

U.S. DEPARTMENT OF EDUCATION
OFFICE OF ADMINISTRATIVE LAW JUDGES

Docket Number: 21-44-CD (Florida Department of Education)

The U.S. Department of Education's Cease and Desist Complaint
Against the Florida Department of Education

EXHIBIT LIST

ED Exhibit 1 - Florida Department of Education's Title I of the Elementary and Secondary Education Act Grant Award Notification (GAN)

ED Exhibit 2 - Florida Department of Education Probable Cause Memo (Alachua County) (exhibits omitted), 10/4/21

ED Exhibit 3 - Florida Department of Education Probable Cause Memo (Broward County) (exhibits omitted), 10/4/21

ED Exhibit 4 - Florida State Board of Education Order DOE No. 2021-4027 (Alachua County), 10/12/21

ED Exhibit 5 - Florida State Board of Education Order DOE No. 2021-4029 (Broward County), 10/12/21

ED Exhibit 6 - Email to Commissioner Corcoran from the Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for Elementary and Secondary Education, 10/7/21

ED Exhibit 7 - Letter from Commissioner Corcoran to the Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for Elementary and Secondary Education, 10/13/21

ED Exhibit 8 - Letter to Commissioner Corcoran from the Deputy Assistant Secretary for Policy and Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary for Elementary and Secondary Education, 10/25/21

ED Exhibit 1

S010A210009

Melissa Ramsey

Florida Department of Education

Bureau of Federal Educational Programs

325 West Gaines Street, Suite 348

Tallahassee, FL 32399

S010A210009

Richard Corcoran
Florida Department of Education
Bureau of Federal Educational Programs
325 West Gaines Street
Suite 348
Tallahassee, FL 32399 - 0400



**US Department of Education
Washington, D.C. 20202**

S010A210009

GRANT AWARD NOTIFICATION

1	RECIPIENT NAME Florida Department of Education Bureau of Federal Educational Programs 325 West Gaines Street Suite 348 Tallahassee, FL 32399 - 0400	2	AWARD INFORMATION <table border="0"> <tr> <td>PR/AWARD NUMBER</td> <td>S010A210009</td> </tr> <tr> <td>ACTION NUMBER</td> <td>1</td> </tr> <tr> <td>ACTION TYPE</td> <td>New</td> </tr> <tr> <td>AWARD TYPE</td> <td>Formula</td> </tr> </table>	PR/AWARD NUMBER	S010A210009	ACTION NUMBER	1	ACTION TYPE	New	AWARD TYPE	Formula																		
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3	PROJECT STAFF RECIPIENT STATE DIRECTOR Melissa Ramsey (850) 245-0841 Melissa.ramsey@fldoe.org EDUCATION PROGRAM CONTACT Collette E Roney (202) 401-5245 collette.roney@ed.gov EDUCATION PAYMENT HOTLINE G5 PAYEE HELPDESK 888-336-8930 edcaps.user@ed.gov	4	PROJECT DESCRIPTION 84.010A Title I Part A Basic Grants to LEAs																										
5	KEY PERSONNEL N/A																												
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US Department of Education
Washington, D.C. 20202

S010A210009

GRANT AWARD NOTIFICATION

10 PR/AWARD NUMBER: S010A210009
RECIPIENT NAME: Florida Department of Education
Bureau of Federal Educational Programs

TERMS AND CONDITIONS

- (1) The Office of Management and Budget requires all Federal agencies to assign a Federal Award Identifying Number (FAIN) to each of their financial assistance awards. The PR/AWARD NUMBER identified in Block 2 is your FAIN. If subawards are permitted under this grant, and you choose to make subawards, you must document the assigned PR/AWARD NUMBER (FAIN) identified in Block 2 of this Grant Award Notification on each subaward made under this grant. The term subaward means:
 1. A legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient. (See 2 CFR 200.331(a))
 2. The term does not include your procurement of property and services needed to carry out the project or program (The payments received for goods or services provided as a contractor are not Federal awards, see 2 CFR 200.501(f) of the OMB Uniform Guidance: "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards").
 3. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract. (See 2 CFR 200.1)
- (2) This grant award is subject to the terms and conditions (if any) identified in Attachment T.
- (3) The negotiated indirect cost rate or the indirect cost allocation plan approved for the entity identified in Block 1 of this GAN applies to this grant award.
- (4) THIS GRANT AWARD IS MADE SUBJECT TO THE PROVISIONS OF ALL APPLICABLE ACTS, REGULATIONS, AND ASSURANCES.

THIS GRANT IS SUBJECT TO THE PROVISIONS OF TITLE I, PARTS A AND F, AND TITLE VIII, AS APPLICABLE, OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965, AS AMENDED BY THE EVERY STUDENT SUCCEEDS ACT, AND THE GENERAL EDUCATION PROVISIONS ACT (P.L. 103-382). THIS GRANT IS ALSO SUBJECT TO THE TITLE I REGULATIONS IN 34 CFR PART 200 AND THE EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS (EDGAR) IN 34 CFR PARTS 76 (EXCEPT FOR 76.650 - 76.662 (PARTICIPATION OF STUDENTS ENROLLED IN PRIVATE SCHOOLS)), 77, 81, AND 82, 2 CFR 3485, AND THE UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS IN 2 CFR PARTS 200 AND 3474.

- (5) UNDER THE "TYDINGS AMENDMENT," SECTION 421(b) OF THE GENERAL EDUCATION PROVISIONS ACT, 20 U.S.C. 1225(B), ANY FUNDS THAT ARE NOT OBLIGATED AT THE END OF THE FEDERAL FUNDING PERIOD SPECIFIED IN BLOCK 6 SHALL REMAIN AVAILABLE FOR OBLIGATION FOR AN ADDITIONAL PERIOD OF 12 MONTHS.



**US Department of Education
Washington, D.C. 20202**

S010A210009

GRANT AWARD NOTIFICATION

A handwritten signature in blue ink that reads "Ian Rosenblum".

Ian Rosenblum
Acting Assistant Secretary

07/01/2021

AUTHORIZING OFFICIAL

DATE

EXPLANATION OF BLOCKS ON THE GRANT AWARD NOTIFICATION

For Discretionary, Formula and Block Grants (See Block 2 of the Notification)

- 1. RECIPIENT NAME** - The legal name of the recipient or name of the primary organizational unit that was identified in the application, state plan or other documents required to be submitted for funding by the grant program.
- 2. AWARD INFORMATION** - Unique items of information that identify this notification.
 - PR/AWARD NUMBER** - A unique, identifying number assigned by the Department to each application. On funded applications, this is commonly known as the "grant number" or "document number." The PR/Award Number is also known as the Federal Award Identifying Number, or FAIN.
 - ACTION NUMBER** - A numeral that represents the cumulative number of steps taken by the Department to date to establish or modify the award through fiscal or administrative means. Action number "01" will always be "NEW AWARD"
 - ACTION TYPE** - The nature of this notification (e.g., NEW AWARD, CONTINUATION, REVISION, ADMINISTRATIVE)
 - AWARD TYPE** - The particular assistance category in which funding for this award is provided, i.e., DISCRETIONARY, FORMULA, or BLOCK. If this award was made under a Research and Development grant program, the terms RESEARCH AND DEVELOPMENT will appear under DISCRETIONARY, FORMULA OR BLOCK.
- 3. PROJECT STAFF** - This block contains the names and telephone numbers of the U.S. Department of Education and recipient staff who are responsible for project direction and oversight.
 - *RECIPIENT PROJECT DIRECTOR** - The recipient staff person responsible for administering the project. This person represents the recipient to the U.S. Department of Education.
 - EDUCATION PROGRAM CONTACT** - The U.S. Department of Education staff person responsible for the programmatic, administrative and business management concerns of the Department.
 - EDUCATION PAYMENT CONTACT** - The U.S. Department of Education staff person responsible for payments or questions concerning electronic drawdown and financial expenditure reporting.
- 4. PROJECT TITLE AND CFDA NUMBER** - Identifies the Catalog of Federal Domestic Assistance (CFDA) subprogram title and the associated subprogram number.
- 5.* KEY PERSONNEL** - Name, title and percentage (%) of effort the key personnel identified devotes to the project.
- 6. AWARD PERIODS** - Project activities and funding are approved with respect to three different time periods, described below:
 - BUDGET PERIOD** - A specific interval of time for which Federal funds are being provided from a particular fiscal year to fund a recipient's approved activities and budget. The start and end dates of the budget period are shown.
 - PERFORMANCE PERIOD** - The complete length of time the recipient is proposed to be funded to complete approved activities. A performance period may contain one or more budget periods.
 - *FUTURE BUDGET PERIODS** - The estimated remaining budget periods for multi-year projects and estimated funds the Department proposes it will award the recipient provided substantial progress is made by the recipient in completing approved activities, the Department determines that continuing the project would be in the best interest of the Government, Congress appropriates sufficient funds under the program, and the recipient has submitted a performance report that provides the most current performance information and the status of budget expenditures.
- 7. AUTHORIZED FUNDING** - The dollar figures in this block refer to the Federal funds provided to a recipient during the award periods.
 - *THIS ACTION** - The amount of funds obligated (added) or de-obligated (subtracted) by this notification.
 - *BUDGET PERIOD** - The total amount of funds available for use by the grantee during the stated budget period to this date.
 - *PERFORMANCE PERIOD** - The amount of funds obligated from the start date of the first budget period to this date.
 - RECIPIENT COST SHARE** - The funds, expressed as a percentage, that the recipient is required to contribute to the project, as defined by the program legislation or regulations and/or terms and conditions of the award.
 - RECIPIENT NON-FEDERAL AMOUNT** - The amount of non-federal funds the recipient must contribute to the project as identified in the recipient's application. When non-federal funds are identified by the recipient where a cost share is not a legislation requirement, the recipient will be required to provide the non-federal funds.
- 8. ADMINISTRATIVE INFORMATION** - This information is provided to assist the recipient in completing the approved activities and managing the project in accordance with U.S. Department of Education procedures and regulations.

DUNS/SSN - A unique, identifying number assigned to each recipient for payment purposes. The number is based on either the recipient's assigned number from Dun and Bradstreet or the individual's social security number.

***REGULATIONS** - Title 2 of the Code of Federal Regulations(CFR), Part 200 as adopted at 2 CFR 3474; the applicable parts of the Education Department General Administrative Regulations (EDGAR), specific program regulations (if any), and other titles of the CFR that govern the award and administration of this grant.

