

The School Board of Broward County, Florida's
Response to the August 20, 2021
ORDER OF STATE BOARD OF EDUCATION
UNDER ITS OVERSIGHT AND
ENFORCEMENT AUTHORITY" (the "Order")
DOE No.: 2021-4024

The School Board of Broward County, Florida ("School Board") respectfully submits that the Order is contrary to exclusive powers granted to the School Board, includes erroneous findings, seeks to impose sanctions beyond the constitutional and statutory authority of the State Board of Education, ("State Board"), and seeks to impose such sanctions in an *ultra vires* manner contrary to the requirements of applicable law including, without limitation, Chapter 120, Florida Statutes.¹ Accordingly, the School Board requests that the State Board rescind the Order.

I. Powers Vested Within the School Board

Although Section 2 of Article IX created the State Board, that body's constitutional authority is limited in scope to "such supervision of the system of free public education as is provided by law." The actual responsibility and authority to "operate, control and supervise all free public schools within the school district" is exclusively conferred by Section 4, Article IX upon the duly locally elected district school board and not the appointed State Board or its appointed Commissioner of Education. The boundaries that govern the roles of the State Board and individual district school boards are further defined by Sections 1001.30 and 1001.32, Florida Statutes.

Section 1001.30, Fla. Stat., states in pertinent part as follows:

District unit.—... *Each district shall constitute a unit for the control, organization, and administration of schools. The responsibility for the actual operation and administration of all schools needed within the districts in conformity with rules and minimum standards prescribed by the state, and also the responsibility for the provision of any desirable and practicable opportunities authorized by law beyond those required by the state, are delegated by law to the school officials of the respective districts.*

[Emphasis added].

Section 1001.32, Florida Statutes, states in pertinent part as follows:

Management, control, operation, administration, and supervision.—
The district school system must be managed, controlled, operated, administered, and supervised as follows:

¹ The School Board incorporates by reference the letter submitted to the State Board by the Superintendent of the Broward County Public Schools, on August 13, 2021.

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(1) DISTRICT SYSTEM.—The district school system shall be considered as a part of the state system of public education. All actions of district school officials shall be consistent and in harmony with state laws and with rules and minimum standards of the state board. District school officials, however, shall have the authority to provide additional educational opportunities, as desired, which are authorized, but not required, by law or by the district school board.

(2) DISTRICT SCHOOL BOARD.—In accordance with the provisions of s. 4(b) of Art. IX of the State Constitution, *district school boards shall operate, control, and supervise all free public schools in their respective districts and may exercise any power except as expressly prohibited by the State Constitution or general law....*

[Emphasis added].

Section 1001.30, Florida Statutes, requires district school boards to act “in conformity with rules and minimum standards prescribed by the state” and Section 1001.32, Fla. Stat., requires all actions of district school officials to “be consistent and in harmony with state laws and with rules and minimum standards of the state board.” However, the contours of the State Board’s supervisory rule-making authority are constrained by applicable law pursuant to Section 2, Article IX of the Florida Constitution.

District school boards have been granted broad “home rule” authority under Section 1001.32(2), Florida Statutes, to “exercise any power except as expressly prohibited by the State Constitution or general law.” However, the Florida Legislature has also enacted a specific law that authorizes the School Board’s face-coverings policy.² Section 1001.43(1)(b), Florida Statutes, expressly gives a district school board authority to adopt policies that impose dress-related requirements “*if the district school board finds that those requirements are necessary for the safety or welfare of the student body or school personnel.*” *[Emphasis added].*

Since Section 1001.43(1)(b), Florida Statutes, confers upon the district school board the authority to impose dress-related requirements that the district school board finds to be necessary for the safety or welfare of the student body or school personnel, the State Board may not adopt or impose rules or minimum standards upon such local decisions. To do so would be contrary to what has been “provided by law;” exceed the limitations imposed upon the State Board’s authority by Section 2, Article IX, of the Florida Constitution; and usurp the express and exclusive authority granted by law to district school boards by Section 1001.43(1)(b), Florida Statutes.

² The School Board’s current policy pertaining to face-coverings is designated as Policy 2170, and was effective December 15, 2020. The School Board policy pertaining to face-coverings which was effective from August 19, 2020, until the adoption of Policy 2170, was designated as “2170-E”. Copies of Policy 2170 and Policy 2170-E are attached as Exhibits 1 and 2, respectively. The School Board’s positions with respect to the Order are substantively the same, whether the subject of the Order is Policy 2170 or Policy 2170-E. The School Board’s Policy 2170 will be referred to as the “Face-Coverings Policy”.

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The School Board's Face Coverings Policy contains findings by the School Board that face-coverings are necessary for the safety and welfare of its student body and school personnel. The preamble of the policy states:

THE SCHOOL BOARD'S HIGHEST PRIORITY IS TO ENSURE THE HEALTH AND SAFETY OF ITS COMMUNITY INCLUDING EMPLOYEES, STUDENTS AND THE PUBLIC. THE CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC) AND THE FLORIDA DEPARTMENT OF HEALTH (FDOH) ADVISE THAT ALL PEOPLE PLAY AN IMPORTANT PART IN REDUCING COMMUNITY SPREAD. THE USE OF A FACE COVERING BY EVERYONE CAN LIMIT THE SPREAD OF THE VIRUS AND THE RELEASE OF INFECTED DROPLETS WHEN BREATHING, TALKING, COUGHING, AND/OR SNEEZING.

After making the foregoing requisite finding pursuant to Section 1001.43(1)(b), Florida Statutes, the School Board imposed reasonable dress-related requirements regarding the wearing of face-coverings by adopting its Face-Coverings Policy for health and safety reasons. Although the School Board's Face-Coverings Policy was adopted separately from the dress code provisions of its Code of Student Conduct (Section III of School Board Policy 5.8), the action taken by the School Board within its Face-Coverings Policy is squarely within the exclusive authority conferred upon district school boards by Section 1001.43(1)(b), Florida Statutes, to impose dress-related restrictions upon students. In addition, Rule 3 of the School Board's dress code in School Board Policy 5.8 states that "[s]pecial clothing... may be required for safety reasons...."

Only limited case law exists with regard to a Florida school board's authority to impose dress code restrictions. In *Bar-Navon v. Brevard Co. School Board*, 2008 WL 3822612, the 11th Circuit rejected arguments that a Brevard County dress code provision which restricted jewelry worn by students violated their First Amendment rights. The court held that a "content and viewpoint neutral Dress Code was promulgated in furtherance of legitimate educational objectives." The introduction to the Brevard County dress code policy stated as follows:

The Board will not interfere with the right of students and their parents to make decisions regarding their appearance, however, the standards of appearance for students shall ensure that the student be clean, neat, and properly dressed. They shall observe modes of dress and standards of personal grooming which are in conformity with the studious atmosphere and good personal hygiene necessary in schools.

The 11th Circuit held that the Brevard School Board sought "to avoid extreme dress or appearance which might create a school disturbance, *or which could be hazardous to the student or to others*. To that end, the jewelry limitation [in *Bar-Navon*] was narrowly tailored; and ample communicative alternatives remain unrestricted." *Emphasis added*. The hazards to be avoided through the Broward School Board's Face-Coverings Policy are clearly greater than those sought to be avoided by the dress code policy in the *Bar-Navon* case.

II. Erroneous Findings

The Order sets forth two “findings” to support the sanctions the State Board seeks to impose upon the School Board. First, the State Board finds that:

[T]he School Board of Broward County's Face Coverings Policy 2170-E does not comply with Florida Department of Health Emergency Rule 64DER21-12, 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-out the student from wearing a face covering or mask.

See Order, ¶ 2.³ Department of Health Emergency Rule 64DER21-12, entitled “Protocols for Controlling COVID-19 in School Settings” (the “DOH Emergency Rule”), provides, in pertinent part, as follows: “Students may wear masks or facial coverings as a mitigation measure; however, the school must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask.”⁴ The DOH Emergency Rule does not state that the opt-out must be unlimited, or otherwise prevent schools from establishing parameters for the opt-out.

The School Board’s Face-Coverings Policy explicitly provides circumstances under which an “opt-out” may be exercised. See, e.g., School Board Face-Coverings Policy, I.A.1.b.i. Since the School Board’s Face-Coverings Policy includes exceptions to the requirement as required by the DOH Emergency Rule, the State Board’s finding that the School Board’s Face-Coverings Policy does not comply with the DOH Emergency Rule is patently erroneous; and it is not necessary for the School Board to change its Face-Coverings Policy as described in Paragraph 4 of the Order to comply with the DOH Emergency Rule.

The State Board’s second finding is that the School Board’s purported “noncompliance and knowing failure to follow the law unlawfully denies [sic] Broward County parents and legal guardians of their right to make fundamental health and educational decisions for their children by choosing whether their children should be masked in public schools.” Order, ¶ 3. This finding is erroneous in the first instance because, as demonstrated above, the School Board’s Face-Coverings Policy is in compliance with the DOH Emergency Rule. It is also erroneous because the Face-Coverings Policy does not deprive “Broward County parents and legal guardians of their right to make fundamental health and educational decisions for their children by choosing whether their children should be masked in public schools.”

³ The School Board’s current policy pertaining to face-coverings is designated as Policy 2170, which was effective December 15, 2020. The School Board policy pertaining to face-coverings, which was effective from August 19, 2020, until the adoption of Policy 2170, was designated as “2170-E”. Copies of Policy 2170 and Policy 2170-E are attached as Exhibits 1 and 2, respectively. The School Board’s positions with respect to the Order are substantively the same, whether the subject of the Order is Policy 2170 or Policy 2170-E. The School Board’s Policy 2170 will be referred to as the “Face Coverings Policy”.

⁴ The DOH Emergency Rule explicitly acknowledges that masks or facial-coverings are in fact a form of mitigation against the spread of COVID-19. See, DOH Emergency Rule, subsection (1)(d).

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The School Board disputes that a parent or legal guardian has a fundamental and unlimited right to insist that his or her minor child not be required to wear a face-covering during a pandemic involving a highly contagious virus.⁵ If such a fundamental and unlimited right did exist, it would necessarily conflict with the right of a parent or legal guardian of a minor child – especially an immunocompromised child – to attend school in an environment made safer by a requirement that those individuals the child will come in contact with will wear a face-covering, thereby taking a measure that the Department of Health has acknowledged mitigates against the spread of that virus.

The Parents’ Bill of Rights, as codified in Chapter 1014, Florida Statutes, provides that “it is a fundamental right of parents to direct the upbringing, education, and care of their minor children”, but also recognizes that, like any fundamental right, it is not unlimited. Indeed, the Parents’ Bill of Rights specifically provides that the fundamental right it recognizes is subject to “such action [as] is reasonable and necessary to achieve a compelling state interest and that such action is narrowly tailored and is not otherwise served by a less restrictive means.” In this case, it is indisputable that the School Board has a compelling interest in providing a safe environment for all of its students, including those especially vulnerable to harm caused by COVID-19. Moreover, the Face Coverings Policy includes exceptions to ensure that it is “narrowly tailored and not otherwise served by a less restrictive means.”

III. Lack of Authority for Sanctions to be Imposed

The State Board purports to derive the authority for actions set forth in the Order from Chapters 1001 and 1008, Florida Statutes, but neither of those chapters provide the claimed authority.

A. Department of Health Rule

The rule that the State Board alleges has been violated by the Face-Coverings Policy is not a State Board rule; but rather is a Department of Health rule. The State Board does not have statutory authority to enforce the DOH Emergency Rule.

⁵ According to data published by the Department of Health on August 20, 2021, during the seven days ending August 19, 2021, the COVID-19 positivity rates for children under 12 and persons ages 12-19 were 23.0% and 24.8%. Those positivity rates exceed the positivity rates for all other age groups. The raging pandemic has resulted in thousands of students and school staff being quarantined, and the trend has been toward expanding quarantine numbers. See, <https://www.kpbs.org/news/2021/aug/12/a-florida-school-district-has-already-asked-440/> and compare https://www.cnn.com/us/live-news/coronavirus-pandemic-vaccine-updates-08-18-21/h_1e28fa5b1f714200d00e528142842669; <https://www.washingtonpost.com/education/2021/08/17/florida-students-covid-quarantine-hillsborough/>. Further, it was recently reported that Florida held the ignominious distinction of having the highest hospitalization rate in the nation for children through age 19. See, <https://www.news-journalonline.com/story/news/coronavirus/2021/08/11/florida-has-highest-number-covid-hospitalizations-among-children/5558688001/>. The internal data from the School Board shows that students identified as quarantining has steadily increased from 1271 on 8/18/21, to 1540 on 8/19/21, to 1630 on 8/20/21. <https://app.powerbi.com/view?r=eyJrIjoic2VhYmU3YmItOWZkOC00MmZkLWlwNjYtMmRiZDg1MjEwZDI3IiwidCI6ImVIYWwNiNWNiLTUzNzAtNDM1OC1hOTZhLWEzNzgzYzk1ZDQyMiIsImMiOjF9>

The DOH Emergency Rule identifies the “Rulemaking Authority” for its adoption, and the “Law Implemented” by the rule as Section 1003.22(3), Florida Statutes.⁶ Section 1003.22(3), Florida Statutes, provides:

The *Department of Health* may adopt rules necessary to administer and enforce this section. The *Department of Health*, after consultation with the Department of Education, *shall adopt rules* governing the immunization of children against, the testing for, and the control of preventable communicable diseases. The rules must include procedures for exempting a child from immunization requirements. Immunizations shall be required for poliomyelitis, diphtheria, rubeola, rubella, pertussis, mumps, tetanus, and other communicable diseases as determined by rules of the *Department of Health*. The manner and frequency of administration of the immunization or testing shall conform to recognized standards of medical practice. The *Department of Health* shall supervise and secure the enforcement of the required immunization. Immunizations required by this section shall be available at no cost from the county health departments.

[Emphasis added].

Nowhere within Section 1003.22(3), Florida Statutes, is the State Board granted authority to take any action other than to consult with the Department of Health. Indeed, it is the Department of Health that has the exclusive authority to “supervise and secure enforcement” of the requirements that are the subject of Section 1003.22(3), Florida Statutes.

This specific allocation of authority supersedes any other authority the State Board may have pursuant to Chapters 1001 and 1008, Florida Statutes. However, even in the absence of that specific grant of authority to the Department of Health, neither Chapter 1001 nor 1008 provides authority for the State Board to enforce a Department of Health rule.

Section 1001.02(2)(f), Florida Statutes, states that the State Board has a duty to take actions “necessary for the enforcement of laws and rules *relating to the state system of public education.*” The DOH Emergency Rule is not a rule “relating to the state system of public education”, but is instead a rule that purports to provide “Protocols for Controlling COVID-19” albeit in “school settings”. Regardless, even if the DOH Emergency Rule were a rule “relating to the state system of public education”, the specific grant of authority in Section 1003.22(3), Florida Statutes, conferred upon the Department of Health would supersede the general provisions of Section 1001.02(2)(f), Florida Statutes.

Limitations upon the State Board’s powers are also found in Sections 1001.03(8), and 1008.32(1), (2)(a), Florida Statutes. Section 1001.03(8), Florida Statutes, provides the State Board with the power to “enforce compliance with law and state board rule by all school districts . . . in accordance with the provisions of s. [1008.32](#).” Sections 1008.32(1), (2)(a), (4)(a) and (4)(b),

⁶ The School Board contends that the DOH Emergency Rule is not valid, and nothing in this response may be construed as a waiver by the School Board of its right to contest the validity of the rule in a proceeding initiated pursuant to Chapter 120, Florida Statutes.

Florida Statutes, also make clear that the State Board’s authority extends to enforcement of compliance with “law and state board rule”.⁷

The phrase “law and state board rule” cannot reasonably be construed to include rules of the Department of Health. While a rule may have the force of law, it is not in fact a “law” as that term is used in the above-cited statutes. If the Legislature had intended its use of the term “law” to include agency rules, its inclusion of the phrase “state board rule” would have no independent meaning, and would have been unnecessary.

Further, the Legislature’s choice to limit the State Board’s enforcement authority to “state board rule” makes clear that the State Board is not authorized to enforce laws of other state agencies, including the Department of Health. If the Legislature had intended to empower the State Board to enforce rules of other state agencies, it could have easily done so. It did not.

Notably, as of this writing, the Department of Health has not notified the School Board that its Face-Coverings Policy violates the DOH Emergency Rule. If the Department of Health were to conclude that the School Board’s Face-Coverings Policy violates the DOH Emergency Rule, and initiate the administrative process to impose sanctions against the School Board, the School Board would have the opportunity to contest any proposed sanctions in a Chapter 120, Florida Statutes, proceeding.

B. Withholding of Compensation for School Board Members

In Paragraphs 6, 7 and 8 of the Order, the State Board describes a process for the withholding of compensation for School Board members if the School Board fails to “document compliance with [the DOH Emergency Rule] by allowing a parent or legal guardian of a student to opt-out the student from wearing a face covering or mask, without requiring a medical reason, approval from a medical professional or any additional requirement to support the request.” Order, ¶ 4. As noted above, the actions demanded by the Order are not necessary for the School Board to be in compliance with the DOH Emergency Rule.

There is no authority, in either statute or rule, that would authorize the State Board to withhold compensation from School Board members. Section 1008.32(4)(b), Florida Statutes, provides the sole statutory authority for the State Board to withhold funds, and it provides that the State Board may initiate the withholding of “*state funds, discretionary grant funds, discretionary lottery funds, or any other funds specified as eligible for this purpose by the Legislature*” upon a determination “that a district school board . . . is unwilling or unable to *comply with law or state board rule.*” [*Emphasis supplied*]. The quoted statute does not authorize the withholding of any state funds in a manner that targets any individual, including elected School Board members.

IV. Chapter 120, Florida Statutes

⁷ Section 1008.32(2)(b), Florida Statutes, refers to compliance with “general law”. The DOH Emergency Rule is not a general law.

The actions set forth in the Order clearly affect the School Board's substantial interests. As such, the Order was required by Rule 28-106.111, Florida Administrative Code, to include, "the information required by Section 120.569(1), F.S." Section 120.569(1), Florida Statutes, required the Order to "inform the [School Board] of any administrative hearing or judicial review that is available under this section, s. [120.57](#), or s. [120.68](#); [] indicate the procedure which must be followed to obtain the hearing or judicial review; and [] state the time limits which apply." The Order included none of the required information.

Notwithstanding the failure of the Order to comply with Rule 28-106.111, Florida Administrative Code, and Section 120.569(1), Florida Statutes, the School Board has the right to challenge the Order in a formal administrative proceeding conducted by an administrative law judge, pursuant to Sections 120.569 and 120.57, Florida Statutes.

The State Board may not impose sanctions against the School Board in an *ultra vires* manner that deprives the School Board and its School Board Members of substantive rights under Chapter 120, Florida Statutes.

V. Order Provisions Pertaining to Reporting

A. School Board Members' Compensation

Paragraph 6 of the Order provides:

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.

The School Board has documented compliance as set forth herein; therefore, the information described in Paragraph 6 of the Order is not required. Notwithstanding that fact, and without waiving its continued position that it has documented compliance, the School Board is providing in Exhibit 3 the current annual compensation provided to School Board members.

B. Documentation Pertaining to Implementation of the Face Coverings Policy

Paragraph 9 of the Order requires certain reporting upon a failure by the School Board to document compliance. The School Board notes once again that it is in compliance with the DOH Emergency Rule. The School Board also notes that the reporting specified in paragraph 9 of the order is vague in requiring reporting instances in which a student is "isolated", "stigmatized" or "harassed". Such subjective perceptions are not readily susceptible to reporting with any degree of accuracy. Nevertheless, and without waiving its continued position that it has documented compliance, the School Board will provide a report documenting instances in which a school has reported to the School Board or its staff that a student has been sent home, reassigned, disciplined, suspended or been provided with a written warning due to noncompliance with the Face Coverings Policy.

