

## **NOTICE OF EMERGENCY RULE**

### **DEPARTMENT OF EDUCATION**

### **STATE BOARD OF EDUCATION**

RULE No.: 6AER21-02

RULE TITLE: COVID-19 Hope Scholarship Transfer Procedures.

**SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE:** Given the recent rise in COVID-19 infections, largely driven by the spread of the delta variant, and the impending start to the 2021-2022 school year, the Florida Department of Education has been working to assist the Florida Department of Health in the development of minimum protocols governing the control of COVID-19 in public schools. As public school districts seek to impose new COVID-19 restrictions on students, emergency rulemaking is necessary here to protect the rights of students and their parents or guardians.

This rule conforms to Executive Order Number 21-175, which ordered the Florida Department of Health and the Florida Department of Education to immediately execute rules and to take any additional agency action as necessary, using all legal means available, 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, which is incorporated by reference, directs that any actions taken by school districts comply with the Parents' Bill of Rights, codified in Sections 1014.02 – 1014.06, Fla. Stat., and "protect parents' right to make decisions regarding masking of their children in relation to COVID-19." Parental rights include the right to make health care decisions for minor children, unless prohibited by law, and the right to direct the education and care of minor children. See, Section 1014.04, Fla. Stat. In order to ensure compliance with the law and state board rule, under Section 1008.32, Fla. Stat., the State Board of Education has authority to withhold from school districts state funds, discretionary grant funds, discretionary lottery funds or any other funds specified as eligible for this purpose by the legislature, until the district comes into compliance.

Because of the importance of in-person learning to educational, social, emotional and mental well-being, it is important to protect parents' right to make health care decisions for their minor children at school and provide in-person education for their children. Unnecessarily isolating, quarantining, or subjecting children to physical COVID-19 constraints in schools poses a threat to developmental upbringing and should not occur absent a heightened showing of actual illness or serious risk of illness to other students.

The Hope Scholarship Program provides funding for a K-12 public school student to transfer to a private school or to another district in the state if the student has been subjected to harassment or other qualifying adverse, intimidating treatment at school. Applying the Hope Scholarship Program to instances where a child has been subjected to COVID-19 harassment will provide parents another means to protect the health and education of their child by moving their child to another school.

In light of the recent increase in COVID-19 infections, school districts throughout the state are contemplating adoption of additional COVID-19 restrictions. Given that public schools throughout the state open in August and some open in less than one week, there is not sufficient time to proceed through normal rulemaking procedures before school starts. Accordingly, the Department finds that there is an immediate danger to the health, safety and welfare of students that requires emergency action by the department.

REASONS FOR CONCLUDING THAT PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: First, as noted above, because the recent increase in COVID-19 cases has prompted school districts to consider imposing additional COVID-19-related requirements on students and because school begins in August, there is not sufficient time to adopt a rule through non-emergency means before the start of the 2021-22 school year. Second, the agency has received multiple inquiries about school district COVID-19 protocols, which currently vary from district to district and even from school to school. Third, the emergency rule relies upon an Order of the Governor, which is public, and the rule was published on the Department's website to reach interested persons prior to consideration by the State Board of Education. Finally, because the Department is headed by a board, rather than an individual, the rule will be considered at a public meeting before the State Board of Education, with the opportunity for public input prior to final adoption. While this period is an abbreviated one, given the need to act quickly, the Department concludes that the procedure utilized is fair to interested and affected persons.

SUMMARY OF THE RULE: The emergency rule provides a mechanism to transfer a child to a private school or another school district under a Hope Scholarship when a student is subjected to harassment in response to a school district's COVID-19 mitigation protocols.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Dr. Dakeyan C. Graham, Executive Director, Office of Independent Education and Parental Education.

THE FULL TEXT OF THE EMERGENCY RULE IS:

6AER21-02 COVID-19 Hope Scholarship Transfer Procedures.

(1) Definitions. “COVID-19 harassment” means any threatening, discriminatory, insulting, or dehumanizing verbal, written or physical conduct an individual student suffers in relation to, or as a result of, school district protocols for COVID-19, including masking requirements, the separation or isolation of students, or COVID-19 testing requirements, that have the effect of substantially interfering with a student’s educational performance, opportunities or benefits.

(2) A student who is subject to COVID-19 harassment is eligible for a Hope Scholarship under Rule 6A-6.0951, The Hope Scholarship Program, Fla. Admin. Code R.

(3) School District Parent Notification Requirements. Pursuant to the requirements of Section 1002.40(6), a school district must timely notify a parent of the Hope Scholarship program and provide the parent with a completed Hope Scholarship Notification Form, (Form IEPC-HS1), as provided in Rule 6A-6.0951, , Fla. Admin. Code R., when a parent reports COVID-19 Harassment. A parent whose child has, in the view of the parent, experienced COVID-19 Harassment, may submit Form IEPC-HS1 without regard to district notification.

(4) Hope Scholarship Application Procedure. To receive a Hope Scholarship, a parent must:

(a) Follow the procedures set forth in subsection (4) of Rule 6A-6.0951, Fla. Admin. Code R;

(b) Designate the Incident Type as “Harassment” on Form IEPC-HS1; and

(c) Write COVID-19 next to the Incident Type on the form.

(5) The nonprofit scholarship-funding organization shall confirm eligibility for each student and award all scholarships consistent with the requirements of section 1002.40, F.S., Rule 6A-6.0951, Fla. Admin. Code R., and this rule.

Rulemaking Authority 1001.02(2)(n), 1002.40(16) FS. Law Implemented 1002.40 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: