

MINUTES
STATE BOARD OF EDUCATION
MEETING

October 7, 2021
Via Conference Call

Chair Tom Grady called the emergency meeting to order at 1:00 p.m. The following members were present: Vice Chair Ben Gibson, Monesia Brown, Marva Johnson, Ryan Petty and Andy Tuck.

ACTION ITEM

Consideration of Probable Cause for Noncompliance with Department of Health Emergency Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings (Alachua)

Chair Grady started by thanking those that called in and amended the agenda to withdraw three action items: agenda item five, Hillsborough County School District, agenda item six, Indian River School District and agenda item 11, Sarasota County School District. Chair Grady then recognized Stasi Kamoutsas, General Counsel, Department of Education to explain the emergency rule and the steps that go into enforcement of that rule.

Mr. Kamoutsas thanked the board and reminded them of their earlier decision on August 20 to withhold funds from districts that are not in compliance with the Department of Health's emergency rule 64DER21-15 on COVID-19 and how that determination was made. Starting with the commissioner initiating an investigation into allegations of noncompliance, making a determination of probable cause, State Board consideration of the commissioners' investigation, and if found in noncompliance the district must document compliance by a specified time provided by the board. Adding that district's unwilling or unable to document compliance with the law within the time set by the Board, may be subject to State Board action including authority to order certain actions which are designed to encourage compliance with the law. These include the withholding of state funds, reporting for the Legislator, reporting to the Department, the Commissioner of Education or the State Board of Education.

Chair Grady then recognized Richard Corcoran, Commissioner to provide the board his findings of probable cause for each district not in compliance with the emergency order. Commissioner Corcoran started by reading the House rule about mask requirements in school: "Schools may adopt the requirements for students to wear a mask 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." Noting that none of the districts on today's call allow parents to opt out of school district masking mandate at their sole discretion. Most limit opt out to circumstances where parents can demonstrate an exception, such as a medical note and it requires documentation to meet these exceptions.

Commissioner Corcoran then made his recommendation: order compliance within 48 hours, withhold state funds in an amount equal to any federal Project SAFE grant funds or successor grants awarded to the district, and move into compliance with the Florida Department of Health's emergency rule.

Chair Grady called for a motion to approve the probable cause findings and commissioners recommendation. Ms. Johnson made the motion with a second by Ms. Brown.

Chair Grady then recognized Carly Simon, Superintendent, Alachua County to share her districts position with the board. Superintendent Simon thanked the board and proceeded to discuss the policies and procedures that the Alachua County School Board have adopted and implemented. Stating that she believes they comply with the statutory requirements and the parents' Bill of Rights and they are necessary to meet our students' constitutional right to safe and secure schools.

Chair Grady called for a motion, the motion passed unanimously.

Consideration of Probable Cause for Noncompliance with Department of Health Emergency Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings (Brevard)

Chair Grady then recognized Richard Corcoran, Commissioner to provide the board his findings of probable cause and recommendation. Commissioner Corcoran stated the district has not come forward with documentation that establishes compliance and recommended finding the district not in compliance with the new FDOH rule, order compliance within 48 hours and withhold state funds in an amount equal to any federal Project SAFE grant funds or successor grants awarded to the district.

Chair Grady called for a motion to approve the probable cause findings and commissioners recommendation. Mr. Petty made the motion with a second by Mr. Tuck.

Chair Grady recognized Mark Mullins, Superintendent, Brevard County to share his districts position with the board. Superintendent Mullins thanked the board and introduced Misty Belford, Chair, Brevard County School Board to provide Brevard's alignment with the law. Ms. Belford argued that Brevard was in compliance with the law, stating that Article 9 of the Florida constitution, as well as Florida Statute 1002.20 require that districts provide a safe system of free public education and Florida Statute 252.36 states that schools should remain open, provided safety can be maintained by mitigation strategies recommended by federal or state health agencies.

Chair Grady called for a motion, the motion passed unanimously.

Consideration of Probable Cause for Noncompliance with Department of Health Emergency Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings (Broward)

Chair Grady then recognized Richard Corcoran, Commissioner to provide the board his findings of probable cause and recommendation. Commissioner Corcoran stated the district has not come forward with documentation that establishes compliance and recommended finding the district not in compliance with the new FDOH rule, order compliance within 48 hours and withhold state funds in an amount equal to any federal Project SAFE grant funds or successor grants awarded to the district.

Chair Grady called for a motion to approve the probable cause findings and commissioners recommendation. Mr. Petty made the motion with a second by Mr. Tuck.

Chair Grady recognized Dr. Vickie Cartwright, Superintendent, Broward County to share her districts position with the board. Superintendent Cartwright thanked the board and shared that her district was following updated guidance issued by the CDC on August 5th on COVID-19 for prevention in schools due to the Delta variant, stating that the CDC recommends universal indoor masking by all students, staff, teachers, visitors, to K 12 schools regardless of vaccination status.

Chair Grady called for a motion, the motion passed unanimously.

