

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: