



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

August 13, 2021

The Honorable Ron DeSantis
Governor
The Capitol
400 S. Monroe Street
Tallahassee, FL 32399

The Honorable Richard Corcoran
Commissioner of Education
Florida Department of Education
325 W. Gaines Street
Tallahassee, FL 32399

Dear Governor DeSantis and Commissioner Corcoran:

As the new school year begins in school districts across Florida, it is our shared priority that students return to in-person instruction safely. The safe return to in-person instruction requires that school districts be able to protect the health and safety of students and educators, and that families have confidence that their schools are doing everything possible to keep students healthy. Florida's recent actions to block school districts from voluntarily adopting science-based strategies for preventing the spread of COVID-19 that are aligned with the guidance from the Centers for Disease Control and Prevention (CDC) puts students and staff at risk. I am writing on behalf of the U.S. Department of Education (Department) to emphasize the importance of allowing school district leaders to make decisions that ensure safety for their students.

In particular, I am deeply concerned about Florida's July 30 Executive Order prohibiting school districts from adopting universal masking policies consistent with CDC guidance.¹ Moreover, on August 9, the Governor's spokesperson released a statement specifying that in cases where school districts adopt masking policies consistent with CDC guidance, "the State Board of Education could move to withhold the salary of the district superintendent or school board members." The Governor's Office appeared to further clarify that penalties could take the forms of fines on a school district.

The Department recognizes that several school districts in your State have already moved to adopt such policies in line with guidance from the CDC for the reopening and operation of school facilities despite the State level prohibitions. **The Department stands with these dedicated educators who are working to safely reopen schools and maintain safe in-person instruction.**

The American Rescue Plan Act of 2021 (ARP Act) provides more than \$7 billion to support Florida's students and educators through the Elementary and Secondary School Emergency Relief Fund (ESSER). The Department notes that allowable uses of ESSER funds include "activities that are necessary to maintain the operation of and continuity of services in local educational agencies and continuing to employ existing staff of the local educational agency." This includes paying the full salaries of educators (including superintendents) and school board members, regardless of whether the State moves to withhold some of their salary as Florida is threatening.

¹ See: https://www.flgov.com/wp-content/uploads/orders/2021/EO_21-175.pdf.

Despite the requirement in the ARP Act that “[e]ach State shall make allocations... to local educational agencies in an expedited and timely manner and, to the extent practicable, not later than 60 days after the receipt of such funds”—that is, by May 24—the Florida Department of Education (FL DOE) has made none of these funds available to Florida’s school districts for their intended purpose. In fact, it appears that Florida has prioritized threatening to withhold State funds from school districts that are working to reopen schools safely rather than protecting students and educators and getting school districts the Federal pandemic recovery funds to which they are entitled.

Even if Florida does not fulfill its responsibility to make ARP ESSER funds available to its school districts expeditiously, a school district may use ARP ESSER funds for pre-award costs dating back to March 13, 2020. In addition, a school district may use ESSER funds under the Coronavirus Aid, Relief, and Economic Security (CARES) Act or the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA) for the same purposes. In other words, any threat by Florida to withhold salaries from superintendents and school board members who are working to protect students and educators (or to levy other financial penalties) can be addressed using ESSER funds at the sole and complete discretion of Florida school districts.

In addition, Florida’s State level action against science-based strategies for preventing the spread of COVID-19 appears to restrict the development of local health and safety policies and is at odds with the school district planning process embodied in the Department’s interim final requirements. As you know, the ARP Act requires each LEA that receives ARP ESSER funds to adopt a plan for the safe return to in-person instruction and continuity of services. (See section 2001(i).) The Department’s interim final requirements clarify that such plan “must describe...how [the LEA] will maintain the health and safety of students, educators, and other staff and the extent to which it has adopted policies, and a description of any such policies, on each of the following safety recommendations established by the CDC...” The safety recommendations include “universal and correct wearing of masks.” The Department is concerned that Florida’s action could limit each LEA’s ability under the ARP Act to adopt a plan for the safe return to in-person instruction and continuity of services that the LEA determines adequately protects students and educators by following CDC guidance.

As mentioned in my call to Commissioner Corcoran on August 4, we are eager to partner with FL DOE on any efforts to further our shared goals of protecting the health and safety of students and educators. If FL DOE does not wish to pursue such an approach, the Department will continue to work directly with the school districts and educators that serve Florida’s students. In addition, the Department will continue to closely review and monitor whether Florida is meeting all of its Federal fiscal requirements. It’s critical that we do everything in our power to provide a safe environment for our students and staff to thrive.

Sincerely,



Miguel A. Cardona, Ed.D.