

Principal, Vice Principal, School Board Member

School or School Board

Address

Phone: _____

Fax: _____

Email: _____

_____, _____, 2021

Re: Name of Student: _____
Masks Issue

Dear Sir/Ma'am:

This is to notify you that we (including our child) will no longer comply with any mask guidelines and Orders in relation to mask usage in the public/private school system. The masks/Covid measures are unauthorized by law, and are putting children at risk of great harm both physically and mentally, including increased mental health risks and a startling increase in the rate of suicide amongst children and youth.¹

Orders/Guidelines/Guidance – Historically to the present

I wish to bring to your attention your (including all staff and/or School Board members) comments, beliefs and/or representations that the B.C. Government has, as of Sept. 11, 2020, mandated mask wearing in all common areas of schools including at their desks, as well as school buses, save for instances where a medical note is provided, or medical exemption is claimed. Not only is your position incorrect, it is illegal and contrary to statutory legislation in this province.

In support, B.C. school officials appear to have been initially relying upon the following September 2020 document, "*Back to School Facts: What you need to know for the return to school 2020-21*", (Facts), at this government website,² which I have reviewed. This document in turn, is merely an admitted summary of a secondary document referenced on **p. 1, column 1**, where there is a link to this secondary document: "*COVID-19 Public Health Guidance for K-12 School Settings*" (*Original Guidance*), which in turn itself has recently been updated on February 4, 2021 (*Updated Guidance*).³ Notwithstanding these changes, a recent two page March 30, 2021 *Addendum* from the BCCDC⁴ further states on **p. 2**: "...the guidance in this addendum should be used in place of masking guidance in the Public Health Guidance for K-12 Schools." In this document, it purports to summarize changes to mask policy guidelines in schools from the previous February 4, 2021 *Updated Guidance*, and replace it with the guidelines in this *Addendum*.

I pause to note that this *Addendum* (nor any other *Guidance*) does not state that children or staff "*must*" or "*shall*" wear masks, but rather, that they "*should*" wear them. The former words are mandatory the latter are permissive and dependant upon the choice of the individual.

In the recent March 31, 2021 B.C. Ministry of Health publication, "*COVID-19 safe schools*", the Government expressly continues to refer to the February 4, 2021 *Updated Guideline* as being for "Review guidance and guidelines" purposes.⁵

¹ <https://www.cdc.gov/mmwr/volumes/69/wr/mm6945a3.htm>

² <https://www.surreyschools.ca/covid19/Documents/COVID19-BackToSchool-Factsheet.pdf>

³ http://www.bccdc.ca/Health-Info-Site/Documents/COVID_public_guidance/Guidance-k-12-schools.pdf

⁴ http://www.bccdc.ca/Health-Info-Site/Documents/COVID_public_guidance/Addendum_Public_Health_Guidance_K-12.pdf

⁵ <https://www2.gov.bc.ca/gov/content/education-training/k-12/covid-19-safe-schools#health-safety>

Moreover, there is now a prevailing, updated Province-wide Ministry of Education document: “*Provincial COVID-19 Health & Safety Guidelines for K-12 Setting*”, (*Health Guidelines*), updated as of March 30, 2021.⁶ It is the most recent publication from the Government, however it expressly states on **p. 4** of the February 4, 2021 *Updated Guidance*, that if there are any discrepancies between the February 4, 2021 document and this document, this March 30, 2021 document governs.

It is unsigned under a Ministry of Health BC logo, and is not from the Minister or Ministry of Education, nor does it constitute an order from same. Unfortunately, as shown above, there have been a number of publications and changes put out from both the B.C. Minister of Public Safety, the B.C. Ministry of Health, and the BCCDC. Admittedly, this appears at first glance to be confusing, with summaries of guidelines which are summaries of original documents and summaries of updated documents; however, the statutory illegality of all school actions in relation to purported mandatory mask usage on students, will be so self-evident by the end of this Notice, that there will be no excuse for even suggesting mask usage, much less making them mandatory.

COVID-19 – contextually and factually

I bring to your attention in the Sept. 11/20 *Original Guidance* (note: has now been removed now from the internet), the repeated admissions (**p. 1-3**) that risk of COVID-19 transmission in schools is and always has been, very low. This continues to be recognized in the recent February 4, 2021 *Updated Guidance*: “*COVID-19 virus has a relatively low infection rate among children (0-18)*”, “*Children do not appear to be the primary drivers of COVID-19 in schools, community settings or households.*”, “*Schools do not appear to result in significant increases in community transmission of COVID—19*”. (**p. 24, 25**) Nor is this a consequence of increased mask usage, which the Government continues to concede to be of very little effectiveness of preventing viral transmission (**p. 21**).

The B.C. Ministry of Health, on **p. 5** of its Sept. 11/20 *Original Guidance* and to the present, expressly recognizes that masks are the lowest form of protection from viral transmission. Additionally, the B.C. Ministry admitted that: “*To date, less than 5% of those tested have been positive for COVID-19. This means of people with cold, influenza or COVID-19 like symptoms, very few have COVID-19.*” (my emphasis – **p. 2**) This finding was confirmed again, on **p. 6, 21-22, 24, 25** of the February 4, 2021 *Updated Guidance*, and on **p. 5, 8, 10, 28** of the March 30, 2021 *Health Guidelines*,⁷ yet school officials improperly and unfairly continue to treat it, and shame non-mask wearers, as if it is the most critical.

In its relatively recent February 4, 2021 *Updated Guidance*, the BCCDC affirmed again that <3% of children 5-12 and <6% of children 13-18, tested positive. Additional admissions recognize that, “*Children do not appear to be the primary drivers of COVID-19 in schools, community settings or households.*” (**Appendix “A”, p. 24**) Further facts contained in this document from the Ministry of Health include that:

- i. most children are not at high risk;
- ii. there is a low infection rate in children (0-19);
- iii. less than five children to the end of August, 2020 in all of B.C. were admitted into hospitalization for COVID-19 – none required intensive care and no deaths;⁸
- iv. the majority of infected children arise from transmission from adults, not the reverse;

⁶ <https://www2.gov.bc.ca/assets/gov/education/administration/kindergarten-to-grade-12/safe-caring-orderly/k-12-covid-19-health-safety-guidelines.pdf>

⁷ <https://www2.gov.bc.ca/assets/gov/education/administration/kindergarten-to-grade-12/safe-caring-orderly/k-12-covid-19-health-safety-guidelines.pdf>

⁸ Quoted from the *Original Guidance*

- v. most adults (up to 88%) are asymptomatic and experience mild to no symptoms and cannot transmit the virus; and,
- vi. there is little evidence of transmission of COVID-19 in the educational system;
- vii. where there is transmission, it is more likely from staff to staff, then students to staff or staff to students.⁹

Contextually, and as admitted by the B.C. Ministry of Health, the fear and emphasis placed on this virus (especially in the school system) is grossly disproportionate to any alleged threat of transmission¹⁰ from the educational system.

Referenced Documents & Legislation

The nature of these documents is such that they are guidelines only. They are not statutes. They are not regulations. They are not legal notices. They are not legally binding documents. They are not even Orders as set out in the *Public Health Act* or the *Emergency Program Act*.¹¹ As expressly stated therein the Sept. 11/20 *Original Guidance*, the February 4, 2021 *Updated Guidance* (**p.1, para. 1**), and affirmed in the March 30, 2021 *Health Guidance*: “*This document provides guidance for educators, administrators and support staff (hereafter referred to as staff) at public, independent and First Nations Kindergarten to Grade 12 (K-12) schools...*” (my emphasis).

Section 88(1) of the *School Act* of British Columbia, commands (“must provide health services”) that the School Board provide health services, “...in accordance with any orders made by the Minister.” (my emphasis), ie: Minister of Health (**s. 87.1**). As you know, there are no such orders, **just non-legally binding guidelines**, in relation to suggestions only of mandatory compulsion to wear masks at school for students; nor as shown below, can there be any such orders issued.

I have failed to locate any actual Order or other legal document that constitutes legal obligations upon schools in relation to this issue. The Gatherings Order of the Public Health Officer expressly excludes all provincial schools,¹² as well as Public Health Minister Mask Order M012, which as you know or should know, fails to apply and does not provide for mandatory mask requirements other than in post secondary schools.¹³ Similar exemptions for schools (and thus including teachers and staff) were outlined in previous Gatherings and Events Orders, dated August 7, and July 27, 2020, as well as the October 30, November 10, December 2, 4 and 15, 24, 2020, and January 8, 2021 Orders of Bonnie Henry. The recent February 4, 2021 *Updated Guidance*, **p. 21**, and re-affirmed on **p. 29** of the March 30, 2021 *Health Guidelines*, further concedes elementary students (Grades K to 3) are under no obligation to wear masks at all.

Any documents relied upon by the *School/School Board*, in my understanding and belief, have no legal effect and are merely voluntary or suggestive guidelines,¹⁴ unless you can provide me with a ‘law’ to the contrary. Nor is there any such law emanating from any Provincial Health Directive. My research shows that there is no such mask requirement in any such generalized Directive or Order.

⁹ http://www.bccdc.ca/Health-Info-Site/Documents/COVID_public_guidance/Guidance-k-12-schools.pdf

¹⁰ <https://action4canada.com/covid-19-death-rates/>

¹¹ <https://www2.gov.bc.ca/gov/content/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/current-health-topics/covid-19-novel-coronavirus> COVID-19 (Novel Coronavirus)

¹² Order of Provincial Health Officer Feb. 5, 2021 para. 11; Order of Provincial Health Officer March 30, 2021 para. M, def. “event” *School Act* RSBC 199 CHAPTER 412 s. 167, 168

¹³ https://www.bclaws.gov.bc.ca/civix/document/id/mo/mo/m0012_2021

¹⁴ Public Health Minister Mask Order M012 January 8, 2021 Public Health Minister Mike Farnworth s. 2(2)(b)(v)

As shown by the repeated use of the words, “*should*”, “*suggested*”, “*recommended*”, etc.

I also bring to your attention at p. 21 of the Sept. 11/20 *Original Guidance*, **Appendix “A”** Summary of School Based Control Measures, and on p. 24-26 **Appendix “A”** “Evidence Summary”, of the February 4, 2021 *Updated Guidance*,¹⁵ where there is a complete and conspicuous absence of any legislative, mandatory compulsion to wear masks. Indeed, the issue of masks is not even mentioned as a recommended preventative measure. The March 30, 2021 *Health Guidelines* also make no such reference.

I further bring to your attention the instructions contained in the Sept. 11/20 *Original Guidance* on p. 13 and p. 19,^A (re-affirmed on p. 22 of the February 4, 2021 *Updated Guidance*)^B, the March 30, 2021 *Addendum*, and all confirmed yet again in the March 30, 2021 *Health Guidelines*,^C where the Ministry recognizes that neither you, nor the School/School Board can compel my child to wear a mask if he/she is unable to so do. The Ministry places no obligation on us, nor our child to even provide a medical note in this regard; my child’s declaration to you of his/her inability to tolerate wearing a mask is sufficient unto itself to be recognized in this manner and he/she is not required to wear a mask at school.

- A *“No student should be required to wear a non-medical mask if they do not tolerate it.”*
“No student should be required to wear a mask if they do not tolerate it.”
“Exceptions will also be made for students who cannot tolerate masks (e.g. health or behavioural reasons).” (my emphasis)
- B *“Students should not be required to wear a mask if they do not tolerate it (for health or behavioural reasons). Schools are encouraged to support student mask use through positive and inclusive approaches, and not punitive measures or enforcement activities that exclude students from fully participating in school or that could result in stigma.*
- Do not require a health-care provide note (i.e. a doctor’s note) to determine if a person does not tolerate a mask.”***¹⁶
- C *“Staff should utilize positive and inclusive approaches to engage students in the use of masks, and should not employ measures that are punitive or stigmatizing in nature.*

The guidance outlined above regarding mask requirements does not apply to staff, students and visitors in the following circumstances:

- *to a person who cannot tolerate wearing a mask for health or behavioural reasons.*

*Schools must not require a health care provider note (ie. a doctor’s note) to confirm if staff, students or visitors cannot wear a mask. No student should be prevented from attending or fully participating at school if they do not wear a mask.”*¹⁷ (my emphasis)

These suggestions apply, as worded, to both medical and non-medical masks. My child’s refusal to wear a mask and/or alternatively that he/she has health problems associated with so doing such as to result in not wearing a mask, is conclusive and absolute, irrevocable confirmation that my child cannot “tolerate” use or wearing of any such masks, and you and the School/School Board are Constitutionally required to respect his/her medical choices and conditions. As stated throughout herein and our position below, providing such a doctor’s note is not even legally compelling upon us.

