed to have sole custody and sole decision making authority for the child; therefore, the decision to opt out from the face covering requirement rests with the mother in this specific example.
- If the parents are **married, separated**, or have **shared parental responsibility** per a court ordered parenting plan, and there is nothing in the court order as to who can make medical decisions, then it is recommended that the student continue to wear his/her face covering, since it is currently required, until the parents can agree in writing to opt out of the requirement. Shared parental responsibility requires the parents to make parenting decisions together. It is important to note, if parents are in disagreement and one parent sends the student to school without a face covering, while the other parent has not agreed to opt out, the school should remind the student to wear a face covering and speak with the parents regarding the above; however, the student should not be disciplined for refusal to wear a face covering.
- If the parents have court documentation that gives one parent **sole/ultimate decision making authority for medical decisions or educational decisions**, then it is recommended that the parent with this authority be the one who makes the decision whether to opt out.

Please contact our office at (407) 317-3411, if you have any questions or need additional guidance.

Staff Communications



From: [Smith, Jason](#)
To: [Pagan, Marieliz](#)
Subject: FW: NYCU - COVID-19 Health and Safety Procedures Manual
Date: Tuesday, August 17, 2021 4:05:38 PM
Attachments: [image001.png](#)

Jason Smith

Director, Public Relations
Orange County Public Schools
445 W. Amelia Street, Orlando, FL, 32801
407.317.3368 (IP 2002303)

From: OCPS News You Can Use <newsyoucanuse@ocps.net>
Date: Friday, July 30, 2021 at 5:02 PM
To: allusers1 <allusers1@ocps.net>, Allusers2 <Allusers2@ocps.net>
Subject: NYCU - COVID-19 Health and Safety Procedures Manual



The Joint Safety Committee met on Thursday, July 29. District staff and OESPA were in attendance and CTA provided written feedback. Click on the link for the most current version of the 2021-22 OCPS [COVID-19 Health and Safety Procedures Manual](#). Updates and changes to the manual will be made as necessary.

From: [Smith, Jason](#)
To: [Pagan, Marieliz](#)
Subject: FW: NYCU: District and OESPA Reach Agreement on 2021-22 School Opening
Date: Tuesday, August 17, 2021 4:06:27 PM
Attachments: [image001.png](#)

Jason Smith

Director, Public Relations
Orange County Public Schools
445 W. Amelia Street, Orlando, FL, 32801
407.317.3368 (IP 2002303)

From: OCPS News You Can Use <newsyoucanuse@ocps.net>
Date: Tuesday, August 3, 2021 at 11:35 AM
To: Classified-ALL <Classified-ALL@ocps.net>
Cc: "OCPS Administrators (All)" <OCPSadmin@ocps.net>
Subject: NYCU: District and OESPA Reach Agreement on 2021-22 School Opening



District and the Orange Education Support Professionals Association reach agreement on 2021-22 School Opening

We are happy to share that we have reached an agreement with OESPA for the opening of schools for the 2021-22 School Year. You can read the [Memorandum of Understanding at this link](#).

MEMORANDUM OF UNDERSTANDING #7
2021-22 School Opening
July 30, 2021

This Memorandum of Understanding is made on this 30th day of July 2021, by and between the School Board of Orange County, Florida (District) and the Orange Education Support Professionals Association (OESPA).

WHEREAS, the purpose of this Memorandum of Understanding is to memorialize the parties' agreement regarding the opening of schools through December 2021.

NOW, THEREFORE, the parties mutually as follows:

Health and Safety

1. The procedures contained herein apply to all facilities wherein bargaining unit employees work. The District will consider the recommendations of Center of Disease Control and Prevention ("CDC") and/or local health officials as appropriate to Florida and Orange County.
2. Any classified employee who agrees to substitute or assist in the medical clinic shall be given training regarding clinic protocols and procedures.
3. The District will keep employees and the community informed via the COVID-19 Dashboard. The District will do the following:
 - a. Provide plexiglass at public reception areas and replace as necessary.
 - b. Provide necessary protective supplies for all bargaining unit employees.
 - c. The COVID-19 Health and Safety Procedures Manual will be made available for review by classified staff.
 - d. The District will include a record of changes within the procedures manual. A link to the document will be placed prominently on the District website.
4. Any fully vaccinated or approved reasonable accommodation bargaining unit employee required to miss work by the District because of COVID-related circumstances will be placed on medical relief of duty with pay for the time prescribed by the FDOH Orange County. This shall be retroactive to July 1, 2021, for 12-month employees only.
5. Other than potential loss of accrued time, employees shall not be negatively impacted, including but not limited to discipline, directive or a negative evaluation for a COVID-19 related absence.
6. After being informed by employees, site administrators will address any student non-compliance with health and safety protocols promptly.
7. The District will approve or deny reasonable accommodation requests under the Americans with Disabilities Act as soon as possible based upon the order the request is received.

Training

8. The District shall provide sufficient training for employees on proper safety protocols; how to use safety equipment and supplies; and how to de-escalate situations in which students refuse to follow protocols.

MEMORANDUM OF UNDERSTANDING #7
2021-22 School Opening
July 30, 2021

Transportation

9. All bus operators and monitors shall perform sanitization of school transportation vehicles between every route.
10. Bus operators shall be given thirty (30) additional minutes at the end of the morning and afternoon run(s) to sanitize windows including sills, all seats and high touch areas of the transportation vehicle.
11. If a route has a monitor, the bus operator and monitor shall be given fifteen (15) minutes at the end of the morning and afternoon run(s) to sanitize windowsills, all seats and high touch areas of the transportation vehicle.
12. Bus operators and monitors who interact with students with disabilities shall be provided with the necessary protective equipment.

Emergency Worksite Closure

13. Based on operational need, the District will make every reasonable effort to deploy bargaining unit employees to alternate worksites due to emergency worksite closures. Employees will continue to be paid their regular rate of pay when deployed. This provision does not guarantee deployment to an alternate worksite.

Duration

Unless otherwise modified by this Memorandum, this agreement does not waive any provisions of the Collective Bargaining Agreement. This Memorandum shall remain in effect until December 31, 2021, unless otherwise mutually agreed to by the parties in writing.

For School Board of Orange County, Florida:

For Orange Education Support Professionals
Association:



James Preusser
Senior Executive Director, Human Resources



Ron Pollard
President

From: [Arias, Lorena](#)
To: [Pagan, Marieliz](#)
Subject: FW: Face mask update
Date: Tuesday, August 17, 2021 4:53:03 PM
Attachments: [ATT00001.png](#)
[image001.png](#)
[image002.png](#)
[image003.png](#)

Lorena Arias

Assistant Director, Media Relations
Orange County Public Schools
Ronald Blocker Educational Leadership Center
445 W. Amelia St. Orlando, FL 32801
Office 407.317.3458

Members of the media: Please send your requests to PIO@ocps.net



From: OCPS <No_reply@ocps.net>
Sent: Friday, August 6, 2021 5:33 PM
To: Arias, Lorena <Lorena.Arias@ocps.net>
Subject: Face mask update



OCPS families and staff,

As many of you know, the State Board of Education met this morning to adopt new rules related to attendance and Hope Scholarships. You can find the new rules by clicking Back-to-School FAQs on the district's home page at ocps.net. While neither rule addressed face masks, they did provide background for the 1:30pm webinar presented by the Florida Department of Education. More critical to that presentation was the newly adopted rule by the Florida Department of Health which is also available in the FAQ. Details include that parents must be given an opt out choice if face masks are required by the school district. I want to acknowledge parents who are passionate on both sides of this debate and realize neither group will be fully satisfied at this juncture.

Out of an abundance of caution for the safety of our students and employees, and

after consultation with our health experts and school board members, I am implementing required face masks for all students unless the parent chooses to opt out of the requirement. Opting out means sending a simple note with your child on the first day of school such as “I am opting out of the face mask requirement for (child’s name)” with your signature. The student may give the note to the teacher. This mandate is effective **for 30 days**, beginning Tuesday, August 10th. We will continue to monitor the situation with our local experts and make a determination about how to proceed before the 30 days have expired.

www.ocps.net

Orange County Public Schools would like to continue connecting with you via email. If you prefer to be removed from our list, please contact Orange County Public Schools directly. To stop receiving all email messages distributed through our SchoolMessenger service, follow this link and confirm: [Unsubscribe](#)

SchoolMessenger is a notification service used by the nation's leading school systems to connect with parents, students and staff through voice, SMS text, email, and social media.

1. Ensure your preferred mobile device number is on file with your school(s).
2. Simply scan the QR code with your smartphone then hit send. (Text YES from the device to 68453.)



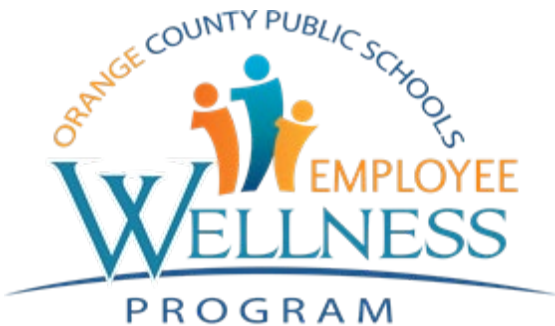
The information contained in this e-mail message is intended solely for the recipient(s) and may contain privileged information. Tampering with or altering the contents of this message is prohibited. This information is the same as any written document and may be subject to all rules governing public information according to Florida Statutes. Any message that falls under Chapter 119 shall not be altered in a manner that misrepresents the activities of Orange County Public Schools. [References: Florida State Constitution I.24, Florida State Statutes Chapter 119, and OCPS Management Directive A-9.] If you have received this message in error, or are not the named recipient notify the sender and delete this message from your computer.

From: [Smith, Jason](#)
To: [Pagan, Marieliz](#)
Subject: FW: NYCU - Vaccination Incentive Update for Employees
Date: Tuesday, August 17, 2021 4:06:49 PM
Attachments: [image001.png](#)

Jason Smith

Director, Public Relations
Orange County Public Schools
445 W. Amelia Street, Orlando, FL, 32801
407.317.3368 (IP 2002303)

From: OCPS News You Can Use <newsyoucanuse@ocps.net>
Date: Thursday, August 12, 2021 at 4:25 PM
Subject: NYCU - Vaccination Incentive Update for Employees



We are pleased to share that more than 11,000 OCPS full- and part-time employees have received their COVID-19 vaccination.

If you are fully vaccinated, you are eligible to receive a \$200 incentive made possible by ESSER grant funds. Fully vaccinated is defined as two weeks after an individual's second dose in a 2-dose series, such as the Pfizer or Moderna vaccines, or two weeks after the single-dose Johnson & Johnson's Janssen vaccine.

Proof of vaccination must be submitted by Sunday, Oct. 31.

Visit <https://bit.ly/ocpscovidincentive> for details to confirm your vaccination status.

Connect Orange Template



2021-2022

CONNECT ORANGE TO PARENTS & EMPLOYEES

COVID-19 POSITIVE CASE(S)

CLICK ON EACH STEP TO GET TO THE SCRIPT

STEP 1: INITIAL NOTIFICATION

- Done day of confirmation of positive case on campus (if after hours, next day)
- CO to parents of students & employees possibly exposed
- Email completion confirmation to Area Superintendent or Supervisor
- ***STOP / Proceed to General notification and/or Quarantine notification***

STEP 2: GENERAL NOTIFICATION

- Send to parents & employees for transparency AFTER Call #1 has been sent
- Reminder to view dashboard for real time information
- Email completion confirmation to Area Superintendent or Supervisor
- ***STOP / Will be notified by FDOH regarding quarantines***

STEP 3: QUARANTINE NOTIFICATION

- Part A - CO message to those on FDOH list for quarantine
- Part B - email letters to those on FDOH list for quarantine
- Part C - CO message to all staff and families who received Potential Exposure notification who were not on FDOH list for quarantine
- Email completion confirmation to Area Superintendent or Supervisor
- ***STOP / if concerned about # of quarantines, discuss with Area Superintendent***

STEP 4: PIVOT SCHOOL OR CLASS

- Decisions about pivoting occur in consultation with principal, Area Superintendent and FDOH-Orange
- If pivot is determined, call Media Relations to discuss message specifics
- Use voice, email & SMS to all parents/employees
- Email completion confirmation to Area Superintendent or Supervisor
- ***STOP / go to Step 5 when return is confirmed***

STEP 5: RETURN FROM PIVOT

- Return to school/class message to all parents and employees
- Email completion confirmation to Area Superintendent or Supervisor

STEP 1: INITIAL NOTIFICATION

Revised 8/10/21

PRINCIPALS, REMEMBER THESE IMPORTANT ITEMS:

- Make sure you have **medical/lab documentation** or name of testing lab and date of test, **or the case is included in the FDOH isolation list,** **before** making this call.
- Make sure to send it to **parents of students AND staff members** in class with the positive case, as well as any additional necessary individuals. (Add recipients to broadcasts by [uploading a list](#) or [adding/removing contacts](#).)
- Due to privacy concerns do **not** use an individual's name in any form in School Messenger (i.e. title of broadcast) as it could be viewable to recipients.
- **If the positive individual has not been on campus in the last 30 days, a message does not need to be sent.**
- If the positive individual is a bus driver/monitor, click [here](#) for a special Bus Route Notification template.
- If you have a person who was on campus **after** testing positive, notify Media Relations and click [here](#) for a specialized Step 1 & 2 template.
- This Step 1 message needs to go out ASAP and before the Step 2 message.
- Need help? [Click here](#) for a list of individuals who can assist.

Step 1 has two options:

- A. **Voice/Email** ConnectOrange message - if going to large group
- B. **Talking Points** for individual calls - if small group is impacted

A. VOICE/EMAIL

This is [NAME OF SCHOOL] [TITLE & NAME], making you aware of an individual in one of your child's [CLASS/CLUB/TEAM] who tested positive for COVID-19. This person has not been on campus since [DATE]. The Florida Department of Health in Orange County does contact tracing and will determine who was in close contact. If they issue quarantines, we will let you know. This case will show on the dashboard at ocps.net in a day or so. The impacted areas have been cleaned and disinfected. Please remember that to stop the spread in our community, masks are mandatory

for everyone during the first 30 days of school, unless a parent sends a note. Thank you for your cooperation.

B. TALKING POINTS FOR INDIVIDUAL CALLS

- I am calling to make you aware of a person in one of your child's [CLASS/CLUB/TEAM] who tested positive for COVID-19.
- This person has not been on campus since [DATE].
- Please know that information related to any individual's medical history is confidential and protected by law.
- The Florida Department of Health in Orange County does contact tracing and will determine who was in close contact. If they issue quarantines, we will let you know.
- All impacted areas of campus have been thoroughly cleaned and disinfected.
- Please remember masks are mandatory for everyone for the first 30 days of school to try to stop the spread of the virus, unless a parent sends a note.
- Please know that our team is committed to the health and safety of our students and will continue to be diligent in our effort to provide a safe learning and working environment for all.
- This case will show on the dashboard at ocps.net in a day or so.

NEXT: Go to [Step 2: General Notification](#)

STEP 2: GENERAL NOTIFICATION

Revised 8/09/21

PRINCIPALS, REMEMBER THESE IMPORTANT ITEMS:

- Send this Step 2 message out at the **end of the day** in case you have multiple cases, so you don't have to send multiple schoolwide calls.
- Make sure to send it to **all staff and all parents** as well as any additional necessary individuals such as subs, SRO, itinerant staff, volunteers, visitors, etc... (Add to broadcast by [uploading a list](#) or [adding/removing contacts](#).)
- If the positive individual is a bus driver/monitor, click [here](#) for a special Bus Route Notification template.
- If you had a person who was on campus **after** testing positive, notify Media Relations and click [here](#) for a specialized Step 1 & 2 template.
- Due to privacy concerns do **not** use an individual's name in any form in School Messenger (i.e. title of broadcast) as it could be viewable to recipients.
- **If the positive individual has not been on campus in the last 30 days, a message does not need to be sent.**
- Need help? [Click here](#) for a list of individuals who can assist.

Step 2 has two options:

- A. Script for **student, school employee, volunteer, vendor or visitor**
- B. Script for **district/itinerant staff** (ex. psychologist or social worker) on your campus

A. VOICE/EMAIL: STUDENT, SCHOOL EMPLOYEE, VOLUNTEER, VENDOR OR VISITOR

[NAME OF SCHOOL] families, this is [TITLE & NAME] making you aware that [an / # of] individual/s associated with our school has/have tested positive for COVID-19. This person/these people has/have not been on campus since [DATE/S]. The Florida Department of Health in Orange County does contact tracing. Individuals in proximity have already been notified and impacted areas of campus have been cleaned. This case will show on the dashboard at ocps.net in a day or so. Please remember that to stop the spread in our community, masks are mandatory for

everyone during the first 30 days of school, unless a parent sends a note. Thank you for your cooperation.

B. DISTRICT/ITINERANT STAFF ON CAMPUS

[NAME OF SCHOOL] families, this is [TITLE & NAME] making you aware that a **district employee** who was on campus during on [DATE] tested positive for COVID-19. This individual had limited contact with our students and staff. The positive case will not reflect on the dashboard for the school because they are not on staff but the case will be included on the district's total in a day or so. The Florida Department of Health in Orange County does contact tracing. Individuals in proximity have already been notified and impacted areas of campus have been cleaned. Thank you for your cooperation.

NEXT: Have you received quarantine information from FDOH?

- If **not yet**, **STOP HERE AND WAIT**.
- If **yes**, and there are quarantine orders, GO TO [STEP 3: Quarantine Notification](#)
- If yes, and there were **not** any quarantine orders, send the following CO (but *if you get word on the same day*, bundle it into the above Step 2 message):

This is [NAME OF SCHOOL] [TITLE & NAME] letting you know there have been NO quarantines issued in connection to the positive COVID case we notified you of on [DATE]. If your child is not feeling well, please keep them home until they are symptom-free. If you have any questions, please contact me.

STEP 3: Quarantine Notification (3rd Call)

Revised 8/10/21

PRINCIPALS, REMEMBER THESE IMPORTANT ITEMS:

- There are a variety of situations that can occur with quarantines. This template includes the most common to give you options.
- **EMAIL LETTERS** to all students' school email addresses, as well as all parents with email addresses on file, and to staff member's OCPS emails.
- If needed, you can add to broadcast recipients by [uploading a list](#) or [adding/removing contacts](#).
- Make sure to send the schoolwide message to **all staff and all parents** as well as any additional necessary individuals such as subs, SRO, itinerant staff, volunteers, visitors, etc...
- Due to privacy concerns do **not** use an individual's name in any form in School Messenger (i.e. title of broadcast) as it could be viewable to recipients.
- Need help? [Click here](#) for a list of individuals who can assist.

Step 3 includes the following:

PART A: Voice/Email ConnectOrange message to those being quarantined - if going to large group

PART B: If it's a small group (i.e. 10 or less) use Talking Points for individual calls (if you get voicemail, use script provided)

PART C: Schoolwide ConnectOrange message for quarantines, choose one version:

1. Letting whole school know all quarantine letters have been issued
2. Letting whole school know if FDOH determined no quarantines needed

NOTE: Do not send schoolwide quarantine messaging for non-school based exposures

PART A: VOICE/EMAIL TO THOSE BEING QUARANTINED

VOICE: This is [NAME OF SCHOOL] [TITLE & NAME]. The Florida Department of Health in Orange County has issued quarantines. Anyone under quarantine was directly exposed to a positive COVID case and must stay at home. **[IF A NON-SCHOOL BASED EXPOSURE, ADD: FDOH says this is an exposure that did not occur on campus, and so it will not appear on our dashboard.]** We email quarantine letters to students' and staff school email addresses AND to parents, if we have an email on file. You can follow-up with your doctor if you have any medical questions.

The length of time to stay home is determined by the Department of Health, not by us at the school. Teachers will provide work for students in quarantine upon request. [INSERT DIRECTIONS FOR ACADEMIC INSTRUCTION HERE] If you need assistance with meals, OCPS Food & Nutrition Services can provide food to cover the quarantine period. A reservation link for pick up has been emailed to you. Thank you for your cooperation.

EMAIL: The Florida Department of Health in Orange County has issued quarantines. Anyone under quarantine was directly exposed to a positive COVID case and must stay at home. [IF A NON-SCHOOL BASED EXPOSURE, ADD: FDOH says this is an exposure that did not occur on campus, and so it will not appear on our dashboard.] This email includes a letter from the Florida Department of Health in Orange County with the quarantine information. You can follow-up with your doctor if you have any medical questions. The length of time to stay home is determined by the Department of Health, not by us at the school. Teachers will provide work for students in quarantine upon request. [INSERT DIRECTIONS FOR PARENTS HERE]. If you need assistance with meals, OCPS Food & Nutrition Services can provide food to cover the quarantine period. Please click [here](#) to make a reservation for pick up. If you have any questions please contact me. Thank you for your cooperation.
Signature: Name, Email, Phone

PART B: TALKING POINTS FOR INDIVIDUAL CALLS TO THOSE BEING QUARANTINED

- This is [NAME OF SCHOOL] [TITLE & NAME]. The Florida Department of Health has determined that you/your child needs to quarantine because of being in close contact with a person with COVID-19.
- IF A NON-SCHOOL BASED EXPOSURE, SAY: FDOH says this is an exposure that did not occur on campus, and so it will not appear on our dashboard.
- Privacy laws prevent me from disclosing any individual's identity or medical history as it is confidential and protected by law.
- The Florida Department of Health in Orange County has provided a letter advising us that you must keep your child home until the date that is indicated on the letter. I've forwarded their letter to your email address (and that of your student, if talking with a parent.)
- You can follow-up with your doctor if you have any medical questions.
- The length of time to stay home is defined by FDOH not us at the school.
- Teachers will provide work while your child is in quarantine upon request. [INSERT DIRECTIONS FOR PARENTS HERE]
- If you need assistance with meals, OCPS Food & Nutrition Services can provide food to cover the quarantine period. You can make a reservation for pick up online:
<https://app.smartsheet.com/b/form/d46e3d555ac24cdabfb871a59e0187ed>
- If you have any questions contact me.

2021-2022 Connect Orange Template

IF YOU GET THEIR VOICEMAIL: This is [NAME OF SCHOOL] [TITLE & NAME] calling to let you know that the Florida Department of Health has issued a quarantine order for you/your child because of close contact with a person who has tested positive for COVID-19. I am emailing a letter from the Florida Department of Health to you/your student's email address and I'll also send it to you if you have an email on file with us. That letter includes the date you/your child can return to school. Thank you for your cooperation.

PART C: Schoolwide ConnectOrange message for quarantines related to on-campus exposure only (choose one)

All quarantine letters have been issued

This is [NAME OF SCHOOL] [TITLE & NAME] calling to let you know that all quarantine letters for the positive case/s on [DATE] have been emailed. If you did not get one and stayed home out of an abundance of caution, you can return to school if you don't have symptoms. Active quarantine numbers will show on the District's dashboard in a day or so. Thank you for your cooperation.

FDOH determined no quarantines are necessary

This is [NAME OF SCHOOL] [TITLE & NAME] letting you know there are NO quarantines being issued in connection to the positive case/s on [DATE]. However, if you aren't feeling well, please stay home. Thank you for your cooperation.

NEXT: If you need to pivot, go to [Step 4: Pivoting A School or Class](#).

STEP 4: Pivoting a School or Class

Revised 8/10/21

PRINCIPALS, REMEMBER THESE IMPORTANT ITEMS:

- The decision to pivot a class/unit is made in consultation with FDOH and your Area Superintendent. The decision to pivot an entire grade level/school is made by the Superintendent or Deputy Superintendent.
- Make sure to send the schoolwide message to **all staff and all parents** as well as any additional necessary individuals such as subs, SRO, itinerant staff, volunteers, visitors, etc...
- If needed, you can add to broadcast recipients by [uploading a list](#) or [adding/removing contacts](#).
- Need help? [Click here](#) for a list of individuals who can assist.

Step 4 includes the following:

- A. Voice/email Connect Orange
- B. At the same time, send SMS Text message

VOICE/EMAIL

This is [NAME OF SCHOOL] [TITLE & NAME] calling to let you know that [SCHOOL/YOUR CHILD'S CLASS] will pivot due to [# confirmed cases or quarantines]. The pivot will begin tomorrow. Students will learn from home on our learning management system, Canvas. [IF NEEDED, ADD: If your child needs help, you can visit digital.ocps.net and click on the icon that says "Getting Started Tips".] [IF SCHOOLWIDE, ADD: There won't be any school-related activities during this time.] We will all return to campus on [DAY OF WEEK], [DATE]. If you need assistance with meals, OCPS Food & Nutrition Services can provide food to cover the quarantine period. Please go to [INSERT LINK FROM FNS] to make a reservation for pick up.

Please know everyone's health and safety is our top priority. We encourage you to get tested. You can find testing locations at ocfl.net/testing. Again, starting tomorrow, [DAY, DATE], [SCHOOL/YOUR CHILD'S CLASS] students will pivot and follow their regular class schedule. Thank you for your cooperation.

SMS TEXT

[SCHOOL/CLASS] will pivot to learning from home, tomorrow through [DATE].

NEXT: When nearing the return of staff and students, use [Step 5: Return to School or Class](#)

STEP 5: Return to School or Class

Revised 7/26/21

PRINCIPALS, REMEMBER THESE IMPORTANT ITEMS:

- Make sure to send the schoolwide message to ***all staff and all parents*** as well as any additional necessary individuals such as subs, SRO, itinerant staff, volunteers, visitors, etc...
- If needed, you can add to broadcast recipients by [uploading a list](#) or [adding/removing contacts](#).
- Need help? [Click here](#) for a list of individuals who can assist.

Step 5 includes the following:

- A. Voice/email Connect Orange
- B. At the same time, send SMS Text message

VOICE/EMAIL

This is [NAME OF SCHOOL] [TITLE & NAME] calling parents and staff to remind you that our pivot is ending and we will all return to the building on [DATE]. The entire campus was cleaned and disinfected during the pivot. It's very important to remember if you or your child aren't feeling well, or are waiting for test results, please do not report to school or work. Please also stay home if someone in your household has tested positive. And if the Department of Health has issued you a quarantine letter, you must not return before that time period is up. We appreciate your adhering to these guidelines to keep our schools and community healthy. We look forward to seeing you on [DATE]! Thank you for your cooperation.

