

Notice of Emergency Rule

DEPARTMENT OF HEALTH

Division of Disease Control

RULE NO.: RULE TITLE:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Because of an increase in COVID-19 infections, largely due to the spread of the COVID-19 delta variant, prior to the beginning of the 2021-2022 school year, it is imperative that state health and education authorities continue to provide emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. In August 2021, all public schools in Florida began the 2021-2022 school year with in-person learning available for all students. The Department of Health adopted Emergency Rule 64DER21-12 on August 6, 2021. Since that time the Department has conducted a review of data for cases of COVID-19 positive school-aged children and data for school-aged children who have been in direct contact with a COVID-19 positive person. The Department observed a large number of students have been required to quarantine for long periods of time, resulting in the loss of hundreds of thousands of days of in-person learning. In addition, the Department observed no meaningful difference in the number of COVID-19 cases in school-aged children in counties where school districts have imposed mask mandates. It is necessary to minimize the amount of time students are removed from in-person learning based solely on direct contact with an individual that is positive for COVID-19, to ensure parents and legal guardians are allowed the flexibility to control the education and health care decisions of their own children, and to protect the fundamental rights of parents guaranteed under Florida law.

In order to permit students to continue in-person learning, to minimize the detriment to students and school personnel from the added burden of recurrent removal of students, and to benefit the overall welfare of students in Florida, it is necessary to provide updated emergency guidance to school districts concerning the governance of COVID-19 protocols in schools. This emergency rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to ensure safety protocols for controlling the spread of COVID-19 in schools that (1) do not violate Floridians' constitutional freedoms; (2) do not violate parents' rights under Florida law to make health care decisions for their minor children; and (3) protect children with disabilities or health conditions who would be harmed by certain protocols, such as face masking requirements. The order directs that any COVID-19 mitigation actions taken by school districts comply with the Parents' Bill of Rights, and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19."

Because of the importance of in-person learning to educational, social, emotional and mental health, and welfare, removing healthy students from the classroom for lengthy quarantines should be limited. Under Florida law, parents and legal guardians have a fundamental right to direct the upbringing, education, health care, and mental health of their minor children and have the right to make health care decisions for their minor children. HB 241, Ch. 2021-199, Laws of Fla. Parents and legal guardians are uniquely situated to understand the health care, emotional, and educational needs of their minor children. In furtherance of the Florida Department of Health's authority to adopt rules governing the control of preventable communicable diseases—and because students benefit from in-person learning—it is necessary to immediately promulgate a rule regarding COVID-19 safety protocols that protects parents' rights and to maximize the allowance of in-person education for their children. Unnecessarily removing students from in-person learning poses a threat to the welfare of children, including their social, emotional and educational developmental, and is not necessary absent illness.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: This emergency rule is necessary in light of the unnecessary exclusion of healthy students from in-person learning and the urgent need to provide updated COVID-19 guidance to school districts. Given the evolving nature of this novel disease and the potential for adverse impacts on school children resulting from the unnecessary exclusion of healthy children from in-person learning, there is a need to issue an immediately effective rule while the department promulgates a permanent rule through the non-emergency process.

SUMMARY: Emergency rule 64DER21-15 sets forth the procedures for controlling COVID-19 in school settings. Emergency rule 64DER21-15 repeals and replaces Emergency rule 64DER21-12 that was adopted on August 6, 2021.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Carina Blackmore, Florida Department of Health, 4052 Bald Cypress Way, Tallahassee, Florida 32399-1703, (850)245-4732.

THE FULL TEXT OF THE EMERGENCY RULE IS:

64DER21-15 Protocols for Controlling COVID-19 in School Settings

(1) GENERAL PROTOCOLS AND DEFINITION. The following procedures shall be instituted to govern the control of COVID-19 in public schools:

- (a) Schools will encourage routine cleaning of classrooms and high-traffic areas.
- (b) Students will be encouraged to practice routine handwashing throughout the day.
- (c) Students will stay home if they are sick.
- (d) Schools may adopt requirements for students to 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 the student out of wearing a face covering or mask at the parent or legal guardian's sole discretion.

(e) For purposes of this rule, "direct contact" means cumulative exposure for at least 15 minutes, within six feet.

(2) PROTOCOLS FOR SYMPTOMATIC OR COVID-19 POSITIVE STUDENTS. Schools will ensure students experiencing any symptoms consistent with COVID-19 or who have received a positive diagnostic test for COVID-19 shall not attend school, school-sponsored activities, or be on school property until:

- (a) The student receives a negative diagnostic COVID-19 test and is asymptomatic; or
- (b) Ten days have passed since the onset of symptoms or positive test result, the student has had no fever for 24 hours and the student's other symptoms are improving; or
- (c) The student receives written permission to return to school from a medical doctor licensed under chapter 458, an osteopathic physician licensed under chapter 459, or an advanced registered nurse practitioner licensed under chapter 464.

(3) PROTOCOLS FOR STUDENTS WITH EXPOSURE TO COVID-19. Schools shall allow parents or legal guardians the authority to choose how their child receives education after having direct contact with an individual that is positive for COVID-19:

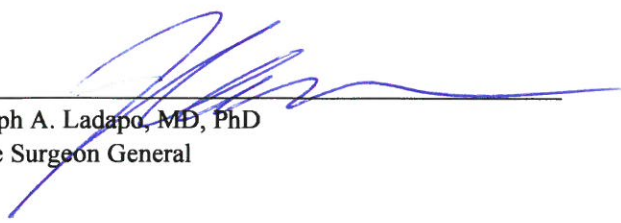
(a) Parents or legal guardians of students who are known to have been in direct contact with an individual who received a positive diagnostic test for COVID-19 may choose one of the following options:

- 1. Allow the student to attend school, school-sponsored activities, or be on school property, without restrictions or disparate treatment, so long as the student remains asymptomatic; or
- 2. Quarantine the student for a period of time not to exceed seven days from the date of last direct contact with an individual that is positive for COVID-19.

(b) If a student becomes symptomatic following direct contact with an individual that has tested positive for COVID-19, or tests positive for COVID-19, the procedures set forth in subsection (2), above shall apply.
Rulemaking Authority 1003.22(3) FS. Law Implemented 1003.22(3) FS. History—New.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE:


Joseph A. Ladapo, MD, PhD
State Surgeon General

9/22/21
Date