



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

September 3, 2021

Dr. Ken Savage
Superintendent
Lee County Schools
2855 Colonial Boulevard
Ft. Myers, Florida 33966

Ms. Debbie Jordan
School Board Chair
Lee County Schools
2855 Colonial Boulevard
Ft. Myers, Florida 33966

Dear Superintendent Savage and Chair Jordan:

This letter is sent to express my grave concern regarding your district's response to the recently adopted Emergency Rule 64DER21-12 from the Florida Department of Health. This rule, issued on August 6, 2021, by the Florida Surgeon General, Dr. Scott Rivkees, explicitly requires that any mandated mask policy imposed by a district or school "must allow for a parent or legal guardian of the student to opt-out the student from wearing a face covering or mask." The emergency rule does not require parents to submit medical documentation in order to opt out.

Executive Order 21-175 directed the Florida Department of Health and the Florida Department of Education to execute rules to ensure safety protocols for controlling the spread of COVID-19 in schools. The Order directs further that any such action must "at minimum be in accordance with Florida's Parents' Bill of Rights and protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Because the Florida Department of Health, under section 1003.22(3), Florida Statutes, is the agency authorized to adopt rules governing the control of communicable diseases, the Florida Department of Health adopted an emergency rule establishing protocols for controlling COVID-19 in public schools. The rule provides, in 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.

Rule 64DER21-12(1)(d), Florida Administrative Register, Vol. 47/No. 153, August 9, 2021.

Recent reports in the media indicate that the Lee County School Board has taken action inconsistent with the emergency rule by limiting or conditioning the parental ability to opt out of a face covering or mask mandate. Your rationale may be based on Judge Cooper's recent order;

Dr. Ken Savage, Ms. Debbie Jordan
September 3, 2021
Page Two

however, at this point, an automatic stay is in effect. This means the Department of Education may resume enforcement of the Florida Department of Health's emergency rule. In the event the stay is lifted, then enforcement action will be automatically tolled.

Section 1008.32, Florida Statutes, states, "The State Board of Education shall oversee the performance of district school boards and the Florida College System institution board of trustees in enforcement of all laws and rules." Further, section 1008.32(2)(a), Florida Statutes, states that the "Commissioner of Education may investigate allegations of noncompliance with law or state board rule and determine probable cause."

Based on this authority, I am immediately initiating an investigation of non-compliance with the rule adopted by the Florida Department of Health on August 6, 2021. In commencing this investigation, I am demanding that you provide a written response by 10:00 a.m. on Wednesday, September 8, 2021, documenting how your district is complying with Florida Department of Health Emergency Rule 64DER21-12. Should you fail to document full compliance with this rule, in accordance with section 1008.32, Florida Statutes, I intend to recommend to the State Board of Education that the Department withhold funds in an amount equal to the salaries for all the members of the School Board, as well as other sanctions authorized by law, until the district comes into compliance.

Parents have a fundamental right to direct the upbringing, education and care of their minor children. The Department of Education will protect that right.

Sincerely,

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

Richard Corcoran
Commissioner