SMS TEXT

[SCHOOL/CLASS]: everyone who is healthy and not quarantined can return to school on [DATE].

Health and Safety Update



Summary of Changes from 2020-2021 Health and Safety Manual

- The 2021-22 Health and Safety Procedures Manual is reflective of lessons learned throughout the pandemic.
 - The original document was developed during the beginning of the COVID-19 pandemic
 - Initially included standards to cover all needs, based on rapidly changing information
 - The previous version included special magistrate language recommended, ended with MOU, which expired on July 31, 2021.
 - Allows for faster adoption of guidance in alignment with FDOH
 - Provides for the flexibility to respond to changes with the pandemic as changes occur.
 - It consolidates to key areas
 - Implements standards to assist in the development of specific plans to address unique programmatic and facility needs throughout the district
 - Includes assurance that current safety guidelines are being met.
 - Departments provide training to staff on their procedures.

Sections and Topics from the Previous Version

All page numbers reference August 10, 2021 Version Manual

- *General Preventative Measures*
 - Communication and Messaging
 - Replaced with language on page 4, “Staff is expected to follow best practices to reduce the spread of COVID-19 in their work areas.”
 - PPE (face coverings)
 - Included, page 8
 - Physical distancing
 - Removed, physical distancing cannot be guaranteed with schools back at full capacity but is provided where feasible
 - Hygiene Protocols (hand hygiene)
 - Included, page 9
 - Health Monitoring/Screening
 - Removed, the district no longer formally conducts health screening but monitoring information language found on page 10.
 - Cleaning and Disinfection
 - Included under the Operational Guidance sections, pages 13-15.
 - Absenteeism
 - Included, page 11
- *School Operations*
 - Transportation
 - Included under Operational Guidance-Schools section, page 13
 - Arrival and Dismissal
 - Removed, an increased number of students returning will not allow additional time for staff to control entry points.
 - Administrative Offices.

- Included, under Operational Guidance-Schools section “common areas,” page 13
 - Transition
 - Removed, must maintain state-required instructional minutes that may be lost due to staggering schedules and transition periods.
 - Classroom
 - Included, under Operational Guidance-Schools section, page 13
 - FNS
 - Included, under Operational Guidance-Schools section “common areas,” page 13
 - Media Center
 - Included, under Operational Guidance-Schools section “common areas” page 13
 - Common areas
 - Included, under Operational Guidance-Schools section “common areas” page 13
 - Playground and recess
 - Removed, must maintain state-required instructional minutes that may be lost due to staggering schedules and transition periods and requirements for outside social distancing and mask usage have changed
 - Emergency drills
 - Guidance is fluid; Emergency Management and Business Continuity will communicate this to schools through regular communication channels
 - Specials/electives
 - Removed, departments/programs have plans based on their specific needs
 - School-sponsored activities/visual and performing arts
 - Removed, departments/programs have plans based on their specific needs
 - School events/Before and after school activities
 - Removed, departments/programs have plans based on their specific needs
- *Administrative Site Operations*
 - Health Monitoring/Screening
 - Removed screening component, guidance is fluid; communication will be updated as changes occur. Monitoring covered under General Preventative Measures, page 10
 - Workspaces-employee responsibilities
 - Replaced, with language on page 4, “Staff is expected to follow best practices to reduce the spread of COVID-19 in their work areas.”
 - Workspaces-supervisor responsibilities
 - Replaced, with language on page 4, “Staff is expected to follow best practices to reduce the spread of COVID-19 in their work areas.”
 - Common areas - breakrooms
 - Common areas - elevators and restrooms
 - Common areas – conference rooms
 - Common areas – Lobby/visitors
 - All common areas above are included in the Operational Guidance-Administrative Sites section, page 15

- District vehicles
 - Included in Operational Guidance-Administrative Sites section, page 15
- Contractors and vendors
 - included in Operational Guidance-Administrative Sites section, page 15
- *COVID-19 Case Management*
 - Clinic Procedures
 - Moved to Operational Guidance—Schools section page 14; Health Services maintains the procedure
 - Special Considerations – medically fragile students and students with significant cognitive and emotional disabilities
 - Removed, guidance for specific student needs outlined by our ESE and Health Services
 - Return recommendations
 - Included, page 17
 - Flow charts
 - Removed, the process changed; replaced with the process for reporting cases on page 19
 - FAQs-COVID-19 Case management
 - Removed, guidance is fluid; communication will be updated as changes occur and housed on the district website
 - Information to support FDOH contact tracing
 - Included on page 20
 - Investigative case support for employees
 - Removed, guidance is fluid; procedures will be included based on guidance from FDOH-Orange
 - Investigative case support for students
 - Removed, guidance is fluid; procedures will be included based on guidance from FDOE
 - Closure considerations
 - Removed, need flexibility instead of a static procedure
 - Crisis response team
 - Removed, out of date information, schools to follow standard School Emergency Response Team (SERT) procedures
- *Additional Resources*
 - Mental health and wellness of students and employees
 - Removed, special considerations handled on an as-needed basis
 - Temperature screening checklist – admin sites and schools
 - Removed, no longer used
 - Guidance letters
 - Removed, guidance letters provided by FDOH
 - FAQs-masks
 - Removed, out of date
 - School reopening considerations
 - Removed, need flexibility instead of a static procedure

- References
 - Included in Additional Resources section page 23
- District contacts
 - Included in Additional Resources section page 24



COVID-19 HEALTH AND SAFETY PROCEDURES MANUAL

2021-22 School Year



Orange County
Public Schools

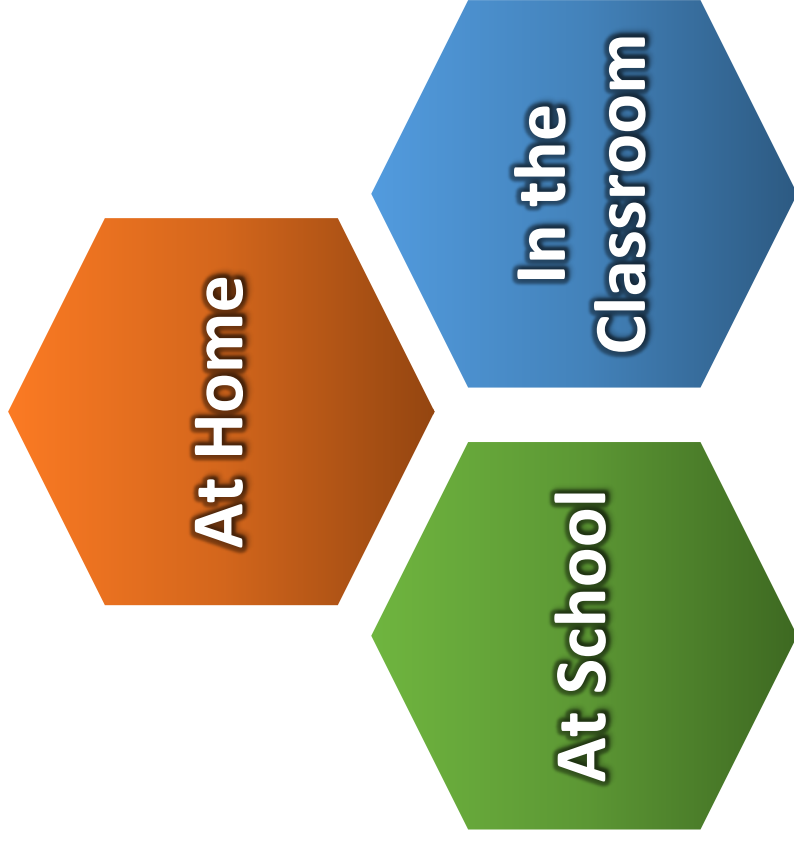
August 17, 2021

Disclaimer

This manual contains general guidance to assist school and administrative sites in navigating health and safety considerations during the COVID-19 pandemic. It is intended for the use of district staff, rather than the public at-large. This manual is a supplement to the Injury/Illness section of the Emergency Procedures Manual for Schools and the Medical Emergencies section of the Emergency Procedures Manual for Administrative Sites.



Promoting risk reduction through a great culture of teaching.



Promoting a Healthy and Safe Learning Environment

To minimize the risk of exposure to COVID-19 for students, staff, and families across the school district, Orange County Public Schools (OCPS) encourages following appropriate health guidance.

2021-2022 Guidance Overview



- This manual contains standard COVID-19 safety-related procedures and protocols.
- Additional procedures and protocols may be in place based on programs and facility layouts.
- Staff are expected to follow best practices to reduce the spread of COVID-19 in their work areas.
- District administration will continue to monitor federal, state and local public health communication about COVID-19, coordinate with local health officials, and modify guidance as needed.

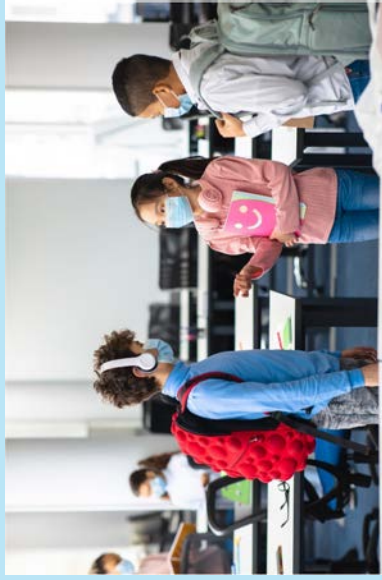


Record of Changes



Changes from Previous Version	Date	Page
Updated page title to reflect return recommendations for staff and CTE students only.	8/17/21	17
Added slide detailing FDOH return recommendations for Pre-K – 12 students.	8/17/21	18

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Section 1: General Preventative Measures

Personal Protective Equipment (PPE)

*Help Protect Yourself
and Others*

- Per Board Policy EBBA:
 - Face coverings may be required if the CDC or other governmental entity updates guidance which mandates more restrictive face covering requirements.
 - Students must wear face coverings unless the parent chooses to opt out of the requirement.
 - OCPS employees must wear a face covering while inside district facilities or vehicles and in the presence of another individual.
 - Visitors including volunteers, vendors, parents and guardians must wear a face covering while inside district facilities.
- Face coverings will be made available at district facilities.
- Individuals may choose to wear the following face coverings:
 - Commercially produced and disposable masks
 - Cloth face coverings
 - Clear face coverings
 - Face shields
- Individuals opting to wear reusable cloth face coverings should ensure they are cleaned regularly.
- Disposable gloves are not required and should be replaced with handwashing or hand sanitizer unless required to perform job duties.

Reference [School Board Policy EBBA Disease Prevention; Face Coverings for additional information regarding masks/face coverings.](#)



Hygiene Protocols

Hand Hygiene

Handwashing is one of the best ways to protect yourself and your family from getting sick.

After you have been in a public place and touched an item or surface that may be frequently touched by other people, such as door handles, tables, counter tops, chairs, sinks, shared pens, elevator buttons, and microphones, sanitize your hands before touching your eyes, nose, or mouth because that's how germs enter our bodies.



- You can help yourself and others stay safe, especially during these key times when you are likely to get and spread germs:

- After entering a building or school
- Before, during, and after eating food
- Before and after handling papers that are not your own
- Before and after treating a cut or wound
- Before taking medication
- After using the restroom
- After blowing your nose, coughing, or sneezing
- After handling your cellphone that has been placed on a table or other area that is not your own
- After touching a recycling or garbage receptacle

- Steps to Wash Your Hands the Right Way:

1. **Wet** your hands with clean, running water (warm or cold), turn off the tap, and apply soap.
 2. **Lather** your hands by rubbing them together with the soap. Lather the backs of your hands, between your fingers, and under your nails.
 3. **Scrub** your hands for at least 20 seconds. Need a timer? Hum the “Happy Birthday” song from beginning to end twice.
 4. **Rinse** your hands well under clean, running water.
- If soap and water are not readily available, district approved hand sanitizer that contains at least 60% alcohol can be used (for staff and older children who can safely use hand sanitizer).
 - Contact your Custodial Services Area Manager to acquire additional handwashing supplies.



Health Monitoring

Recognizing the Signs and Symptoms

- Encourage staff, students, volunteers and visitors planning to enter the school or facility to self-screen for [symptoms](#) of COVID-19 prior to coming onsite.
- Refrain from entering the school or facility if any of the following are present:
 - [Symptoms](#) of COVID-19
 - A temperature of 100.4° F or higher
 - Under evaluation for COVID-19 (for example, waiting for the results of a viral test to confirm infection)
 - Diagnosed with COVID-19 and not yet cleared to discontinue isolation

Health monitoring and recognizing the signs and symptoms are crucial to help reduce the risk of spreading COVID-19.



Absenteeism and Academic Continuity

Monitor and Plan for Absenteeism

Monitor absenteeism of students and employees, cross-train staff, and create a roster of trained back-up staff to use in case of excessive employee absences due to illness.



- Review the usual absenteeism patterns at your school among both students and staff.
- School administrators should alert Professional Standards and local health officials about large increases in student and staff absenteeism, particularly if absences appear due to respiratory illnesses (like the common cold or the flu, which have symptoms similar to COVID-19).
- Review attendance and sick leave policies. Encourage students and staff to stay home when sick, even without documentation from a doctor.
- Identify critical job functions and positions, and plan for alternative coverage by cross-training staff within job description or classification.
- The district will provide further direction in the event a school or classroom needs to pivot to digital learning in order to support academic continuity.
- For individual students who may need to isolate or quarantine, schools will follow normal procedures for sick students.

Section 2: Operational Guidance

Operational Guidance - Schools

Promote Safety and Preventative Measures

Continue encouraging measures to reduce the transmission of infectious diseases.



- **Buses**
 - Buses will be cleaned or disinfected as needed.
 - Bus windows should be lowered to improve air circulation.
 - If a student becomes ill during the day, he/she must not use group transportation to return home.
 - Contact your Transportation Area Manager for additional transportation guidance or resources.
- **Classrooms**
 - Classrooms will be cleaned or disinfected as needed.
 - Hand sanitizer is available as individuals enter the classroom.
 - Shared object use is discouraged without proper hand hygiene.
- **Common Areas**
 - Common areas will be cleaned or disinfected as needed.
 - Ensure bathrooms are stocked with proper handwashing products.
 - Existing plexiglass may remain in place.
- **Visitors and Volunteers**
 - Visitors and volunteers are allowed on campus; encourage visitors to self-screen for COVID-19 symptoms prior to coming onsite.
- **Meetings**
 - Virtual meetings are permitted when requested by parents or guardians.
 - In-person meetings require documentation indicating attendance and seating locations (seating charts).

Operational Guidance - Schools

*Promote Safety and
Preventative Measures*

Continue encouraging measures to reduce the transmission of infectious diseases.



- School Clinics
 - Staff and students with COVID-19 symptoms will immediately be taken to the Sick Room.
 - Encourage staff and students planning to enter the school environment to self-screen prior to coming onsite. Do not attempt to enter the school if any of the following are present:
 - Symptoms of COVID-19
 - A temperature of 100.4° F or higher
 - Under evaluation for COVID-19 (for example, waiting for the results of a viral test to confirm infection)
 - Diagnosed with COVID-19 and not yet cleared to discontinue isolation

Operational Guidance – Administrative Sites

Promote Safety and Preventative Measures

Sick employees should follow CDC-recommended steps. Employees should not return to work until the criteria to discontinue home isolation are met, in consultation with healthcare providers.



- **Offices**
 - Reinforce guidance that sick employees stay home.
 - Maintain a clean and sanitary workspace.
 - Practice good hand hygiene throughout the workday.
- **Vehicles**
 - Regularly clean and disinfect high touch surfaces in the vehicle.
- **Shared Equipment**
 - Equipment (copiers, microwaves, phones tools, etc.) should be cleaned and disinfected regularly.
- **Common Areas**
 - Common areas will be cleaned or disinfected as needed.
 - Bathrooms should be stocked with proper handwashing products.
 - Provide hand sanitizer in strategic locations.
 - Existing plexiglass may remain in place.
- **Visitors and Volunteers**
 - Visitors are allowed at facilities; encourage visitors to self-screen for COVID-19 symptoms prior to coming onsite.
- **Meetings**
 - Virtual meetings are allowed when possible.
 - In-person meetings require documentation indicating attendance and seating locations (seating charts).

Section 3: COVID-19 Case Management

Return Recommendations for District Staff and CTE Students

*Reviewed and Revised
in Accordance with FDOH-Orange*

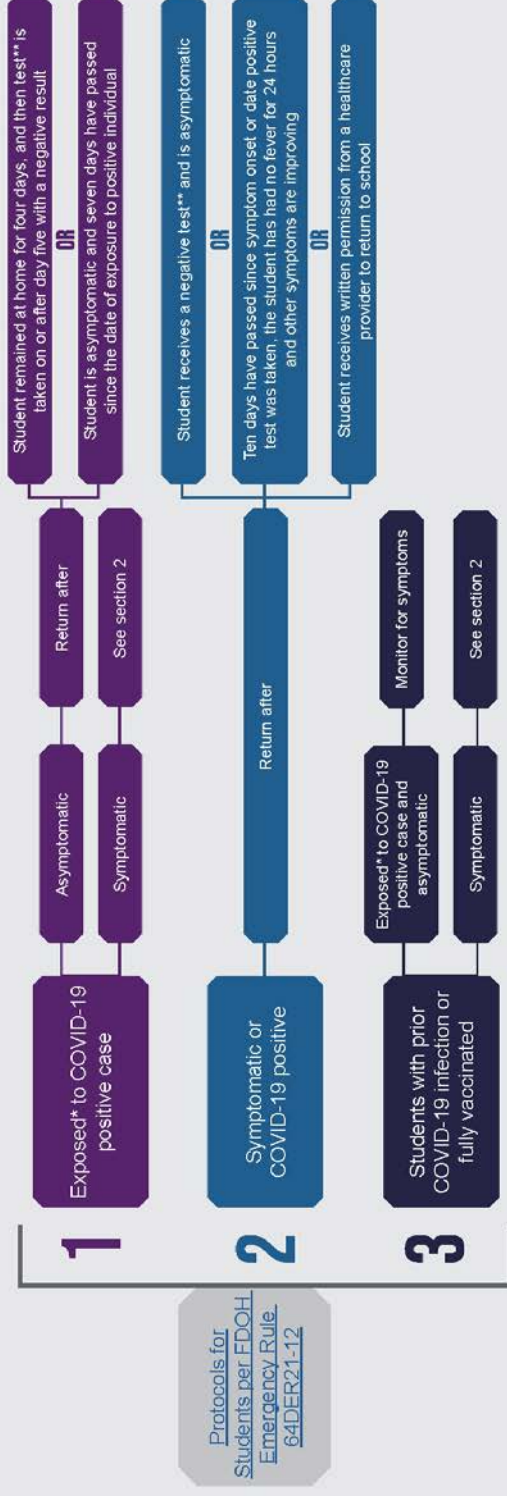
Case Type	Response
Confirmed Positive <ul style="list-style-type: none"> Received a test stating that the individual has tested positive 	<ul style="list-style-type: none"> The individual will self-isolate for 10 days from start of symptoms or after receiving a positive test (whichever comes first). After the isolation period is over the individual must be symptom and fever free for 24 hours without the aid of medication prior to returning. Test-based strategies for returning are not implemented because individuals can test positive for the virus for up to 6 months after infection while the individual is not infectious.
Symptomatic (with no known exposure) <ul style="list-style-type: none"> The individual is experiencing COVID-19 like symptoms and has not been known to be exposed to someone who has COVID-19 	<ul style="list-style-type: none"> If the individual takes a COVID test and the test is negative, the individual can return as soon as they feel better. If the individual does not take a COVID test, or the individual takes a COVID test and it is positive, they must self-isolate for 10 days from the start of symptoms. After the 10-day self-isolation period is over, the individual must be symptom and fever-free for 24 hours without the aid of medication prior to returning. The return recommendations for symptomatic individuals (with no known exposure) will be followed even if the individual is fully vaccinated (2 weeks after last dose).
Exposed Close Contact (secondary exposure) <ul style="list-style-type: none"> Must be within 6 feet for 15 minutes (cumulative within a 24-hour period, with or without a mask) and deemed potentially exposed by the Florida Department of Health (FDOH) 	<ul style="list-style-type: none"> If the individual is considered exposed by FDOH-Orange they can return after a 10-day quarantine and being symptom and fever free for 24 hours without the aid of medication. If the individual was diagnosed with COVID-19 within the previous 90 days of exposure they do not need to quarantine. If symptoms develop during quarantine, the individual must wait 10 days after the onset of symptoms and be symptom and fever free for 24 hours without the aid of medication prior to returning. FDOH-Orange recommends that the individual get a test, but an individual who is an exposed close contact cannot test out of a 10-day quarantine. If a vaccinated individual is an exposed close contact then the current guidance produced by public health officials will be followed.

Return Recommendations for Pre-K - 12 Students

Reviewed and Revised
in Accordance with FDOH-Orange

PROTOCOLS FOR CONTROLLING COVID-19 2021-22 SCHOOL YEAR

STUDENTS



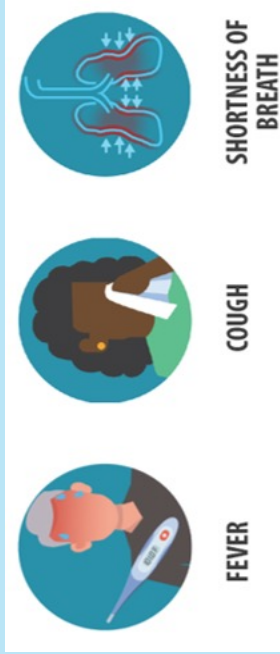
*Per CDC, exposure is close contact of six feet or less for 15 minutes or more.

**The test must be a SARS-COV-2 Viral Test (PCR or rapid antigen test).

Reporting COVID-19 Cases

*Developed and Reviewed in
Accordance with FDOH-Orange*

- If a student/visitor tests positive for COVID-19 or an employee tests positive, shows symptoms, or has been in close contact with COVID-19 (even if they are vaccinated) the following shall be completed:
 - The supervisor/administrator will complete the COVID-19 Case Management Intake Form.
 - The OCPS COVID-19 Task force will coordinate with FDOH-Orange to ensure the proper actions are taken.
- If any individual tests positive, or comes in close contact, or shows symptoms of COVID-19 the supervisor/administrator should coordinate with Custodial Services to disinfect areas in need.



Information to Support FDOH Contact Tracing

What is Investigative Case Support?

FDOH uses contact tracing to track COVID-19 exposures. Contact tracing is a highly scientific process, requiring specialized training. To assist FDOH contact tracing, OCPS will use investigative case support.



- Professional Standards and/or Health Services may request certain documents and information to support the FDOH contact tracing investigations.
- Information required to confirm a positive case:
 - Individual's Name
 - Date of Birth
 - Hard or electronic copy of COVID-19 testing results, if possible, or name and address of agency that conducted the testing
- Information to assist in tracing close contacts:
 - Classroom/lunchroom seating charts or workspace details
 - Individual class or work schedules
 - List of individuals who were within 6-feet for 15-minutes or more of the affected individual (consider cafeteria, after care, activities, sports, meetings, etc.)
 - Bus information

COVID-19 Vaccine and Testing

Information for Students and Staff

- COVID-19 testing and vaccines are readily available to the public.
- Eligibility for the vaccine continues to be updated regularly by the CDC and other public health organizations.
- OCPS, in conjunction with FDOH-Orange, is opening up campuses to host vaccine events.
- Individuals who receive the COVID-19 vaccine **may** have a different quarantine length if they have come in close contact with COVID-19.
 - Individuals should contact FDOH to determine their level of exposure and vaccination which will dictate the need to quarantine.

For current information on vaccines and testing, please visit:

www.floridahealth.gov

www.ocfl.net/vaccine

www.ocps.net



Section 4: Additional Resources

Additional Resources

- [Orange County Public Schools COVID-19 Vaccine Information](#)
- [Florida Department of Education-Emergency Response](#)
- [Florida Department of Health in Orange County](#)
- [Centers for Disease Control](#)

The following includes resources where additional information on COVID-19 can be referenced.



Additional Resources

District Contact Information

- District Main Line: 407.317.3200
- Employee Hotline: 407.250.6269
- General Inquiries: questions@ocps.net
- District Website: www.ocps.net

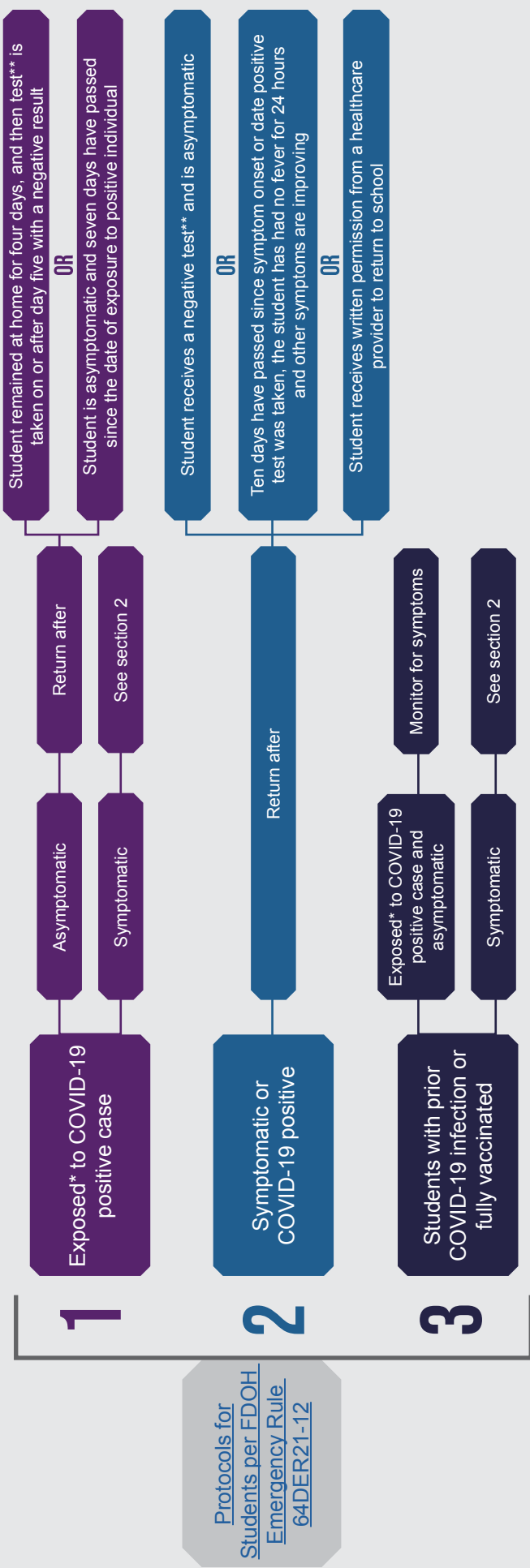
For any additional guidance and resources, please contact the appropriate district office. If you are unsure who to contact, call the district's main telephone line at 407-317-3200 or email questions@ocps.net.