2170-E FACE COVERINGS

PURPOSE:

ONE OF THE SCHOOL BOARD'S HIGHEST PRIORITIES IS TO ENSURE THE HEALTH AND SAFETY OF ITS COMMUNITY INCLUDING EMPLOYEES, STUDENTS AND THE PUBLIC. THE CENTER FOR DISEASE CONTROL AND PREVENTION (CDC) AND THE FLORIDA DEPARTMENT OF HEALTH (FDOH) ADVISE THAT PEOPLE WHO MAY BE INFECTED WITH COVID-19 (WHETHER SYMPTOMATIC OR PRE-SYMPTOMATIC) PLAY AN IMPORTANT PART IN REDUCING COMMUNITY SPREAD. THE USE OF FACE COVERING BY EVERYONE CAN LIMIT RELEASE OF INFECTED DROPLETS WHEN TALKING, COUGHING, AND/OR SNEEZING.

I. RULES:

A. Subject to the exceptions set forth below, each student, employee, visitor, vendor or other person are always required to properly wear a face covering while at or inside a school/facility, or other vehicle owned, leased or operated by The School Board. **Proper wearing of a face covering, should cover both the nose and mouth of the person and should fit snugly against the sides of the person's face with no gaps.**

1. **EXCEPTIONS:** A face covering will not be required in the following instances:

a. **For All (Students, employees, vendors and visitors):**

- i. **Infants:** A face covering shall not be required for persons younger than two (2) years of age;
- ii. **Medical Certification:** A face covering shall not be required for persons who present school officials with a certification from a health care provider that the person has a medical, physical or psychological contraindication that prevents the person from being able to safely wear a face covering;
- iii. **Outdoors with Physical Distancing:** A face covering shall not be required for persons outside of any school district building or vehicle provided that such person maintains physical distancing (six (6) feet minimum distance) from other persons. However, a face covering shall be worn during change of classes even if it involves use of outside areas; or,
- iv. **Identification:** Administrators, security staff and other appropriate employees may ask someone to *briefly* remove their face covering to verify their identity. Physical distance will be observed during these requests, whenever possible.

b. For Students:

- i. Students with Approval:** A face covering shall not be required for a student if school administration, IEP team or 504 team authorizes the student to remove her/his face covering during an activity provided that the student maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering;
- ii. Regularly Scheduled Mealtimes:** A face covering shall not be required for any person inside or outside a school district facility while such person is eating during a planned mealtime provided that the student maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering;
- iii. Musical & Theatrical Performances:** A face covering will not be required for any student while playing a musical instrument or performing or rehearsing a choral or theatrical performance; provided that the student maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering. This exception shall not apply to the singing of the National Anthem, school alma maters, or other songs performed by students not engaged in a planned choral or theater/drama class;
- v. Strenuous Physical Activity:** A face covering shall not be required for any student inside or outside of any school district facility school district building while the student is engaged in strenuous physical activity provided that the student maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering;
- vi. During Receipt of Health Care:** A face covering shall not be required for any student inside or outside any school district facility or building when removal of the face covering is necessary for the student to receive health care or to undergo a health care examination from authorized health care personnel; or,
- vii. Demanding Circumstances:** A face covering will not be required if a student is experiencing acute trouble breathing, is unconscious or incapacitated, or is personally unable to remove the face covering without assistance.

c. For Employees:

- i. Employees with Supervisor's Approval:** A face covering shall not be required when the school district official supervising an employee authorizes the employee to remove her/his face covering when wearing a face covering would create a safety risk to the person as determined by local, state, or federal regulators or workplace safety guidelines. If this occurs, the employee must

maintain physical distancing (six (6) feet minimum) from other persons;

- ii. **Regularly Scheduled Mealtimes:** A face covering shall not be required for any employee inside or outside a school district facility while the employee is eating during a planned mealtime provided that the employee maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering;
- iii. **Musical & Theatrical Performances:** A face covering will not be required for any employee while playing a musical instrument or performing or rehearsing a choral or theatrical performance; provided that the employee maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering. This exception shall not apply to the singing of the National Anthem, school alma maters, or other songs performed by students not engaged in a planned choral or theater/drama class;
- v. **Strenuous Physical Activity:** A face covering shall not be required for any employee inside or outside of any school district facility or building while such person is engaged in strenuous physical activity provided that the student maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering;
- vi. **Demanding Circumstances:** A face covering will not be required if a person is experiencing acute trouble breathing, is unconscious or incapacitated, or is personally unable to remove the face covering without assistance.

d. Visitors and Vendors:

