



# Miami-Dade County Public Schools

*giving our students the world*

## Superintendent of Schools

Alberto M. Carvalho

## Miami-Dade County School Board

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September 1, 2021

Mr. Richard Corcoran, Commissioner of Education

Florida Department of Education

Turlington Building

325 West Gaines Street, Suite 1514

Tallahassee, Florida 32399

Dear Commissioner Corcoran:

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

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

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

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

<sup>2</sup> Video of the Ad Hoc Medical and Public Health Experts Task Force's meeting of August 16, 2021, outlining its findings, is available online using the following link: <https://m-dcps.eduvision.tv/Default.aspx?q=3SfVi13wT7SR7CKAQLb17HfJBhsJkHGh7orwU%252f0YSe5KH%252bzxzuOxw%253d%253d>

the Parents' Bill of Rights and Article IX, § 1, by basing its local decision to "temporarily" require student facial coverings on the advice and recommendations of the Superintendent's Ad Hoc Medical and Public Health Experts Task Force<sup>2</sup>, U.S. Centers for Disease Control and Prevention, Florida Department of Health<sup>3</sup>, and American Academy of Pediatrics. Additionally, M-DCPS is monitoring county-wide health data including community transmission, vaccine availability for children, hospitalizations and ICU admissions versus capacity, and positivity rate on a regular and consistent basis, and adjusting our approach based on local public health conditions.

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

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

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



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

Sincerely,



Alberto M. Carvalho  
Superintendent of Schools

Attachments

cc: School Board Members  
School Board Attorney

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