PROTOCOLS FOR CONTROLLING COVID-19

2021-22 SCHOOL YEAR

STUDENTS



Protocols for Students per FDOH Emergency Rule 64DER21-12

*Per CDC, exposure is close contact of six feet or less for 15 minutes or more.
 **The test must be a SARS-COV-2 Viral Test (PCR or rapid antigen test).

Facilities



CUSTODIAL

Cleaning and Disinfecting:

- Each school completed deep cleaning as the normal process during summer months to get each campus ready for start of school.
- Custodial Services Managers are working closely with school administration to ensure the needs of schools are being met throughout the rising numbers in cases of COVID-19 as staff and students return to school.
- Vaccination/Testing sites are being staffed with custodial support to ensure cleaning and disinfecting take place.
- Increased temporary labor is being utilized to fill FTE gaps. These gaps are created by Leave of Absences, COVID related absences (quarantine), vacancies, personal leave, etc.
- Increased overtime is being utilized to assist with covering after school programs and sporting events.

Custodial Hours:

Understanding the current environment, Custodial Services has adjusted their hours to better service schools at full student capacity. This change allows continuous cleaning and disinfecting throughout the day with additional time for cleaning once students/staff are not on campus.

Work Hours:

Role	Hours	Level
Resident	6:00am – 2:30pm	ALL
Crew Leader(s), Custodians	11:30am – 8:00pm	ALL
Master Crew Leader(s)	Schedule will be set to provide maximum leadership at individual locations	ALL

Supplies and Equipment:

- Restroom supplies and PPE (disinfectant, gloves, etc.) are being stocked at maximum levels to ensure schools are well equipped throughout the pandemic and to support full student/staff occupancy.
- Equipment purchases and repairs occur continuously to ensure all campuses are well maintained throughout the year.

Technology

- Custodial Services training team is partnering with OCPS E-Learning team to create Custodial Services University where on-line learning content will be available to all levels of Custodians as part of progression planning.
- Current planning is taking place to implement a software system to bring all components of Custodial Services management under one roof including budget, logistics/equipment, work orders, temporary labor, overtime etc. The result is improved processes and management through automation, the ability to determine custodial operations, maintain budgets by location, manage equipment inventory, create and maintain a work order management system, provide analytics etc.



Orange County Public Schools

Facilities Services · 6501 Magic Way, Building 200 · Orlando, FL 32809-5677 · Phone (407) 317-3700

HVAC SYSTEMS

OCPS started considering options to improve the delivery of our HVAC systems back in May 2020. Facilities was assessed in two groups: schools designed “post-2014” that have a bi-polar ionization HVAC system installed as a way to improve air quality vs. schools that were designed “pre-2014” that didn’t have that feature, therefore, the addition of UV was considered for the “pre-2014” schools.

We hired Hanson, a system engineer specializing in the design and operation of HVAC systems, as an independent party, to assess and make recommendations about the schools HVAC systems that would achieve a safer environment. Hanson considered the UV option as well as other improved system filtration options. Hanson outlined pros and cons for each of these options.

OCPS and Hanson continued to consider different options, however with the focus and emphasis on air (filtration) purification, vs. HVAC system upgrades (UV and/or bi-polar ionization).

OCPS directed Hanson to research improved air filtration systems for our schools. In turn, Hanson recommended MERV 13 air filters as a preferred option. The MERV 13 is a very dense filter that captures air contaminants and has the ability to remove 85% of 1-micron particles sizes. Additionally, Hanson recommended a MERV 9A filter for schools where the HVAC equipment is within 5 years of its end of useful life and cannot support a MERV 13 installation.

- We started replacing existing filters with Merv 13 filters in January 2021. 182 sites now use Merv 13 filters. They are changed every 90 days for buildings and every 30 days for portables.
- Older buildings and ancillary offices, 51 sites, use Camfil Dual 9A filters.

08/17/2021

EDOH Data



SUMMARY OF CONFIRMED COVID-19 CASES FDOH ORANGE COUNTY

AVERAGE: JULY 23 – 26, 2021		
AGE RANGE	CONFIRMED CASES	%
0-4	25	3%
5-14	90.75	10%
15-24	134.25	16%
ALL	966	100%

AVERAGE: FIRST 6 DAYS OF SCHOOL		
AGE RANGE	CONFIRMED CASES	%
0-4	66.17	4%
5-14	211.5	14%
15-24	235.17	15%
ALL	1,493	100%

OCPS COVID-19 DASHBOARD

August 2 - 18, 2021

1,326

Total Confirmed Cases

398

Employees

920

Students

8

Vendors/Visitors

1,069

Active Quarantines

14

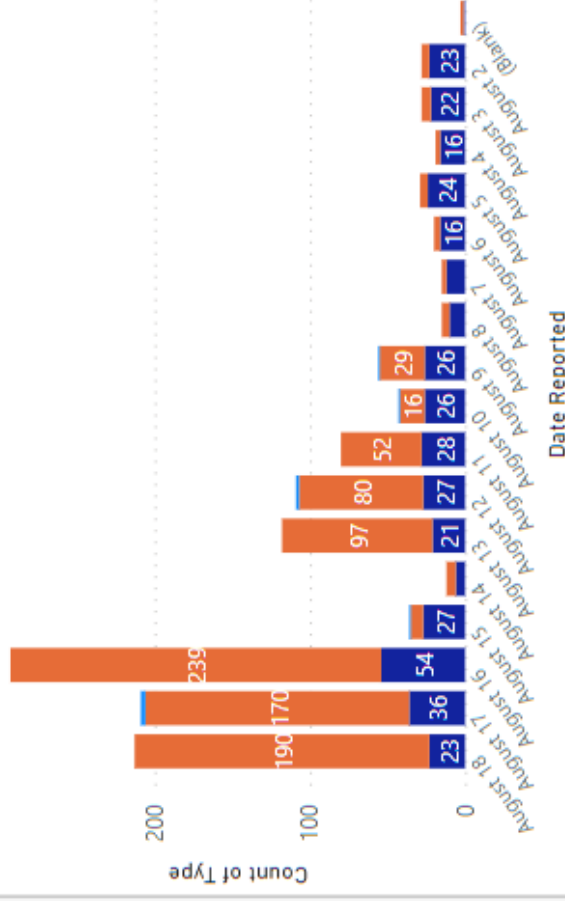
Employees

1,055

Students

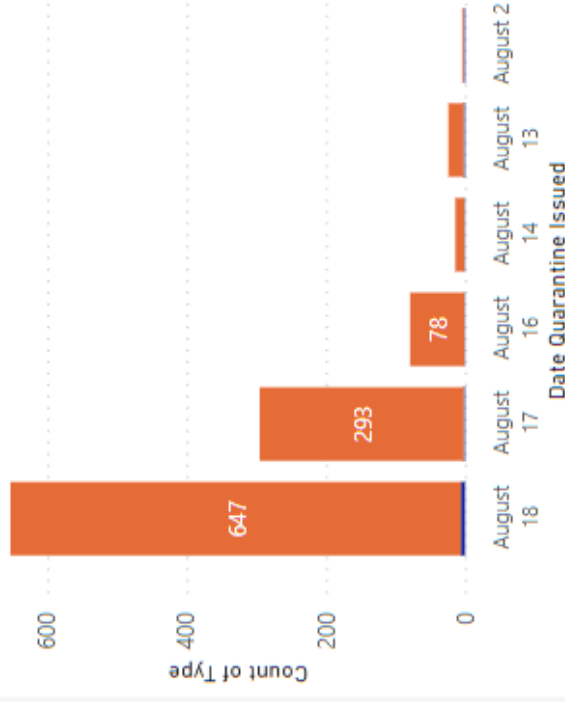
Reported Confirmed Cases on Campus since August 2, 2021

Type ● Employee ● Student ● Vendor/Visitor



Active Quarantines by Day

Type ● Employee ● Student



OCPS COVID-19 DASHBOARD

August 10-18, 2021

1,113

Total Confirmed Cases

248

Employees

858

Students

7

Vendors/Visitors

1,041

Active Quarantines

13

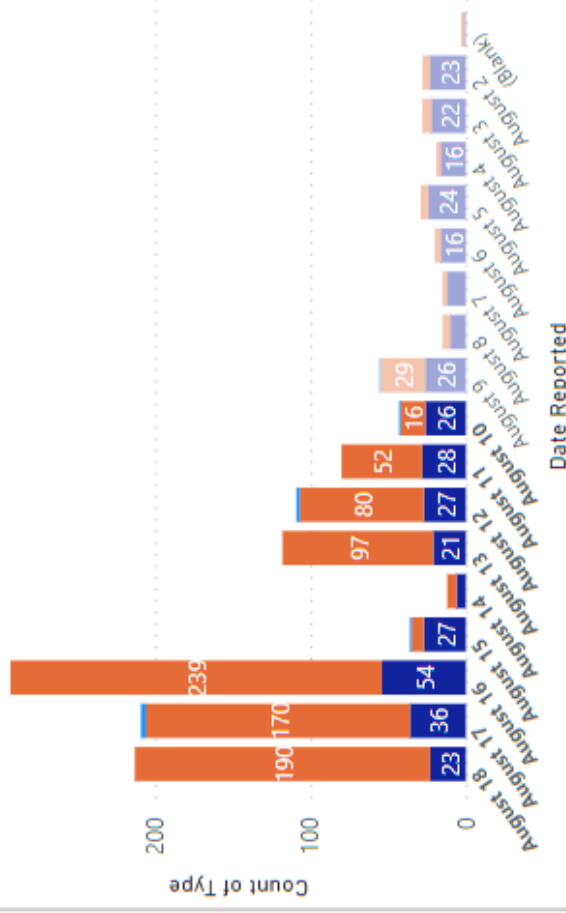
Employees

1,028

Students

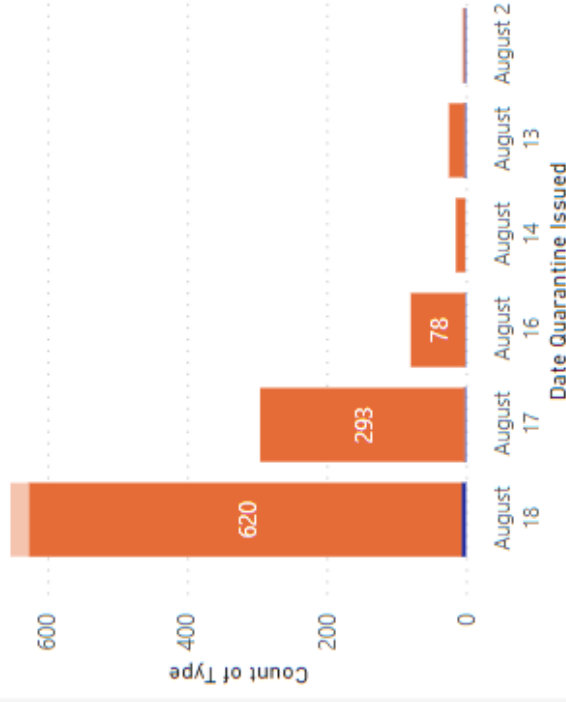
Reported Confirmed Cases on Campus since August 2, 2021

Type ● Employee ● Student ● Vendor/Visitor



Active Quarantines by Day

Type ● Employee ● Student



Staff Data



8/16/2021

28 Interviewing

Row Labels	Count of Org Unit
Alternative Education	5
DEVEREUX TREATMENT PROGRAM	1
JUVENILE DETENTION	1
POSITIVE PATHWAYS TRANSITION CENTER	2
PROJECT COMPASS	1
East Learning Community	3
LEGACY MIDDLE	1
UNION PARK MIDDLE	2
High Schools Learning Community	18
APOPKA HIGH	3
COLONIAL HIGH	2
DR PHILLIPS HIGH	1
HORIZON HIGH	2
LAKE BUENA VISTA HIGH	1
OAK RIDGE HIGH	1
OCOEE HIGH	2
OLYMPIA HIGH	3
UNIVERSITY HIGH	1
WEKIVA HIGH	1
WINDERMERE HIGH	1
Innovation Office	9
ARBOR RIDGE K-8	1
DREAM LAKE ELEMENTARY	3
HUNTERS CREEK MIDDLE	1
PERSHING SCHOOL	1
SHINGLE CREEK ELEMENTARY	1
SUNRIDGE MIDDLE	1
WINDY RIDGE K-8	1
North Learning Community	16
COLLEGE PARK MIDDLE	2
LOCKHART MIDDLE	2
PIEDMONT LAKES MIDDLE	1
PINEWOOD ELEMENTARY	2
RIDGEWOOD PARK ELEMENTARY	7
SILVER PINES ACADEMY K-12 LEARNING CENTER	2
School Choice Services	1
ORANGE YOUTH ACADEMY	1
School Transformation Office	12

CARVER MIDDLE	7
ROCK LAKE ELEMENTARY	2
ROSEMONT ELEMENTARY	3
Southeast Learning Community	7
ANDOVER ELEMENTARY	1
MOSS PARK ELEMENTARY	3
WETHERBEE ELEMENTARY	1
WYNDHAM LAKES ELEMENTARY	2
Southwest Learning Community	14
CASTLEVIEW ELEMENTARY	1
CATALINA ELEMENTARY	2
CHAIN OF LAKES MIDDLE	2
EAGLES NEST ELEMENTARY	1
HORIZON WEST MIDDLE	2
OCPS ACADEMIC CENTER FOR EXCELLENCE	1
PALMETTO ELEMENTARY	1
SADLER ELEMENTARY	1
SOUTHWEST MIDDLE	1
SUNSHINE ELEMENTARY	2
West Learning Community	24
BRIDGEWATER MIDDLE	3
CITRUS ELEMENTARY	2
HIAWASSEE ELEMENTARY	3
INDEPENDENCE ELEMENTARY	1
MAGNOLIA	3
METROWEST ELEMENTARY	1
ORANGE CENTER ELEMENTARY	2
PINE HILLS ELEMENTARY	1
ROBINSWOOD MIDDLE	2
SILVER PINES ACADEMY K-12 LEARNING CENTER	1
SUMMERLAKE ELEMENTARY	1
WATER SPRING MIDDLE	3
WESTBROOKE ELEMENTARY	1
Grand Total	109

Teacher Absences Due to Illness			
First Week of School			
Year	2018-19	2019-20	2021-22
First Day	52	70	148
Second Day	76	73	179
Third Day	98	107	227
Fourth Day	114	125	267



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[COVID-19 Vaccination Sites](#)[Expand Side Navigation](#)

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[COVID-19 Vaccinations](#)

[COVID-19 Testing](#)

[COVID-19 Vaccination Sites](#)

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Fall 2021 Vaccination Sites

First-Dose Locations

Aug. 16 | 4-7 p.m.

Memorial Middle (*Gymnasium*)
2220 W. 29th Street
Orlando, FL 32805

Aug. 16 | 5-7 p.m.

Oak Ridge High (*Gymnasium*)
700 W. Oak Ridge Road
Orlando, FL 32809

Aug. 17 | 4-7 p.m.

Carver Middle (*Gymnasium/Cafeteria*)
4500 W. Columbia Street
Orlando, FL 32811

Aug. 18 | 5-7 p.m.

Evans High (*Auditorium*)
4949 Silver Star Road
Orlando, FL 32808

Aug. 19 | 4:30-6:30

Meadowbrook Middle (*Gymnasium*)
6000 North Lane
Orlando, FL 32808

Aug. 20 | 4-7 p.m.

Robinswood Middle (*Media Center*)

6305 Balboa Drive
Orlando, FL 32818

Aug. 20 | 4:30-7 p.m.
Walker Middle (*Cafeteria*)
150 Amidon Lane
Orlando, FL 32809

Aug. 21 | 8 a.m.-3 p.m.
Colonial High (*Gymnasium*)
6100 Oleander Drive
Orlando, FL 32807

Aug. 25 | 3-6 p.m.
Lockhart Middle (*Cafeteria*)
3411 Doctor Love Road
Orlando, FL 32810

For more information about vaccination locations throughout Orange County, visit the [OCPS Vaccine Information page](#).



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In partnership with the Florida Department of Health in Orange County, the district will host one COVID-19 testing location each day. Monday- Friday testing sites will be open for OCPS students, parents and staff. Saturday and Sunday testing sites will be open for students, parents, staff and community members.

The locations are:

Mondays | 4 - 8 p.m.

Catalina Elementary

2448 29th Street

Orlando, FL 32805

Tuesdays | 4 – 8 p.m.

Avalon Elementary

13500 Tanja King Blvd.

Orlando, FL 32828

Wednesdays | 4 – 8 p.m.

Lakeville Elementary

2015 Lakeville Road

Apopka, FL 32703

Thursdays | 4 – 8 p.m.

Winegard Elementary

7055 Winegard Road

Orlando, FL 32809

Fridays | 4 – 8 p.m.

Westpointe Elementary

7525 Westpointe Blvd.

Orlando, FL 32835

Saturdays | 10 a.m. – 4 p.m.

Union Park Elementary

1600 N. Dean Road

Orlando, FL 32825

Sundays | 10 a.m. – 4 p.m.

Rosemont Elementary

4650 Point LookOut Road

Orlando, FL 32808

Please make sure to bring your ID. Any individual 17 or younger must be accompanied by a parent or legal guardian.

Student Data

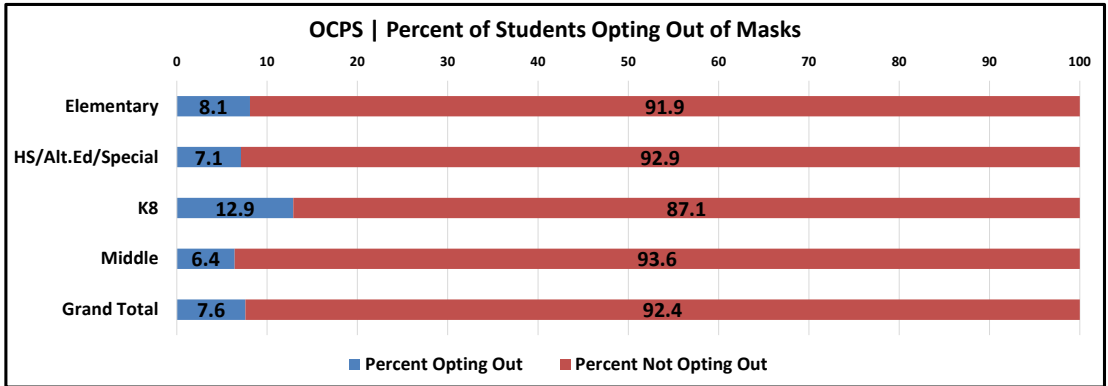


Enrollment

As of Friday, August 13, 2021

Traditional Schools with VPK	168,311
Alternative Schools	1,002
OCVS	3,364
HomeEd	8,226
FES/McKay	5,776
Charter Schools	14,198

OCPS Percent of Students Opting Out of Masks			
School Type	Students Opting Out of Masks	Total Students Enrolled	% Opt Out Mask
Elementary	5699	70330	8.1%
HS/Alt.Ed/Special	3943	55552	7.1%
K8	936	7247	12.9%
Middle	2306	35985	6.4%
Grand Total	12884	169114	7.6%



School Type	Enrolled_School	Count 8.18.21	Final Student Count with VPK	% Opt Out
HS/Alt.Ed/Special	ACCELERATION EAST	3	169	1.8%
HS/Alt.Ed/Special	ACCELERATION WEST	5	221	2.3%
Elementary	ALOMA ELEMENTARY	37	482	7.7%
HS/Alt.Ed/Special	AMI KIDS	0	8	0.0%
Elementary	ANDOVER ELEMENTARY	60	700	8.6%
Elementary	APOPKA ELEMENTARY	40	764	5.2%
HS/Alt.Ed/Special	APOPKA HIGH	303	3319	9.1%
Middle	APOPKA MIDDLE	65	1077	6.0%
K8	ARBOR RIDGE K-8	74	719	10.3%
K8	AUDUBON PARK SCHOOL	172	1061	16.2%
Elementary	AVALON ELEMENTARY	92	606	15.2%
Middle	AVALON MIDDLE	107	931	11.5%
Elementary	AZALEA PARK ELEMENTARY	15	397	3.8%
Elementary	BALDWIN PARK ELEMENTARY	17	728	2.3%
Elementary	BAY LAKE ELEMENTARY	44	634	6.9%
Elementary	BAY MEADOWS ELEMENTARY	84	640	13.1%
HS/Alt.Ed/Special	BETA SCHOOL	0	13	0.0%
K8	BLANKNER K-8	102	768	13.3%
Elementary	BONNEVILLE ELEMENTARY	60	379	15.8%
Middle	BRIDGEWATER MIDDLE	248	1722	14.4%
Elementary	BROOKSHIRE ELEMENTARY	79	522	15.1%
Elementary	CAMELOT ELEMENTARY	39	536	7.3%
Middle	CARVER MIDDLE	5	584	0.9%
Elementary	CASTLE CREEK ELEMENTARY	49	508	9.6%
Elementary	CASTLEVIEW ELEMENTARY	77	723	10.7%
Elementary	CATALINA ELEMENTARY	21	538	3.9%
Middle	CHAIN OF LAKES MIDDLE	27	935	2.9%
Elementary	CHENEY ELEMENTARY	23	401	5.7%
Elementary	CHICKASAW ELEMENTARY	20	487	4.1%
Elementary	CITRUS ELEMENTARY	27	449	6.0%
Elementary	CLAY SPRINGS ELEMENTARY	85	667	12.7%
Middle	CLEMENTE MIDDLE	13	879	1.5%
Middle	COLLEGE PARK MIDDLE	11	565	1.9%
HS/Alt.Ed/Special	COLONIAL HIGH	53	2847	1.9%
Elementary	COLUMBIA ELEMENTARY	134	470	28.5%
Elementary	CONWAY ELEMENTARY	30	441	6.8%
Middle	CONWAY MIDDLE	35	597	5.9%
Middle	CORNER LAKE MIDDLE	98	792	12.4%
HS/Alt.Ed/Special	CYPRESS CREEK HIGH	81	2933	2.8%
Elementary	CYPRESS SPRINGS ELEMENTARY	2	669	0.3%
Elementary	DEERWOOD ELEMENTARY	60	418	14.4%
HS/Alt.Ed/Special	DEVEREUX TREATMENT CENTER	0	12	0.0%
Elementary	DILLARD STREET ELEMENTARY	97	490	19.8%
Middle	DISCOVERY MIDDLE	72	769	9.4%
Elementary	DOMMERICH ELEMENTARY	121	545	22.2%
Elementary	DOVER SHORES ELEMENTARY	18	383	4.7%
Elementary	DR. PHILLIPS ELEMENTARY	174	691	25.2%
HS/Alt.Ed/Special	DR. PHILLIPS HIGH	114	2916	3.9%
Elementary	DREAM LAKE ELEMENTARY	47	620	7.6%
Elementary	EAGLE CREEK ELEMENTARY	103	697	14.8%
Elementary	EAGLE'S NEST ELEMENTARY	3	507	0.6%
Elementary	EAST LAKE ELEMENTARY	58	426	13.6%
HS/Alt.Ed/Special	EAST RIVER HIGH	179	2024	8.8%
Elementary	ECCLESTON ELEMENTARY	2	323	0.6%
HS/Alt.Ed/Special	EDGEWATER HIGH	129	1749	7.4%
Elementary	ENDEAVOR ELEMENTARY	33	544	6.1%
Elementary	ENGELWOOD ELEMENTARY	17	476	3.6%
HS/Alt.Ed/Special	ESE TRANSITION	2	114	1.8%
HS/Alt.Ed/Special	ESTEEM ACADEMY	3	18	16.7%
Elementary	FORSYTH WOODS ELEMENTARY	12	433	2.8%
HS/Alt.Ed/Special	FREEDOM HIGH	32	2639	1.2%