¹⁵ http://www.bccdc.ca/Health-Info-Site/Documents/COVID_public_guidance/Guidance-k-12-schools.pdf

¹⁶ http://www.bccdc.ca/Health-Info-Site/Documents/COVID_public_guidance/Guidance-k-12-schools.pdf

COVID-19 Public Health Guidance for K—12 Schools Updated Guidance February 4, 2021 p.16

¹⁷ <https://www2.gov.bc.ca/assets/gov/education/administration/kindergarten-to-grade-12/safe-caring-orderly/k-12-covid-19-health-safety-guidlines.pdf> Provincial COVID-19 Health & Safety Guidelines for K-12 Settings March 30, 2021 p. 8, 30

Constitutional privacy and other rights and freedoms

With respect to any demand or anticipated demand for a medical note or confirmation advising the School/School Board or School Doctor of my child's medical condition, not only will we not be providing same to you, you do not have the power at law to make any such demand.

I bring to your attention my child's Constitutional right to privacy, protected pursuant to the security of the person and liberty components of my child's **s. 7, 8** Charter rights and freedoms, which ourselves and my child notice you of our reliance upon in respect of this issue. I respectfully remind you that all COVID-19 measures must comply with our Constitution, including our Charter, they do not nullify nor supersede them, nor is there any express mention in any such law, statute, regulation, order or *Guidance* to so do.

Pursuant to **s. 1** of the *Privacy Act* of B.C., RSBC 1996 CHAPTER 373, it is unlawful to violate the privacy of another person. My child's private health issues are strictly between my child, myself as his/her parent, and our doctor. There is no legal or any other obligation at law requiring us or our child, to divulge the nature of his/her medical conditions to yourself, the School, the School Board or anyone else.

Additionally, this could very readily lead to human rights violations. Several significant Supreme Court of Canada cases have recognized this fundamental right of health privacy, pursuant to **s. 7, 8** of the Charter. As I describe below, in the absence of a medical note actually recommending a child to wear a mask, you have no power to compel any student to so do, including my own child.

I note as well, that there remains no legal obligation nor even any recommendation in any supporting Government provided materials, nor in any law, that we provide this confidential information to yourself or the School/School Board or School Doctor. Any claim or demand by yourself, the School or School Board to demand access to the private details of my child's health conditions, especially as a condition of entry to or remaining in school, is a violation of my child's and our Constitutional privacy rights. I re-emphasize: the nature of my child's medical health/conditions is not required to be provided and respectfully, will not be provided.

The body of court judgments recognizing the Constitutional right to privacy in one's own medical records, and biographical core of information, subject only to a court order, is extensive.¹⁸ Neither my child, nor myself his/her parent, waive any of our statutory, Constitutional, common law or other rights/freedoms at any time.

Further, and most importantly, it appears that there is a misinterpretation of the law in this area and our respective rights and duties by yourself, the School and the School Board. Let me explain. For re-emphasis, there is no 'law' or order that requires our child to wear a mask as a condition of entry into school or upon school property, or remaining there. So doing is merely suggestive, or a request. Any such alleged mandatory law or order, would, in any event, be Constitutionally repugnant as violating our fundamental health rights, freedoms and powers under **s. 2, 7**, and likely **s. 12** of the Charter, which is the basis for why there is no such direct law or order. In the absence of any such law or lawful order, the School/School Board and/or yourself can, at most, simply ask for my child's consent or agreement to wear the mask, which he/she is free to refuse at any time. I quote from **s. 17** of the *Infants Act*, RSBC 1996 CHAPTER 223, reproduced below for your ease of reference, in this regard.

Part 2 — Medical Treatment

¹⁸ Reference re Genetic Non-Discrimination Act, 2020 SCC 17 (CanLII) para. 82; R. v. Plant 1993 CanLII 70 (SCC)

Consent of infant to medical treatment

17(1) In this section:

"health care" means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health related purpose, and includes a course of health care;

"health care provider" includes a person licensed, certified or registered in British Columbia to provide health care.