***ATTACHMENTS** - Additional sections of the Grant Award Notification that discuss payment and reporting requirements, explain Department procedures, and add special terms and conditions in addition to those established, and shown as clauses, in Block 10 of the award. Any attachments provided with a notification continue in effect through the project period until modified or rescinded by the Authorizing Official.

9. LEGISLATIVE AND FISCAL DATA - The name of the authorizing legislation for this grant, the CFDA title of the program through which funding is provided, and U.S. Department of Education fiscal information.

FUND CODE, FUNDING YEAR, AWARD YEAR, ORG.CODE, PROJECT CODE, OBJECT CLASS -

The fiscal information recorded by the U.S. Department of Education's Grants Management System (G5) to track obligations by award.

AMOUNT - The amount of funds provided from a particular appropriation and project code. Some notifications authorize more than one amount from separate appropriations and/or project codes. The total of all amounts in this block equals the amount shown on the line, "THIS ACTION" (See "AUTHORIZED FUNDING" above (Block 7)).

10. TERMS AND CONDITIONS - Requirements of the award that are binding on the recipient.

***PARTICIPANT NUMBER** - The number of eligible participants the grantee is required to serve during the budget year.

***GRANTEE NAME** - The entity name and address registered in the System for Award Management (SAM). This name and address is tied to the DUNS number registered in SAM under the name and address appearing in this field. This name, address and the associated DUNS is what is displayed in the SAM Public Search.

***PROGRAM INDIRECT COST TYPE** - The type of indirect cost permitted under the program (i.e. Restricted, Unrestricted, or Training).

***PROJECT INDIRECT COST RATE** - The indirect cost rate applicable to this grant.

***AUTHORIZING OFFICIAL** - The U.S. Department of Education official authorized to award Federal funds to the recipient, establish or change the terms and conditions of the award, and authorize modifications to the award

FOR FORMULA AND BLOCK GRANTS ONLY:

(See also Blocks 1, 2, 4, 6, 8, 9 and 10 above)

3. PROJECT STAFF - The U.S. Department of Education staff persons to be contacted for programmatic and payment questions.

7. AUTHORIZED FUNDING

CURRENT AWARD AMOUNT - The amount of funds that are obligated (added) or de-obligated (subtracted) by this action.

PREVIOUS CUMULATIVE AMOUNT - The total amount of funds awarded under the grant before this action.

CUMULATIVE AMOUNT - The total amount of funds awarded under the grant, this action included.

* This item differs or does not appear on formula and block grants.

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE CHIEF FINANCIAL OFFICER
& CHIEF INFORMATION OFFICER

Melissa Ramsey
Florida Department of Education
Bureau of Federal Educational Programs
325 West Gaines Street
Suite 348

Tallahassee, FL 32399 - 0400

SUBJECT: Payee Identification for Grant Award S010A210009

This is to inform you that the United States Department of Education does not have a payee and bank account of record designated for the above listed grant award. You will not be able to request funds for this grant award until a payee and bank account of record are established.

- 1) All SF-1199A, Direct Deposit and Fedwire Sign-Up forms must be mailed to the Department of Education. The SF-1199A must contain original signatures for both the recipient and bank officials.
- 2) First time recipients establishing a bank account for a new award must include a copy of the grant award document with the cover letter and SF-1199A, Direct Deposit or Fedwire Sign-Up forms.
- 3) The Grant Administration and Payment System (GAPS) has been enhanced to produce an automated notification when bank account data has been changed or deleted. This automated notification is transmitted via e-mail to Payees having e-mail capacity or mailed to recipients without an e-mail address.
- 4) All banking information requests, including establishing a new bank account, modifying an existing bank account or deleting a bank account must be accompanied with a cover letter requesting the specific action. The cover letter must be on the letterhead of the requesting payee. The cover letter must contain the following information:
 - DUNS Number
 - e-mail address (if available) for the person to receive automated notification
 - signature and phone number of the person requesting the bank information change

Mail Cover Letters and accompanying forms to:

U.S. Department of Education
400 Maryland Ave, SW, Rm. 4C146
Washington, DC 20202-4110

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE CHIEF FINANCIAL OFFICER
& CHIEF INFORMATION OFFICER

Attn: Financial Management Operations

If you have any questions or require assistance concerning establishing a payee record for a bank account please contact the G5 Hotline at 1-888-336-8930.

Dear G5 Payee:

To obtain your G5 Login ID, you will need to complete the G5 External User Access Request Form and return it notarized to the U.S. Department of Education. Attached are the instructions for accessing and completing the form. Upon receiving the notarized form, the Department will send you an email with your new G5 Login ID.

Please mail the form to:

U.S. Department of Education
Office of the Chief Information Officer
Mail Stop - 4110
400 Maryland Avenue S.W.
Washington, DC 20202
Attn: Functional Applications Team

Thank you for your continued support of the U.S. Department of Education's G5 Grant Management System. Please contact the G5 Hotline (888-336-8930) if you have any

Sincerely,
G5 Administration

Instructions for Completing the G5 External User Access Request Form

To establish direct access to your U.S. Department of Education G5 Grant Management System account, please complete the G5 External User Access Request Form attached, have it notarized, and mail the completed form to the address below.

Steps for Completing the G5 External User Access Request Form -

1. Go to <http://www.g5.gov> and click on the link, "Not Registered? Sign up".
2. Complete each data element of the form including the following elements:
 - a. User Type (Select Payee unless you are specifically a Servicer)
 - b. Dun and Bradstreet Number (DUNS)
 - b. Desired Role (Select Full Access to enable you to continue to draw funds, or View Only if you will only need to review account activity).
3. Print the form and then Submit your online registration.
4. You will immediately receive an email asking you to activate your account.
5. Click on the link in the email and select your password and Secret Question and Answer.
6. Congratulations! You now have an active account. Only one more step!!
7. Sign the printed (from step 3) G5 External User Access Request Form as the Authorized Payee in the presence of a Notary Public.
8. Assure the G5 External User Access Request Form is notarized with appropriate seal and signature and expiration date.
9. Mail the completed, notarized G5 External User Access Request Form to the following address:

U.S. Department of Education
Office of the Chief Information Officer
Mail Stop - 4110
400 Maryland Avenue S.W.
Washington DC 20202
Attn: Functional Applications Team
10. Allow two weeks for delivery and account updates.
11. You will receive Email notification that your G5 External User Access Request Form has been processed and your roles have been assigned.
12. Congratulations, You're now able to access G5 directly.

As always, please contact the G5 Hotline (888-336-8930) with any questions.

INSTRUCTIONS
ACH DIRECT DEPOSIT SIGN-UP FORM
SF-1199A

Recipients can obtain an SF-1199A (Figure D-1) from their financial institution. The preprinted instructions on the reverse side of the SF-1199A should be disregarded and the following instructions should be followed in completing the SF-1199A.

The recipient is to complete Sections 1 and 2 of the SF-1199A. The recipient's financial institution is to complete Section 3 and mail the completed form to the Department of Education. The financial institution will mail a copy of the completed SF-1199A to the recipient.

INSTRUCTIONS - SECTION 1

ITEM A	Name of Payee Address Telephone Number	Enter the name and address of payee's organization. Enter telephone number of person authorized to certify the payment request.
ITEM B	Name of Person(s) Entitled to Payment	Leave Blank.
ITEM C	Claim or Payroll ID Number	Enter the following information Prefix: 9 digit D-U-N-S Number, Suffix: 11 character Grant Award nUmber.
ITEM D	Type of Depositor	Place an "X" in the Appropriate Box.
ITEM E	Depositor Account	Enter the payee's account number at the financial institution in which funds are to be deposited. Include blanks or dashes when entering the account number.
ITEM F	Type of Payment	Enter "X" in the "Other" box.
ITEM G	Box for Allotment of Payment Only	Leave Blank.
Payee/Joint Certification		Authorized Certifying Official for the payee is to sign the form.

INSTRUCTIONS - SECTION 2

Government Agency Name	Enter:	U.S. Department of Education
Government Agency Address	Enter:	400 Maryland Avenue, SW Room 4C138 Washington, DC 20202

INSTRUCTIONS - SECTION 3

To be completed by financial institution.

Director, Financial Payment Group
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202 - 4331

Ref: PR/Award No. S010A210009

Dear Sir:

Please transfer FEDWIRE payments for Florida Department of Education to the following financial institution and depositor account beginning on this date: Month_____, Day_____, Year_____.

Information regarding the financial institution to which payments for D-U-N-S _____ are to be transferred is provided below.

Financial Institution

Name: _____
Street: _____
City: _____
State: _____
Zip: _____

Corresponding Bank (if applicable):

Name: _____
Street: _____
City: _____
State: _____
Zip: _____

ABA Number: _____
Account Number: _____
Contact Name: _____
Telephone No: _____

ABA Number: _____
Telegraphic Abbrev.: _____

Please update my account with the information as indicated above. If you have any questions, I may be reached at (____) _____.

Sincerely,

Chief Financial Officer

AN OVERVIEW OF SINGLE AUDIT REQUIREMENTS OF STATES, LOCAL GOVERNMENTS, AND NONPROFIT ORGANIZATIONS

This GAN ATTACHMENT is **not** applicable to for-profit organizations. For-profit organizations comply with audit requirements specified in block 10 of their Grant Award Notification (GAN).

Summary of Single Audit Requirements for States, Local Governments and Nonprofit Organizations:

1. Single Audit. A non-Federal entity (a State, local government, Indian tribe, Institution of Higher Education (IHE)¹, or nonprofit organization) that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single audit conducted in accordance with 2 CFR 200.501, "Audit Requirements," except when it elects to have a program specific audit conducted.
2. Program-specific audit election. When an auditee expends Federal awards under only one Federal program (excluding research and development (R&D)), and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of the auditee, the auditee may elect to have a program-specific audit conducted. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a subrecipient, approves in advance a program-specific audit.
3. Exemption when Federal awards expended are less than \$750,000. A non-Federal entity that expends less than \$750,000 during the non-Federal entity's fiscal year in Federal awards is exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO). Generally, grant records must be maintained for a period of three years after the date of the final expenditure report ([2 CFR § 200.334](#))
4. Federally Funded Research and Development Centers (FFRDC). Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity.
5. Report Submission. To meet audit requirements of U.S. Office of Management and Budget (OMB) Uniform Guidance: Cost Principles, Audit, and Administrative Requirements for Federal Awards (Uniform Guidance), grantees must submit all audit documents required by Uniform Guidance 2 CFR 200.512, including Form SF-SAC: Data Collection Form electronically to the Federal Audit Clearinghouse at:

¹ As defined under the Higher Education Act of 1965, as amended (HEA) section 101.

<https://facides.census.gov/Account/Login.aspx>.

The audit must be completed, and the data collection form and reporting package must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day. Unless restricted by Federal statutes or regulations, the auditee must make copies available for public inspection. Auditees and auditors must ensure that their respective parts of the reporting package do not include protected personally identifiable information. (2 CFR 200.512)

Grantees are strongly urged to obtain the "OMB Compliance Supplement" and to contact their cognizant agency for single audit technical assistance.

The designated cognizant agency for single audit purposes is "the Federal awarding agency that provides the predominant amount of direct funding to the recipient." Grantees should obtain a copy of the OMB Compliance supplement. This supplement will be instructive to both grantees and their auditors. Appendix III of the supplement provides a list of Federal Agency Contacts for Single Audits, including addresses, phone numbers, fax numbers, and e-mail addresses for technical assistance.

For single audit-related questions, if the U.S. Department of Education is the cognizant agency, grantees should contact the Non-Federal Audit Team in the Department's Office of Inspector General, at oignon-federalaudit@ed.gov. Additional resources for single audits are also available on the Non-Federal Audit Team's website at <https://www2.ed.gov/about/offices/list/oig/nonfed/index.html>. For programmatic questions, grantees should contact the education program contact shown on the Department's GAN.

Grantees can obtain information on single audits from:

The OMB website at www.omb.gov. Look under Office of Management and Budget (in right column) then click Office of Federal Financial Management (to obtain OMB Compliance Supplement). The SF-SAC: Data Collection Form can be found at the Federal Audit Clearinghouse at: <https://facides.census.gov/Files/2019-2021%20Checklist%20Instructions%20and%20Form.pdf>.

The American Institute of Certified Public Accountants (AICPA) has illustrative OMB Single Audit report examples that might be of interest to accountants, auditors, or financial staff at www.aicpa.org.

TRAFFICKING IN PERSONS

The Department of Education adopts the requirements in the Code of Federal Regulations at 2 CFR [175](#) and incorporates those requirements into this grant through this condition. The grant condition specified in 2 CFR [175.15\(b\)](#) is incorporated into this grant with the following changes. Paragraphs a.2.ii.B and b.2. ii. are revised to read as follows:

“a.2.ii.B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 34 CFR part 85.”

“b.2. ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 34 CFR part 85.”

Under this condition, the Secretary may terminate this grant without penalty for any violation of these provisions by the grantee, its employees, or its subrecipients.

**FEDERAL FUNDING ACCOUNTABILITY TRANSPARENCY ACT
REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION**

The Federal Funding Accountability and Transparency Act (FFATA) is designed to increase transparency and improve the public’s access to Federal government information. To this end, FFATA requires that Department of Education (Department) grant recipients:

1. Report **first-tier subawards** made under Federal grants that are funded at \$30,000 or more that meet the reporting conditions as set forth in this grant award term;
2. Report their executives’ compensation for all new Federal grants that are funded at \$30,000 and that meet the reporting conditions as set forth in this grant award term; and
3. Report executive compensation data for their **first-tier subrecipients** that meet the reporting conditions as set forth in this grant award term.

For FFATA reporting purposes, the Department grant recipient is the entity listed in box 1 of the Grant Award Notification.

Only **first-tier subawards** made by the Department grant recipient to its **first-tier subrecipients** and the **first-tier subrecipients’** executive compensation are required to be reported in accordance with FFATA.

Subaward, Subrecipient, Recipient, Total Compensation, Executives, and other key terms, are defined within item 5, Definitions, of this grant award term.

This grant award term is issued in accordance with [2 CFR Part 170—Reporting Subaward And Executive Compensation Information](#).

1. Reporting of First-tier Subawards -

a. Applicability and what to report.

Unless you are exempt as provided item 4, Exemptions, of this grant award term, you must report each obligation that **equals or exceeds \$30,000** in Federal funds for a first-tier subaward to a non-Federal entity or Federal agency.

You must report the information about each obligating action that are specified in the submission instructions posted at [FSRS](#).

b. Where and when to report.

The Department grant recipient must report each obligating action described in paragraph **1.a.** of this award term to [FSRS](#).

Report subaward information no later than the end of the month following the month in which the subaward obligation was made. For example, if the obligation was made on November 7, 2020, the obligation must be reported by no later than December 31, 2020.

2. Reporting Total Compensation of the Department’s Grant Recipients’ Executives -

a. *Applicability and what to report.*

You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

- i The total Federal funding authorized to date under this Federal award **equals or exceeds \$30,000**;
- ii In the preceding fiscal year, you received—
 - A. 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards), **and**
 - B. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards); **and**,
 - C. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at [SEC Investor.gov Executive Compensation](#).)

b. *Where and when to report.*

You must report executive total compensation described in paragraph **2.a.** of this grant award term:

- i As part of your registration profile at [SAM.gov](#).
- ii By the end of the month following the month in which this award is made (for example, if the obligation was made on November 7, 2020 the executive compensation must be reported by no later than December 31, 2020), and annually thereafter.

3. Reporting of Total Compensation of Subrecipient Executives –

a. *Applicability and what to report.*

Unless you are exempt as provided in item 4, Exemptions, of this award term, for each first-tier **non-Federal entity** subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- i In the subrecipient's preceding fiscal year, the subrecipient received—

- A. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards), **and**
 - B. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at [2 CFR 170.320](#) (and subawards); **and**,
 - C. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at [SEC Investor.gov Executive Compensation](#).)
- b. *Where and when to report.*

You must report subrecipient executive total compensation described in paragraph **3.a.** of this grant award term:

- i. In [FSRS](#). You must include a condition on subawards that requires the subrecipients to timely report the information required under paragraph **3.a.** to you the prime awardee, or in the [SAM.gov](#). Subrecipient executive compensation entered in [SAM.gov](#) by the subrecipient will pre-populate in [FSRS](#), so you do not have to report when subrecipients enter this information in [SAM.gov](#). Subrecipient executive compensation not entered in [SAM.gov](#) by the subrecipient is reported in [FSRS](#) by you the Department grant recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if the subaward obligation was made on November 7, 2020 the subrecipient’s executive compensation must be reported by no later than December 31, 2020.

4. Exemptions –

- a. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:
 - i. Subawards, and
 - ii. The total compensation of the five most highly compensated executives of any **subrecipient**.

5. Definitions -

- a. For purposes of this award term:
 - i. Federal *Agency* means a Federal agency as defined at [5 U.S.C. 551\(1\)](#) and further clarified by [5 U.S.C. 552\(f\)](#).
 - ii. Non-Federal *Entity* means all of the following, as defined in [2 CFR part 25](#):

A Governmental organization, which is a State, local government, or Indian tribe;

- A foreign public entity;
 - A domestic or foreign nonprofit organization; and,
 - A domestic or foreign for-profit organization
- iii. *Executive* means officers, managing partners, or any other employees in management positions.
- iv. *Obligation*, when used in connection with a non-Federal entity's utilization of funds under a Federal award, means orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the non-Federal entity during the same or a future period.
- v. *Subaward*:

This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

The term does not include your procurement of property and services (such as payments to a contractor, small purchase agreements, vendor agreements, and consultant agreements) that are needed for the benefit of the prime awardee to carry out the project or program (for further explanation, see [2 CFR 200.331](#)). For example, the following are not considered subawards:

Cleaning Vendors: Vendors that are hired by a grantee to clean its facility.

Payroll Services Vendors: Vendors that carryout payroll functions for the grantee.

Information Technology Vendors: Vendors that provide IT support to grant staff.

Payments to individuals that are beneficiaries of Federal programs are not considered subawards.

A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

- v. *Subrecipient* means a non-Federal entity or Federal agency that:

Receives a subaward from you (the recipient) under this award; and

Is accountable to you for the use of the Federal funds provided by the subaward.

In accordance with its subaward, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the Department prime awardee.

- vii. *Recipient* means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. See also §200.69 Non-Federal entity.
- viii. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see [17 CFR 229.402\(c\)\(2\)](#)):

Salary and bonus.

Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization, or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.

Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

Above-market earnings on deferred compensation which is not tax-qualified.

Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites, or property) for the executive exceeds \$10,000.

**SPECIFIC CONDITIONS FOR DISCLOSING
FEDERAL FUNDING IN PUBLIC ANNOUNCEMENTS**

When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, U.S. Department of Education grantees shall clearly state:

- 1) the percentage of the total costs of the program or project which will be financed with Federal money;
- 2) the dollar amount of Federal funds for the project or program; and
- 3) the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

Recipients must comply with these conditions under Division H, Title V, Section 505 of Public Law 116-260, Consolidated Appropriations Act, 2021.

**PROHIBITION OF TEXT MESSAGING AND EMAILING WHILE DRIVING
DURING OFFICIAL FEDERAL GRANT BUSINESS**

Federal grant recipients, sub recipients and their grant personnel are prohibited from text messaging while driving a government owned vehicle, or while driving their own privately-owned vehicle during official grant business, or from using government supplied electronic equipment to text message or email when driving.

Recipients must comply with these conditions under Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," October 1, 2009.

REGISTRATION OF UNIQUE ENTITY IDENTIFIER (UEI) NUMBER AND TAXPAYER IDENTIFICATION NUMBER (TIN) IN THE SYSTEM FOR AWARD MANAGEMENT (SAM)

The U.S. Department of Education (Department) Grants Management System (G5) disburses payments via the U.S. Department of Treasury (Treasury). The U.S. Treasury requires that we include your Tax Payer Identification Number (TIN) with each payment. Therefore, in order to do business with the Department you must have a registered Unique Entity Identifier (UEI)¹ and TIN number with the SAM, the U.S. Federal Government's primary registrant database. If the payee UEI number is different than your grantee UEI number, both numbers must be registered in the SAM. Failure to do so will delay the receipt of payments from the Department.

A TIN is an identification number used by the Internal Revenue Service (IRS) in the administration of tax laws. It is issued either by the Social Security Administration (SSA) or by the IRS. A Social Security number (SSN) is issued by the SSA whereas all other TINs are issued by the IRS.