Middle	FREEDOM MIDDLE	17	970	1.8%
Middle	GLENRIDGE MIDDLE	74	1043	7.1%
Middle	GOTHA MIDDLE	59	1049	5.6%
Elementary	HIAWASSEE ELEMENTARY	3	454	0.7%
Elementary	HIDDEN OAKS ELEMENTARY	50	344	14.5%
Elementary	HILLCREST ELEMENTARY	52	421	12.4%
HS/Alt.Ed/Special	HORIZON HIGH	233	1224	19.0%
Middle	HORIZON WEST MIDDLE	121	1255	9.6%
Middle	HOWARD MIDDLE	108	974	11.1%
Elementary	HUNGERFORD ELEMENTARY	2	218	0.9%
Elementary	HUNTERS CREEK ELEMENTARY	26	705	3.7%
Middle	HUNTERS CREEK MIDDLE	45	1115	4.0%
Elementary	INDEPENDENCE ELEMENTARY	140	800	17.5%
Middle	INNOVATION MIDDLE	93	1184	7.9%
Elementary	IVEY LANE ELEMENTARY	0	255	0.0%
Elementary	JOHN YOUNG ELEMENTARY	43	597	7.2%
HS/Alt.Ed/Special	JONES HIGH	11	1389	0.8%
Middle	JUDSON B WALKER MIDDLE	8	750	1.1%
Elementary	KEENE'S CROSSING ELEMENTARY	195	998	19.5%
Elementary	KILLARNEY ELEMENTARY	35	324	10.8%
HS/Alt.Ed/Special	LAKE BUENA VISTA HIGH	48	949	5.1%
K8	LAKE COMO SCHOOL	52	704	7.4%
Elementary	LAKE GEM ELEMENTARY	11	481	2.3%
Elementary	LAKE GEORGE ELEMENTARY	27	434	6.2%
HS/Alt.Ed/Special	LAKE NONA HIGH	204	3674	5.6%
Middle	LAKE NONA MIDDLE	117	1456	8.0%
Elementary	LAKE SILVER ELEMENTARY	19	402	4.7%
Elementary	LAKE SYBELIA ELEMENTARY	46	407	11.3%
Elementary	LAKE WESTON ELEMENTARY	11	430	2.6%
Elementary	LAKE WHITNEY ELEMENTARY	112	526	21.3%
Elementary	LAKEMONT ELEMENTARY	47	503	9.3%
Middle	LAKEVIEW MIDDLE	86	752	11.4%
Elementary	LAKEVILLE ELEMENTARY	15	615	2.4%
Elementary	LANCASTER ELEMENTARY	3	533	0.6%
Elementary	LAUREATE PARK ELEMENTARY	103	904	11.4%
Elementary	LAWTON CHILES ELEMENTARY	57	555	10.3%
Middle	LEGACY MIDDLE	6	647	0.9%
Middle	LIBERTY MIDDLE	19	874	2.2%
Elementary	LITTLE RIVER ELEMENTARY	15	395	3.8%
Elementary	LOCKHART ELEMENTARY	3	334	0.9%
Middle	LOCKHART MIDDLE	13	758	1.7%
Elementary	LOVEL ELEMENTARY	31	626	5.0%
HS/Alt.Ed/Special	MAGNOLIA	3	84	3.6%
Middle	MAITLAND MIDDLE	146	683	21.4%
HS/Alt.Ed/Special	MAYNARD EVANS HIGH	10	2183	0.5%
Elementary	MEADOW WOODS ELEMENTARY	19	608	3.1%
Middle	MEADOW WOODS MIDDLE	14	809	1.7%
Middle	MEADOWBROOK MIDDLE	2	609	0.3%
Middle	MEMORIAL MIDDLE	3	815	0.4%
Elementary	METRO WEST ELEMENTARY	21	491	4.3%
Elementary	MICHAEL MCCOY ELEMENTARY	32	412	7.8%
Elementary	MILLENNIA ELEMENTARY	10	647	1.5%
Elementary	MILLENNIA GARDENS ELEMENTARY	15	780	1.9%
Elementary	MOLLIE RAY ELEMENTARY	0	341	0.0%
Elementary	MOSS PARK ELEMENTARY	157	962	16.3%
Elementary	NORTHLAKE PARK COMMUNITY ELEMENTARY	107	648	16.5%
Elementary	OAK HILL ELEMENTARY	13	388	3.4%
HS/Alt.Ed/Special	OAK RIDGE HIGH	16	2369	0.7%
Elementary	OAKSHIRE ELEMENTARY	23	475	4.8%
Elementary	OCOEE ELEMENTARY	49	612	8.0%
HS/Alt.Ed/Special	OCOEE HIGH	82	2425	3.4%
Middle	OCOEE MIDDLE	30	1137	2.6%

K8	OCPS ACADEMIC CENTER FOR EXCELLENCE	3	879	0.3%
Middle	ODYSSEY MIDDLE	19	653	2.9%
HS/Alt.Ed/Special	OLYMPIA HIGH	97	2908	3.3%
Elementary	ORANGE CENTER ELEMENTARY	0	257	0.0%
K8	ORLANDO GIFTED ACADEMY	16	318	5.0%
Elementary	ORLO VISTA ELEMENTARY	6	383	1.6%
HS/Alt.Ed/Special	PACE CENTER FOR GIRLS	0	15	0.0%
Elementary	PALM LAKE ELEMENTARY	66	623	10.6%
Elementary	PALMETTO ELEMENTARY	7	688	1.0%
K8	PERSHING SCHOOL	186	829	22.4%
Elementary	PHYLLIS WHEATLEY ELEMENTARY	1	380	0.3%
Middle	PIEDMONT LAKES	23	865	2.7%
Elementary	PINAR ELEMENTARY	9	303	3.0%
Elementary	PINE HILLE ELEMENTARY	2	529	0.4%
Elementary	PINELOCH ELEMENTARY	8	599	1.3%
Elementary	PINEWOOD ELEMENTARY	0	439	0.0%
HS/Alt.Ed/Special	POSITIVE PATHWAYS TRANSITION CENTER	3	122	2.5%
Elementary	PRAIRIE LAKE ELEMENTARY	2	754	0.3%
Elementary	PRINCETON ELEMENTARY	49	431	11.4%
HS/Alt.Ed/Special	PROJECT COMPASS	0	14	0.0%
HS/Alt.Ed/Special	RANDALL ACADEMY	1	7	14.3%
Elementary	RIDGEWOOD PARK ELEMENTARY	3	392	0.8%
Elementary	RIVERDALE ELEMENTARY	39	510	7.6%
Elementary	RIVERSIDE ELEMENTARY	37	466	7.9%
Middle	ROBINWOOD MIDDLE	4	982	0.4%
Elementary	ROCK LAKE ELEMENTARY	6	245	2.4%
Elementary	ROCK SPRINGS ELEMENTARY	83	654	12.7%
Elementary	ROLLING HILLS ELEMENTARY	3	386	0.8%
Elementary	ROSEMONT ELEMENTARY	6	442	1.4%
Elementary	SADLER ELEMENTARY	6	646	0.9%
Elementary	SALLY RIDE ELEMENTARY	9	384	2.3%
Elementary	SAND LAKE ELEMENTARY	63	571	11.0%
Elementary	SHENANDOAH ELEMENTARY	69	441	15.6%
Elementary	SHINGLE CREEK ELEMENTARY	5	644	0.8%
HS/Alt.Ed/Special	SILVER PINES	1	33	3.0%
HS/Alt.Ed/Special	SIMON YOUTH FOUND ACAD AT OUTLET MKTPLCE	2	7	28.6%
Middle	SOUTH CREEK MIDDLE	27	1000	2.7%
Middle	SOUTHWEST MIDDLE	77	1170	6.6%
Elementary	SOUTHWOOD ELEMENTARY	28	475	5.9%
Elementary	SPRING LAKE ELEMENTARY	26	423	6.1%
Elementary	STONE LAKES ELEMENTARY	73	608	12.0%
Elementary	SUMMERLAKE ELEMENTARY	199	973	20.5%
Elementary	SUN BLAZE ELEMENTARY	93	897	10.4%
Elementary	SUNRIDGE ELEMENTARY	40	632	6.3%
Middle	SUNRIDGE MIDDLE	213	1301	16.4%
Elementary	SUNRISE ELEMENTARY	71	469	15.1%
Elementary	SUNSET PARK ELEMENTARY	126	795	15.8%
Elementary	SUNSHINE ELEMENTARY	29	697	4.2%
Elementary	TANGELO PARK ELEMENTARY	9	400	2.3%
Elementary	THORNEBROOKE ELEMENTARY	1	593	0.2%
Elementary	THREE POINTS ELEMENTARY	23	416	5.5%
Elementary	TILDENVILLE ELEMENTARY	54	530	10.2%
HS/Alt.Ed/Special	TIMBER CREEK HIGH	228	3430	6.6%
Elementary	TIMBER LAKES ELEMENTARY	72	742	9.7%
Middle	TIMBER SPRINGS MIDDLE	63	913	6.9%
Elementary	UNION PARK ELEMENTARY	20	480	4.2%
Middle	UNION PARK MIDDLE	14	630	2.2%
HS/Alt.Ed/Special	UNIVERSAL EDUCATION CENTER	0	15	0.0%
HS/Alt.Ed/Special	UNIVERSITY HIGH	88	2375	3.7%
Elementary	VENTURA ELEMENTARY	10	535	1.9%
Elementary	VILLAGE PARK ELEMENTARY	30	532	5.6%
Elementary	VISTA LAKES ELEMENTARY	41	555	7.4%

Elementary	VISTA POINTE ELEMENTARY	30	506	5.9%
Elementary	WASHINGTON SHORES ELEMENTARY	0	310	0.0%
Elementary	WATER SPRING ELEMENTARY	125	1094	11.4%
Middle	WATER SPRING MIDDLE	48	451	10.6%
Elementary	WATERBRIDGE ELEMENTARY	29	568	5.1%
Elementary	WATERFORD ELEMENTARY	48	529	9.1%
K8	WEDGEFIELD SCHOOL	248	891	27.8%
HS/Alt.Ed/Special	WEKIVA HIGH	44	2007	2.2%
Elementary	WEST CREEK ELEMENTARY	45	618	7.3%
Elementary	WEST OAKS ELEMENTARY	1	451	0.2%
HS/Alt.Ed/Special	WEST ORANGE HIGH	451	2611	17.3%
Elementary	WESTBROOKE ELEMENTARY	28	522	5.4%
Elementary	WESTPOINTE ELEMENTARY	25	541	4.6%
Middle	WESTRIDGE MIDDLE	4	975	0.4%
Elementary	WETHERBEE ELEMENTARY	45	1079	4.2%
Elementary	WHISPERING OAK ELEMENTARY	227	1035	21.9%
Elementary	WILLIAM FRANGUS ELEMENTARY	12	348	3.4%
HS/Alt.Ed/Special	WILLIAM R BOONE HIGH	416	2689	15.5%
Elementary	WILLIAM S MAXEY ELEMENTARY	12	393	3.1%
Elementary	WINDERMERE ELEMENTARY	185	600	30.8%
HS/Alt.Ed/Special	WINDERMERE HIGH SCHOOL	628	2990	21.0%
K8	WINDY RIDGE K-8	83	1078	7.7%
Elementary	WINEGARD ELEMENTARY	23	559	4.1%
HS/Alt.Ed/Special	WINTER PARK HIGH	473	3050	15.5%
Elementary	WOLF LAKE ELEMENTARY	82	847	9.7%
Middle	WOLF LAKE MIDDLE	172	1314	13.1%
Elementary	WYNDHAM LAKES ELEMENTARY	28	916	3.1%
Elementary	ZELLWOOD ELEMENTARY	58	576	10.1%

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169114

Legal Updates

C  VID 19

From: [Palmerini, John C.](#)
To: [Pagan, Marieliz](#)
Cc: [Envall, Amy D.](#)
Subject: FW: Constitutional authority of Board and Superintendent with respect to complying with executive orders
Date: Tuesday, August 17, 2021 9:42:08 AM

For inclusion in the legal tab of the notebook.

John C. Palmerini, B.C.S. in Education and Labor and Employment Law
Deputy General Counsel, Employment, Labor and Litigation
School Board of Orange County, Florida
445 W. Amelia St., Orlando, FL 32801
407-317-3200, ext. 2002954



From: Palmerini, John C.
Sent: Friday, July 30, 2021 4:26 PM
To: School Board <schoolboard@ocps.net>
Cc: Jenkins, Barbara M. <barbara.jenkins@ocps.net>; Envall, Amy D. <Amy.Envall@ocps.net>; Vazquez, Maria F. <maria.vazquez@ocps.net>; Williams, Bridget <bridget.williams@ocps.net>
Subject: Constitutional authority of Board and Superintendent with respect to complying with executive orders

Dear Members of the Board,

It is my understanding that some members of the Board have received emails from constituents urging that you defy the upcoming executive order to be issued by the Governor and require students to wear masks.

For the reasons stated below, such actions could potentially lead to your removal from office by the Governor.

Under Article IV, Section 7(a) of the Florida Constitution, “By executive order stating the grounds and filed with the custodian of state records, **the governor may suspend from office** any state officer not subject to impeachment, any officer of the militia not in the active service of the United States, or **any county officer, for malfeasance, misfeasance,** neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony, and may fill the office by

appointment for the period of suspension. The suspended officer may at any time before removal be reinstated by the governor.” (Emphasis added)

The Florida Supreme Court, in its 1993 decision titled In re Advisory Opinion to Governor-Sch. Bd. Member-Suspension Auth., 626 So. 2d 684, 687 (Fla. 1993), held that School Board members may be suspended from office by the Governor under Article IV, Section 7(A) of the Florida Constitution: “The single question presented by these letters is whether a school board member is a ‘county’ officer, in which event he or she may be suspended only under article IV, section 7(a), or a ‘district’ officer, in which event the school board member could be suspended under the statutory authority of section 112.51, Florida Statutes (1991). **For the reasons expressed in this opinion, we conclude that an elected school board member may be suspended by the governor only under the authority granted in article IV, section 7.**” (Emphasis added)

Article IV, Section 7(a) lists misfeasance and malfeasance as a basis for suspension. Misfeasance is defined as the “improper doing of an act which a person might lawfully do.” Rosa v. Dep't of Children & Families, 915 So. 2d 210, 212 (Fl. 1st DCA 2005) Malfeasance is “the doing of an act which a person ought not do at all.” Id. The question then becomes whether defying an executive order is something a Board Member can legally do. Pursuant to s. 252.36(1)(b), Fla. Stat., executive orders issued by the Governor in cases of public emergencies have the force of law: “Pursuant to the authority vested in her or him under paragraph (a), the Governor may issue executive orders, proclamations, and rules and may amend or rescind them. **Such executive orders, proclamations, and rules shall have the force and effect of law.**” (Emphasis added)

Defying an executive order which has the force and effect of law by a School Board member would be an illegal act and would therefore be malfeasance in my opinion: “Malfeasance has reference to evil conduct or an illegal deed, the doing of that which one ought not to do, the **performance of an act by an officer in his official capacity that is wholly illegal** and wrongful, which he has no right to perform or which he has contracted not to do.” State ex rel. Hardie v. Coleman, 155 So. 129, 132 (Fla. 1934). (Emphasis added) It is my opinion that requiring all students to be masked in violation of an executive order prohibiting such action would be grounds for removal from office by the Governor.

It is also my understanding that some constituents are urging the Board to bring suit against the Governor to invalidate the executive order. The basis of such a suit would be the School Board’s right under Article IX, Section 4(b) of the Florida Constitution to “operate, control and supervise” all public schools in the District as well as s. 1001.42(8), Fla. Stat., which states the School Board must provide “for proper attention to health, safety, and other matters relating to the welfare of students.”

However, school boards must presume acts by the legislature or governor are constitutional and do not have the legal ability to sue (or standing as it is known in the law) to challenge the constitutionality of a statute or an executive order. “The school boards' constitutional challenge to HB 7069's provisions represents their disagreement with new statutory duties enacted by the Legislature. As the foregoing authority makes clear, however, the school boards must presume that the provisions at issue are constitutional. ... Based upon the foregoing, the school boards lack

standing to challenge the constitutionality of HB 7069's provisions pertaining to the schools of hope, the charter school standard contract, and the charter school 'turnaround' provisions." Sch. Bd. of Collier County v. Florida Dep't of Educ., 279 So. 3d 281, 289-290 (Fla. 1st DCA 2019), review denied sub nom. Sch. Bd. of Alachua County, Florida v. Florida Dep't of Educ., SC19-1649, 2020 WL 1685138 (Fla. Apr. 7, 2020).

Finally, in DeSantis v. Florida Education Association, 306 So.3d 1202, 1215 (Fla. 1st DCA 2020), the Court held it was not its province to usurp the role of Governor and Commissioner of Education in the political decisions the Governor makes in fighting the pandemic: "The court cannot decide whether the State has met its obligation to provide for safe and secure schools unless it makes policy determinations reserved for the executive branch and the non-party school districts. Nor can the court determine whether the Governor and the Commissioner, through their delegated emergency authority, met the executive's statutory obligation to address the natural emergency presented by the pandemic. And the court cannot resolve the questions here 'without expressing lack of respect due coordinate branches of government.'"

For the reasons expressed above, it is my opinion that defying any executive order which prohibits School Boards from requiring students and staff wear masks could potentially lead to your removal from office. Moreover, I do not think this Board would have standing to sue the Governor to overturn any executive order prohibiting School Boards from requiring students to wear masks, as the School Boards must presume the Governor's exercise of his executive authority to issue the executive order is constitutional. Nothing in this opinion should be read to address my thoughts about the propriety of the impending executive order to be issued by the Governor.

Of course, we will review the upcoming executive order when it is issued and we will pass it along to you along with any necessary comments. If anything in the issued executive order changes my analysis, I will let you know as well.

If you would like to address your constituents with a short email, I would state as follows: "If the Board were to defy an executive order issued by the Governor, it could potentially lead to the Board Members removal from office by the governor under Article IV, Section 7(a) of the Florida Constitution for malfeasance. Also, the Board does not have the legal ability to sue the Governor to overturn his executive order, as case law requires the Board to presume the executive order is constitutional."

Please do not hesitate to contact me should you have any further questions or concerns.

Sincerely,

John C. Palmerini, B.C.S. in Education and Labor and Employment Law
Deputy General Counsel, Employment, Labor and Litigation
School Board of Orange County, Florida
445 W. Amelia St., Orlando, FL 32801
407-317-3200, ext. 2002954

From: [Palmerini, John C.](#)
To: [Pagan, Marieliz](#)
Cc: [Envall, Amy D.](#)
Subject: FW: One more plea
Date: Tuesday, August 17, 2021 9:42:23 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)

From: Palmerini, John C.
Sent: Monday, August 2, 2021 10:00 AM
To: Lopez, Johanna <johanna.lopez@ocps.net>
Cc: Jenkins, Barbara M. <barbara.jenkins@ocps.net>; Envall, Amy D. <Amy.Envall@ocps.net>; Vazquez, Maria F. <maria.vazquez@ocps.net>; Williams, Bridget <bridget.williams@ocps.net>
Subject: RE: One more plea

Dear Member Lopez,

Please allow this email to respond to the question below. I spoke with the General Counsel of the Broward County School Board this morning. In light of the Executive Order signed Friday by the Governor, it is my understanding that Broward County Schools will not require children to wear masks. Please do not share this information as of this time because the Broward County School Board has not publically announced it will comply with the Executive Order.

As for the home rule question, School Board home rule is established by s. 1001.32(2), Fla. Stat., which states "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)

As I wrote to you all on Friday, the Executive Order under s. 252.36(1)(b), Fla. Stat., has the force of law: "Pursuant to the authority vested in her or him under paragraph (a), the Governor may issue executive orders, proclamations, and rules and may amend or rescind them. **Such executive orders, proclamations, and rules shall have the force and effect of law.**" (Emphasis added) If your action in operating, controlling and supervising conflicts with an Executive Order, which has the force of law, then your home rule authority would not protect such action.

Also, I have to remind you of s. 1001.42(15), Fla. Stat. which states that School Boards and School Board members must "**require that all laws** and rules of the State Board of Education or of the district school board are properly enforced." Since the Executive Order has the force and effect of law, you as a Board Member and the Board as a whole must ensure that the Executive Order is properly enforced.

Please let me know if you have any further questions or concerns.

John C. Palmerini, B.C.S. in Education and Labor and Employment Law
Deputy General Counsel, Employment, Labor and Litigation
School Board of Orange County, Florida
445 W. Amelia St., Orlando, FL 32801
407-317-3200, ext. 2002954



From: Lopez, Johanna <johanna.lopez@ocps.net>
Sent: Sunday, August 1, 2021 9:53 PM
To: Susan Frese <susan_frese@hotmail.com>; Palmerini, John C. <John.Palmerini@ocps.net>
Subject: Re: One more plea

I will look into it. I am forwarding your email to Mr. Palmerini to provide feedback on this matter.

Johanna López
Board Member, District 2
Orange County Public Schools
445 W Amelia St. Orlando, FL 32801
Office: 407.317.3236
www.ocps.net

 @JohannaOCPS  @JohannaOCPS  @JohannaOCPS

From: Susan Frese <susan_frese@hotmail.com>
Date: Sunday, August 1, 2021 at 9:30 PM
To: Lopez, Johanna <johanna.lopez@ocps.net>
Subject: Re: One more plea

CAUTION: This email originated from outside of Orange County Public Schools. Do not click links or open attachments unless you know the content is safe.

An Executive Order doesn't supersede home rule. You might want to call the attorney at Broward County schools to see what/how they did it. It's a risk, but he is all bark and no bite.

Get [Outlook for iOS](#)

From: Lopez, Johanna <johanna.lopez@ocps.net>
Sent: Sunday, August 1, 2021 5:38:27 PM
To: Susan Frese <susan_frese@hotmail.com>
Subject: Re: One more plea

Thank you so much for providing your feedback. This is a very difficult situation. Before the governor issued his executive order prohibiting mask mandates in our schools I had asked the superintendent to establish the mask mandate. I am currently having conversations with the legal department to come up with creative solutions and policies to protect the safety of our students and staff.

Johanna López
Board Member, District 2
Orange County Public Schools
445 W Amelia St. Orlando, FL 32801
Office: 407.317.3236
www.ocps.net



@JohannaOCPS



@JohannaOCPS



@JohannaOCPS

From: Susan Frese <susan_frese@hotmail.com>
Date: Friday, July 30, 2021 at 8:04 PM
To: Jacobs, Teresa S. <Teresa.Jacobs@ocps.net>, Gallo, Angie R. <Angie.Gallo@ocps.net>, Lopez, Johanna <johanna.lopez@ocps.net>, Kobert, Linda G. <Linda.Kobert@ocps.net>, Gould, Pamela J. <Pamela.Gould@ocps.net>, Felder, Vicki E. <vicki.felder@ocps.net>, Dentel, Karen C. <Karen.CastorDentel@ocps.net>, Byrd, Melissa M. <Melissa.Byrd@ocps.net>
Subject: One more plea

CAUTION: This email originated from outside of Orange County Public Schools. Do not click links or open attachments unless you know the content is safe.

It's not a matter of if. It's a matter of when. If the Broward County school board can put forth a mask mandate, you can too. Most kids don't die is your rationale right? Most kids don't suffer serious illnesses, right? The students WILL get sick and then they WILL spread it. In Orange County, we had an 18% positivity rate with 1000+ per day testing positive last week. I personally know 5 people with COVID. One who thought the worst was behind her was admitted to the hospital today with Pneumonia.

The LEAST restrictive tool to stop the spread is masks and social distancing. If we can't distance - we at least mask up. To take both away is insanity. Your decision has to be politically charged or you caved. And for those of you on the board doing your own "research," the CDC provided guidance, but I guess your Bachelor's Degree in Marketing from UCF is better than Dr. Rochelle Walensky's education. I guess marketing classes touch on infectious diseases now. FML! Miss Kat never would have voted this way.

[Rochelle Walensky, MD, MPH](#), is the chief of the [Infectious Diseases Division](#) at Massachusetts General Hospital, Steve and Deborah Gorlin MGH Research Scholar 2015-2020, and professor of medicine at Harvard Medical School. Dr. Walensky received her MD from the Johns Hopkins School of Medicine and her MPH from the Harvard School of Public Health. She trained in internal medicine at the Johns Hopkins Hospital and in infectious diseases at the [MGH/BWH combined fellowship program](#).

Please do not write me back.

Previous week (July 23, 2021 - July 29, 2021)



County	2021 population	Cumulative (since March 1, 2020)				Previous week (July 23, 2021 - July 29, 2021)			
		People vaccinated	Percent 12+ vaccinated	Cases	Case positivity	People vaccinated	Cases	New case positivity	Cases per 100,000 population
Holmes	20,211	4,573	26%	2,447	25.6%	89	93	20.0%	460.1
Indian River	160,707	96,351	67%	14,411	15.1%	1,322	682	18.7%	424.4
Jackson	47,261	15,835	38%	7,154	23.5%	559	311	19.2%	658.0
Jefferson	14,887	6,152	46%	1,623	20.3%	161	66	21.0%	443.3
Lafayette	8,799	2,688	35%	1,725	41.9%	76	47	24.9%	534.2
Lake	377,680	195,893	59%	35,650	16.4%	3,630	1,961	23.0%	519.2
Lee	773,456	406,533	59%	79,160	17.6%	6,718	2,947	19.2%	381.0
Leon	303,541	139,250	52%	35,497	18.1%	2,856	1,511	15.4%	497.8
Levy	41,859	15,343	42%	4,117	20.6%	441	210	24.1%	501.7
Liberty	8,837	2,431	31%	1,212	21.9%	113	55	27.2%	622.4
Madison	19,299	6,515	38%	2,235	21.9%	155	85	24.0%	440.4
Manatee	405,480	210,615	59%	43,140	16.4%	3,290	1,552	17.5%	382.8
Marion	372,469	173,848	53%	36,115	20.0%	3,720	1,881	24.5%	505.0
Martin	162,810	88,913	61%	14,412	15.2%	1,471	557	17.8%	342.1
Monroe	76,335	48,241	70%	7,374	13.3%	710	249	16.2%	326.2
Nassau	89,151	41,644	54%	10,715	20.2%	1,617	810	26.8%	908.6
Okaloosa	206,418	79,523	45%	22,795	22.6%	1,812	810	27.6%	392.4
Okeechobee	42,449	14,407	40%	4,568	20.5%	270	154	19.4%	362.8
Orange	1,457,445	780,452	63%	163,417	15.5%	17,332	7,913	18.2%	542.9

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From: [Palmerini, John C.](#)
To: [Pagan, Marieliz](#)
Cc: [Envall, Amy D.](#)
Subject: FW: Brown study referenced in the Executive Order
Date: Tuesday, August 17, 2021 9:44:48 AM

From: Palmerini, John C.
Sent: Thursday, August 5, 2021 1:39 PM
To: School Board <schoolboard@ocps.net>
Cc: Jenkins, Barbara M. <barbara.jenkins@ocps.net>; Envall, Amy D. <Amy.Envall@ocps.net>; Vazquez, Maria F. <maria.vazquez@ocps.net>; Williams, Bridget <bridget.williams@ocps.net>
Subject: Brown study referenced in the Executive Order

Dear Members of the Board,

The link below is to the study from Brown University referenced in the Executive Order. The study, which was released on May 21, 2021, has not been peer reviewed for its methodology at this time. The following note is attached to the article: "Readers should therefore be aware that articles on medRxiv have not been finalized by authors, might contain errors, and report information that has not yet been accepted or endorsed in any way by the scientific or medical community. We also urge journalists and other individuals who report on medical research to the general public to consider this when discussing work that appears on medRxiv preprints and emphasize it has yet to be evaluated by the medical community and the information presented may be erroneous."