(2) *Subject to subsection (3), an infant may consent to health care whether or not that health care would, in the absence of consent, constitute a trespass to the infant's person, and if an infant provides that consent, the consent is effective and it is not necessary to obtain a consent to the health care from the infant's parent or guardian.*

(3) *A request for or consent, agreement or acquiescence to health care by an infant does not constitute consent to the health care for the purposes of subsection (2) unless the health care provider providing the health care*

(a) *has explained to the infant and has been satisfied that the infant understands the nature and consequences and the reasonably foreseeable benefits and risks of the health care, and*

(b) *has made reasonable efforts to determine and has concluded that the health care is in the infant's best interests.* (my emphasis)

Wearing a mask in the context of the health facts and issues of COVID-19, is encompassed within the definition of "health care". As you can see, the Act requires that my child cannot provide you with his/her consent to wear this mask, unless his/her doctor has explained the nature and consequences as well as reasonable, foreseeable benefits and risks of so doing. After this, the doctor must then conclude¹⁹ it is in the best interest of my child's health care for him/her to wear a mask. Thus, in the absence of a doctor's note stating that after complying with s. 17(3)(a) of the Act by certifying or declaring that the doctor has explained the benefits, dangers and risks of wearing a mask, that the doctor believes it is in the best medical interest of my child to wear a mask, and then only if my child has agreed to such a course of health care as wearing a mask, neither the School or the School Board have any legal power to force him/her (or any other student) to wear a mask, at any time or at any location to begin with. Nor do you have the power to compel a doctor to issue such a medical note. This absence of power on your/School/School Board's part, is much different than requiring us to provide an exemption.

This is not a mask exemption requirement, it is a proof of power on your part to compel masks requirement – which does not exist. Because wearing a mask is subsumed as a form of health care in s. 17(1) definition of "health care" of the Act, you cannot compel my child to a course of health care conduct, including wearing a mask, unless you have a medical note and approval from his/her doctor, after the doctor has complied with s. 17(3)(a)(b) of the Act.

Notwithstanding the above, my child's doctor has determined that it is not in his/her health interests to be wearing a mask and said doctor has not provided to us, nor to yourself nor the School or School Board, any medical note either compelling or recommending the wearing of a mask, and thus there is

¹⁹ This requires that the doctor must have a working knowledge of how masks work for health care purposes. Doctors are not trained in this area nor the physics of mask operation and construction, and should thus not be giving medical advice in this area for which they are not trained and are incapable of providing the statutory advice required. Doctors giving such advice in the absence of such required training, could be open to liability from any resultant health conditions.

no statutory power for yourself or the School or School board, to force him/her to so do.

In the absence of a medical note confirming that my child should or must wear a mask as being in his/her best health care interests, which neither the School, the School Board or yourself have the Constitutional or other power to force upon him/her to obtain, nor the doctor to provide, you cannot force him/her to so do, which would further then amount to a statutory and Constitutional violation by the School or School Board and/or yourself. Nor do you or the Province have the power to compel a doctor to make a decision one way or the other in respect of mask usage, as this would, in many instances, violate the doctor’s Hippocratic Oath.

Succinctly, there are repeated recognitions in the Sept. 11, 2020 *Original Guidance*, Feb. 4, 2021 *Updated Guidance* manuals including the Addendum, and March 30, 2021 *Health Guidelines*, that doctor’s notes are not required, and that you respectfully do not have the statutory or any other power to force my child to wear a mask without his/her consent to so do obtained via a doctor’s note. It is not that a medical doctor’s note is required to be exempt from wearing a mask, it is that the legislation does not permit you to force a mask to be worn by my child (nor any other child) without his/her express consent, and then only after a medical note confirming this has been issued and the statutory requirements complied with. Neither requirement exists.

In the initial Facts summary document referenced above at **Footnote 2**, it expressly states on **p. 3, column 1**: *“People who cannot wear masks for medical reasons will not be required to wear one...Everyone must treat people wearing masks, and those who cannot for medical reasons, with respect.”* (my emphasis) This is emphasized in all *Guidance* documents. Despite being contrary to the express wording of **s. 17** of the *Infants Act* requiring actual medical approval to wear a mask, to the extent that you would be required to comply with this document, it imposes a positive obligation upon yourself, all teachers and staff and the School Board, to respect my child’s rights, freedoms and powers not to wear a mask, and in relation to health care, his/her inability and/or choice not to so do. My child must be treated equally and respectfully by all staff, pursuant to *inter alia*, **s. 15** of the Charter – equality provisions.

I trust this clarifies our position on this matter, and that you, the School and the School Board will hereafter recognize my child’s rights, freedoms and powers not to have to wear a mask at any and all times within the school and upon school property, and treat my child with respect and equality at all times, and ensure that he/she is treated with the same candour by all students and school officials.

Yours truly

Mother’s Name

Father’s Name

Student’s Name

Address
Phone No.
Email