The following are all considered [TINs according to the IRS](#).

- Social Security Number "SSN"
- Employer Identification Number "EIN"
- Individual Taxpayer Identification Number "ITIN"
- Taxpayer Identification Number for Pending U.S. Adoptions "ATIN"
- Preparer Taxpayer Identification Number "PTIN"

If your UEI number is not currently registered with the SAM, you can easily register by going to www.sam.gov. Please allow 3-5 business days to complete the registration process. If you need a new TIN, please allow 2-5 weeks for your TIN to become active. If you need assistance during the registration process, you may contact the SAM Federal Service Desk at 866-606-8220.

If you are currently registered with SAM, you may not have to make any changes. However, please take the time to validate that the TIN associated with your UEI is correct.

If you have any questions or concerns, please contact the G5 Hotline at 888-336-8930.

¹ Currently, ED uses the Data Universal Numbering System (DUNS) number, assigned by Dun and Bradstreet, INC. to uniquely identify business entities, as the UEI.

SYSTEM FOR AWARD MANAGEMENT AND UNIVERSAL IDENTIFIER REQUIREMENTS

1. Requirement for System for Award Management (SAM)

Unless you are exempted from this requirement under 2 CFR 25.110, you are, in accordance with your grant program's Notice Inviting Applications, required to maintain an active SAM registration with current information about your organization, including information on your immediate and highest level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable, at all times during which you have an active Federal award or an application or plan under consideration by a Federal awarding agency. To remain registered in the SAM database after your initial registration, you are required to review and update your information in the SAM database on an annual basis from the date of initial registration or subsequent updates to ensure it is current, accurate and complete.

2. Requirement for Unique Entity Identifier (UEI)* Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that they may not receive a subaward from you unless they provided their UEI number to you.
2. May not make a subaward to a subrecipient when the subrecipient fails to provide its UEI number to you.

3. Definitions

For purposes of this award term:

1. System for Award Management (SAM) means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at <https://www.sam.gov>).
2. Unique Entity Identifier (UEI) means the identifier assigned by SAM registration to uniquely identify business entities. Currently the Data Universal Numbering System (DUNS) number, the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B), is used to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
3. Recipient means a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients. See 2 CFR 200.86.
4. Subaward means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. It does not include

payments to a contractor or payments to an individual that is a beneficiary of a Federal program. A subaward may be provided through any form of legal agreement, including an agreement that the pass-through entity considers a contract. See 2 CFR 200.92.

5. Subrecipient means a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency. See 2 CFR 200.93.

*Currently, the Department uses the Data Universal Numbering System (DUNS) number, assigned by Dun and Bradstreet, Inc. to uniquely identify business entities, as the UEI.

THE USE OF GRANT FUNDS FOR CONFERENCES AND MEETINGS

You are receiving this memorandum to remind you that grantees must take into account the following factors when considering the use of grant funds for conferences and meetings:

- Before deciding to use grant funds to attend or host a meeting or conference, a grantee should:
 - Ensure that attending or hosting a conference or meeting is consistent with its approved application and is reasonable and necessary to achieve the goals and objectives of the grant;
 - Ensure that the primary purpose of the meeting or conference is to disseminate technical information, (e.g., provide information on specific programmatic requirements, best practices in a particular field, or theoretical, empirical, or methodological advances made in a particular field; conduct training or professional development; plan/coordinate the work being done under the grant); and
 - Consider whether there are more effective or efficient alternatives that can accomplish the desired results at a lower cost, for example, using webinars or video conferencing.
- Grantees must follow all applicable statutory and regulatory requirements in determining whether costs are reasonable and necessary, especially the Cost Principles for Federal grants set out at 2 CFR Part 200 Subpart E of the, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.” In particular, remember that:
 - Federal grant funds cannot be used to pay for alcoholic beverages; and
 - Federal grant funds cannot be used to pay for entertainment, which includes costs for amusement, diversion, and social activities.
- Grant funds may be used to pay for the costs of attending a conference. Specifically, Federal grant funds may be used to pay for conference fees and travel expenses (transportation, per diem, and lodging) of grantee employees, consultants, or experts to attend a conference or meeting if those expenses are reasonable and necessary to achieve the purposes of the grant.
 - When planning to use grant funds for attending a meeting or conference, grantees should consider how many people should attend the meeting or conference on their behalf. The number of attendees should be reasonable and necessary to accomplish the goals and objectives of the grant.
- A grantee hosting a meeting or conference may not use grant funds to pay for food for conference attendees unless doing so is necessary to accomplish legitimate meeting or conference business.
 - A working lunch is an example of a cost for food that might be allowable under a Federal grant if attendance at the lunch is needed to ensure the full participation by conference attendees in essential discussions and speeches concerning the purpose of the conference and to achieve the goals and objectives of the project.
- A meeting or conference hosted by a grantee and charged to a Department grant must not be promoted as a U.S. Department of Education conference. This means that the seal of the U.S. Department of Education must not be used on conference materials or signage without Department approval.

- All meeting or conference materials paid for with grant funds must include appropriate disclaimers, such as the following:
 - The contents of this (insert type of publication; e.g., book, report, film) were developed under a grant from the Department of Education. However, those contents do not necessarily represent the policy of the Department of Education, and you should not assume endorsement by the Federal Government.
- Grantees are strongly encouraged to contact their project officer with any questions or concerns about whether using grant funds for a meeting or conference is allowable prior to committing grant funds for such purposes.
 - A short conversation could help avoid a costly and embarrassing mistake.
- Grantees are responsible for the proper use of their grant awards and may have to repay funds to the Department if they violate the rules on the use of grant funds, including the rules for meeting- and conference-related expenses.

MEMORANDUM TO REMIND DEPARTMENT OF EDUCATION GRANTEES OF EXISTING CASH MANAGEMENT REQUIREMENTS CONCERNING PAYMENTS

The Department of Education (Department) requires that its grantees adhere to existing cash management requirements concerning payments and will ensure that their subgrantees are also aware of these policies by providing them relevant information. A grantee's failure to comply with cash management requirements may result in an improper payment determination by the Department in accordance with the [Payment Integrity Information Act \(PIIA\) of 2019](#).

There are three categories of payment requirements that apply to the drawdown of funds from grant accounts at the Department. The first two types of payments are subject to the requirements in the Treasury Department regulations implementing the Cash Management Improvement Act (CMIA) of 1990, 31 U.S.C.6513, and the third is subject to the requirements in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance) at 2 CFR part 200,¹ as follows:

1. Payments to a State under programs that are covered by a State's Treasury State Agreement (TSA);
2. Payments to States under programs that are not covered by a TSA; and
3. Payments to other non-Federal entities, including nonprofit organizations and local governments.

CMIA Requirements Applicable to Programs included in a TSA

Generally, under the Treasury Department regulations implementing the CMIA, only major assistance programs (large-dollar programs meeting thresholds in 31 CFR § 205.5) are included in a State's written TSA. See 31 CFR § 205, subpart A. Programs included in a TSA must use approved funding techniques and both States and the Federal government are subject to interest liabilities for late payments. State interest liabilities accrue from the day federal funds are credited to a State account to the day the State pays out the federal funds for federal assistance program purposes. 31 CFR § 205.15. If a State makes a payment under a Federal assistance program before funds for that payment have been transferred to the State, Federal Government interest liabilities accrue from the date of the State payment until the Federal funds for that payment have been deposited to the State account. 31 CFR § 205.14.

CMIA Requirements Applicable to Programs Not Included in a TSA

Payments to States under programs not covered by a State's TSA are subject to subpart B of Treasury's regulations in 31 CFR § 205. These regulations provide that a State must minimize the time between the drawdown of funds from the federal government and their disbursement for approved program activities. The timing and amount of funds transfers must be kept to a minimum and be as close as is administratively feasible to a State's actual cash outlay for direct program costs and the proportionate share of any allowable indirect costs. 31 CFR § 205.33(a). States should exercise sound cash management in funds transfers to subgrantees.

¹ The Department adopted the Uniform Guidance as regulations of the Department at 2 CFR part 3474.

Under subpart B, neither the States nor the Department owe interest to the other for late payments. 31 CFR § 205.33(b). However, if a State or a Federal agency is consistently late in making payments, Treasury can require the program to be included in the State's TSA. 31 CFR § 205.35.

Fund transfer requirements for grantees other than State governments and subgrantees

The transfer of Federal program funds to grantees other than States and to subgrantees are subject to the payment and interest accrual requirements in the Uniform Guidance at 2 CFR § 200.305(b). These requirements are like those in subpart B of the Treasury Department regulations in 31 CFR part 205, requiring that "payments methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity." 2 CFR § 200.305(b) introduction.

The Federal Government and pass-through entities must make payments in advance of expenditures by grantees and subgrantees if these non-Federal entities maintain, or demonstrate the willingness to maintain, written procedures "that minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity, and financial management systems that meet the standards for fund control and accountability." 2 CFR § 200.305(b)(1). If a grantee or subgrantee cannot meet the criteria for advance payments, a Federal agency or pass-through entity can pay that entity through reimbursement. See 2 CFR § 200.305(b)(1) and (4) for more detailed description of the payment requirements and the standards for requiring that payments be made by reimbursement.

Non-Federal entities must maintain advance payments in interest bearing accounts unless certain conditions exist. See 2 CFR § 200.305(b)(8) for those conditions. The requirements regarding interest accrual and remittance follow:

Grantees and subgrantees must annually remit interest earned on federal advance payments except that interest earned amounts up to \$500 per year may be retained for administrative expense. Any additional interest earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment. 2 CFR § 200.305(b)(9)(i) and (ii).

1. When returning interest through ACH Direct Deposit or Fedwire, grantees must include the following in their return transaction:
 - PMS Account Number (PAN). NOTE: The PAN is the same series of alpha-numeric characters used for payment request purposes (e.g.: C1234G1).
 - PMS document number.
 - The reason for the return (e.g., interest, part interest part other, etc.).
 - An explanation stating that the refund is for interest payable to the Department of Health and Human Services, and the grant number(s) for which the interest was earned.
- a. U.S. Department of Education grantees are generally located and operate domestically and return interest domestically. Below is PSC ACH account information for interest returned

domestically. For international ACH interest returned, account information is available at: Returning Funds/Interest.

- PSC ACH Routing Number is: 051036706
 - PSC DFI Accounting Number: 303000
 - Bank Name: Credit Gateway - ACH Receiver
 - Location: St. Paul, MN
- b. Service charges may be incurred from a grantee's financial institution when a Fedwire to return interest is initiated. For FedWire returns, Fedwire account information is as follows:
- Fedwire Routing Number: 021030004
 - Agency Location Code (ALC): 75010501
 - Bank Name: Federal Reserve Bank
 - Treas NYC/Funds Transfer Division
 - Location: New York, NY
2. Interest may be returned by check using only the U.S. Postal Service; however, returning interest via check may take 4-6 weeks for processing before a check payment may be applied to the appropriate PMS account.
- a. Interests returned by check are to be mailed (USPS only) to:
- HHS Program Support Center
PO Box 979132
St. Louis, MO 63197
- A brief statement explaining the nature of the return must be included.
- b. To return interest on a grant not paid through the PMS, make the check payable to the Department of Health and Human Services, and include the following with the check:
- An explanation stating that the refund is for interest
 - The name of the awarding agency
 - The grant number(s) for which the interest was earned
 - The return should be made payable to: Department of Health and Human Services.
3. For detailed information about how to return interest, visit the PSC Returning Funds/Interest page at: [Returning Funds/Interest](#)

Grantees, including grantees that act as pass-through entities and subgrantees have other responsibilities regarding the use of Federal funds. For example, all grantees and subgrantees must have procedures for determining the allowability of costs for their awards. We highlight the following practices related to the oversight of subgrantee compliance with the financial management requirements in the Uniform Guidance that will assist State grantees (pass-through entities) in meeting their monitoring responsibilities. Under 2 CFR § 200.332, pass-through entities must –

1. Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring.
2. Monitor the performance and fiscal activities of the subrecipient to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved.

A small number of Department grant programs have program-specific cash management and payment requirements based on the authorizing legislation or program regulations. These program-specific requirements may supplement or override general cash management or payment requirements. If you have any questions about your specific grant, please contact the Education Program Contact listed in Block 3 of your Grant Award Notification.

**RECIPIENTS OF DEPARTMENT OF EDUCATION GRANTS AND COOPERATIVE AGREEMENTS
FREQUENTLY ASKED QUESTIONS ON CASH MANAGEMENT**

Q What are the Federal Laws and Regulations Regarding Payments to the States?

A The *Cash Management Improvement Act of 1990 (CMIA)* establishes interest liabilities for the Federal and State governments when the Federal Government makes payments to the States. See 31 U.S.C. 3335 and 6503. The implementing regulations are in Title 31 of the Code of Federal Regulations (CFR), Part 205, https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title31/31cfr205_main_02.tpl. Non-Federal entities other than States follow the rules on Federal payments set out in 2 CFR 200.305.

Q What is a Treasury-State Agreement (TSA)?

A A TSA documents the accepted funding techniques and methods for calculating interest agreed upon by the U.S. Department of the Treasury (Treasury) and a State. It identifies the Federal assistance programs that are subject to interest liabilities under the CMIA. The CMIA regulations specify a number of different funding techniques that may be used by a State but a State can negotiate with the Treasury Department to establish a different funding technique for a particular program. A TSA is effective until terminated and, if a state does not have a TSA, payments to the State are subject to the default techniques in the regulations that Treasury determines are appropriate.

Q What are the CMIA requirements for a program subject to a Treasury-State Agreement?

A Payments to a State under a program of the Department are subject to the interest liability requirements of the CMIA if the program is included in the State's Treasury-State Agreement (TSA) with the Department of Treasury. If the Federal government is late in making a payment to a State, it owes interest to the State from the time the State spent its funds to pay for expenditure until the time the Federal government deposits funds to the State's account to pay for the expenditure. Conversely, if a State is late in making a payment under a program of the Department, the State owes interest to the Federal government from the time the Federal government deposited the funds to the State's account until the State uses those funds to make a payment. For more information, GAN Enclosure 4.

Q What are the CMIA requirements for a program that is not subject to a Treasury-State Agreement?

A If a program is not included in the State's TSA, neither the State nor the Federal government are liable for interest for making late payments. However, both the Federal government and the State must minimize the time elapsing between the date the State requests funds and the date that the funds are deposited to the State's accounts. The State is also required to minimize the time elapsed between the date it receives funds from the Federal government and the date it makes a payment under the program, Also, the Department must minimize the amount of funds transferred to a State to only that needed to meet the immediate cash needs of the State. The timing and amount of funds transferred must be as close as is administratively feasible to a State's actual cash outlay for direct program costs and the proportionate share of any allowable indirect costs.

Q What if there is no TSA?

- A** When a State does not have a TSA in effect, default procedures in 31 CFR, part 205 that the Treasury Department determines appropriate apply. The default procedures will prescribe efficient funds transfer procedures consistent with State and Federal law and identify the covered Federal assistance programs and designated funding techniques.
- Q** **Who is responsible for Cash Management?**
- A** Grantees and subgrantees that receive grant funds under programs of the Department are responsible for maintaining internal controls regarding the management of Federal program funds under the Uniform Guidance in 2 CFR 200.302 and 200.303. In addition, grantees are responsible for ensuring that subgrantees are aware of the cash management and requirements in 2 CFR part 200, subpart D.
- Q** **Who is responsible for monitoring cash drawdowns to ensure compliance with cash management policies?**
- A** Recipients must monitor their own cash drawdowns **and** those of their subrecipients to assure substantial compliance to the standards of timing and amount of advances.
- Q** **How soon may I draw down funds from the G5 grants management system?**
- A** Grantees are required to minimize the amount of time between the drawdown and the expenditure of funds from their bank accounts. (See 2 CFR 200.305(b).) Funds must be drawn only to meet a grantee's immediate cash needs for each individual grant. The G5 screen displays the following message:
- By submitting this payment request, I certify to the best of my knowledge and belief that the request is based on true, complete, and accurate information. I further certify that the expenditures and disbursements made with these funds are for the purposes and objectives set forth in the applicable Federal award or program participation agreement, and that the organization on behalf of which this submission is being made is and will remain in compliance with the terms and conditions of that award or program participation agreement. I am aware that the provision of any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me, and the organization on behalf of which this submission is being made, to criminal, civil, or administrative penalties for fraud, false statements, false claims, or other violations. (U.S. Code Title 18, Section 1001; Title 20, Section 1097; and Title 31, Sections 3729-3730 and 3801-3812)**
- Q** **How may I use Federal funds?**
- A** Federal funds must be used as specified in the Grant Award Notification (GAN) and the approved application or State plan for allowable direct costs of the grant and an allocable portion of indirect costs, if authorized.
- Q** **What are the consequences to recipients/subrecipients for not complying with terms of the grant award?**
- A** If a recipient or subrecipient materially fails to comply with any term of an award, whether stated in a Federal statute or regulation, including those in 2 CFR part 200, an assurance, the GAN, or elsewhere, the awarding agency may in accordance with 2 CFR 200.339 take one or more of the following actions:

1. Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity.
2. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity not in compliance.
3. Wholly or partly suspend or terminate the Federal award.
4. Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal award agency regulations (or in the case of a pass-through be initiated by a Federal awarding agency).
5. Withhold further Federal awards for the project or program.
6. Take other remedies that may be legally available.

Q Who is responsible for determining the amount of interest owed to the Federal government?

A As set forth in 31 CFR 205.9, the method used to calculate and document interest liabilities is included in the State's TSA. A non-State entity must maintain advances of Federal funds in interest-bearing accounts unless certain limited circumstance apply and remit interest earned on those funds to the Department of Health and Human Services, Payment Management System annually. See 2 CFR 200.305.

Q What information should accompany my interest payment?

A In accordance with 2 CFR 200.305(b)(9), interest in excess of \$500.00 earned on Federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services Payment Management System (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.

For returning interest on Federal awards paid through PMS, the refund should:

- (a) Provide an explanation stating that the refund is for interest;
- (b) List the PMS Payee Account Number(s) (PANs);
- (c) List the Federal award number(s) for which the interest was earned; and
- (d) Make returns payable to: Department of Health and Human Services.

For returning interest on Federal awards not paid through PMS, the refund should:

- (a) Provide an explanation stating that the refund is for interest;
- (b) Include the name of the awarding agency;
- (c) List the Federal award number(s) for which the interest was earned; and
- (d) Make returns payable to: Department of Health and Human Services.

For additional information about returning interest see GAN ATTACHMENT 4.

Q Are grant recipients/subrecipients automatically permitted to draw funds in advance of the time they need to disburse funds in order to liquidate obligations?

A The payment requirements in 2 CFR 200.305(b) authorize a grantee or subgrantee to request funds in advance of expenditures if certain conditions are met. However, if those conditions are not met, the Department and a pass-through agency may place a payee on reimbursement.

Q For formula grant programs such as ESEA Title I, for which States distribute funds to LEAs, may States choose to pay LEAs on a reimbursement basis?

A A subgrantee must be paid in advance if it meets the standards for advance payments in 2 CFR 200.305(b)(1) but if the subgrantee cannot meet those standards, the State may put the subgrantee on reimbursement payment. See 2 CFR 200.305(b).

Q Will the Department issue special procedures in advance if G5 plans to shut down for 3 days or more?

A Yes, before any shutdown of G5 lasting three days or more, the Department issues special guidance for drawing down funds during the shut down. The guidance will include cash management improvement act procedures for States and certain State institutions of higher education and procedures for grants (including Pell grants) that are not subject to CMIA.

FLORIDA

ATTACHMENT T – Fiscal Year 2021 Condition Governing Title I, Part A Grants to Local Educational Agencies

A condition was placed on the Florida Department of Education’s (FDOE’s) 2017, 2018, 2019 and 2020 Title I, Part A grant awards because the State had not yet provided all information needed for review and approval of its standards and assessment system through the Department’s assessment peer review process. On January 6, 2017 FDOE received a letter (<https://www2.ed.gov/admins/lead/account/nclbfinalassess/fl5.pdf>) from the U.S. Department of Education that specified additional information needed for review and approval of the State’s standards and assessment system under section 1111(b)(1) and (3) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001, and as continued under section 1111(b)(1) and (2) of the ESEA, as amended by the Every Student Succeeds Act. A second letter (<https://www2.ed.gov/admins/lead/account/nclbfinalassess/fl6.pdf>) on May 18, 2018, identified several items that are still needed for review and approval of the State’s academic standards and assessment system. A third letter (<https://oese.ed.gov/files/2020/11/Florida-8.pdf>) on November 24, 2020, identified several items that are still needed for review and approval of the State’s academic standards and assessment system.