- i. **Outdoors with Physical Distancing:** A face covering shall not be required for persons outside of any school district building or vehicle provided that such person maintains physical distancing (six (6) feet minimum distance) from other persons;
- ii. **Regularly Scheduled Mealtimes:** A face covering shall not be required for any person inside or outside a school district facility while such person is eating during a planned mealtime;
- iii. **Strenuous Physical Activity:** A face covering shall not be required for any person inside or outside of any school district facility or building while such person is engaged in strenuous physical activity;
- iv. **Musical & Theatrical Performances:** A face covering will not be required for visitors or vendors while playing a musical instrument or performing or rehearsing a choral or theatrical performance. This exception shall not apply to the singing of the National Anthem, school alma maters, or other songs performed by students not engaged in a planned choral class; or,

- v. **Demanding Circumstances:** A face covering will not be required if a person is experiencing acute trouble breathing, is unconscious or incapacitated, or is personally unable to remove the face covering without assistance.
- 2. **FACE COVERING TYPES (Students, Vendors and Visitors):** All students, visitors and vendors must supply and wear their own face coverings while at or inside a school district campus/facility or inside a school district vehicle. The following face covering types are approved for compliance with this policy by persons other than school district employees:
 - a. **Commercially Produced Face Coverings:** Commercially produced surgical masks or respirators are acceptable for compliance with this policy;
 - b. **Cloth Face Coverings:** Cloth face coverings are acceptable for compliance with this policy provided that the face covering covers both the nose and mouth of the person and fits snugly against the sides of the person's face with no gaps. The U.S. Center for Disease Control has issued instructions on how to make a cloth face covering at:
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html>
- 3. **FACE COVERING TYPES (Employees):** All school district employees must wear face coverings while in a school district campus/facility or inside a school district vehicle. The School District will have face coverings available at all district facilities and in all vehicles, including school buses.
- 4. **LIMITED FACE SHIELD USE:** Face shields are less effective than commercial and cloth face coverings and may not be used by any persons to comply with this policy except under the following limited circumstances:
 - a. **In Addition to a Face Covering:** When used in addition to an approved face covering to protect eyes, as well;
 - b. **Medical Certification:** A face shield may be worn in lieu of other approved face coverings by persons who are observing physical distancing and present school officials with a certification from a health care provider that the person has a medical, physical or psychological contraindication that prevents the person from being able to safely wear an approved face covering; or,
 - c. **Instruction:** Face shields may be used by school district employees in situations where physical distancing is observed and it is important for students to see how the instructor pronounces words (e.g., English Learners, early childhood instruction, speech therapy, foreign language, etc.) and/or

an instructor may wear a clear mask when it is important for a student to observe the instructors mouth.

B. LIMITATIONS/ENFORCEMENT:

1. **NO STUDENT or EMPLOYEE:** shall wear a face covering that has markings that are suggestive, revealing, indecent¹, associated with gangs or cults, encourage the use of drugs, alcohol, or violence, or support discrimination on the basis of age, color, ethnicity, gender, gender identity, gender expression, linguistic differences, marital status, national origin, race, religion, socioeconomic background, sexual orientation, physical appearance, or any other basis. Additionally, face coverings shall not be used to promote a political party or and individual seeking elected office.
2. **EMPLOYEES:** All employees are expected to comply with the face covering requirements above for the health and safety of themselves, their colleagues, students and others. Employees who do not comply should be reminded of the policy. If they refuse to comply, after being reminded the employee may be disciplined according to their respective Collective Bargaining Agreement or other School Board Policies for insubordination.
3. **STUDENTS:** All students are expected to follow face covering requirements while in school or school sponsor activities/events for the health and safety of themselves, school staff, and others. Students who do not comply should be reminded of the policy and the student's parent will be called. If a student blatantly disregards the health and safety of others and/or refuses to comply with wearing a face covering, discipline will be in accordance with the Code of Student Conduct.
4. **VISITORS:** Members of the public and visitors should be reminded that face coverings are required while at or inside a District school/facility. A visitor will not be admitted to a District school/facility without wearing a face covering.

SPECIFIC AUTHORITY: Section 1001.41(1), (2) and (3), Florida Statutes.

LAW IMPLEMENTED: Sections 1001.42(4) and (8), 1003.31, 1012.23 and 1012.27(1) and (7), Florida Statutes.

Policy Adopted: August 19, 2020

¹ Indecent, suggestive, and revealing refer to exposure of private body parts and/or pictures or words with a sexual connotation.

2170 FACE COVERINGS

PURPOSE:

ONE OF THE SCHOOL BOARD'S HIGHEST PRIORITIES IS TO ENSURE THE HEALTH AND SAFETY OF ITS COMMUNITY INCLUDING EMPLOYEES, STUDENTS AND THE PUBLIC. THE CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC) AND THE FLORIDA DEPARTMENT OF HEALTH (FDOH) ADVISE THAT PEOPLE WHO MAY BE INFECTED WITH COVID-19 (WHETHER SYMPTOMATIC OR PRE-SYMPTOMATIC) PLAY AN IMPORTANT PART IN REDUCING COMMUNITY SPREAD. THE USE OF FACE COVERING BY EVERYONE CAN LIMIT RELEASE OF INFECTED DROPLETS WHEN TALKING, COUGHING, AND/OR SNEEZING.

I. RULES:

- A. **Subject to the EXCEPTIONS set forth below**, each student, employee, visitor, vendor or other person shall properly wear a face covering while at or inside a school campus, district facility, a vehicle owned, leased or operated by The School Board or a school/district sponsored activity. **Proper wearing of an approved face covering, means the face covering should cover both the nose and mouth of the person and should fit snugly against the sides of the person's face with no gaps. This includes:**

Musical and Theatrical Performances: A face covering will be required for all individuals while playing a musical instrument or performing or rehearsing for a choral or theatrical performance. This includes the singing of the National Anthem, school alma maters, or other songs.

1. **EXCEPTIONS:** A face covering will not be required in the following instances:

a. **For All (Students, Employees, Vendors and Visitors):**

- i. **Infants:** A face covering shall not be required for persons younger than two (2) years of age;
- ii. **Outdoors with Physical Distancing:** A face covering shall not be required for persons outside of any school district building or vehicle provided that such person maintains physical distancing (six (6) feet minimum distance) from other persons. However, a face covering shall be worn during change of classes even if it involves use of outside areas; or,
- iii. **Identification:** Administrators, security staff and other appropriate employees may ask someone to *briefly* remove their face covering to verify their identity. Physical distance will be observed during these requests, whenever possible.

b. For Students:

- i. Students with Approval:** A face covering shall not be required for a student if the student's IEP or 504 team, after receiving a certification from a health care provider that the student has a medical, physical or psychological contraindication that prevents the person from being able to safely wear an approved face covering, authorizes the student to remove her/his face covering during an activity provided that the student maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering. Face shields should be considered when granting an accommodation for not wearing an approved face covering;
- ii. Regularly Scheduled Mealtimes:** A face covering shall not be required for any student inside or outside a school district facility or a school/district sponsored activity while student is eating during a planned mealtime provided that the student maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering.
- iii. Strenuous Physical Activity:** A face covering shall not be required for any student outside of any school, district building, or at a school/district sponsored activity while the student is engaged in strenuous physical activity provided that the student maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering. Students participating in indoor physical activities are required to wear a face covering, including weight rooms and physical education classes;
- iv. Extracurricular Athletic Team Activities:** Students actively participating in indoor or outdoor practice or competition are not required to wear face coverings;
- v. During Receipt of Health Care:** A face covering shall not be required for any student inside or outside any school district facility or building when removal of the face covering is necessary for the student to receive health care or to undergo a health care examination from authorized health care personnel; or,
- vi. Demanding Circumstances:** A face covering will not be required if a student is experiencing acute trouble breathing, is unconscious

or incapacitated. A staff member may remove the student's mask if the student is unable.

c. For Employees:

- i. Employees with Approval:** An employee may request a reasonable accommodation under the Americans with Disabilities Act (ADA) and other statutes, through the Office of Equal Educational Opportunities, if the employee has a medical, physical or psychological contraindication that prevents the person from being able to wear an approved face covering. Face shields should be considered when granting an accommodation for not wearing an approved face covering. A face covering may not be required when the school district official supervising an employee authorizes the employee to remove her/his face covering when wearing a face covering would create a safety risk to the person as determined by local, state, or federal regulators or workplace safety guidelines. If this occurs, the employee must maintain physical distancing (six (6) feet minimum) from other persons;
- ii. Regularly Scheduled Mealtimes:** A face covering shall not be required for any employee inside or outside a school district facility or at a school/district sponsored activity while the employee is eating during a planned mealtime provided that the employee maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering;
- iii. Strenuous Physical Activity:** A face covering shall not be required for any employee outside of any school, district building or school/district sponsored activity while such employee is engaged in strenuous physical activity provided that the employee maintains physical distancing (six (6) feet minimum) from other persons when not wearing a face covering. Employees participating in indoor physical activities are required to wear a face covering including weight rooms and physical education classes;
- iv. Extracurricular Athletic Team Activities:** Employees participating in indoors or outdoors practice or competition (coaching) are required to wear face coverings at all times; or,
- v. Demanding Circumstances:** A face covering will not be required if a person is experiencing acute trouble breathing, is unconscious or incapacitated. A staff member may remove the employee's mask if the employee is unable.

d. Visitors and Vendors:

- i. Outdoors with Physical Distancing:** A face covering shall not be required for persons outside of any school district building or vehicle provided that such person maintains physical distancing (six (6) feet minimum distance) from other persons;
- ii. Regularly Scheduled Mealtimes:** A face covering shall not be required for any person inside or outside a school district facility while such person is eating during a planned mealtime;
- iii. Strenuous Physical Activity:** A face covering shall not be required for any person outside of any school, district building or at a school/district sponsored activity while such person is engaged in strenuous physical activity. Visitors participating in indoor physical activities are required to wear a face covering; or,
- iv. Extracurricular Athletic Team Activities:** Visitors participating in indoors or outdoors practice or competition are required to wear face coverings at all times; or,
- v. Demanding Circumstances:** A face covering will not be required if a person is experiencing acute trouble breathing, is unconscious or incapacitated. A staff member may remove a visitor's mask if the visitor is unable.