<https://www.medrxiv.org/content/10.1101/2021.05.19.21257467v1.full-text>

Let me know if you need anything further.

John C. Palmerini, B.C.S. in Education and Labor and Employment Law
Deputy General Counsel, Employment, Labor and Litigation
School Board of Orange County, Florida
445 W. Amelia St., Orlando, FL 32801
407-317-3200, ext. 2002954



From: [Palmerini, John C.](#)
To: [Pagan, Marieliz](#)
Cc: [Envall, Amy D.](#)
Subject: FW: OCPS Mask Policy
Date: Tuesday, August 17, 2021 9:45:19 AM

From: Palmerini, John C.
Sent: Thursday, August 5, 2021 2:25 PM
To: Jacobs, Teresa S. <Teresa.Jacobs@ocps.net>
Cc: Jenkins, Barbara M. <barbara.jenkins@ocps.net>; Envall, Amy D. <Amy.Envall@ocps.net>; Vazquez, Maria F. <maria.vazquez@ocps.net>; Williams, Bridget <bridget.williams@ocps.net>
Subject: RE: OCPS Mask Policy

Dear Madam Chair,

As you know, the legislature has passed 1001.42(15), Fl. Stat. which requires School Boards to “require that all laws and rules of the State Board of Education or of the district school board are properly enforced.” The Superintendent is also required to follow the law and the rules of the State Board. See s1001.49(14), Fla. Stat. which states that the Superintendent shall “require that all laws and rules of the State Board of Education, as well as supplementary rules of the district school board, are properly observed and report to the district school board any violation that the district school superintendent does not succeed in having corrected.”

As I have stated to the Board previously, s. 252.36(1)(b) states that the Executive Order has the force and effect of law.: “Such executive orders, proclamations, and rules shall have the force and effect of law.” The FDOE and FDOH will be promulgating rules to enforce the requirement of the Governor’s order that “protect parents’ right to make decisions regarding masking of their children in relation to COVID-19.”

The Executive Order references s. 1008.32(4), Fla. Stat. That statute gives the FDOE enforcement authority over school boards which violate law and which violate State Board of Education rules. The statute states as follows: “If the State Board of Education determines that a district school board or Florida College System institution board of trustees is unwilling or unable to comply with law or state board rule within the specified time, the state board shall have the authority to initiate any of the following actions: ... Withhold the transfer of state funds, discretionary grant funds, discretionary lottery funds, or any other funds specified as eligible for this purpose by the Legislature until the school district or Florida College System institution complies with the law or state board rule.” (See s. 1008.32(4)(b), Fla. Stat.)

Given the existence of a statutory basis already in law to allow FDOE to withhold money if the district does not follow law (the Executive Order has the force and effect of law) and State Board of Education rules (which will be adopted tomorrow), I respectfully disagree with the assertion by the Senator that there would need to be a separate legislative action to adopt sanctions for failing to follow the Executive Order. Current law already allows for withholding of state funds when a school

district violates either law or State Board of Education rules.

Let me know if you need anything further.

Sincerely,

John C. Palmerini, B.C.S. in Education and Labor and Employment Law
Deputy General Counsel, Employment, Labor and Litigation
School Board of Orange County, Florida
445 W. Amelia St., Orlando, FL 32801
407-317-3200, ext. 2002954



From: Jacobs, Teresa S. <Teresa.Jacobs@ocps.net>
Sent: Thursday, August 5, 2021 1:43 PM
To: Steven Green <segreen2@gmail.com>
Cc: Palmerini, John C. <John.Palmerini@ocps.net>
Subject: Re: OCPS Mask Policy

Mr. Green,

I am certainly not an expert on the legal authority of the legislature relative to the legal authority of the Governor. By copy of this email, I am sharing your questions with our Deputy General Counsel, as he will likely be far more knowledgeable.

Teresa Jacobs
School Board Chair
Orange County Public Schools
45 W. Amelia St., Orlando, Florida 32801
407-317-3236
www.ocps.net

From: Steven Green <segreen2@gmail.com>

Sent: Wednesday, August 4, 2021 5:40 PM

To: Jacobs, Teresa S.

Subject: Re: OCPS Mask Policy

⚠ CAUTION: This email originated from outside of Orange County Public Schools. Do not click links or open attachments unless you know the content is safe.

Ms. Jacobs,

Thank you very much for the detailed explanation. I very much appreciate the extensive research and effort the School Board has put into this. I recently heard State Senator Gary Farmer speak at a Broward County School Board Meeting. He is of the opinion that the Governor's EO is toothless, as it would take action by the legislature to adopt sanctions for defying this EO which only directed two state agencies to engage in rule making. That action would take months. Have you or your counsel reached out to his office for clarification on his interpretation that is contrary to yours?

Thank you again for your time and consideration.

Sincerely ,

Steven Green

On Mon, Aug 2, 2021 at 6:21 PM Jacobs, Teresa S. <Teresa.Jacobs@ocps.net> wrote:

Mr. Green,

Thank you for reaching out to me. I apologize in advance that this email may not address every issue you raised. However, due to the large volume of emails, it is not possible to timely respond individually to each email. Let me clarify at the outset, that I am in favor of mandatory masks in school at the start of the school year, but any attempt to require masks has been blocked by the Governor's latest executive order.

The following is a recap of recent events relating to and the current status of our mask policy.

Recap of School Board Actions and Discussions

On April 14, 2021, we received a letter from the Commissioner of Education with his expectations that masks be optional at the start of this school year. While his direction was clear, it was not legally binding on school districts. We are also aware of the Governor's position, through his various press conferences and speeches, that parents not school districts should determine whether or not their children wear a mask.

On Monday, July 26, 2021, The Chancellor of K-12 education conducted a state-wide conference call with all superintendents clarifying the Department of Education's position, that any mitigation strategies utilized in our schools should be surgical in nature, not sweeping. While the direction from the Governor, Commissioner of Education and the Department of Education was clear, none of this was binding on school districts.

Notwithstanding the direction from the state, during the discussion period near the end of last Tuesday's school board meeting, I shared my concerns with fellow school board members. I also explained that if I had the sole authority to make this decision, I would reinstate the mandatory mask requirement for the start of the school year. However, after soliciting input from the board on this issue, only two other board members concurred. That's three members out of eight members on the board, not enough to provide direction to the superintendent to reinstate mandatory masks.

To clarify, the revisions we made to our mask policy on July 13, 2021 included a provision that allows the superintendent to reinstate mandatory masks based upon guidance from the CDC or other governmental entities which mandates more restrictive face covering requirements. To ensure everyone understood my position before I cast my vote, I stated that my decision was made based on the provision that the district can reinstate the mask requirement, if necessary, even if that means changing course between now and the start of the school year. As I further explained, "if I believe in my heart of hearts that a decision I've made is putting our children at significant risk and they'd be safer with masks, then I will be back here advocating for that." Which is what I did during last Tuesday's meeting. However, lacking the support of the majority of the board, there was no board direction to the superintendent to exercise this provision.

The majority of the board, while sharing concerns for the welfare of our students, were not in support of mandating masks at this time based on the directions of the state. In general, they felt the better approach was to monitor positivity and hospitalizing rates by zip code, if we could obtain this data. This data could enable the district to add additional layers of protection, such as requiring masks for schools in the most impacted communities; thereby applying a more "surgical approach." To summarize the board's position, the majority of board members were justifiably concerned that if we attempted to impose a district-wide mandate, the Governor would strike it down.

What is the Effect of Governor DeSantis' Executive Order Number 21-175

The school board's concern was subsequently validated by the Governor's Executive Order #21-175, which was executed two days after the Broward County School Board voted to require masks. Executive Order #21-175 directed the Florida Health Department (FDOH) and the Florida Department of Education (FLDOE) to execute rules and take all actions necessary - including withholding state funding (without which our schools cannot operate) to, among other things, ensure that parents have the right to decide whether their children will wear masks in school.

Who Has Authority Over Mask Requirements in Schools, the Governor/State or Local School Boards?

I have since received several emails requesting that we defy this order since their understanding of the Florida Constitution is that school boards, not the Governor, control schools. I understand why people believe this to be true based on Article IX, Section 4(b) of the Constitution which states:

"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. Two or more school districts may operate and finance joint educational programs."

However, the question of whether the State, through the State Board of Education, and subsequently through FLDOE and the Commissioner of Education, has superior authority has been litigated and appears to be resolved. To clarify this issue, I and several other school board members have posed the question to our General Counsel's Office of whether the emergency order and, more importantly, subsequent emergency rules to be issued by the FDOE are binding on local school districts. Below is the response from our Deputy General Counsel.

"The School Board's ability to operate, control and supervise under Article IX, Section 4(b) under the Florida Constitution is limited by law. See s. 1001.32(2), Fla. Stat.: "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) The authority of the State to oversee local School Boards under the Florida Constitution was recognized in Sch. Bd. of Palm Beach County v. Florida Charter Educ. Found., Inc., 213 So. 3d 356, 360 (Fla. 4th DCA 2017):

The Florida Constitution provides that "[t]he state board of education shall be a body corporate and have such *supervision of the system* of free public education as is provided by law." Art. IX, § 2, Fla. Const. (emphasis added). 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. It is "a paramount duty *of the state* to make adequate provision for the education of all children within its borders."

As I explained in a previous email, School Boards have been prohibited by case law from suing the State when it believes that its ability to operate, control and supervise under Article IX, Section 4(b) has been usurped when the expenditure of public funds is not implicated. In Sch. Bd. of Collier County v. Florida Dep't of Educ., 279 So. 3d 281, 288–89 (Fla. 1st DCA 2019), this School Board and approximately 12 other School Boards challenged the constitutionality of certain portions of House Bill 7069 under Article IX, Section 4(b) of the Florida Constitution because we believed HB 7069 overrode our power to operate, control and supervise schools within the District. The Courts ruled that School Boards do not have the legal ability to sue or challenge the constitutionality of the act and that School Boards must presume such acts are lawful:

"The doctrine, which we recently addressed, and which is grounded in the separation of powers, 'recognizes that public officials are obligated to obey the legislature's duly enacted statute until the judiciary passes on its constitutionality.' It is for that reason that a public official's '[di] agreement with a constitutional or statutory duty, or the means by which it is to be carried out, does not create a justiciable controversy or provide an occasion to give an advisory judicial opinion.' The prohibition against public officials attacking the constitutionality of a statute is not limited to those public

officials charged with a duty under the challenged law, but also extends to public officials whose duties are affected by the challenged law.; *see also Echeverri*, 991 So. 2d at 794–803 (holding that a property appraiser acting in his or her official capacity lacks standing to raise the constitutionality of a statute as a defense in an action by a taxpayer and finding its earlier holding in *State ex rel. Atlantic Coast Line Railway Co. v. State Board of Equalizers*, 84 Fla. 592, 94 So. 681 (1922), **that a public official may not challenge the constitutionality of the statute as ‘promot[ing] an important public policy of ensuring the orderly and uniform application of state law’**)...”

So even though the Board thought the Executive Order was unconstitutional under Article IX, Section 4(b), it cannot raise such constitutional challenges under the House Bill 7069 case cited above. Remember, an Executive Order under s. 252.36(1)(b), Fla. Stat. has the force and effect of a law passed by the Legislature, so the same analysis would apply."

Does the Governor/State Have Enforcement Powers?

I should also point out that if the Broward County School Board tries to enforce a mask mandate that violates an order, according to our Deputy General Counsel, the Governor would have the authority under Article IV, Section 7(a) of the Florida Constitution to remove them from office for failing to uphold the laws of the State of Florida. That might seem like the noble approach board members should take; however, the Governor also has the authority to appoint their replacements until such time as a special election is held. Should this happen, the appointees would obviously comply with the Governor’s requests and the parents who are in opposition to the Governor’s position on this and other matters would lose their potential voice on the school board.

Is LaunchEd@Home an Option?

Another question that has come up frequently in response to the lack of a mask mandate is whether OCPS will continue to offer LaunchEd@Home this fall. Unfortunately, we are no longer able to offer this option. The virtual options that are available are Orange County Virtual School with an enrollment cutoff of August 6 and Florida Virtual School with an enrollment cutoff of August 13.

Closing

In closing, I disagree with the Governor's decision that masks cannot be mandatory in schools, especially in the midst of this very real and alarming surge in cases and hospitalizations. But I do understand the Governor’s broad authority. However, since the Governor believes parents, not the government, should be able to decide whether their children should wear a mask to school to protect themselves and other students, I wish the Governor would also support parent’s right to choose an alternative instruction platform such as LaunchEd@Home until we are safely through this pandemic.

In light of the issues you have raised and the limited control we have at this point, I would urge you to also reach out to the Governor's Office to express your concerns.

Teresa Jacobs

School Board Chair

[Orange County Public Schools](http://www.ocps.edu)

[45 W. Amelia St., Orlando, Florida](#) 32801

407-317-3236

www.ocps.net

From: Steven Green <segreen2@gmail.com>
Sent: Monday, August 2, 2021 09:48 AM
To: Jacobs, Teresa S. <Teresa.Jacobs@ocps.net>
Subject: OCPS Mask Policy

⚠ CAUTION: This email originated from outside of Orange County Public Schools. Do not click links or open attachments unless you know the content is safe.

Good morning Ms.Jacobs,

I am writing to you as a concerned parent of a fifth grader at Tildenville Elementary. As you know, children under the age of 12 are ineligible to get vaccinated for COVID-19, and unfortunately, this includes my child. Since we as a community are unable to afford him and other K-5 students this protection, I urge you and your fellow board members to reconsider the optional mask policy, specifically for this vulnerable age group. Given the challenges, the 2020-2021 school year was a success with minimal disruptions thanks to our leaders including you and your fellow board members following the advice of public health experts. However, we have seen cases rise dramatically in our community to levels never seen before, largely due to the selfish decisions of adults. Let's not make another one. Why would we remove the same protocols that allowed last year to be successful when conditions have in fact deteriorated?

Granted, children are statistically unlikely to get seriously ill from COVID-19, but I pose the question: what is an acceptable number of hospitalized, or God forbid, dead children, especially when something as simple as wearing a mask can mitigate this completely predictable disaster? Health policy aside, these kids can no longer afford the continued disruption of in-person instruction.

I understand Governor Desantis's order threatening to withhold funding from districts that impose mask mandates. I implore you to summon the courage to live up to the OCPS's stated objective of providing a positive climate and safe environment. You have my full support.

Respectfully,

Steven Green
(352) 987-8385

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

August 9, 2021

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

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

Dear Superintendent Hanna and Chair Bowen:

This letter is sent to express my grave concern regarding your district's significant neglect in response to the recently adopted Emergency Rule 64DER21-12 from the Florida Department of Health (FDOH). This order, issued on August 6, 2021, by the Florida Surgeon General, Dr. Scott Rivkees, is explicit in its expectations for ensuring that any mandated mask policies 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 from a physician or a nurse practitioner in order to opt out and any such requirement is inconsistent with the emergency rule. Your district's response, as noted in our conversation, and in recent letters sent to parents/guardians, as well as public statements made during press events this week indicate that you have no current intentions of complying with this order, which is intended to guarantee choice options to parents/guardians regarding their child while also protecting families and students federal and state protected rights to privacy.

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 established in law, I am immediately initiating an investigation of non-compliance with rules adopted by the Florida Department of Health and the Florida State Board of Education on August 6, 2021. In commencing this investigation, I am demanding that you provide a written response by 5:00 p.m. on Wednesday, August 11, 2021, documenting how your district is complying with FDOH rule 64DER21-12. Any failure to adequately document and substantiate full compliance with this rule will result in sanctions permitted under law in section 1008.32(4)(b), Florida Statutes.

Mr. Rocky Hanna/Ms. Georgia Bowen
August 9, 2021
Page 2

Depending on the facts presented, I may recommend to the State Board of Education that the Department withhold funds in an amount equal to the salaries for the Superintendent and all the members of the School Board.

There is no room for error or leniency when it comes to ensuring compliance with policies that allow parents and guardians to make health and educational choices for their children. Therefore, it is imperative that you work together as the Superintendent and the School Board to remedy this glaring non-compliance and report the resolution to the Florida Department of Education by 5:00 p.m. on Wednesday, August 11, 2021.

Again, if this matter is not addressed by submitting the documentation establishing compliance with the law, the maximum accountability measures provided for under the law will be imposed.

Sincerely,

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

Richard Corcoran
Commissioner

From: [Palmerini, John C.](#)
To: [Pagan, Marieliz](#)
Cc: [Envall, Amy D.](#)
Subject: FW: 2021.08.09_Leon County Superintendent Hanna.pdf
Date: Tuesday, August 17, 2021 9:46:02 AM
Attachments: [2021.08.09_Leon County Superintendent Hanna.pdf](#)

From: Palmerini, John C.
Sent: Tuesday, August 10, 2021 11:26 AM
To: School Board <schoolboard@ocps.net>
Cc: Jenkins, Barbara M. <barbara.jenkins@ocps.net>; Envall, Amy D. <Amy.Envall@ocps.net>; Vazquez, Maria F. <maria.vazquez@ocps.net>; Williams, Bridget <bridget.williams@ocps.net>
Subject: 2021.08.09_Leon County Superintendent Hanna.pdf

Dear Members of the Board,

Attached is the letter sent by Commissioner of Education Richard Corcoran to the Leon County School Board Chair and the Superintendent. As a reminder, the Leon County Superintendent decided that face coverings were required and the only way students could not wear masks would be to send in a medical note stating the student cannot wear a mask. The Commissioner informed the Board Chair and Superintendent that such requirement was a violation of the Emergency Rule adopted on Friday August 6, 2021. The Commissioner gave the District until 5:00 p.m. on August 11 to explain its compliance with the rule.

Citing to s. 1008.32(4)(b), Fla. Stat., the Commissioner stated “Any failure to substantiate full compliance with this rule will result in the sanctions permitted under law” in the statute. The Commissioner further stated “Depending on the facts presented, I may recommend to the State Board of Education that the Department withhold funds in an amount equal to the salaries for the Superintendent and all the members of the School Board.” The Commissioner further stated that Leon’s requirement for a medical note in order to opt out of wearing masks was a “glaring non-compliance with the rule.”

The final paragraph is the key paragraph. This paragraph states that sanctions for non-compliance is not be limited to withholding of School Board member and Superintendent salaries: “Again, if this matter is not addressed by submitting documentation establishing compliance with the law, **the maximum accountability measures provided for under the law will be imposed.**” (Emphasis added). The maximum accountability measures under s. 1008.32(4)(b), Fla. Stat. include withholding “the transfer of state funds, discretionary grant funds, discretionary lottery funds, or any other funds specified as eligible for this purpose by the Legislature until the school district or Florida College System institution complies with the law or state board rule.”

It is for this reason that I cannot guarantee that the State would only withhold the Superintendent and Board Members’ salaries if we did not have an opt out in our masking requirements. In fact, the letter appears to state that the withholding of state funds “will be imposed” if Leon County does not

reverse course and state that parents can opt out without a medical note.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

John C. Palmerini, B.C.S. in Education and Labor and Employment Law
Deputy General Counsel, Employment, Labor and Litigation
School Board of Orange County, Florida
445 W. Amelia St., Orlando, FL 32801
407-317-3200, ext. 2002954



From: [Palmerini, John C.](#)
To: [Pagan, Marieliz](#)
Cc: [Envall, Amy D.](#)
Subject: FW: Leon Circuit Court case
Date: Tuesday, August 17, 2021 9:46:23 AM
Attachments: [image_orders.pdf](#)

From: Palmerini, John C.
Sent: Wednesday, August 11, 2021 11:31 AM
To: School Board <schoolboard@ocps.net>
Cc: Jenkins, Barbara M. <barbara.jenkins@ocps.net>; Envall, Amy D. <Amy.Envall@ocps.net>; Vazquez, Maria F. <maria.vazquez@ocps.net>; Williams, Bridget <bridget.williams@ocps.net>
Subject: Leon Circuit Court case

Dear Members of the Board,

A lawsuit was filed by a group of parents in Circuit Court in Leon County against the Governor, Commissioner of Education and the State Board of Education. It has numerous counts:

Count I is that the State's Executive Order and Emergency rules do not provide for a safe school under Article IX, Section 1(a) of the Constitution. As explained last night, this is the same claim rejected on separation of powers and political question grounds in the FEA lawsuit.

Count II is a claim that the Emergency Order violates School Board local control under Article IX, Section 4(b). As explained last night, I expect the State to argue parents do not have standing to vindicate School Board constitutional authority.

Count III is that the rule is arbitrary and capricious in that it violates local school board control. Again, I think this is the same claim rejected last year in the FEA case.

Count IV claims the Executive Order violates the Florida Department of Health's authority to draft rules. DOH has the right under 1003.22(3) to "adopt rules necessary to administer and enforce this section. The Department of Health, after consultation with the Department of Education, shall adopt rules governing the immunization of children against, the testing for, and the control of preventable communicable diseases." DOH did draft rules dealing with how Covid-19 may, or in this case, may not be mitigated.

Count V claims DOH's emergency rule requiring districts to have an opt out is arbitrary and capricious because it conflicts with the CDC guidance and the American Academy of Pediatrics standards. A rule will be enforced and will not be found to be arbitrary or capricious "unless it is wholly without a reasonable or practical basis, and therefore purely arbitrary." Florida League of Cities, Inc. v. Dep't of Env'tl. Regulation, 603 So. 2d 1363, 1368 (Fla. 1st DCA 1992).

Count VI seeks injunctive relief to prevent schools from reopening without masks because community spread will increase.

A hearing for this matter has been set for Friday. I will let you all know what decision comes out of the hearing when it is issued.

Sincerely,

John C. Palmerini, B.C.S. in Education and Labor and Employment Law
Deputy General Counsel, Employment, Labor and Litigation
School Board of Orange County, Florida
445 W. Amelia St., Orlando, FL 32801
407-317-3200, ext. 2002954



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION

ROBIN MCCARTHY and JOHN MCCARTHY, individually and on behalf of L.M., a minor; ALLISON SCOTT, individually and on behalf of W.S., a minor; LESLEY ABRAVANEL and MAGNUS ANDERSSON, individually and on behalf of S.A. and A.A, minors; KRISTEN THOMPSON, individually and on behalf of P.T., a minor; AMY NELL, individually and on behalf of O.S., a minor; EREN DOOLEY, individually and on behalf of G.D., D.D., and F.D., minors; DAMARIS ALLEN, individually and on behalf E. A., a minor; PATIENCE BURKE, individually and on behalf of C.B., a minor; and PEYTON DONALD and TRACY DONALD, individually and on behalf of A.D., M.D., J.D., and L.D., minors,

Case No.: 2021 CA 001382

Plaintiffs,

v.

GOVERNOR RON DESANTIS, in his official capacity as Governor of the State of Florida; RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; and FLORIDA BOARD OF EDUCATION,

Defendants.

COMPLAINT AND DEMAND FOR EMERGENCY INJUNCTIVE RELIEF

COME NOW, Plaintiffs, ROBIN MCCARTHY and JOHN MCCARTHY, individually and on behalf of L.M., a minor; ALLISON SCOTT, individually and on behalf of W.S., a minor; LESLEY ABRAVANEL and MAGNUS ANDERSSON, individually and on behalf of S.A. and A.A, minors; KRISTEN THOMPSON, individually and on behalf of P.T., a minor; AMY NELL, individually and on behalf of O.S., a minor; EREN DOOLEY, individually and on behalf of G.D.,

D.D., and F.D., minors; DAMARIS ALLEN, individually and on behalf of E. A., a minor; PATIENCE BURKE, individually and on behalf of C.B., a minor; and PEYTON DONALD and TRACY DONALD, individually and on behalf of A.D., M.D., J.D., and L.D., minors (collectively “Plaintiffs”), by and through their undersigned counsel, and pursuant to Florida Rules of Civil Procedure, file this Complaint and Demand for Emergency Injunctive Relief against Defendants, GOVERNOR RON DESANTIS, in his official capacity as Governor of the State of Florida; RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; and FLORIDA BOARD OF EDUCATION (collectively “Defendants”), and in support thereof state as follows:

Venue and Jurisdiction

1. This is an action for declaratory relief pursuant to Chapter 86, Florida Statutes.
2. Plaintiffs are residents of various Florida counties, which counties are subject to the underlying Executive Order.
3. Plaintiffs ROBIN MCCARTHY and JOHN MCCARTHY, individually and on behalf of L.M., a minor with severe asthma and who has been identified as a student with a disability, reside in Miami-Dade County, Florida.
4. Plaintiff ALLISON SCOTT, individually and on behalf of W.S., a minor, resides in Orange County, Florida.
5. Plaintiffs LESLEY ABRAVANEL and MAGNUS ANDERSSON, individually and on behalf of S.A. and A.A, minors, reside in Palm Beach County, Florida.
6. Plaintiff KRISTEN THOMPSON, individually and on behalf of P.T., a minor, resides in Alachua County, Florida.

7. Plaintiff AMY NELL, individually and on behalf of O.S., a minor, resides in Hillsborough County, Florida.
8. Plaintiff EREN DOOLEY, individually and on behalf of G.D., D.D., and F.D., minors, resides in Hillsborough County, Florida.
9. Plaintiff DAMARIS ALLEN, individually and on behalf of E.A., a minor, resides in Hillsborough County, Florida.
10. Plaintiff PATIENCE BURKE, individually and on behalf of C.B., a minor, resides in Pinellas County, Florida.
11. Plaintiffs PEYTON DONALD and TRACY DONALD, individually and on behalf of A.D., M.D., J.D., and L.D., minors, reside in Pinellas County, Florida.
12. Defendant GOVERNOR RON DESANTIS, in his official capacity as Governor of the State of Florida (“Governor DeSantis”), is the duly elected Governor of the State of Florida in which the supreme executive power is vested and “is responsible for meeting the dangers presented to this state and its people by emergencies.” Const. Art. IV, § 1, Fla. Const.; § 252.36(1)(a), Fla. Stat.
13. Governor DeSantis is the chief public official overseeing Florida’s coronavirus response, including during the current crisis which has witnessed an unprecedented surge in the positivity rate of infected individuals and dramatic increase in hospitalizations throughout the State.
14. Defendant RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education (“Commissioner Corcoran”), is Florida Commissioner of Education appointed by the State Board of Education to serve as the Executive Director of the Department of Education. *See* Const. Art. IX, § 1, Fla. Const.; § 20.15(1), Fla. Stat.

15. Along with the State Board of Education, Commissioner Corcoran is charged with assigning the divisions of the Department of Education with “such powers, duties, responsibilities, and functions as are necessary to ensure the greatest possible coordination, efficiency, and effectiveness of education for students in K-20 education.” § 20.15(5), Fla. Stat.
16. Commissioner Corcoran is the education official who is acting to direct local school boards in Florida to decide to reopen schools without adherence to the constitutional mandate of maintaining safe and secure public schools.
17. Defendant FLORIDA BOARD OF EDUCATION (“Board of Education”) is the head of the Defendant FLORIDA DEPARTMENT OF EDUCATION (“Department of Education”) and the government body charged with supervision of the state’s public education system. *See* Art. IX, § 1, Fla. Const.; § 20.15(1), Fla. Stat.
18. Venue is proper in this Court under Florida law and acts giving rise to these claims occurred in all counties within the State.
19. This Court has jurisdiction pursuant to sections 26.012(2)(c) and 86.011, Florida Statutes.
20. Plaintiffs have satisfied all conditions precedent to bringing this action.
21. The cumulative amount in controversy exceeds \$30,000, exclusive of fees and costs.

Common Allegations

22. Florida finds itself as the nation’s hotspot for the present wave of the COVID-19 Delta variant.
23. Present positive COVID-19 tests and hospitalizations are at the highest point in the history of this pandemic in the State of Florida.

24. Medicine and science tell us that the Delta variant is vastly different from the original COVID-19 strain including transmissibility that mirrors chicken pox, a viral load more than 1,000 times the original COVID-19 strain, and vulnerability to the childhood population.
25. Hospitals throughout the state are nearing capacity for COVID-19 patients.
26. Neither vaccinated individuals nor children are immune from infection by or transmission of the COVID-19 Delta variant.
27. Both the Centers for Disease Control (“CDC”) and the American Academy of Pediatrics recommend mandatory masking in schools to arrest the spread of COVID-19.
28. In spite of this, Governor DeSantis entered Executive Order Number 21-175 entitled “Ensuring Parents’ Freedom to Choose—Masks in Schools” (“Executive Order”), attached hereto and incorporated herein as **Exhibit A**.
29. The Executive Order precludes individual county school districts from enacting mask mandates and penalizes “non-compliant” school boards by threatening to withhold state funds for violating rules or agency action relative to the Executive Order.
30. As a matter of law, public school on-site instruction and operations must be conducted safely; the Florida Constitution mandates that “[a]dequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools.” Art. IX, § 1(a), Fla. Const.
31. The Executive Order impairs the safe operation of schools and requires the courts to issue necessary and appropriate relief.
32. Florida students are entitled to safe schools under the law.

33. Plaintiffs bring this suit to safeguard the health and welfare of Florida public school students and the general public, including residents of all Florida counties following the failure to take the necessary steps to mitigate community spread of COVID-19.
34. Plaintiffs ROBIN MCCARTHY and JOHN MCCARTHY, individually and on behalf of L.M., a minor, will suffer particularized harm as their child will be denied the right to a safe school environment/education, losing his spot at his magnet school if he does not attend in-person, and L.M. has severe asthma and has been identified as a student with a disability.
35. Plaintiff ALLISON SCOTT, individually and on behalf of W.S., a minor, will suffer particularized harm for her child who cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm; online learning is not an option.
36. Plaintiffs LESLEY ABRAVANEL and MAGNUS ANDERSSON, individually and on behalf of S.A. and A.A, minors, will suffer particularized harm for their children who cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm.
37. Plaintiff KRISTEN THOMPSON, individually and on behalf of P.T., a minor, will suffer particularized harm for her child who cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm.
38. Plaintiff AMY NELL, individually and on behalf of O.S., a minor, will suffer particularized harm for her child who cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm.

39. Plaintiff EREN DOOLEY, individually and on behalf of G.D., D.D., and F.D., minors, will suffer particularized harm for her children who cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm, especially in light of the fact that G.D. has asthma.
40. Plaintiff DAMARIS ALLEN, individually and on behalf of E.A., a minor, will suffer particularized harm for her child as the presence of non-masked students and unvaccinated students within the school setting is an actual harm, especially in light of the fact that less than 10% of the parents and students wore masks at E.A.'s school open house/orientation events.
41. Plaintiff PATIENCE BURKE, individually and on behalf of C.B., a minor, will suffer particularized harm for her child who cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm, and opting for virtual school will result in the loss of a magnet school seat.
42. Plaintiffs PEYTON DONALD and TRACY DONALD, individually and on behalf of A.D., M.D., J.D., and L.D., minors, will suffer particularized harm as their children cannot be vaccinated at this time due to age, and the presence of non-masked students and unvaccinated students within the school setting is an actual harm.
43. Defendants, Governor DeSantis, Commissioner Corcoran, the Department of Education, and the Board of Education's arbitrary, dangerous, and unconstitutional actions, under the guise of parent choice, in the midst of the pandemic, create an imminent and actual threat to the public health, safety, and welfare of Florida's students.
44. An actual controversy currently exists between Plaintiffs and Defendants.

45. Absent the requested relief, Florida's students risk exposure according to medical professionals that will certainly lead to contracting COVID-19 and transmitting it to others.
46. Students will become sick and potentially die as a result of the failure to follow the mandatory masking requirements of the CDC and the American Academy of Pediatrics.

**COUNT I: DECLARATORY JUDGMENT—VIOLATION OF FLORIDA
CONSTITUTION FOR UNSAFE SCHOOLS**
Against all Defendants

47. Plaintiffs adopt and reincorporate the allegations in paragraphs 1-46, as if fully set forth herein.
48. This is an action for declaratory relief against Defendants.
49. There is a bona fide, actual, present, and practical need for this declaration.
50. This declaration deals with a present, ascertained or ascertainable state of facts, or present controversy as to a state of facts.
51. There is a privilege or right of Plaintiffs that is dependent upon the facts or law applicable to the facts.
52. There is an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.
53. This antagonistic and adverse interest is before the Court by proper process.
54. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. *See State Farm Mut. Auto. Ins. Co. v. Marshall*, 618 So. 2d 1377, 1380 (Fla. 5th DCA 1993), disapproved on other grounds, 630 So. 2d 179, 182 (Fla. 1994).
55. Plaintiffs are in doubt as to the constitutionality of the Executive Order based upon their rights under the Florida Constitution.

56. Section 86.011, Florida Statutes, gives the circuit courts of this state jurisdiction and the power “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”

57. Article IX, Section 1(a) of the Florida Constitution provides:

Section 1. Public education.—

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, *safe*, secure, and high quality system of free public schools that allows students to obtain a high quality education . . .

(Emphasis added.)

58. The Florida Constitution requires that state entities and public officials, who are charged with overseeing the funding and operations of public education, ensure that Florida’s schools operate safely.

59. Defendants cannot legally deny students, public school staff, their family members, and the public with whom they come in contact within the public school system their basic human needs for health and safety.

60. Plaintiffs seek a declaratory judgment determining that the State Government Defendants have failed to abide by the requirements of the Florida Constitution by enacting the Executive Order that precludes county school boards from enacting mandatory masking.

61. The Emergency Order will cause further spread of the COVID-19 virus to Plaintiffs, their families, and the general public.

62. Further, the Emergency Order fails to consider unique local circumstances, resources, and health data, as required by health experts.

63. While it might be safe to reopen in some districts across the state without a mask requirement, it is not safe to physically open schools in others, including Leon County and other crisis areas of Florida such as Duval, Pinellas, Hillsborough, Broward, Miami-Dade, Palm Beach, and Orange Counties.
64. Medicine and science must dictate such decisions.
65. An actual controversy currently exists between Plaintiffs and Defendants.
66. Plaintiffs are in doubt as to their rights under the Florida Constitution relative to the Executive Order.
67. The relief sought is not merely giving of legal advice by the Court or the answer to questions propounded from curiosity.
68. There is a substantial likelihood that Plaintiffs will prevail on the merits of this action.
69. As a proximate result of Defendants' actions, Plaintiffs continue to suffer irreparable damages for which monetary damages are inadequate.
70. Plaintiffs are wrongfully being denied safe schools which constitutes irreparable harm for the purpose of declaratory relief.
71. Absent the requested relief, schools across the state will reopen on-site instruction in an unsafe manner and to the injury and detriment of all Florida citizens; a declaration is needed from this Court to protect the community from the Executive Order.

WHEREFORE, Plaintiffs seek a declaration from this Court that the Executive Order and related actions or threatened actions to enforce it violate the Florida Constitution and any additional relief the Court deems equitable, just, and proper.

**COUNT II: DECLARATORY JUDGMENT— VIOLATION OF FLORIDA
CONSTITUTION FOR HOME RULE**
Against all Defendants

72. Plaintiffs adopt and reincorporate the allegations in paragraphs 1-71, as if fully set forth herein.
73. This is an action for declaratory relief against Defendants.
74. There is a bona fide, actual, present, and practical need for this declaration.
75. This declaration deals with a present, ascertained or ascertainable state of facts, or present controversy as to a state of facts.
76. There is a privilege or right of Plaintiffs that is dependent upon the facts or law applicable to the facts.
77. There is an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.
78. This antagonistic and adverse interest is before the Court by proper process.
79. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. *See State Farm Mut. Auto. Ins. Co. v. Marshall*, 618 So. 2d 1377, 1380 (Fla. 5th DCA 1993), disapproved on other grounds, 630 So. 2d 179, 182 (Fla. 1994).
80. Plaintiffs are in doubt as to the constitutionality of the Executive Order based upon their rights under the Florida Constitution.
81. Article 9, Section 4 of the Florida Constitution, states: “The school board shall operate, control and supervise all free public schools within the school district.”
82. As such, local school boards, elected by local citizens, have the power to operate, control and supervise public schools in the district under home rule powers.

83. Plaintiffs seek a declaratory judgment determining that the State Government Defendants have failed to abide by the requirements of the Florida Constitution by enacting the Executive Order that precludes county school boards from enacting mandatory masking.
84. The Emergency Order will cause further spread of the virus to Plaintiffs, their families, and the general public.
85. Further, the Emergency Order fails to consider unique local circumstances, resources, and health data, as required by health experts.
86. While it might be safe to reopen schools without a mask mandate in some districts across the state, it is not safe to physically open schools in others, including Leon County and other crisis areas of Florida such as Duval, Pinellas, Hillsborough, Broward, Miami-Dade, Palm Beach, and Orange Counties.
87. Medicine and science must dictate such decisions.
88. An actual controversy currently exists between Plaintiffs and Defendants.
89. Plaintiffs are in doubt as to their rights under the Florida Constitution relative to the Executive Order.
90. The relief sought is not merely giving of legal advice by the Court or the answer to questions propounded from curiosity.
91. There is a substantial likelihood that Plaintiffs will prevail on the merits of this action.
92. As a proximate result of Defendants' actions, Plaintiffs continue to suffer irreparable damages for which monetary damages are inadequate.
93. Plaintiffs are wrongfully being denied safe schools which constitutes irreparable harm for the purpose of declaratory relief.

94. Absent the requested relief, schools across the state will reopen on-site instruction in an unsafe manner and to the injury and detriment of all Florida citizens; a declaration is needed from this Court to protect the community from the Executive Order.

WHEREFORE, Plaintiffs seek a declaration from this Court that the Executive Order and related actions or threatened actions to enforce it violate the Florida Constitution and any additional relief the Court deems equitable, just, and proper.

**COUNT III: DECLARATORY JUDGMENT—EXECUTIVE ORDER UNDERMINES
SCHOOLS' SAFETY AND MAKES ARBITRARY AND CAPRICIOUS DEMANDS ON
PUBLIC SCHOOLS IN VIOLATION OF THE FLORIDA CONSTITUTION**

Against all Defendants

95. Plaintiffs adopt and reincorporate the allegations in paragraphs 1-94, as if fully set forth herein.

96. This is an action for declaratory relief against Defendants.

97. There is a bona fide, actual, present, and practical need for this declaration.

98. This declaration deals with a present, ascertained or ascertainable state of facts, or present controversy as to a state of facts.

99. There is a privilege or right of Plaintiffs that is dependent upon the facts or law applicable to the facts.

100. There is an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.

101. This antagonistic and adverse interest is before the Court by proper process.

102. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. *See State Farm Mut. Auto. Ins. Co. v. Marshall*, 618 So. 2d 1377, 1380 (Fla. 5th DCA 1993), disapproved on other grounds, 630 So. 2d 179, 182 (Fla. 1994).

103. Plaintiffs are in doubt as to the constitutionality of the Executive Order.
104. Section 86.011, Florida Statutes, gives the circuit courts of this state jurisdiction and the power “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”
105. Article I, Section 9 of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law[.]”
106. If a statute or government order is arbitrary and capricious, it violates due process rights guaranteed by the Florida Constitution. *See State v. Saiez*, 489 So. 2d 1125, 1128 (Fla. 4th DCA 1986).
107. Plaintiffs seek a declaration that the Executive Order is arbitrary and capricious.
108. The Executive Order bans all county school boards from enacting mandatory masking.
109. The Executive Order is unreasonable, inconsistent, and arbitrary and capricious.
110. The Executive Order fails to provide the constitutional and clear, logical guidance.
111. Further, Plaintiffs are being denied the right to rely on their locally-elected school board officials because the State Government Defendants are usurping their constitutional functions.
112. Parents and public school employees have a right to rely on their elected officials to make decisions safeguarding their health and the health and safety of their families.
113. Defendants’ efforts usurp local judgment and individual school districts are permitted home rule powers in this context.
114. An actual controversy currently exists between Plaintiffs and Defendants.

115. Defendants' mandate wrongfully assumes that state authorities can better determine the local health risks and educational needs of students and teachers than the local officials that were elected for that purpose.
116. This is an arbitrary and capricious government action and violates due process.
117. The decisions as to how and when to safely reopen schools are subject to the discretion of school boards and should be based on current and accurate information and in cooperation with each counties' public health authorities.
118. The declaration involves the rights of Plaintiffs and is dependent upon the facts herein as applied to the Florida Constitution and above statutes.
119. Plaintiffs have a present interest in the subject matter.
120. Defendants' antagonistic and adverse interests are all before the Court.
121. The relief sought is not merely giving of legal advice by the Court or the answer to questions propounded from curiosity.
122. There is a substantial likelihood that Plaintiffs will prevail on the merits of this action.
123. As a proximate result of Defendants' actions, Plaintiffs continue to suffer irreparable damages for which monetary damages are inadequate.

WHEREFORE, Plaintiffs seek a declaration from this Court that the Executive Order is arbitrary and capricious and therefore, violates the Florida Constitution and any additional relief the Court deems equitable, just, and proper.

**COUNT IV: DECLARATORY JUDGMENT—EXECUTIVE ORDER EXCEEDS
THE AUTHORITY OF THE DEPARTMENT OF EDUCATION AND VIOLATES
THE FLORIDA CONSTITUTION
Against all Defendants**

124. Plaintiffs adopt and reincorporate the allegations in paragraphs 1-123, as if fully set forth herein.

125. This is an action for declaratory relief against Defendants.
126. There is a bona fide, actual, present, and practical need for this declaration.
127. This declaration deals with a present, ascertained or ascertainable state of facts, or present controversy as to a state of facts.
128. There is a privilege or right of Plaintiffs that is dependent upon the facts or law applicable to the facts.
129. There is an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.
130. This antagonistic and adverse interest is before the Court by proper process.
131. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. *See State Farm Mut. Auto. Ins. Co. v. Marshall*, 618 So. 2d 1377, 1380 (Fla. 5th DCA 1993), disapproved on other grounds, 630 So. 2d 179, 182 (Fla. 1994).
132. Plaintiffs are in doubt as to the constitutionality of the Executive Order.
133. Section 86.011, Florida Statutes, gives the circuit courts of this state jurisdiction and the power “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”
134. Article I, Section 9 of the Florida Constitution provides that “[n]o person shall be deprived of life, liberty or property without due process of law[.]”
135. If a statute or government order is arbitrary and capricious, it violates due process rights guaranteed by the Florida Constitution. *See State v. Saiez*, 489 So. 2d 1125, 1128 (Fla. 4th DCA 1986).

136. Plaintiffs seek a declaration that the Executive Order exceeds the authority of the Department of Education and the subject matter of public health matters, such as masking in schools, is appropriately within the authority of the Florida Department of Health under section 1003.22(3), Florida Statutes.
137. The Executive Order bans all county school boards from enacting mandatory masking.
138. This Order addresses the spread of COVID-19.
139. Defendants' efforts usurp the mandate of the Florida Department of Health under these circumstances.
140. An actual controversy currently exists between Plaintiffs and Defendants.
141. The declaration involves the rights of Plaintiffs and is dependent upon the facts herein as applied to the above statutes.
142. Plaintiffs have a present interest in the subject matter.
143. Defendants' antagonistic and adverse interests are all before the Court.
144. The relief sought is not merely giving of legal advice by the Court or the answer to questions propounded from curiosity.
145. There is a substantial likelihood that Plaintiffs will prevail on the merits of this action.
146. As a proximate result of Defendants' actions, Plaintiffs continue to suffer irreparable damages for which monetary damages are inadequate.

WHEREFORE, Plaintiffs seek a declaration from this Court that the Executive Order exceeds the authority of the Department of Education and the subject matter of public health matters, such as masking in schools, is appropriately within the authority of the Florida Department of Health under section 1003.22(3), Florida Statutes, and the Executive Order and is arbitrary and

capricious, and therefore, violates the Florida Constitution and any additional relief the Court deems equitable, just, and proper.

**COUNT V: DECLARATORY JUDGMENT– DEPARTMENT OF HEALTH RULE
64DER21-12
Against Commissioner Corcoran, the Department of Education, and the Board of
Education**

147. Plaintiffs adopt and reincorporate the allegations in paragraphs 1-146, as if fully set forth herein.
148. This is an action for declaratory relief against Defendants.
149. There is a bona fide, actual, present, and practical need for this declaration.
150. This declaration deals with a present, ascertained or ascertainable state of facts, or present controversy as to a state of facts.
151. There is a privilege or right of Plaintiffs that is dependent upon the facts or law applicable to the facts.
152. There is an actual, present, adverse, and antagonistic interest in the subject matter, either in fact or law.
153. This antagonistic and adverse interest is before the Court by proper process.
154. The relief sought is not merely the giving of legal advice by the Court or the answer to questions propounded from curiosity. *See State Farm Mut. Auto. Ins. Co. v. Marshall*, 618 So. 2d 1377, 1380 (Fla. 5th DCA 1993), disapproved on other grounds, 630 So. 2d 179, 182 (Fla. 1994).
155. Plaintiffs are in doubt as to the constitutionality of the Florida Department of Health Rule 64DER21-12 (“Rule”) based upon their safe school rights under the Florida Constitution. *See* Notice of Emergency Rule, Department of Health, Rule No.: 64DER21-12, incorporated herein and attached as **Exhibit B**.

156. In short, this Rule states that districts must allow students to opt out of masking if they so choose.
157. This Rule is contrary to the CDC’s and the American Academy of Pediatrics’ standards of mandatory masking and does not create a safe school environment in the present COVID-19 pandemic.
158. Section 86.011, Florida Statutes, gives the circuit courts of this state jurisdiction and the power “to declare rights, status, and other equitable or legal relations whether or not further relief is or could be claimed.”
159. Article IX, Section 1(a) of the Florida Constitution provides:

Section 1. Public education.—

(a) The education of children is a fundamental value of the people of the State of Florida. It is, therefore, a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, *safe*, secure, and high quality system of free public schools that allows students to obtain a high quality education . . .

(Emphasis added.)

160. The Florida Constitution requires that state entities and public officials, who are charged with overseeing the funding and operations of public education, ensure that Florida’s schools operate safely.
161. Defendants cannot legally deny students, public school staff, their family members, and the public with whom they come in contact within the public school system their basic human needs for health and safety.
162. Plaintiffs seek a declaratory judgment determining that the State Government Defendants have failed to abide by the requirements of the Florida Constitution by enacting the Rule that precludes county school boards from enacting mandatory masking.

163. The Rule will cause further spread of the COVID-19 virus to Plaintiffs, their families, and the general public.
164. Further, the Rule fails to consider unique local circumstances, resources, and health data, as required by health experts.
165. While it might be safe to reopen in some districts across the state without a mask requirement, it is not safe to physically open schools in others, including Leon County and other crisis areas of Florida such as Duval, Pinellas, Hillsborough, Broward, Miami-Dade, Palm Beach, and Orange Counties.
166. Medicine and science must dictate such decisions.
167. An actual controversy currently exists between Plaintiffs and Defendants.
168. Plaintiffs are in doubt as to their rights under the Florida Constitution relative to the Rule.
169. The relief sought is not merely giving of legal advice by the Court or the answer to questions propounded from curiosity.
170. There is a substantial likelihood that Plaintiffs will prevail on the merits of this action.
171. As a proximate result of Defendants' actions, Plaintiffs continue to suffer irreparable damages for which monetary damages are inadequate.
172. Plaintiffs are wrongfully being denied safe schools which constitutes irreparable harm for the purpose of declaratory relief.
173. Absent the requested relief, schools across the state will reopen on-site instruction in an unsafe manner and to the injury and detriment of all Florida citizens; a declaration is needed from this Court to protect the community from the Rule.

WHEREFORE, Plaintiffs seek a declaration from this Court that the Rule and related actions or threatened actions to enforce it violate the Florida Constitution and any additional relief the Court deems equitable, just, and proper.

COUNT VI: EMERGENCY INJUNCTIVE RELIEF
Against All Defendants

174. Plaintiffs adopt and reincorporate the allegations to paragraphs 1-173, as if fully set forth herein.
175. Section 26.012(3), Florida Statutes, gives the circuit courts of this state jurisdiction and the power to issue injunctions.
176. Plaintiffs have a clear legal right to be free from significant threats to public health, including outbreaks of infectious diseases.
177. Plaintiffs seek an injunction to prohibit all named Defendants from taking actions to unconstitutionally preclude local school districts from mandatory masking.
178. In-person instruction requires prolonged close indoor contact between students and school employees.
179. There is currently no ability to provide for adequate physical distancing, PPE use, hygiene practices, contact tracing, and other safety measures.
180. The spread of COVID-19 that will result from the unsafe reopening of schools during the surge is not limited to students, teachers, school administrators, or school staff and will undoubtedly spread to their families and communities.
181. Instead of controlling the community spread, as they have a legal duty to do, Defendants' threatened actions will increase positivity rates, hospitalizations, and deaths and put added stress on healthcare resources that are already running dangerously low because of the current surge in COVID-19.

182. Defendants' actions would unreasonably interfere with Floridians' right to public health and safety, and will cause special harm and endangerment to Plaintiffs and their families as they will be directly exposed to the virus on a daily basis if all brick and mortar schools are reopened in August without a mask requirement in place.
183. Absent an injunction from this Court, the reopening of schools in just a few short days will create an unsafe and unsecure environment for students, employees, and the community at large.
184. The community spread that will inevitably result from the unsafe reopening of schools without a mask mandate will yield unfortunate and avoidable increases in disease, long-term health complications, and deaths across Leon County and the State of Florida.
185. Florida's students, teachers, and other school employees and their families are at a particularly high risk if schools reopen in August, as the state is now the national epicenter of the pandemic.
186. Students, school employees, and other communities across the state are also extremely vulnerable to this disease as its spread continues to increase throughout Florida.
187. Plaintiffs have a substantial likelihood of success on the merits.
188. Without an injunction, Plaintiffs and millions of students, and the community at large will be put at an unnecessarily increased risk of physical injury, illness, and potentially death from the COVID-19 virus.
189. Employees and students should not have to risk injury or death by being required to report to schools without mandatory mask requirements; indeed, the Florida Constitution guarantees their safety and condemns needless harm.

190. If Defendants are not enjoined from their actions, including mandating the physical reopening of schools without banning mask mandates, Plaintiffs face irreparable harm in the form of unquantifiable physical injury resulting from the Delta variant upon children that cannot be vaccinated..
191. The virus will continue to spread and result in severe illness, long-term and unpredictable health complications and, in some cases, death.
192. The threatened injury to the lives of Plaintiffs and to Florida residents outweighs any possible harm to Defendants.
193. Plaintiffs' injuries cannot be compensated adequately by damages or otherwise remedied at law. This is not an issue that can be cured with money.

WHEREFORE, Plaintiffs seek an order enjoining all named Defendants from unnecessarily and unconstitutionally enforcing the Executive Order and any additional relief this Court deems equitable, just, and proper.