The condition previously applied to the State’s awards for fiscal year (FY) 2017, 2018, 2019, and 2020 will also apply to the State’s receipt of funds under this award for FY 2021 until all remaining information needed for review and approval of the State’s standards and assessment system under the authorities listed above has been provided. If this condition is not resolved in a timely manner, the Department may request additional information, revise this condition to require further action, or provide notice of its intent to take further administrative action.

FLORIDA

ATTACHMENT T – Fiscal Year 2021 Condition Governing Title I, Part A Grants to Local Educational Agencies

A condition was placed on the Florida Department of Education’s 2019 and 2020 Title I, Part A grant awards as a result of a letter (<https://oese.ed.gov/files/2020/03/Florida-7.pdf>) from the U.S. Department of Education, dated August 26, 2019, that specified additional information needed for review and approval of the State’s English language proficiency (ELP) standards and assessments under section 1111(b)(1) and (2) of the Elementary and Secondary Education Act of 1965 (ESEA). The condition previously applied to the State’s award for FY 2019 will also apply to the State’s receipt of funds under this award for FY 2021 until all remaining information needed for review and approval of the State’s ELP standards and assessment system under the authorities listed above has been provided. If this condition is not resolved in a timely manner, the Department may request additional information, revise this condition to require further action, or provide notice of its intent to take further administrative action.

ED Exhibit 2



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

MEMORANDUM

TO: State Board of Education Members

FROM: Richard Corcoran

RE: Alachua County School District, Student Opt-Out Requirements

DATE: October 4, 2021

Based upon the following memorandum, I find there is probable cause that the Alachua County School Board (ACSB) acted contrary to the law by requiring students to wear a mask or face covering unless certain exceptions apply, such as a medical certification. Specifically, ACSB's policy violated the provisions of Rule 64DER21-12 and continues to violate Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings.

Background Information

As you recall, on August 17, 2021, the State Board of Education (State Board) found that ACSB's mask policy did not comply with the Department of Health's former rule, Rule 64DER21-12, and implemented its enforcement authority by withholding funds from the district. See Order of State Board of Education Under its Oversight and Enforcement Authority, DOE No. 2021-4023, attached as Exhibit A. ACSB's policy requires students to wear a mask on school property unless certain exceptions apply and does not allow a parent to opt out a child unless the district determines one of its exceptions applies.

Prior to the State Board's action, the Governor issued Executive Order Number 21-175, directing the Florida Department of Health (FDOH) and the Florida Department of Education (FDOE) to immediately execute rules and take any additional action necessary to ensure safety protocols for controlling the spread of COVID-19 in schools. The Governor's order requires that these protocols be consistent with the Parents' Bill of Rights, codified in chapter 1014, and directs that action "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Moreover, the order directs the Commissioner of Education to pursue all legal means available to ensure school districts adhere to the law, including but not limited to withholding funds from noncompliant school boards.

On September 17, 2021, ACSB applied for a Project SAFE grant from the United States Department of Education. *See* Exhibit B. Eligibility for this new grant program requires that the district implement CDC’s strategies for preventing COVID-19, including masking, if the district:

[h]as incurred or will incur a financial penalty imposed by its SEA or other State entity, such as a reduction in funding, including but not limited to reduction in salaries for school board members or superintendents, due to the implementation of one or more [CDC] strategies and

. . . . commits to maintain such strategy or strategies to the extent consistent with CDC guidance for the 2021-2022 school year.

Id. The grant application includes the following attestation by ACSB’s Superintendent Simon:

By signing this document, the LEA Superintendent/chief executive officer (CEO) attests that the LEA has implemented such prevention strategy(ies) and that it will continue implementing the prevention strategy(ies) to the extent consistent with CDC guidance for the duration of the 2021-2022 school year.

Id.

On September 22, 2021, FDOH issued a revised rule, 64DER21-15, which relaxes the requirements for quarantining asymptomatic students who have been exposed to COVID-19, and further clarifies the parental opt-out provision by requiring that a school “must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian’s **sole discretion.**” *See* Rule 64DER21-15, Florida Administrative Register, Vol. 47 / No. 185, September 23, 2021 (emphasis supplied), attached as Exhibit C.

On September 23, 2021, I notified ACSB of Rule 64DER21-15 and requested written confirmation of the school district’s compliance with the revised FDOH rule. *See* Exhibit D.

Also on September 23, 2021, the United States Department of Education announced that it had awarded ACSB \$147,719 in Project SAFE grant funds. *See* Exhibit E, Exhibit F.

On September 24, 2021, ACSB submitted a written response, requesting an extension until October 6, in order to allow the school board time to review the rule and its policies in light of the revised rule, at a public meeting scheduled for October 5, 2021. *See* Exhibit G. The letter did not rescind the requirement for medical documentation in order to opt-out of the mask mandate.

In sum, the ACSB’s face covering policy requires all students, staff and visitors to wear face coverings on ACSB grounds and in ACSB vehicles. Although the policy appears to provide a number of exceptions, the policy precludes voluntary parental opt-out at the parent’s or legal guardian’s sole discretion. *See* Exhibit H.

The State Board’s Enforcement Authority

The State Board of Education’s enforcement authority is found in section 1008.32, Florida

Statutes. The statute provides that “[t]he State Board of Education shall oversee the performance of district school boards [...] in enforcement of all laws and rules.” § 1008.32, Fla. Stat.

In enforcing the law, the statutory process prescribed therein requires that I, as Commissioner of Education, first report my determination of probable cause to the State Board of Education. If the State Board then determines that a district school board is unwilling or unable to comply with either law or rule, the State Board is authorized to impose sanctions in order to secure compliance, including the withholding of funds and reporting to the Legislature.

Any argument that the State Board’s authority to enforce these safety protocols interferes with any district school board’s authority to operate and control schools should be rejected. Indeed, the law in Florida is clear that the State Board’s supervisory authority acts as a limitation on the operational authority of districts to operate, control and supervise public schools.

Looking to the Florida Constitution, there is a hierarchy under which a school board has local control, but in which the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a board’s local powers, but such infringement is expressly contemplated and, in fact, encouraged by the very structure set by the Florida Constitution. *See Sch. Bd of Palm Beach Cty. v. Fla. Charter Educ. Found, Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017) (rejecting school board’s argument that the State Board of Education’s authority to approve a charter school application on appeal violates article IX, section 4(b)); *see also Sch. Bd of Collier Cty v. Fla. Dep’t of Education*, 279 So. 3d 281 (Fla. 1st DCA 2019) (rejecting school board’s argument that a statute requiring school boards to distribute a portion of capital millage revenue to charter schools violates article IX, section 4(b)).

Accordingly, any argument that the State Board of Education lacks the authority to enforce these school safety protocols should also be rejected. It has long been settled that rules have the force and effect of the law. *State v. Jenkins*, 469 So. 2d 733 (Fla. 1985); *Florida Livestock Board v. W.G. Gladden*, 76 So. 2d 291 (Fla. 1954). Rule 64DER21-15 derives authority from a statute in the educational code—specifically, section 1003.22(3), Florida Statutes—so while FDOH may *also* have enforcement authority, enforcement of school safety protocols falls squarely within the State Board of Education’s authority to supervise the state’s education system as a whole.

Conclusion

Every school board member and every school superintendent has a duty to comply with the law, whether they agree with it or not. While the district school board may not agree with the safety protocols set forth by the Surgeon General in rule, the Surgeon General is the person who, under the law, sets protocols to control and mitigate COVID-19 in schools. The Office of the Attorney General relied upon these principles to reject any argument a school board could depart from FDOH’s emergency rule based upon a disagreement with the protocols found in the rule. *See*, AGO 2021-01, September 1, 2021. Disagreement with the protocols found in 64DER21-15 simply does not provide a school district with a basis to violate the rule, be it through medical requirements, attempts to tie mask requirements to fluctuating positivity rates, or through any other means.

All of this in mind, I hereby recommend that the State Board of Education use its enforcement powers to enforce the health protocols found in Emergency Rule 64DER21-15 and protect the right of parents to make both health and educational decisions on behalf of their children.

Should the State Board adopt my recommendation, I request that it consider the sanction of withholding state funds in an amount equal to 1/12 of all school board members' salaries, as well as withholding state funds in an amount equal to any federal grant funds awarded to the ACSB for its noncompliance with Emergency Rule 64DER21-15.

ED Exhibit 3

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

MEMORANDUM

TO: State Board of Education Members

FROM: Richard Corcoran

RE: Broward County School District, Student Opt-Out Requirements

DATE: October 4, 2021

Based upon the following memorandum, I find there is probable cause that the Broward County School Board (BCSB) acted contrary to the law by requiring students to wear a mask or face covering unless certain exceptions apply, such as a medical certification. Specifically, BCSB's policy violated the provisions of Rule 64DER21-12 and continues to violate Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings.

Background Information

As you recall, on August 17, 2021, the State Board of Education (State Board) found that BCSB's mask policy did not comply with the Department of Health's former rule, Rule 64DER21-12, and implemented its enforcement authority by withholding funds from the district. *See Order of State Board of Education Under its Oversight and Enforcement Authority, DOE No. 2021-4024, attached as Exhibit A.* BCSB's policy requires students to wear a mask on school property unless certain exceptions apply and does not allow a parent to opt out a child unless the district determines one of its exceptions applies.

Prior to the State Board's action, the Governor issued Executive Order Number 21-175, directing the Florida Department of Health (FDOH) and the Florida Department of Education (FDOE) to immediately execute rules and take any additional action necessary to ensure safety protocols for controlling the spread of COVID-19 in schools. The Governor's order requires that these protocols be consistent with the Parents' Bill of Rights, codified in chapter 1014, and directs that action "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Moreover, the order directs the Commissioner of Education to pursue all legal means available to ensure school districts adhere to the law, including but not limited to withholding funds from noncompliant school boards.