2. FACE COVERING TYPES (Students, Vendors and Visitors): All students, visitors and vendors must supply and wear their own face coverings while at or inside a school district campus/facility or inside a school district vehicle. All students, visitors and vendors must properly maintain their face covering. The following face covering types are approved for compliance with this policy by persons other than school district employees:

- a. Commercially Produced Surgical Masks:
- b. Cloth Face Masks: That have two or more layers of washable, breathable fabric. The U.S. Center for Disease Control has issued instructions on how to make a cloth face covering at:
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-to-make-cloth-face-covering.html>

3. FACE COVERING TYPES (Employees): The School District will have face coverings available at all district facilities and in all vehicles, including school buses. All school district employees must wear face coverings while in a school district campus/facility or inside a school district vehicle.

4. **FACE COVERINGS NOT IN COMPLIANCE: (Students, Employees, Vendors and Visitors):** Students, employees, visitors or vendors who wear one of the following type of face coverings **will not** be in compliance with this policy:
 - a. Face masks that are made of fabric that makes it hard to breathe, for example vinyl;
 - b. Face masks that have inhale/exhalation valves or vents; or,
 - c. Gaiters.

5. **LIMITED FACE SHIELD USE:** Face shields are less effective than commercial and cloth face coverings and may not be used by any persons to comply with this policy except under the following limited circumstances:
 - a. **In Addition to a Face Covering:** When used in addition to an approved face covering to protect eyes, as well;

 - b. **Medical Certification:** A face shield may be worn in lieu of other approved face coverings by students and/or employees who are observing physical distancing and the need for such an accommodation is provided through the process described in paragraphs I. A. 1. b. i. or I. A. 1. c. i.; or,
 - c. **Instruction:** Face shields may be used by school district employees in situations where physical distancing is observed and it is important for students to see how the instructor pronounces words (e.g., English Learners, early childhood instruction, speech therapy, foreign language, etc.) and/or an instructor may wear a clear mask when it is important for a student to observe the instructors mouth.

B. LIMITATIONS/ENFORCEMENT:

1. **NO STUDENT or EMPLOYEE:** shall wear a face covering that has markings that are suggestive, revealing, indecent¹, associated with gangs or cults, encourage the use of drugs, alcohol, or violence, or support discrimination on the basis of age, color, ethnicity, gender, gender identity, gender expression, linguistic differences, marital status, national origin, race, religion, socioeconomic background, sexual orientation, physical appearance, or any other basis while on a school campus district building or a school/district sponsored activity.

2. **EMPLOYEES:** All employees are expected to comply with the face covering requirements above for the health and safety of themselves, their colleagues, students and others. Employees who do not comply should be reminded of the policy. If they refuse to comply, after being reminded the employee may be

¹ Indecent, suggestive, and revealing refer to exposure of private body parts and/or pictures or words with a sexual connotation.

disciplined according to their respective Collective Bargaining Agreement or other School Board Policies for insubordination. Additionally, face coverings shall not be worn that promote a political party, political ideas, and/or an individual seeking elected office.

3. **STUDENTS:** All students are expected to follow face covering requirements while in school or school sponsor activities/events for the health and safety of themselves, school staff, and others. Students who do not comply should be reminded of the policy and the student's parent will be called. If a student blatantly disregards the health and safety of others and/or refuses to comply with wearing a face covering, discipline will be in accordance with the Code of Student Conduct. Additionally, face coverings may be worn to promote an individual seeking elected office, to support political ideas, as long as they do not cause a substantial disruption to the educational environment.
4. **VISITORS:** Members of the public and visitors will be reminded that face coverings are required while at or inside a District school/facility. A visitor will not be admitted to a District school/facility without wearing a face covering. If a visitor blatantly disregards the health and safety of others and/or refuses to wear a face covering, they will be asked to leave the school facility.

II. DELEGATION OF AUTHORITY:

In consultation with and guidance from public health officials, the Superintendent has the authority to determine when the Face Covering Policy will be implemented and when it will no longer be required. Further, as new face coverings are developed and produced the Superintendent is authorized to change the types of face coverings that would be both in compliance and not in compliance with this policy.

SPECIFIC AUTHORITY: Section 1001.41(1), (2) and (3), Florida Statutes.

LAW IMPLEMENTED: Sections 1001.42(4) and (8), 1003.31, 1012.23 and 1012.27(1) and (7), Florida Statutes.

Policy Adopted as Emergency Policy: August 19, 2020

Policy Adopted: December 15, 2020

The School Board of Broward County, Florida
DOE No: 2021-4024
Board Members Salary and Fringes

Board Members		
P#	Names	Salary
95300	Dr. Rosalind Osgood	\$46,773
90686	Laurie Rich Levinson	\$46,773
92505	Donna P Korn	\$46,773
33316	Debra Hixon	\$46,773
4427	Ann Murray	\$46,773
60687	Patricia Good	\$46,773
102039	Sarah Leonardi	\$46,773
121662	Lori Alhadeff	\$46,773
53364	Nora Rupert	\$46,773