



**THE SCHOOL DISTRICT OF
PALM BEACH COUNTY, FL**

**MICHAEL J. BURKE
SUPERINTENDENT**

**FRANK A. BARBIERI, JR., ESQ.
BOARD CHAIRMAN**

OFFICE OF THE SUPERINTENDENT
3300 FOREST HILL BOULEVARD, C-316
WEST PALM BEACH, FL 33406-5869

PHONE: 561-649-6833 / FAX: 561-649-6837
WWW.PALMBEACHSCHOOLS.ORG

**KAREN M. BRILL
BOARD VICE CHAIR**

MARCIA ANDREWS
ALEXANDRIA AYALA
BARBARA MCQUINN
DEBRA L. ROBINSON, M.D.
ERICA WHITFIELD

September 1, 2021

Richard A. Corcoran
Commissioner of Education
Florida Department of Education
325 W. Gaines Street
Tallahassee, FL 32399-0400

Dear Commissioner Corcoran:

Pursuant to Fla. Stat. 1008.32(1), on behalf of the School District of Palm Beach County, we respectfully submit the following response to your letter of August 27, 2021.

On August 18, 2021, the School Board adopted its current Policy, 5.326, Student Protocols due to COVID-19.¹ The purpose of the Policy is "[t]o facilitate the continuous operations of the District and protect the health, safety, and welfare of students by adhering to COVID-19 District safety protocols." Policy 5.326(1). One of the District Safety Guidelines is that "[a]ll students must ... wear face coverings at all times." Policy 5.326(3)(viii). The Policy provides for an exemption or accommodation where "verified by a treating licensed medical physician as required by (ADA), or Section 504 of the Rehabilitation Act and agreed to by a compliant 504 Team." Policy 5.326(3)(viii). Further, "[f]acial coverings will not need to be worn when outside, after seated when eating or drinking as outlined in District protocols that will be posted to the District website and approved by the school principal or designee." Policy 5.326(3)(viii)(1). Finally, "[t]his emergency modification of this policy shall remain in effect for a period of no more than ninety (90) days from the date of the adoption." Policy 5.326(11). "The Superintendent may suspend/revoke/rescind portions of this policy based on the updates/available information from the CDC, State, or local authorities regarding COVID-19 cases." Policy 5.326(11).

The School District of Palm Beach County has not acted inconsistently with the DOH Emergency Rule or the authorities which purportedly underpin that Rule. The Rule is based on the directive in the Governor's Executive Order 21-175, "to ensure safety protocols for controlling the spread of COVID-19 in schools that:

- a. Do not violate Floridians' constitutional freedoms;
- b. Do not violate parents' right under Florida law to make health care decisions for their minor children; and
- c. Protect children with disabilities or health conditions who would be harmed by certain protocols such as face masking requirements.

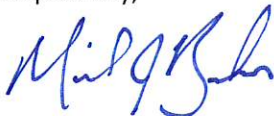
¹ <http://go.boarddocs.com/fl/palmbeach/Board.nsf/goto?open&id=C63KZ55315E8>.

With respect to Floridians' constitutional freedoms, there has been no determination that has concluded a face-covering requirement for students is unconstitutional. Nothing in the Parents' Bill of Rights prohibits a face-covering requirement. The Parents' Bill of Rights also preserves the School Board's power to take action where it 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." § 1014.03, Fla. Stat. The Board's face-covering requirement satisfies these requirements.

It cannot be disputed that providing a safe learning environment for all students is a compelling interest for the School Board and the State of Florida as a whole. A face-covering policy was necessary in response to the dramatically and rapidly worsening state of the spread of COVID-19 as a result of the Delta variant. The Policy was adopted after the experience of operating schools for a week and a half and seeing an explosion of COVID-19 cases. Cases have continued to soar. In the three weeks since school opened on August 10, the District has 3,470 reported cases of COVID-19 involving students and staff on our campuses. In the entirety of the 2020-2021 school year, the District had a total of 3,800 reported cases. The Policy is reasonable and there is not a less restrictive means in light of the lack of available vaccines for the majority of school-age students and the requirement that the Board provide in-person instruction. The Policy is also narrowly tailored, as it is only in effect for 90 days and can be suspended or revoked sooner where available information supports doing so.

Finally, the Board's face-covering requirement provides for an exemption or accommodation where "verified by a treating licensed medical physician as required by the ADA, or Section 504 of the Rehabilitation Act and agreed to by a compliant 504 Team." Policy 5.326(3)(viii). Accordingly, it also protects children with disabilities or health conditions who would be harmed by certain protocols such as face masking requirements, as set forth in the Governor's Executive Order.

Respectfully,



Michael J. Burke
Superintendent

C: Frank A. Barbieri, Jr., Esq., Board Chairman
Karen Brill, Vice-Chair
Marcia Andrews
Alexandria Ayala
Barbara McQuinn
Debra L. Robinson, M.D.
Erica Whitfield