On September 22, 2021, FDOH issued a revised rule, 64DER21-15, which relaxes the requirements for quarantining asymptomatic students who have been exposed to COVID-19, and further clarifies the parental opt-out provision by requiring that a school “must allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian’s **sole discretion.**” *See* Rule 64DER21-15, Florida Administrative Register, Vol. 47 / No. 185, September 23, 2021 (emphasis supplied), attached as Exhibit B.

On September 23, 2021, I notified BCSB of Rule 64DER21-15 and requested written confirmation of the school district’s compliance with the revised FDOH rule. *See* Exhibit C.

On September 24, 2021, BCSB submitted a written response, requesting an extension until October 6, in order to allow the school board time to review the rule and its policies in light of the revised rule, at a public meeting scheduled for October 5, 2021. *See* Exhibit D. The letter did not rescind the requirement for medical documentation in order to opt-out of the mask mandate.

On September 28, 2021, BCSB announced that it had been awarded \$420,957 in Project SAFE grant funds by the USDOE. *See* Exhibit E. Although BCSB’s application has not been posted publicly, eligibility for this new grant program requires that the district implement CDC’s strategies for preventing COVID-19, including masking, if the district:

[h]as incurred or will incur a financial penalty imposed by its SEA or other State entity, such as a reduction in funding, including but not limited to reduction in salaries for school board members or superintendents, due to the implementation of one or more [CDC] strategies and

. . . . commits to maintain such strategy or strategies to the extent consistent with CDC guidance for the 2021-2022 school year.

See Exhibit F. The grant application also requires the following attestation:

By signing this document, the LEA Superintendent/chief executive officer (CEO) attests that the LEA has implemented such prevention strategy(ies) and that it will continue implementing the prevention strategy(ies) to the extent consistent with CDC guidance for the duration of the 2021-2022 school year.

Id.

In sum, the BCSB’s face covering policy requires all students, staff and visitors to wear face coverings on BCSB grounds and in BCSB vehicles. Although the policy appears to provide a number of exceptions, the policy precludes voluntary parental opt-out at the parent’s or legal guardian’s sole discretion. *See* Exhibit G.

The State Board’s Enforcement Authority

The State Board of Education’s enforcement authority is found in section 1008.32, Florida Statutes. The statute provides that “[t]he State Board of Education shall oversee the performance of district school boards [...] in enforcement of all laws and rules.” § 1008.32, Fla. Stat.

In enforcing the law, the statutory process prescribed therein requires that I, as Commissioner of Education, first report my determination of probable cause to the State Board of Education. If the State Board then determines that a district school board is unwilling or unable to comply with either law or rule, the State Board is authorized to impose sanctions in order to secure compliance, including the withholding of funds and reporting to the Legislature.

Any argument that the State Board's authority to enforce these safety protocols interferes with any district school board's authority to operate and control schools should be rejected. Indeed, the law in Florida is clear that the State Board's supervisory authority acts as a limitation on the operational authority of districts to operate, control and supervise public schools.

Looking to the Florida Constitution, there is a hierarchy under which a school board has local control, but in which the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a board's local powers, but such infringement is expressly contemplated and, in fact, encouraged by the very structure set by the Florida Constitution. *See Sch. Bd of Palm Beach Cty. v. Fla. Charter Educ. Found, Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017) (rejecting school board's argument that the State Board of Education's authority to approve a charter school application on appeal violates article IX, section 4(b)); *see also Sch. Bd of Collier Cty v. Fla. Dep't of Education*, 279 So. 3d 281 (Fla. 1st DCA 2019) (rejecting school board's argument that a statute requiring school boards to distribute a portion of capital millage revenue to charter schools violates article IX, section 4(b)).

Accordingly, any argument that the State Board of Education lacks the authority to enforce these school safety protocols should also be rejected. It has long been settled that rules have the force and effect of the law. *State v. Jenkins*, 469 So. 2d 733 (Fla. 1985); *Florida Livestock Board v. W.G. Gladden*, 76 So. 2d 291 (Fla. 1954). Rule 64DER21-15 derives authority from a statute in the educational code—specifically, section 1003.22(3), Florida Statutes—so while FDOH may *also* have enforcement authority, enforcement of school safety protocols falls squarely within the State Board of Education's authority to supervise the state's education system as a whole.

Conclusion

Every school board member and every school superintendent has a duty to comply with the law, whether they agree with it or not. While the district school board may not agree with the safety protocols set forth by the Surgeon General in rule, the Surgeon General is the person who, under the law, sets protocols to control and mitigate COVID-19 in schools. The Office of the Attorney General relied upon these principles to reject any argument a school board could depart from FDOH's emergency rule based upon a disagreement with the protocols found in the rule. *See*, AGO 2021-01, September 1, 2021. Disagreement with the protocols found in 64DER21-15 simply does not provide a school district with a basis to violate the rule, be it through medical requirements, attempts to tie mask requirements to fluctuating positivity rates, or through any other means.

All of this in mind, I hereby recommend that the State Board of Education use its enforcement powers to enforce the health protocols found in Emergency Rule 64DER21-15 and protect the right of parents to make both health and educational decisions on behalf of their children.

Should the State Board adopt my recommendation, I request that it consider the sanction of withholding state funds in an amount equal to 1/12 of all school board members' salaries, as well as withholding state funds in an amount equal to any federal grant funds awarded to the BCSB for its noncompliance with Emergency Rule 64DER21-15.

ED Exhibit 4

FILED AGENCY CLERK

2021 OCT 12 PM 2:00

DEPT OF EDUCATION
TALLAHASSEE FLA

**STATE OF FLORIDA
STATE BOARD OF EDUCATION**

IN RE:

DOE No.: 2021-4027

SCHOOL BOARD OF ALACHUA COUNTY,
STUDENT OPT-OUT REQUIREMENTS.

**ORDER OF STATE BOARD OF EDUCATION UNDER ITS OVERSIGHT AND
ENFORCEMENT AUTHORITY**

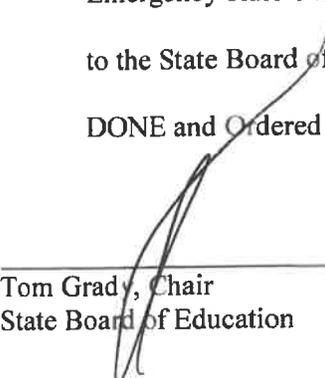
After having considered the determination of probable cause made by the Commissioner of Education, Richard Corcoran, along with an independent review of the documentary support for that determination, as well as public comment and discussions provided at the October 7, 2021, State Board of Education meeting, the State Board of Education implements its oversight authority under section 1008.32, Florida Statutes, as follows:

1. The State Board of Education finds that the School Board of Alachua County's masking/face covering policy does not comply with Florida Department of Health Emergency Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings. That rule requires public schools to "allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's sole discretion."
2. Based on this finding, it is ordered that the School Board of Alachua County must document compliance with Florida Department of Health Emergency Rule 64DER21-15.
3. The School Board of Alachua County has 48 hours from receipt of this order to document compliance as set forth in this order. If the School Board of Alachua County demonstrates compliance by this deadline, then no further action is needed.

4. If the School Board of Alachua County fails to timely document compliance within 48 hours from receipt of this order, the School Board of Alachua County must provide to the Commissioner of Education, no later than 48 hours after receipt of this order, information confirming the current annual compensation provided to all school board members.
5. Upon receipt of the annual compensation information for the School Board of Alachua County members mentioned above, and continuing until the School Board of Alachua County demonstrates compliance with the law, the Florida Department of Education is directed to begin withholding from state funds, on a monthly basis, an amount equal to 1/12 of the total annual compensation of the school board, as an initial step. Monthly withholding must continue until the School Board of Alachua County demonstrates compliance, the State Board of Education withdraws this order, or when the rule expires or is withdrawn. If the School Board of Alachua County fails to provide the requested compensation information within the 48 hour period, the Florida Department of Education shall withhold state funds based on the most recent appropriations estimate until the School Board of Alachua County provides the current estimate.
6. In complying with this order, the School District of Alachua County may not permit the reduction of funds based upon this order to impact student services or teacher pay.
7. The Florida Department of Education is also directed to withhold state funds, until the School Board of Alachua County demonstrates compliance with the law, in an amount equal to any federal Project SAFE Grant funds, or successor grants, awarded to the School District of Alachua County for its noncompliance with Emergency Rule 64DER21-15.
8. The Commissioner of Education shall monitor and report to the State Board of Education on the School Board of Alachua County's compliance with Florida Department of Health

Emergency Rule 64DER21-15 and this order, and periodically provide recommendations to the State Board of Education on the matter.

DONE and Ordered this 12th day of October, 2021.



Tom Grady, Chair
State Board of Education



Ben Gibson, Vice Chair
State Board of Education

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 12, 2021, the foregoing was filed with the Agency Clerk of the Florida Department of Education, and that a true and correct copy of the foregoing has been furnished via email and U.S. Mail to:

Ms. Carlee Simon, Alachua County School Superintendent
simonce@gm.sbac.edu

Ms. Leanetta McNealy, Chair, School Board of Alachua County
mcnealy@gm.sbac.edu



AGENCY CLERK

ED Exhibit 5

2021 OCT 12 PM 2:00

**STATE OF FLORIDA
STATE BOARD OF EDUCATION**

DEPT OF EDUCATION
TALLAHASSEE FLA

IN RE:

DOE No.: 2021-4029

SCHOOL BOARD OF BROWARD COUNTY,
STUDENT OPT-OUT REQUIREMENTS.

**ORDER OF STATE BOARD OF EDUCATION UNDER ITS OVERSIGHT AND
ENFORCEMENT AUTHORITY**

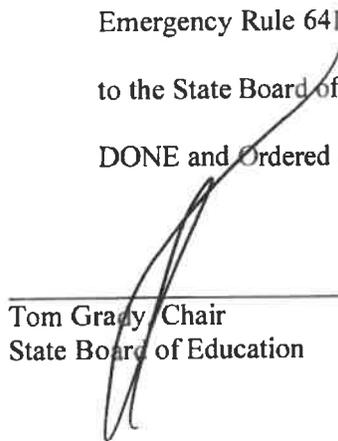
After having considered the determination of probable cause made by the Commissioner of Education, Richard Corcoran, along with an independent review of the documentary support for that determination, as well as public comment and discussions provided at the October 7, 2021, State Board of Education meeting, the State Board of Education implements its oversight authority under section 1008.32, Florida Statutes, as follows:

1. The State Board of Education finds that the School Board of Broward County's masking/face covering policy does not comply with Florida Department of Health Emergency Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings. That rule requires public schools to "allow for a parent or legal guardian of the student to opt the student out of wearing a face covering or mask at the parent or legal guardian's sole discretion."
2. Based on this finding, it is ordered that the School Board of Broward County must document compliance with Florida Department of Health Emergency Rule 64DER21-15.
3. The School Board of Broward County has 48 hours from receipt of this order to document compliance as set forth in this order. If the School Board of Broward County demonstrates compliance by this deadline, then no further action is needed.

