

Office of the Superintendent

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

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Dr. Vickie L. Cartwright
Interim Superintendent of Schools

August 13, 2021

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

Dear Commissioner Corcoran:

Please accept this correspondence in response to your letter dated August 10, 2021. Broward County Public Schools (BCPS) fully agrees that the recent trends resulting from the Delta Variant pose an immediate danger to public health, safety and welfare and, believes our District is taking prudent and responsible measures to protect our students, staff, volunteers and visitors in light of the alarming COVID-19 trends we are experiencing in Broward County.

Since the onset of the pandemic, BCPS has maintained strong partnerships with our local health experts to advise and assist the District in formulating its protocols in response to COVID-19. This includes regular discussions with the Broward County Health Department and the two major hospital districts in Broward. Additionally, BCPS has relied heavily on federal guidance from the Centers for Disease Control (CDC) and other nationally recognized resources in our response to COVID-19.

In July, BCPS was prepared to strongly encourage facial coverings and COVID-19 vaccinations for the start of the 2021-2022 school year; however, recent trends in Broward County and updated national guidance forced the Board to pivot and require facial coverings to ensure the safety of all students, staff, volunteers and visitors for the start of school.

On August 5, 2021, the CDC provided updated guidance on COVID-19 prevention in schools. The guidance was echoed by the American Academy of Pediatrics. The guidance included is listed below.

"Due to the circulating and highly contagious Delta Variant, CDC recommends universal indoor masking by all students (age 2 and older), staff, teachers and visitors to K-12 schools, regardless of vaccination status." <https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/k-12-guidance.html>

Response to Commissioner Corcoran
August 13, 2021
Page Two

Additionally, since July 29, 2021, Broward County has seen an increase of more than 40% in its 3-Day Average for positive COVID-19 cases. During the same period, the daily percentage of positive cases has also increased and consistently has been above 15%. Furthermore, the local hospital districts are reporting that they have been overwhelmed with new COVID-19 patients. This was clearly represented in yesterday's Broward County COVID-19 Hospital Report produced by the Broward County Emergency Management Division. The August 12th report indicates there were 1,614 COVID-19 positive patients currently admitted, which was an increase of 125 (+8.39%) patients from the prior day. More alarming is data that reflects that the combined Broward County pediatric ICU is at 93% capacity and adult ICU is at 96% capacity.

Emergency Rule 64DER21-12 from the Florida Department of Health specifically speaks to an immediate danger to the public health, safety or welfare because of a recent increase in COVID-19 infections, largely due to the spread of the COVID-19 Delta Variant. BCPS strongly believes its recent action referenced in your letter is for the explicit purpose of mitigating the spread of COVID-19 cases in our schools and preventing the unnecessary removal of students from school because of positive cases. This is particularly important because BCPS will be returning to 100% in-person instruction, and the ability to social distance is adversely impacted.

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

1. 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.)

The School Board has over 37,000 students with disabilities. A significant number of students with disabilities are students with medical conditions such as asthma, diabetes and cancer, whose immune systems are stressed or compromised. These students are at an increased risk of being infected with the COVID-19 virus without the protection of a mask requirement. The requirement that a mask be used by all students, staff and visitors alike, in accordance with the CDC, serves to ensure their safety as well as the safety of their peers and teachers. The mask requirement would ensure that the district does not run afoul of the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and the Individual with Disabilities Education Act (IDEA).

The Broward School Board is currently a defendant in a complaint concerning the mask requirement. See Case 1:21-cv-22863-KMM Hayes, et al. v. Governor Ronald Dion Desantis, et al. (August 6, 2021). This complaint was filed by families with students who have disabilities and alleges ADA violations, specifically, the failure to provide access to a free appropriate public education. The named families allege, out of concern for the health and safety of their students, they cannot send their students safely to school, absent a mask requirement in order to mitigate the airborne transmittal of COVID-19. Similarly, under the IDEA, the School Board is charged with educating

Response to Commissioner Corcoran
August 13, 2021
Page Three

students in the least restrictive environment. Without a mask mandate, families may be confronted with the choice of sending their medically compromised students into a school environment without reasonable precautions taken for the safety of their student or keeping them home. Students educated in the home setting when a public school setting is available violates the IDEA. Thus, a mask requirement would facilitate the School Board's role in educating *all* students within its district.

Prioritizing parent-choice over safety and the advice of health experts in the CDC and the American Academy of Pediatrics threatens the safety in schools and does not promote a secure environment for students; thus, it is in direct violation of the Florida Constitutional mandates.

Further, BCPS believes it is in compliance with Emergency Rule 64DER21-12 from the Florida Department of Health because of the exceptions provided within its policy regarding facial coverings. Specifically, Policy 2170 provides the following circumstances by which "A face covering shall not be required for a student":

- "...if the student's IEP or 504 team, after receiving a certification from a health care provider that the student has a medical, physical or psychological contraindication that prevents the person from being able to safely wear an approved face covering...";
- "...inside or outside a school district facility or a school/district sponsored activity while student is eating during a planned mealtime...";
- "...outside of any school, district building, or at a school/district sponsored activity while the student is engaged in strenuous physical activity...";
- "...actively participating in indoor or outdoor practice or competition...";
- "...inside or outside any school district facility or building when removal of the face covering is necessary for the student to receive health care or to undergo a health care examination from authorized health care personnel; or,
- "...if a student is experiencing acute trouble breathing, is unconscious or incapacitated."

The District will fully cooperate in your referenced investigation, and this response to your demand supports that cooperation. Your letter concludes by indicating the potential for sanctions and your possible recommendation to the State Board of Education that the Department withhold funds. BCPS asks that you seriously consider the appropriateness of withholding funds, recognizing this would represent a reduction to the General Fund allocation and may impact services to students.

Regards,



Dr. Vickie L. Cartwright
Interim Superintendent



Dr. Rosalind Osgood
School Board Chair

cc: School Board Members