Consideration of Probable Cause for Noncompliance with Department of Health Emergency Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings (Duval)

Chair Grady then recognized Richard Corcoran, Commissioner to provide the board his findings of probable cause and recommendation. Commissioner Corcoran stated the district has not come forward with documentation that establishes compliance and recommended finding the district not in compliance with the new FDOH rule, order compliance within 48 hours and withhold state funds in an amount equal to any federal Project SAFE grant funds or successor grants awarded to the district.

Chair Grady called for a motion to approve the probable cause findings and commissioners recommendation. Mr. Petty made the motion with a second by Vice Chair Gibson.

Chair Grady recognized Dr. Diana Greene, Superintendent, Duval County to share her districts position with the board. Superintendent Greene thanked the board and shared that Duval County started the year off without a mask mandate and moved to have one due to the amount of positive cases and that her district allows for medical certification opt out, as well as opt out through a HOPE scholarship.

Chair Grady called for a motion, the motion passed unanimously.

Consideration of Probable Cause for Noncompliance with Department of Health Emergency Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings (Leon)

Chair Grady then recognized Richard Corcoran, Commissioner to provide the board his findings of probable cause and recommendation. Commissioner Corcoran stated the district has not come forward with documentation that establishes compliance and recommended finding the district not in compliance with the new FDOH rule, order compliance within 48 hours and withhold state funds in an amount equal to any federal Project SAFE grant funds or successor grants awarded to the district.

Chair Grady called for a motion to approve the probable cause findings and commissioners recommendation. Vice Chair Gibson made the motion with a second by Mr. Tuck.

Chair Grady recognized Randy Hanna, Superintendent, Leon County to share his districts position with the board. Superintendent Hanna thanked the board and shared that Leon County started the year off without a mask mandate and moved to have one due to the amount of positive cases. Adding that Leon County also believes they are not in violation of the Department of Health's Emergency Rule as the language did not prohibit school districts from requiring medical documentation for a parental mask opt out.

Chair Grady called for a motion, the motion passed unanimously.

Consideration of Probable Cause for Noncompliance with Department of Health Emergency Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings (Miami-Dade)

Chair Grady then recognized Richard Corcoran, Commissioner to provide the board his findings of probable cause and recommendation. Commissioner Corcoran stated the district has not come forward with documentation that establishes compliance and recommended finding the district not in

compliance with the new FDOH rule, order compliance within 48 hours and withhold state funds in an amount equal to any federal Project SAFE grant funds or successor grants awarded to the district.

Chair Grady called for a motion to approve the probable cause findings and commissioners recommendation. Mr. Tuck made the motion with a second by Vice Chair Gibson.

Chair Grady recognized Alberto Carvalho, Superintendent, Miami-Dade County to share his districts position with the board. Superintendent Carvalho thanked the board and stated he believes his district is acting in the best regards to their students and following recommended CDC and National Association of Pediatrics guidelines.

Chair Grady called for a motion, the motion passed unanimously.

Consideration of Probable Cause for Noncompliance with Department of Health Emergency Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings (Orange)

Chair Grady then recognized Richard Corcoran, Commissioner to provide the board his findings of probable cause and recommendation. Commissioner Corcoran stated the district has not come forward with documentation that establishes compliance and recommended finding the district not in compliance with the new FDOH rule, order compliance within 48 hours and withhold state funds in an amount equal to any federal Project SAFE grant funds or successor grants awarded to the district.

Chair Grady called for a motion to approve the probable cause findings and commissioners recommendation. Mr. Petty made the motion with a second by Vice Chair Gibson.

Chair Grady recognized Dr. Barbara Jenkins, Superintendent, Orange County to share her districts position with the board. Superintendent Jenkins thanked the board and stated that using a mask mandate was the best way to protect students under section 1001.42(8)(a), Florida Statutes and that the CDCs August 5th guidance recommends universal indoor masking by all students, staff, teachers, and visitors to K12 schools regardless of vaccination status.

Chair Grady called for a motion, the motion passed unanimously.

Consideration of Probable Cause for Noncompliance with Department of Health Emergency Rule 64DER21-15, Protocols for Controlling COVID-19 in School Settings (Palm Beach)

Chair Grady then recognized Richard Corcoran, Commissioner to provide the board his findings of probable cause and recommendation. Commissioner Corcoran stated the district has not come forward with documentation that establishes compliance and recommended finding the district not in compliance with the new FDOH rule, order compliance within 48 hours and withhold state funds in an amount equal to any federal Project SAFE grant funds or successor grants awarded to the district.

Chair Grady called for a motion to approve the probable cause findings and commissioners recommendation. Mr. Tuck made the motion with a second by Mr. Petty.

Chair Grady recognized Mike Burke, Superintendent, Palm Beach County to share his districts position with the board. Superintendent Burke thanked the board and stated that after just four weeks of school, the number of COVID cases had exceeded the total number of cases experienced all of last school year

and that the district's mask policy is reasonable and necessary to achieve a compelling state interest, specifically to protect students from the transmission of the COVID-19 virus.

Chair Grady called for a motion, the motion passed unanimously.

ADJOURNMENT

Having no further business, Chair Grady adjourned the meeting of the State Board of Education Emergency Meeting at 2:45 P.M.

Chris Emerson, Corporate Secretary

Tom Grady, Chair