4. If the School Board of Broward County fails to timely document compliance within 48 hours from receipt of this order, the School Board of Broward County must provide to the Commissioner of Education, no later than 48 hours after receipt of this order, information confirming the current annual compensation provided to all school board members.
5. Upon receipt of the annual compensation information for the School Board of Broward County members mentioned above, and continuing until the School Board of Broward County demonstrates compliance with the law, the Florida Department of Education is directed to begin withholding from state funds, on a monthly basis, an amount equal to 1/12 of the total annual compensation of the school board, as an initial step. Monthly withholding must continue until the School Board of Broward County demonstrates compliance, the State Board of Education withdraws this order, or when the rule expires or is withdrawn. If the School Board of Broward County fails to provide the requested compensation information within the 48 hour period, the Florida Department of Education shall withhold state funds based on the most recent appropriations estimate until the School Board of Broward County provides the current estimate.
6. In complying with this order, the School District of Broward County may not permit the reduction of funds based upon this order to impact student services or teacher pay.
7. The Florida Department of Education is also directed to withhold state funds, until the School Board of Broward County demonstrates compliance with the law, in an amount equal to any federal Project SAFE Grant funds, or successor grants, awarded to the School District of Broward County for its noncompliance with Emergency Rule 64DER21-15.
8. The Commissioner of Education shall monitor and report to the State Board of Education on the School Board of Broward County's compliance with Florida Department of Health

Emergency Rule 64DER21-15 and this order, and periodically provide recommendations to the State Board of Education on the matter.

DONE and Ordered this 12th day of October, 2021.



Tom Grady, Chair
State Board of Education



Ben Gibson, Vice Chair
State Board of Education

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 12, 2021, the foregoing was filed with the Agency Clerk of the Florida Department of Education, and that a true and correct copy of the foregoing has been furnished via email and U.S. Mail to:

Dr. Vickie Cartwright, Broward County Schools Interim Superintendent
vickie.cartwright@browardschools.com
vc@browardschools.com
Dr. Rosalind Osgood, Chair, School Board of Broward County
dr.rosalind.osgood@browardschools.com



AGENCY CLERK

ED Exhibit 6

From: [Rosenblum, Ian](#)
To: [richard.corcoran@fldoe.org](#); [commissioner@fldoe.org](#)
Cc: [karen.dennis@fldoe.org](#); [bethany.swanson@fldoe.org](#); [alexis.calatayud@fldoe.org](#); [jessica.fowler@fldoe.org](#); [eric.hall@fldoe.org](#); [michelle.gaines@fldoe.org](#); [cheryl.letters@fldoe.org](#); [brett.tubbs@fldoe.org](#)
Bcc: [Honeysett, Adam](#); [Thomas, Rachel](#); [Jackson, Luke](#); [Niebling, Rachel](#)
Subject: Withholding of State Funds
Date: Thursday, October 7, 2021 2:37:00 PM
Attachments: [image003.png](#)

Dear Commissioner Corcoran:

It has come to our attention that the Florida Department of Education (FLDOE) is seeking to increase its penalty for school districts that are working to protect the health and safety of their students by adopting CDC guidance for preventing the spread of COVID-19. Specifically, FLDOE's recent "[probable cause](#)" [memoranda](#) to State Board of Education members in advance of today's Board meeting requests approval for "withholding state funds in an amount equal to any federal grant funds" awarded to support school districts in their efforts to promote student safety and well-being.

This issue raises legal concerns with regard to section 8522 of the Elementary and Secondary Education Act (ESEA), which states that: "A State shall not take into consideration payments under this Act (other than under Title VII) in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children." Please note that Project SAFE funding is provided from Title IV of the ESEA.

As always, the U.S. Department of Education stands ready to support you and your LEAs in sustaining safe in-person instruction for all students and meeting their social, emotional, mental health, and academic needs during this critical time.

Sincerely,
Ian



Ian Rosenblum
Deputy Assistant Secretary for Policy and Programs
Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary
United States Department of Education
Office of Elementary and Secondary Education
400 Maryland Avenue, SW | Washington, D.C. 20202
Phone: (202) 401-0113 | Email: ian.rosenblum@ed.gov

ED Exhibit 7



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

October 13, 2021

Ian Rosenblum
Deputy Assistant Secretary for Policy and Programs
Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary
U.S. Department of Education
Office of Elementary and Secondary Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Mr. Rosenblum:

I am in receipt of your correspondence, in which you raise “legal concerns” about recent steps I have taken to enforce Florida law. I am writing to explain why I do not share those concerns.

The real legal problem here is that the U.S. Department of Education (“Department”) has decided to interfere unlawfully with Florida’s enforcement of its education policy. Your Department created the Project SAFE grant program to replenish the withheld salaries of Florida school officials who have knowingly violated state law. This program appears to violate the relevant federal law, which provides that nothing in it “shall be construed to authorize an officer or employee of the Federal Government, including through a grant, contract, or cooperative agreement, to mandate, direct, or control a State, local educational agency, or school’s curriculum, program of instruction, or allocation of State or local resources.” 20 U.S.C. § 7907(a) (emphasis added). The Department has indeed attempted to assert such “control” over the “allocation of State . . . resources,” *id.*, by conditioning Project SAFE grants on whether a school district “[h]as incurred or will incur a financial penalty imposed by its SEA or other State entity, such as a reduction in funding, including but not limited to reduction in salaries for school board members or superintendents.” Moreover, the specific federal statute authorizing the grants limits them for “activities to improve students’ safety and well-being, during and after the school day . . . directly, or through grants, contracts, or cooperative agreements.” 20 U.S.C. § 7281(a)(1)(B). That language authorizes the Department to fund substantive programs designed to improve school safety—not to provide a dollar-for-dollar replacement of executive

salaries to directly offset the State's enforcement of its own law and policy. Thus, the matter being subsidized is not an "activity" within the meaning of the authorizing statute.

Given this background, the State's reaction to the Department's overreach is entirely lawful and appropriate. Under Article IX, Section 2, of the Florida Constitution, the State Board of Education (SBE) has broad authority to supervise Florida's free system of education, "as provided by law." Moreover, Section 1008.32, Florida Statutes, gives the SBE oversight and enforcement authority over school districts, specifically those that are unwilling or unable to comply with state law. As an enforcement tool under this statute, the SBE may withhold state funds, in any amount, to encourage compliance with state law.

You are mistaken to suggest that the state violates Section 8522 of the Elementary and Secondary Education Act (ESEA) by withholding state funds in an amount necessary to counter your Department's unlawful efforts to encourage noncompliance with Florida law. Under Section 8522, "[a] State shall not take into consideration payments under this Act (other than under Title VII) in determining the eligibility of any local educational agency in that State for State aid, or the amount of State aid, with respect to free public education of children." 20 U.S.C. § 7902. As explained above, the payments in question are not "under this Act" at all because the ESEA does not authorize them. They are *ultra vires* and unlawful. Nevertheless, even if the ESEA authorized the grants, the State is not considering them for purposes of determining "eligibility" for or "the amount of State aid"—terms that refer to the amount of State funds available, not penalties that may be necessary to enforce state law. Furthermore, the Orders of the SBE do not reduce the allocation to the district. They simply withhold a portion of state funds until the school districts come into compliance with state law. When the districts can demonstrate compliance with state law, those funds will be disbursed. There is nothing in Section 8522 that addresses the timing for disbursement of the state aid to a district.

In sum, Section 8522 was meant to ensure that States treat grant payments as supplements to (not substitutes for) state funding. It was not meant, as the Department would have it, as a source of regulatory authority, giving the Department the power to dictate state education policy by blocking traditional enforcement mechanisms like financial penalties.

For these reasons, I am asking that the U.S. Department of Education cease and desist from its unlawful efforts to encourage local school board members to violate Florida law.

Sincerely,

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

Richard Corcoran
Commissioner of Education

ED Exhibit 8



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

October 25, 2021

The Honorable Richard Corcoran
Commissioner of Education
Florida Department of Education
325 W. Gaines Street
Tallahassee, FL 32399

Dear Commissioner Corcoran:

It has come to our attention that the Florida Department of Education (FLDOE) has recommended, and the Florida State Board of Education (FSBE) has ordered, through Orders DOE2021-4027 and DOE2021-4029 of October 12, 2021, a reduction in state education aid to the School Board of Broward County (Broward) and the School Board of Alachua County (Alachua) by the amount of each district's federal Project SAFE grant award. The FSBE ordered this reduction in direct response to the federal support provided by Project SAFE, a federal grant program intended to help school districts improve student safety and well-being by advancing strategies to reduce transmission of COVID-19 in schools.

Should FLDOE implement these orders, it would be failing to comply with federal requirements, in particular, section 8522 of the Elementary and Secondary Education Act of 1965, as amended, which provides:

A State shall not take into consideration payments under this Act ... in determining ... the amount of State aid, with respect to free public education of children.

The U.S. Department of Education (Department) expects FLDOE to comply with all requirements applicable to its federal grant awards. If FLDOE moves forward with its planned reduction of state aid to Alachua and Broward, the Department is prepared to initiate enforcement action to stop these impermissible state actions.

We hope that you reconsider your threatened actions against these districts in response to the Project SAFE awards, so that they may continue to take steps to help ensure safe and healthy environments for their students, families, and educators.

400 MARYLAND AVE. SW, WASHINGTON, DC 20202
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access

As always, the Department is eager to work with FLDOE to ensure a safe and successful school year for all of Florida's students. We remain ready to provide assistance, support, and partnership as we work together to achieve this shared goal.

Sincerely,

A handwritten signature in blue ink that reads "Ian Rosenblum". The signature is fluid and cursive, with the first name "Ian" and last name "Rosenblum" clearly legible.

Ian Rosenblum
Deputy Assistant Secretary for Policy and Programs
Delegated the Authority to Perform the
Functions and Duties of the Assistant Secretary