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Co-Counsel for Plaintiffs

From: [Palmerini, John C.](#)
To: [Pagan, Marieliz](#)
Cc: [Envall, Amy D.](#)
Subject: FW: 6A (1)
Date: Tuesday, August 17, 2021 9:47:09 AM
Attachments: [6A \(1\).doc](#)

From: Palmerini, John C.
Sent: Friday, August 13, 2021 10:54 AM
To: School Board <schoolboard@ocps.net>
Cc: Jenkins, Barbara M. <barbara.jenkins@ocps.net>; Envall, Amy D. <Amy.Envall@ocps.net>; Vazquez, Maria F. <maria.vazquez@ocps.net>; Williams, Bridget <bridget.williams@ocps.net>
Subject: 6A (1)

Dear Members of the Board,

The State Board of Education has called a special meeting to address what it views to be the non-compliance by Alachua and Broward counties on the FDOH rule regarding masks in schools. It is set for August 17 at 4 p.m.

Let me know if you have further questions or concerns.

John C. Palmerini, B.C.S. in Education and Labor and Employment Law
Deputy General Counsel, Employment, Labor and Litigation
School Board of Orange County, Florida
445 W. Amelia St., Orlando, FL 32801
407-317-3200, ext. 2002954



Notice of Meeting/Workshop Hearing

DEPARTMENT OF EDUCATION

State Board of Education

The State Board of Education announces an emergency meeting to which all persons are invited.

DATE AND TIME: August 17, 2021, 4:00 p.m. until completion of business

PLACE: Conference Call: 1(888)207-0293, Confirmation Code: 681654. This meeting will also be webcast on the Florida Channel at <https://thefloridachannel.org/>.

GENERAL SUBJECT MATTER TO BE CONSIDERED:

This is an emergency meeting of the State Board of Education to consider the compliance of school districts, including Broward and Alachua, with the Parents' Bill of Rights, Ch. 2021-199, Laws of Florida, and the Department of Health's Emergency Rule 64DER21-12. The Commissioner of Education is expected to report his findings of probable cause or a finding of no probable cause for these districts under the provisions of Section 1008.32, Fla. Stat.

The Department of Education finds that the failure to follow the Department of Health's emergency rule for controlling the spread of COVID-19 in school settings creates an immediate danger to the public health, safety, or welfare now that schools are opening in Broward and Alachua counties for the 2021-22 school year. Failure to faithfully follow the Parents' Bill of Rights and the Department of Health's emergency rule endangers the safety and educational opportunities of students in these districts and has the potential to cause learning loss for students. The procedure for noticing the meeting is fair under the circumstances given that notice was posted in the Florida Administrative Register, on the Department of Education's website and to persons or entities on the Department of Education's list serve, in order to reach as many interested persons as possible. Moreover, the meeting is arranged to occur as quickly as possible after the Department of Education receives responses from Broward and Alachua to the Department of Education's inquiries about compliance with the health protocols found in the Department of Health's emergency rule.

The agenda will be posted prior to the meeting on the Department of Education's website at <http://www.fldoe.org/policy/state-board-of-edu/meetings>.

From: [Palmerini, John C.](#)
To: [Pagan, Marieliz](#)
Cc: [Envall, Amy D.](#)
Subject: FW: Mask update
Date: Tuesday, August 17, 2021 9:47:38 AM
Attachments: [20210812154319.pdf](#)

From: Palmerini, John C.
Sent: Friday, August 13, 2021 5:00 PM
To: School Board <schoolboard@ocps.net>
Cc: Jenkins, Barbara M. <barbara.jenkins@ocps.net>; Envall, Amy D. <Amy.Envall@ocps.net>; Vazquez, Maria F. <maria.vazquez@ocps.net>; Vazquez, Maria F. <maria.vazquez@ocps.net>
Subject: Mask update

Dear Members of the Board,

As a further update on a couple of matters:

1. Leon County has reversed course and will allow students to opt out without a medical note. See the story so confirming here:
<https://www.tallahassee.com/story/news/2021/08/10/parents-can-opt-out-leon-county-mask-rule-no-medical-waiver-needed/5561443001/>
2. The lawsuit in Leon County had a hearing today, but nothing of substance was discussed. It was merely for scheduling matters.: “The purpose of this hearing will be to discuss the status of the case and to set hearing dates. The hearing notice may be somewhat misleading as there will be no substantive decisions made on Friday.” A copy of the email from the judge is attached.

Have a great weekend.

John C. Palmerini, B.C.S. in Education and Labor and Employment Law
Deputy General Counsel, Employment, Labor and Litigation
School Board of Orange County, Florida
445 W. Amelia St., Orlando, FL 32801
407-317-3200, ext. 2002954



Shirley Barber

From: John Cooper
Sent: Wednesday, August 11, 2021 5:10 PM
To: Shirley Barber
Subject: 21 ca 1382

Please forward this email to counsel of record and file copy in the court file. Counsel, this email is to advise you that the hearing I have set for Friday is a case management conference only. **The purpose of this hearing will be to discuss the status of the case and to set hearing dates.** The hearing notice may be somewhat misleading as there will be no substantive decisions made on Friday

E-Filed and E-Served
by SB on AUG 12 2021

From: [Williams, Bridget](#)
To: [Pagan, Marieliz](#)
Subject: FW: State Board action yesterday
Date: Wednesday, August 18, 2021 3:57:12 PM

From: Palmerini, John C. <John.Palmerini@ocps.net>
Sent: Wednesday, August 18, 2021 3:18 PM
To: School Board <schoolboard@ocps.net>
Cc: Jenkins, Barbara M. <barbara.jenkins@ocps.net>; Envall, Amy D. <Amy.Envall@ocps.net>; Vazquez, Maria F. <maria.vazquez@ocps.net>; Williams, Bridget <bridget.williams@ocps.net>
Subject: State Board action yesterday

Dear Members of the Board,

The State Board of Education heard the Commissioner of Education's report on Alachua County School Board and the Broward County School Board regarding their mask mandate and the failure of the mandate to have an opt out provision as required by Florida Department of Health Emergency Rule 64DER21 -12.

The Commissioner's report, which I sent to you yesterday, stated "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." The Commissioner stated expressly in his presentation to the State Board that he believed the Districts were violating the law with their mask rules.

The State Board of Education Chair Tom Grady amended the Motion to accept the Commissioner's Report of Probable Cause by adding the following requirements:

1. It would authorize the Commissioner of Education to conduct further investigations into the conduct of the Superintendent and School Board in both Alachua County and Broward County.
2. It authorized the Commissioner to take all legal steps to enforce the State Board of Education rules, the Department of Health rules and laws duly enacted by the Legislature.
3. He recommended withholding of funds from those districts but not to withhold funds in a way that would harm any child in the District.
4. He recommended that penalties may involve withholding salaries, removing Board members, reviewing District conduct, making public records requests on how District funds are being utilized, including whether the District is utilizing money on public relations or political purposes contrary to their Constitutional mandate
5. He recommended enhanced reporting and accountability for those two Boards to the State

Board.

6. He recommended a report to the Legislature with recommendations for further action if the State Board lacks authority to take further action.

Chair Grady recommended these penalties based upon the following statutes:

s. 1001.02(2)(h), Fla. Stat which states: “The State Board of Education has the following duties: To approve plans for cooperating with other public agencies in the development of rules and in the enforcement of laws for which the state board and such agencies are jointly responsible.”

s. 1001.02(2)(r), Fla. Stat. which states: “The State Board of Education has the following duties: To enforce system wide education goals and policies except as otherwise provided by law.”

s. 1001.03(8), Fla. Stat. which states: “The State Board of Education shall enforce compliance with law and state board rule by all school districts and public postsecondary educational institutions, except for the State University System, in accordance with the provisions of s. [1008.32](#).”

The Board passed the Commissioner’s Report with Chair Grady’s amendment unanimously.

Let me know if you need anything further.

Sincerely,

John C. Palmerini, B.C.S. in Education and Labor and Employment Law
Deputy General Counsel, Employment, Labor and Litigation
School Board of Orange County, Florida
445 W. Amelia St., Orlando, FL 32801
407-317-3200, ext. 2002954



From: [Williams, Bridget](#)
To: [Pagan, Marieliz](#)
Subject: FW: Plaintiffs' Response to Motion to Dismiss in McCarthy v. DeSantis
Date: Wednesday, August 18, 2021 3:56:53 PM
Attachments: [image_orders \(4\).pdf](#)

From: Palmerini, John C. <John.Palmerini@ocps.net>
Sent: Wednesday, August 18, 2021 3:22 PM
To: School Board <schoolboard@ocps.net>
Cc: Jenkins, Barbara M. <barbara.jenkins@ocps.net>; Envall, Amy D. <Amy.Envall@ocps.net>; Vazquez, Maria F. <maria.vazquez@ocps.net>; Williams, Bridget <bridget.williams@ocps.net>
Subject: Plaintiffs' Response to Motion to Dismiss in McCarthy v. DeSantis

Dear Members of the Board,

Attached is the Parent's responses to the Motion to Dismiss filed by the Governor in the Leon County case.

Please let me know if you need anything further.

Sincerely,

John C. Palmerini, B.C.S. in Education and Labor and Employment Law
Deputy General Counsel, Employment, Labor and Litigation
School Board of Orange County, Florida
445 W. Amelia St., Orlando, FL 32801
407-317-3200, ext. 2002954



IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA
CIVIL DIVISION

ALLISON SCOTT, individually and on behalf of W.S., a minor; LESLEY ABRAVANEL and MAGNUS ANDERSSON, individually and on behalf of S.A. and A.A, minors; KRISTEN THOMPSON, individually and on behalf of P.T., a minor; AMY NELL, individually and on behalf of O.S., a minor; DAMARIS ALLEN, individually and on behalf E.A., a minor; PATIENCE BURKE, individually and on behalf of C.B., a minor; and PEYTON DONALD and TRACY DONALD, individually and on behalf of A.D., M.D., J.D., and L.D., minors,

Case No.: 2021-CA-001382

Plaintiffs,

v.

GOVERNOR RON DESANTIS, in his official capacity as Governor of the State of Florida; RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; and FLORIDA BOARD OF EDUCATION,

Defendants.

/

**PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION
TO DEFENDANTS' MOTION TO DISMISS**

Plaintiffs, ALLISON SCOTT, individually and on behalf of W.S., a minor; LESLEY ABRAVANEL and MAGNUS ANDERSSON, individually and on behalf of S.A. and A.A, minors; KRISTEN THOMPSON, individually and on behalf of P.T., a minor; AMY NELL, individually and on behalf of O.S., a minor; DAMARIS ALLEN, individually and on behalf of E.A., a minor; PATIENCE BURKE, individually and on behalf of C.B., a minor; and PEYTON DONALD and TRACY DONALD, individually and on behalf of A.D., M.D., J.D., and L.D., minors (collectively "Plaintiffs"), by and through their undersigned counsel and pursuant to the

Florida Rules of Civil Procedure, file this Memorandum of Law in Opposition to Defendants' Motion to Dismiss and in support thereof state as follows:

I. FACTS

This action results from Defendant Governor DeSantis' entry of Executive Order Number 21-175 entitled "Ensuring Parents' Freedom to Choose—Masks in Schools" ("Executive Order"). The Executive Order precludes individual county school districts from enacting mask mandates and penalizes "non-compliant" school boards by threatening to withhold state funds for violating rules or agency action relative to the Executive Order.

While Defendants, GOVERNOR RON DESANTIS, in his official capacity as Governor of the State of Florida; RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; and FLORIDA BOARD OF EDUCATION (collectively "Defendants"), seek to frame this case as a dispute brought by Plaintiffs over well-reasoned policy considerations based on collaboration among multiple government stakeholders, the facts ultimately get in the way. Taking the facts as they come without filter, it is not a policy decision with which Plaintiffs take issue; rather, it is an operational act which has already endangered all Floridians.

Plaintiffs have incurred injury in fact as a result of the Executive Order despite denials to the contrary. Wearing a mask in school is not a healthcare issue; a mask is not a medical device but rather akin a school uniform. Plaintiffs do not challenge a policy enactment issue by the Governor but do challenge the ability of the Governor to prevent the local school boards from constitutionally guaranteed self-governance. The school boards have been rendered powerless to enact certain policies within their purview that would ensure a safe education environment for the students they oversee.

Children have contracted COVID-19 at a rate ten times that of last year at this time. Demonstrably less is being done to protect those in schools this year as compared to last year. The requested remedies would address this injury in allowing independent school boards to use their judgment in governance of their schools in a safe manner. The effect of the Executive Order renders schools unsafe by leaving school boards without the means to enact safety procedures to mitigate the spread of COVID-19. No child has died from the onerous obligation to wear a mask while indoors at school; however, children have died from contracting COVID-19.

Florida remains the nation's hotspot for the present wave of the COVID-19 Delta variant. Present COVID-19 cases and hospitalizations are at the highest point in the history of this pandemic in the State of Florida. Unequivocally, doctors and medical experts opine that the Delta variant is vastly different from the original COVID-19 strain including: transmissibility that mirrors chicken pox, a viral load more than 1,000 times the original COVID-19 strain, and vulnerability to the childhood population. Hospitals throughout the state are nearing capacity for COVID-19 patients. Neither vaccinated individuals nor children are immune from infection by or transmission of the COVID-19 Delta variant.

Both the Centers for Disease Control ("CDC") and the American Academy of Pediatrics recommend mandatory masking in schools to arrest the spread of COVID-19. In just the first week of school, across Florida cases of COVID-19 occurring at a rate ten times higher than at the same time last year (at which time students were required to wear masks). Both children and adults are sick and dying as a result of COVID-19.

II. LEGAL STANDARDS

A. Motion to Dismiss Standard

The only question for the trial court in reviewing a motion to dismiss is whether the plaintiff would be entitled to the relief requested, assuming all the allegations in the complaint to be true. *Malden v. Chase Home Fin., LLC*, 312 So. 3d 553, 555 (Fla. 1st DCA 2021) (citing *Newberry Square Florida Laundromat, LLC v. Jim's Coin Laundry & Dry Cleaners, Inc.*, 296 So. 3d 584, 589 (Fla. 1st DCA 2020)). It is not for the court to speculate whether the allegations are true or whether the pleader has the ability to prove them. *Universal Underwriters Ins. Co. v. Body Parts of Am., Inc.*, 228 So. 3d 175, 176 (Fla. 1st DCA 2017) (citations omitted). In ruling on a motion to dismiss, “ ‘the trial court must confine its review to the four corners of the complaint, draw all inferences in favor of the pleader, and accept as true all well-pleaded allegations.’ ” *Newberry Square Florida Laundromat, LLC*, 296 So. 3d at 589. A complaint should not be dismissed for failure to state a cause of action “ ‘unless the movant can establish beyond any doubt that the claimant could prove no set of facts whatever in support of his claim.’ ” *Johnson v. Gulf County*, 965 So. 2d 298, 299 (Fla. 1st DCA 2007) (citations omitted). It is well established that dismissal of a complaint with prejudice is a very severe sanction, to be invoked only when the pleader has failed to state a cause of action, and it is conclusively shown the complaint cannot be amended in such a way as to state a claim. *Meyers v. City of Jacksonville*, 754 So. 2d 198, 202 (Fla. 1st DCA 2000).

Despite these time-tested standards, Defendants’ Motion to Dismiss argues facts outside the four corners and attached multiple documentary exhibits. These are improper under Florida law. While Defendants concede this four-corners pleading standard in their Motion, they quickly ignore it as they argue factual matters outside the Complaint.

To state a cause of action, a complaint need only contain *a short and plain statement* as to the ultimate facts which indicate the pleader is entitled to relief. *Weaver v. Leon County Classroom Teachers Ass'n*, 680 So. 2d 478, 481 (Fla. 1st DCA 1996) (emphasis added). Florida is a notice pleading jurisdiction. Only the Fifth District Court of Appeal applies a fact pleading standard. As a matter of law, all other District Courts of Appeal apply a notice pleading standard. *See Doe v. Evans*, 814 So. 2d. 370 (Fla. 2002); *Flo-Sun, Inc., v. Kirk*, 783 So. 2d 1029, 1039 (Fla. 2001); *J.S.L. Const. Co. v. Levy*, 994 So. 2d 394, 399 (Fla. 3d DCA 2008) (“the purpose of a pleading is to notify a defendant that he is being sued and what he is being sued for”) (citing *Connolly v. Sebeco, Inc.*, 89 So.2d 482 (Fla.1956)); *Gilbert v. Merritt*, 901 So. 2d. 334, 336 (Fla. 4th DCA 2005); *Paul v. Humana Med. Plan, Inc.*, 682 So. 2d 1119, 1123 (Fla. 4th DCA 1996) (citing *Metcalf v. Langston*, 296 So.2d 81, 85 (Fla. 1st DCA), cert. denied, 302 So.2d 414 (Fla.1974)); *Arky v. Bowmar Instrument Corp.*, 537 So. 2d 561, 563 (Fla. 1988); *Vann v. Hobbs*, 197 So. 2d 43, 45 (Fla. 2d DCA 1967) (stating that the pleadings in a cause, under the Florida Rules of Civil Procedure, are “merely a tentative outline of the position which the pleader takes before the case is fully developed on the facts through discovery and evidence introduced at the trial.”); *In re Full Gospel Assembly of Delray Beach*, 371 B.R. 559, 564 (Bankr. S.D. Fla. 2007). Moreover, “[c]omplaints are most often pled in the most general terms while the evidence adduced at summary judgment or at trial is specific to the defendant.” *Paul v. Humana Med. Plan, Inc.*, 682 So. 2d 1119, 1123 (Fla. 4th DCA 1996) (citing *Metcalf v. Langston*, 296 So.2d 81, 85 (Fla. 1st DCA), cert. denied, 302 So.2d 414 (Fla.1974)); *see also* 1 La Coe's Fla. R. Civ. P. Forms R 1.100(10) (2015 ed.) (citing *Metcalf v. Langston*, 296 So. 2d 81 (Fla. 1st DCA 1974)).

Plaintiffs provided sufficient factual allegations in the Complaint, which if the Court assumes true, would entitle them to relief. In deciding Defendants’ Motion to Dismiss, it is not

for the Court to speculate whether the allegations in the Complaint are true or whether Plaintiffs the ability to prove them. The only inquiry before the Court is to determine whether Plaintiffs alleged all the requisite facts to support the elements of each count of the action, which they did.

While last year's case in *DeSantis et al. v. Florida Education Association, et al.*, 306 So 3d 1202 (Fla. 1st DCA 2020) shares some COVID, safe schools, and home rule issues, it only reached the First District Court of Appeal after a lengthy evidentiary hearing and not a motion to dismiss. Accordingly, it is proper that the Motion to Dismiss be denied.

B. Leave to Amend

Should this Court grant Defendants' Motion to Dismiss, Plaintiffs are entitled as a matter of law to amend the Complaint. Rule 1.190 provides in pertinent part that "[a] party may amend a pleading once as a matter of course at any time before a responsive pleading is served....Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party..." Fla. R. Civ. P. 1.190(a). Pursuant to its terms, Rule 1.190(a) "provides for amendment as of right (first sentence) and amendment by agreement or leave of court (second sentence), depending on the circumstances." *Boca Burger, Inc. v. Forum*, 912 So. 2d 561, 567 (Fla. 2005), *as revised on denial of reh'g* (Sept. 29, 2005). A motion to dismiss is not a "responsive pleading." *Id.* (citations omitted). Consequently, "the filing of a motion to dismiss does not terminate a plaintiff's *absolute right* to amend the complaint 'once as a matter of course.'" *Id.* (emphasis added).

Rule 1.190(a) "clearly grants a plaintiff one free amendment to perfect the complaint before an answer is served." *Id.* "A judge's discretion to deny amendment of a complaint arises only after the defendant files an answer or if the plaintiff already has exercised the right to amend once." *Id.* Under such circumstances, "the second and fourth sentences of rule 1.190(a) apply: '*Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party....*'"

Leave of court shall be given freely when justice so requires.’ ” *Id.* (alterations in original). A defendant may challenge the legal viability of a first amended complaint by moving to dismiss the amended complaint, not by contesting the plaintiff’s right to amend. *Id.* at 568. A court lacks discretion to deny an amendment under the first sentence of Rule 1.190(a). *Id.*

The first sentence of Rule 1.190(a) is applicable here as Plaintiffs have not previously amended their Complaint, and Defendants have not filed a responsive pleading—i.e. an answer—to the Complaint. As such, because Defendants have not filed a responsive pleading to the Complaint and because a party may amend a pleading once as a matter of course at any time before a responsive pleading is served, Plaintiffs are clearly permitted as a matter of right to amend their Complaint for the first time, and this Court has no discretion to deny such amendment.

However, assuming *arguendo* that this Court believes the amendment of the Complaint falls under the second sentence of Rule 1.190(a)—party may amend a pleading only by leave of court or by written consent of the adverse party, Plaintiffs respectfully request leave of court to amend the Complaint. The rules of civil procedure “evidence a clear policy that, *absent exceptional circumstances*, requests for leave to amend pleadings be granted.” *Thompson v. Publix Supermarkets, Inc.*, 615 So. 2d 796, 797 (Fla. 1st DCA 1993) (emphasis added) (citing Fla. R. Civ. P. 1.190(a)). “ ‘A trial court should grant leave to amend, rather than dismiss a complaint with prejudice, unless a party has abused the privilege to amend, an amendment would prejudice the opposing party, or the complaint is clearly not amendable.’ ” *Newberry Square Florida Laundromat, LLC v. Jim's Coin Laundry & Dry Cleaners, Inc.*, 296 So. 3d 584, 589 (Fla. 1st DCA 2020) (quoting *Florida Nat. Org. for Women, Inc. v. State*, 832 So. 2d 911, 915 (Fla. 1st DCA 2002)). A court abuses its discretion in dismissing with prejudice where a pleader may be able to allege additional facts to support its cause of action or support another cause of action under a

different legal theory. *Obenschain v. Williams*, 750 So. 2d 771, 773 (Fla. 1st DCA 2000) (citations omitted). “Public policy favors the liberal amendment of pleadings, and courts should resolve all doubts in favor of allowing the amendment of pleadings to allow cases to be decided on their merit.” *Lewis v. Morgan*, 79 So. 3d 926, 930 (Fla. 1st DCA 2012) (quoting *Laurencio v. Deutsche Bank Nat. Tr. Co.*, 65 So. 3d 1190, 1193 (Fla. 2d DCA 2011)). “Dismissal of a complaint with prejudice should only be granted when the pleader has failed to state a cause of action and it conclusively appears there is no possible way to amend the complaint to state a cause of action.” *Undereducated Foster Children of Florida v. Florida Senate*, 700 So. 2d 66, 67 (Fla. 1st DCA 1997) (citing *Weaver v. Leon County Classroom Teachers Ass’n*, 680 So. 2d 478, 481 (Fla. 1st DCA 1996)).

In applying these standards, Plaintiffs must be given leave to amend. First, the privilege to amend has not been abused as Plaintiffs have not previously amended the Complaint. Second, an amendment would not prejudice Defendants as any claims added or modified would involve similar facts or circumstances as to those already alleged in the Complaint. Lastly, an amendment would not be futile as additional allegations can be stated, especially regarding standing. Plaintiffs can include additional allegations to support their standing. Thus, the Complaint is amendable. Because all doubts must be resolved in favor of allowing the amendment of pleadings and the liberal amendment of pleadings is favored, Plaintiffs should be given leave to amend the Complaint should this Court grant Defendants’ Motion to Dismiss.

C. Defenses vs. Affirmative Defenses

It is axiomatic that defenses and affirmative defenses have different legal import. An affirmative defense need be asserted in a responsive pleading, such as an answer. Conversely, a defendant cannot assert an affirmative defense outside of an answer. “An affirmative defense

cannot be raised by a motion to dismiss if the motion requires the court ‘to consider matters outside the four corners of the complaint.’ ” *Newberry Square Florida Laundromat, LLC v. Jim's Coin Laundry & Dry Cleaners, Inc.*, 296 So. 3d 584, 589 (Fla. 1st DCA 2020) (citations omitted). “If the court is required to consider matters outside the four corners of the complaint, then the cause is not subject to dismissal on the basis of the affirmative defense.” *Vause v. Bay Med. Ctr.*, 687 So. 2d 258, 261 (Fla. 1st DCA 1996) (citations omitted). “Even a relatively straightforward affirmative defense...*is not a basis for dismissal* unless the complaint affirmatively and clearly shows the conclusive applicability of the defense.” *Id.* (emphasis added) (citations omitted).

Lack of standing is an affirmative defense. *Wells Fargo Bank, N.A. v. Reeves*, 92 So. 3d 249, 253 (Fla. 1st DCA 2012) (citing *Phadael v. Deutsche Bank Tr. Co. Americas*, 83 So. 3d 893 (Fla. 4th DCA 2012)). Typically, the affirmative defense of lack of standing must be alleged in the responsive pleading, and the issue is then determined upon evidence presented or the party’s inability to produce sufficient evidence of its standing. *Id.*

Here, Defendants raise lack of standing as a basis for dismissal of the Complaint. However, lack of standing is an affirmative defense. *Reeves*, 92 So. 3d at 253. As such, lack of standing is appropriately raised in a responsive pleading—an answer, not a motion to dismiss. In support of the Motion to Dismiss, Defendants attach Exhibits—matters outside the four corners of the Complaint. The affirmative defense of lack of standing is not a basis for dismissal because it is an affirmative defense and because Defendants rely on *their* Exhibits to their Motion to Dismiss, which Exhibits are outside of the four corners of the Complaint. Consequently, lack of standing cannot be a basis for dismissal of Plaintiffs’ Complaint.

An affirmative defense is a statement of facts or law that would avoid the action if true, and “the plaintiff is not bound to prove that the affirmative defense does not exist.” *Custer Med.*

Ctr. v. United Auto. Ins. Co., 62 So. 3d 1086, 1096 (Fla. 2010) (citations omitted). An affirmative defense admits the cause of action, but avoids liability, wholly or partially, by alleging an excuse, justification, or other matter that negates or limits liability. *St. Paul Mercury Ins. Co. v. Coucher*, 837 So. 2d 483, 487 (Fla. 5th DCA 2002) (citations omitted). “ ‘All affirmative defenses are pleas by way of confession and avoidance. They admit the allegations of the plea to which they are directed and allege additional facts that avoid the legal effect of the confession.’ ” *Kitchen v. Kitchen*, 404 So. 2d 203, 205 (Fla. 2d DCA 1981) (quoting *Moore Meats, Inc. v. Strawn*, 313 So. 2d 660, 662 (Fla. 1975)). An affirmative defense is a matter that avoids the action and that the defendant must affirmatively establish. *Langford v. McCormick*, 552 So. 2d 964, 967 (Fla. 1st DCA 1989) (citing 40 Fla. Jur. 2d *Pleadings*, § 159 (1982)).

Accordingly, there can be no affirmative defense without the predicate confession and avoidance. Here, Defendants do not admit to Plaintiffs’ allegations and seek to avoid the effect of the confession. Moreover, alleging that a claim failed to state a cause of action cannot form the basis for an affirmative defense.

The requisite certainty in pleading a defense is that the “pleader must set forth the facts in such a manner as to reasonably inform his adversary of what is proposed to be proved in order to provide the latter with a fair opportunity to meet it and prepare his evidence.” *Zito v. Washington Fed. Sav. & Loan Ass’n of Miami Beach*, 318 So. 2d 175, 176 (Fla. 3d DCA 1975) (citations omitted). Herein, Defendants have asserted affirmative defenses in their Motion to Dismiss without any supporting facts.

D. Injunction Predicates

A party seeking a temporary injunction must establish: (1) the likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) a substantial likelihood of success

on the merits; and (4) that a temporary injunction would serve the public interest. *St. Johns Inv. Mgmt. Co. v. Albanese*, 22 So. 3d 728, 731 (Fla. 1st DCA 2009) (citing *Envtl. Services, Inc. v. Carter*, 9 So. 3d 1258, 1261 (Fla. 5th DCA 2009)); *see also Jouvence Ctr. For Advanced Health, LLC v. Jouvence Rejuvenation Centers, LLC*, 14 So. 3d 1097, 1099 (Fla. 4th DCA 2009) (citation omitted).

1. Irreparable Harm

Florida law does not require that irreparable harm be incurred or guaranteed. Irreparable harm can also be presumed under *State Dept. of Environmental Regulation v. Kaszyk*, 590 So. 2d 1010 (Fla. 3rd DCA 1991) which stated as follows:

When the express purpose of a statute is to protect the public health, safety, and welfare, and when the legislature has specifically empowered an agency to seek an injunction against one who violates that statute, irreparable harm is presumed.

Id. at 1011 (citing *Harvey v. Wittenberg*, 384 So. 2d 940, 941 (Fla. 3d DCA 1980)). The safe schools entitlement under the Florida Constitution is clearly directed to protect the public health, safety, and welfare of the school going public and, thus, irreparable harm can be presumed under the four corners facts at this point in the case. Of course, Plaintiffs look forward to proving extensive fact issue sworn testimony on these issues and having their experts speak to the profound harm at issue.

Moreover, in *Lefebvre v. Weiser*, 967 So. 2d 405 (Fla. 5th DCA 2007), the potential loss of employees to a business, who would resign if mismanagement continued, was sufficient to meet the irreparable harm element. In *Winter Green at Winter Park Homeowners Association, Inc. v. Ware*, the court found that the potential of declining property values to a condominium where the association business could not be conducted without documents (association's papers, check book, and other banking records) to also be sufficient to meet irreparable harm.

“Irreparable injury will never be found where the injury complained of is ‘doubtful, eventual or contingent.’ ” *Jacksonville Elec. Auth. v. Beemik Builders & Constructors, Inc.*, 487 So.2d 372, 373 (Fla. 1st DCA 1986) (citation omitted); *see also Biscayne Park, LLC v. Wal-Mart Stores E., LP*, 34 So.3d 24, 26 (Fla. 3d DCA 2010).

These examples are far less than the forgone conclusion that more school children will become sick as a result of COVID-19 infections contracted at school due to disallowing mandatory mask policies. Plaintiffs face real, actual, dangerous peril in attending school with the Executive Order pending which forbids mandatory masking. The danger of becoming seriously ill is an actual harm. Some schools have already begun, and children are already being forced to physically attend schools which do not require masks. Thus, Plaintiffs already face a real threat *every day* of becoming seriously ill due to COVID-19, and they have an imminent harm. Plaintiffs should not have to wait until they are on ventilators and in the ICU in order to bring suit, which is what Defendants argue. It would be unconscionable to wait until a child is dying before a child has standing to sue.

The harm Plaintiffs face is similar to the harm in a dependency action for children. Florida statutes allow an adjudication of dependency “if the court finds the children ‘[t]o be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians,’ *even if no actual abuse is proved.*” *In re L.C.*, 947 So. 2d 1246, 1249 (Fla. 2d DCA 2007) (emphasis added). The prospective abuse in dependency actions must be imminent. *Id.* (citation omitted). “Where there is a history of domestic violence, the prior incidents may support a finding that there is a threat of prospective harm, thus permitting a dependency adjudication under section 39.01(14)(f).” *Id.* (citation omitted).

Similar to the present case, the danger of COVID-19 to Plaintiffs is imminent. Every day that Plaintiffs attend school in-person surrounded by unmasked students, teachers, and administrators, they are at a substantial risk of imminent exposure to COVID-19. The increasing hospitalization of children and the statistics regarding the higher rates of transmissibility of the Delta variants evidence threats of serious illness and show that Plaintiffs have an actual harm in being exposed on a daily basis to a life-threatening illness.

COVID-19 presents a serious threat to Plaintiffs. COVID-19 presents a serious threat to the general public. If it were not a threat, the President of the United States would not have declared COVID-19 a national emergency in 2020. Similarly, if the possibility of contracting COVID-19 were not an imminent threat, Governor DeSantis would not have declared a state of emergency in Florida last year due to COVID-19. A year later, the Delta variant is more infectious than the original strain, and children are more likely to become ill from it. Consequently, the threat of harm to Plaintiffs is real as they are forced to expose themselves at school—an environment full of other children and adults who are not required to wear masks. Plaintiffs face a continuing danger of contracting COVID-19 from unmasked students, teachers, assistants, and other school personnel. There are long-lasting symptoms of COVID-19, as well the possibility of dying from it, which both of these constitute irreparable harm.

The numbers have already supported that more children in schools are contracting COVID-19 this year as compared to the same time last year (where masks were mandatory), and, with virtual teacher-lead options not being offered in many counties this school year, there are more students attending schools in-person than last year. Moreover, as a direct result of the Executive Order, Plaintiffs will lose spots in special school programs should they fail to attend school in-person in an effort to mitigate their risk of contracting COVID-19 on campus.

2. No Adequate Remedy at Law

There can be no remedy at law for the Executive Order. Under Florida law, the test for “no adequate remedy at law” is: could a judgment be obtained in a proceeding at law, rather than, would the judgment procure pecuniary compensation. *Oxford International Bank and Trust, Ltd. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 374 So. 2d 54, 56 (Fla. 3rd DCA 1979). A money judgment cannot remedy the peril, damage, and danger caused by the Executive Order.

3. Substantial Likelihood of Success on the Merits

Under Florida law, a party moving for an injunction must meet the standard of determination of clear legal right. *Finkelstein v. Southeast Bank, N.A.*, 490 So. 2d 976 (Fla. 4th DCA 1986). “A substantial likelihood of success on the merits is shown if good reasons for anticipating that result are demonstrated. It is not enough that a merely colorable claim is advanced.” *City of Jacksonville v. Naegele Outdoor Advertising Co.*, 634 So. 2d 750 (Fla. 1st DCA 1994); *Heslop v. Moore*, 716 So. 2d 276, 279 (Fla. 3d DCA 1998).

Here, the Florida Constitution entitles students to safe schools and vests the power of “how to deliver education to students” to Florida's school boards. *See* Art. IX, § 4(b), Fla. Const. (“The school board shall operate, control and supervise all free public schools within the school district”) As such, Plaintiffs’ Complaint sets forth facts in support of recognized legal rights where there is a substantial likelihood of success and far more than just a colorable claim.

4. Public Interest Served

In *State Dept. of Environmental Regulation v. Kaszyk*, 590 So. 2d 1010 (Fla. 3rd DCA 1991), the court found that in an action to enjoin a violation of a statute to protect public health, safety and welfare such injunction was in the public interest. In the present case, relief in favor of

the Plaintiffs will be in the public interest mitigating the spread of COVID-19 by allowing school districts/boards to enact mandatory masking, if they see fit, to prevent further illness.

III. LEGAL ARGUMENT

A. Safe Schools Entitlement

As a matter of law, public school on-site instruction and operations must be conducted safely; the Florida Constitution mandates that “[a]dequate provision shall be made by law for a uniform, efficient, *safe*, secure, and high-quality system of free public schools.” Art. IX, § 1(a), Fla. Const. (emphasis added).

B. School Board Home Rule

Article 9, Section 4 of the Florida Constitution, states: “The school board shall operate, control and supervise all free public schools within the school district.”

Further, in *DeSantis et al. v. Florida Education Association, et al.*, 306 So. 3d 1202 (Fla. 1st DCA 2020) the First District Court of Appeal confirmed that, “the choice of how to deliver education to students remains with Florida's school boards. *See* Art. IX, § 4 (b), Fla. Const. (“The school board shall operate, control and supervise all free public schools within the school district”).

C. Separation of Powers Doctrine

Separation of powers is an affirmative defense, not a Motion to Dismiss defense. *Wolfinger v. Sentinel Communications, Co.*, 538 So. 2d 1276 (Fla. 5th DCA 1989). No separation of powers attack resulting from a Motion to Dismiss was successful in last year’s *DeSantis et al. v. Florida Education Association, et al.* suit.

Defendants assert the separation of powers as an absolute defense in their Motion to Dismiss. On this issue, the Florida Constitution provides that “[n]o person belonging to one

branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.” In a show of irony, the basis for this action results from the state’s highest executive officer usurping the authority of all county school boards within the state by unitary fiat; or stated another way, an independent violation of the separation of powers doctrine itself.

Importantly, it is not the providence of the Governor to make a specific “one size fits all” wholesale directives regulating each of the 67 independent school districts within the state. That power rests exclusively with the 67 independent school boards. Taking a strict separation of powers defense on its face, the Governor could delve into nearly every feature of a citizen’s life; infant car seats are too constraining, seat belts pose a personal choice issue, auto insurance does not protect the public, compulsory education is an undue imposition. Judicial review exists to remedy such actions.

Citizens for Strong Schools, Inc. v. Florida State Board of Education, 232 So. 3d 1163 (Fla. 1st DCA 2017) addressed separation of powers in an amorphous challenge to the “uniform, efficient, and high quality system of free public schools, as required by Florida Constitution.” The wide inquiry of *Citizens* into expansive policy areas does not mirror the narrow issues before this Court. *Citizens* neither addressed school safety issues or mandatory masking in a pandemic. Therein the court stated,

Absent explicit constitutional authority to the contrary, the legislative and executive branches possess exclusive jurisdiction in such matters, as the legislative branch has sole power to appropriate and enact substantive policy, and the executive branch has the sole power to faithfully execute the substantive policies and budgetary appropriations enacted by the legislative branch.

232 So. 3d at 1171. Under the facts of this case, Defendant’ acts exceed the grant of their authority and remove the constitutional authority to govern to the 67 independent school districts. These acts do not take quarrel with educational policy or health policy concerns, they take aim at a clear

overreach by the Governor that usurps school districts/boards of the right of self-governance. This can be well remedied by judicial review.

D. Political Question

Next, Defendants assert the political question doctrine as motion to dismiss basis. However, the political question doctrine is an affirmative defense, not a Motion to Dismiss defense. No political question doctrine defense resulting from a Motion to Dismiss was successful in last year's *DeSantis, et al. v. Florida Education Association, et al.* suit.

The core question to consider here is whether the decision to forbid all 67 independent school districts/boards within the state from enacting mandatory masking amounts to a discretionary decision in terms of policy or not. Under the Florida Constitution, it is not within the Governor's power to make such decisions. Article 9, Section 4 of the Florida Constitution, states: "The school board shall operate, control and supervise all free public schools within the school district." Nothing in the Executive Order which forbids schools from mandatory masking, and imposed funding penalties for non-compliance, can be argued to flow from any state of emergency powers.

The power of Governor is not absolute; it is limited by the Florida Constitution. Our Supreme Court took up this issue in *Whiley v. Scott*, 79 So. 3d 702 (Fla. 2011). There in an action founded on a writ of quo warranto, the Supreme Court held that: (1) the Governor's executive orders violated separation of powers doctrine, to extent each suspended and terminated rulemaking by precluding notice publication and other compliance with the Administrative Procedure Act (APA) absent prior approval from OFARR, contrary to the APA, (2) the provision of State Constitution vesting the supreme executive power in the governor did not authorize governor to issue executive orders. *See id.* at 705.

The fiat to preclude such school board rules results in de-masking the school going public, which is contrary to public health and mitigating the spread of COVID-19. No medical reason or peer reviewed article is cited in this Executive Order supporting the premise that mandatory mask mandates in schools are harmful. This decision is based upon the Governor’s desire for a “normal school year.” It is discretionary to promote the *want* of a normal school year over the constitutionally mandated “safe” school environment.

The adjudication on the merits of justiciable issues by this Court on the propriety and entitlement of the Executive Order, in no way presents a violation of the political question doctrine. In *DeSantis et al. v. Florida Education Association, et al.*, 306 So. 3d 1202 (Fla. 1st DCA 2020), the First District spoke to the elements of a political question doctrine defense:

To determine whether a case presents a political question, courts consider several factors: (1) the issue raised has been demonstrably and textually committed to a coordinate political department; (2) judicially discoverable and manageable standards for resolving the question are lacking; (3) the court cannot decide the question “without an initial policy determination of a kind clearly for nonjudicial discretion”; (4) the trial court cannot undertake independent resolution of the issue “without expressing lack of respect due coordinate branches of government”; (5) there is “an unusual need for unquestioning adherence to a political decision already made”; and (6) there is a potential of “embarrassment from multifarious pronouncements by various departments on one question.” *Baker*, 369 U.S. at 217. If any of these circumstances is present, the question is a political one and not justiciable.

Id. at 1215.

The U.S. Supreme Court in *Baker v. Carr*, 369 U.S. 186, 217 (1962), further stated that “The doctrine...is one of ‘political questions,’ not one of ‘political cases.’ The courts cannot reject as ‘no law suit’ a bona fide controversy as to whether some action denominated ‘political’ exceeds constitutional authority.”

Defendants cannot meet *any* of these elements to support political question doctrine. In this instance, the Court is appropriately situated to address judicially discoverable and manageable standards for resolving the question. We start from the premise that both the CDC and American Academy of Pediatrics have recommended that masks should be mandatory for all indoor school activities in regions of high spread. Here, the Court is perfectly positioned to hear from medical and public health experts on masking recommendations and data grounded testimony that masking is an effective tool for disease spread mitigation. As the trial court in *DeSantis, et al. v. Florida Education Association, et al.* stated last summer, “Florida's trial courts deal with issues relating to safety and security all day long” and that “[a]llegations of unsafe or unsecure schools can be measured differently and more definitively than can terms like ‘efficient’ and ‘high-quality.’” *Id.* at 1216. While the evaluation last year, on a different set of facts, was offered at a time when “[t]he medical literature is clearly still in flux and difficult to parse,” there is far more clarity and acceptance of the medial data presently, having the benefit of data and analysis. *See id.*

In *Citizens for Strong Schools, Inc. v. Florida State Board of Education*, 262 So. 3d 127 (Fla. 2019), the trial court denied defendants’ motion to dismiss grounded in a political question defense. There, the Court relied on *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006), under a challenge to a voucher program. On this basis, the trial court permitted the Plaintiffs’ claim for declaratory relief as to the state’s education system.

E. Standing to Sue

Standing is an affirmative defense, not a Motion to Dismiss defense. *Gonzalez v. Deutsche Bank Nat'l Trust Co.*, 95 So. 3d 251, 253–54 (Fla. 2d DCA 2012); *Gee v. U.S. Bank Nat'l Ass'n*, 72 So. 3d 211, 213–14 (Fla. 5th DCA 2011); *McLean v. JP Morgan Chase Bank Nat. Ass'n*, 79 So. 3d 170 (Fla. 4th DCA 2012); *Jaffer v. Chase Home Finance, LLC*, 155 So. 3d 1199 (Fla. 4th

DCA 2015); *Phadael v. Deutsche Bank Trust Co. Americas*, 83 So. 3d 893, 895 (Fla. 4th DCA 2012); *Glynn v. First Union Nat'l Bank*, 912 So. 2d 357, 358 (Fla. 4th DCA 2005); *Kissman v. Panizzi*, 891 So. 2d 1147, 1150 (Fla. 4th DCA 2005). Thus, any attack upon standing must be asserted as an affirmative defense in connection with a Defendant's answer, and may not be asserted in a Motion to Dismiss.

No standing attack resulting from a motion to dismiss was successful in last year's *DeSantis et al. v. Florida Education Association, et al.* suit. To the contrary, the trial court correctly held an evidentiary hearing on the merits before ruling. The appeal was then taken after the ruling.

The First District Court of Appeal observed the prevailing standing standard in last year's *DeSantis et al. v. Florida Education Association, et al.*, 306 So. 3d 1202 (Fla. 1st DCA 2020).

To establish standing to sue, a plaintiff must have a "legitimate or sufficient interest at stake in the controversy that will be affected by the outcome of the litigation." *Equity Res., Inc. v. County of Leon*, 643 So. 2d 1112, 1117 (Fla. 1st DCA 1994). When determining whether a plaintiff has standing, courts consider these three elements:

First, a plaintiff must demonstrate an "injury in fact," which is "concrete," "distinct and palpable," and "actual or imminent." *Whitmore v. Arkansas*, 495 U.S. 149, 155, 110 S. Ct. 1717, 109 L. Ed. 2d 135 (1990). Second, a plaintiff must establish "a causal connection between the injury and the conduct complained of." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). Third, a plaintiff must show "a 'substantial likelihood' that the requested relief will remedy the alleged injury in fact." [*Vermont Agency of Natural Res. v. Stevens*, [529 U.S. 765, 771], 120 S. Ct. 1858 [(2000)]. *State v. J.P.*, 907 So. 2d 1101, 1113 n.4 (Fla. 2004).

Id. at 1213.

Within the four corners of its Complaint, Plaintiffs have clearly articulated the actual and imminent injury in fact. Plaintiffs have alleged the real, concrete, and present harm flowing from

requiring their children, most of which are too young to receive a vaccination, to attend on site schools without mandatory masking in contravention of CDC and AAP mandatory masking recommendations. Plaintiffs have alleged the real, concrete, and present harm flowing from the fact that no suitable district-wide online learning is provided as an alternative to in person school attendance. Plaintiffs have alleged the real, concrete, and present harm flowing from the fact that they will lose special school program eligibility in the event that they do not attend school in person. Plaintiffs have alleged the real, concrete, and present harm flowing from being present in schools without mandatory masking with asthma. Plaintiffs have alleged the real, concrete, and present harm flowing from the unsafe school conditions resulting from the Executive Order. Moreover, Plaintiffs are left without recourse to hold their local officials accountable for the decisions to render schools unsafe because this authority was usurped by the Governor. Although striking the Executive Order would not instantly provide mandatory masking mandates, it would give Plaintiffs the ability to hold their school boards to account to science and local conditions without the extortive influence of a loss of funding.

The causal connection present relates to arbitrary and capricious prohibition of mandatory masking (in the name of parent choice), contrary to CDC and AAP mandatory masking recommendations. But for the Executionve Order, schools would be permitted to enact mandatory masking consistent with CDC and AAP mandatory masking recommendations (and prevailing medical guidance).

Finally, declaring the Executive Order unconstitutional supports a substantial likelihood that the requested relief will remedy the alleged injury in fact. School boards are presently without choice. And even without choice and in defiance of the order, some have elected to enact mandatory mask requirements with opt out provisions to mitigate the risk of funding penalties. Of

course, mandatory masking with opt out provisions is not the universal recommended mandatory masking. However, the brave actions of these school boards shows that school boards will enact mandatory masking where the Executive Order has been held unconstitutional.

In *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006), the Supreme Court of Florida held that parents had standing to challenge the opportunity scholarship program statute as unconstitutional under the Florida Constitution's provision requiring the state to provide a "uniform, efficient, safe, secure, and high-quality system of free public schools." Art. 9, § 1(a). There, the Supreme Court of Florida ultimately found the statute unconstitutional as the statute violated requirement that free education be provided through system of free public schools and that education be provided through "uniform" system of public schools. This case is no different in terms of the parent challenge to the Executive Order from the context of the safe schools entitlement of the same constitutional provision. Under the *Bush v. Holmes* standard, Plaintiffs have standing.

In *Brown v. Firestone*, 382 So. 2d 654 (Fla. 1980), the Florida Supreme Court held that a citizen/taxpayer may bring a declaratory action to challenge the constitutionality of provisions in a general appropriations act, including a claim that the state has failed to make adequate provision for a uniform system of free public schools as required by Article IX, section 1, and that the standard for determining whether the legislature has made adequate provision for public schools is whether the resources allocated by the legislature are sufficient to provide "a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education," as required by the Florida Constitution.

As Judge Wolf stated "the Florida Constitution is a document of the people. The people's will is expressed through the adoption of constitutional language. The difficult issue is when do the people have a right to enforce their will, as it is expressed in the constitution, through the court

system.” *Haridopolos v. Citizens for Strong Schools, Inc.*, 81 So. 3d 465 (Fla. 1st DCA 2011) (Wolf, J, specially concurring) (citations omitted). If citizens cannot enforce the Florida Constitution with the courts in times of unconstitutional acts or separation of powers violations, then who stands guard to police such issues?

As Your Honor stated, and as was set forth in *School Board of Collier County v. Florida Department of Education*, 279 So. 2d 281, 285 (Fla. 1st DCA 2019), § 86.021, Florida Statutes, permits any person whose rights may be in doubt to “obtain a declaration of rights, status, or other equitable or legal relations thereunder.” Thus, Plaintiffs seek declaratory judgment under the Florida Constitution on the propriety of the entry of the Executive Order as it relates to a school board’s self-governance rights as follows:

(b) 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. Two or more school districts may operate and finance joint educational programs.

Florida Constitution, Article IX, Section 4.

Plaintiffs are entitled to invoke Fla. Stat. 86.021 to police the separation of powers violations alleged in the Complaint. Importantly, Defendants cite to no case authority that a party plaintiff must be a school board in order to challenge school board self-governance under home rule provisions the Florida Constitution. To the contrary, Florida law allows any person whose rights may be in doubt to come to the Court for declaratory relief.

Based upon this authority, Plaintiffs have alleged facts to support standing before this Court. Plaintiff have alleged a legitimate or sufficient interest at stake in the controversy that will be affected by the outcome of the litigation under Florida law. The four corners of the Complaint set forth clear injury in fact that is real, actual, and imminent. Plaintiffs met the causal connection

between the injury and the conduct complained of relative CDC and AAP mandatory masks standards which schools would follow in the absence of the Executive Order. Finally, Plaintiffs have demonstrated a substantial likelihood that the requested relief will remedy the alleged injury in fact, as shown by school boards presently enacting mandatory mask with opt out guidelines.

IV. CONCLUSION

Since 1988, citizens of Florida are entitled to safe schools under the provisions of the Florida Constitution. Long before that, citizens of Florida came enjoy the separation of powers protections that checks overreach of any one branch of government to another. Our same Florida Constitution empowers local school districts/boards the right of self-governance. As a result of the real and actual peril caused by the Governor's Executive Order, Plaintiffs seek this Court's jurisdiction to correct acts which impair the rights of all Floridians under our constitution (and document of the people).

Pursuant to the standards for deciding a motion to dismiss, Defendants' Motion to Dismiss must be denied. In accepting the Complaint's allegations as true and construing its factual allegations in the light most favorable to Plaintiffs, this Court should deny the Motion to Dismiss. The Complaint contains the requisite facts necessary to support the elements of each cause of action. Plaintiffs provided sufficient factual allegations in the Complaint, which if the Court assumes true, would entitle them to relief. Moreover, Defendants' arguments exceed the four corners of the Complaint, to which this Court is confined in deciding the Motion to Dismiss. Additionally, Defendants assert affirmative defenses in their Motion to Dismiss, which are inappropriate bases for dismissal. Accordingly, Plaintiffs respectfully request that this Court deny Defendants' Motion to Dismiss in its entirety.

Should this Court grant any part of Defendants’ Motion to Dismiss, as Plaintiffs have not yet amended their Complaint and as Defendants have not filed a responsive pleading, Plaintiffs seek to amend their Complaint. Plaintiffs are entitled to amend their Complaint once as a matter of right before the filing of a responsive pleading. Assuming *arguendo* that Plaintiffs require leave of Court to do so, Plaintiffs respectfully request leave to amend. Leave of court should be freely granted because the amendment of the Complaint would not prejudice Defendants, the privilege to amend has not been abused, and the amendment would not be futile.

Paramount to the issues before this Court is the safety of the entire school-going public: students, teachers, staff and parents. The Executive Order puts those in peril when it should not. Injury in fact does not require that a student, teacher, staff or parent contract COVID-19 and become ill. Nor does it require that they die from COVID-19.

The opportunity cost of mandatory masking in schools is nominal inconvenience. The opportunity cost of schools without mandatory masking—sick and dead children—is quickly becoming our reality in Florida. The idea that the factual issues before this Court amount to “parent choice” is nothing more than pretext for the clear public health crisis that is COVID-19.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August, 2021, the foregoing was electronically filed with the Clerk of the Courts by using the Florida Courts E-Filing Portal, which will send a notice of electronic filing to the following: **Michael A. Abel, Esquire, Daniel K. Bean, Esquire, Jacqueline A. Van Laningham, Esquire, and Jared J. Burns, Esquire**, ABEL BEAN LAW, P.A., 100 N. Laura Street, Suite 501, Jacksonville, FL 32202,

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