

Insert name of Addressee

Insert title, ie: Principle, Vice Principle, School Board Member etc.

Insert name of School or School Board

Insert Address

Phone: Insert phone number

Fax: Insert fax number

Email: Insert email address

Insert date

Re: Masks issue

Insert Student Name

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Dear [insert name of Addressee]:

I wish to first bring to your attention your (including all staff and/or School Board members) comments, beliefs and/or representations that the B.C. Government has mandated mask wearing in all common areas of schools, buses and when out of cohort, save for instances where a medical note is provided. In support, B.C. school officials appear to be relying upon the following government website:

<https://www.sd44.ca/COVID-19/BacktoSchoolSeptember2020FAQs/Documents/COVID19-BackToSchool-Factsheet.pdf>

Please note that I have reviewed this document entitled: “*Back to School Facts: What you need to know for the return to school 2020-21*”, (Facts). This document in turn, is merely an admitted summary of the original document referenced on **p. 1, column 1**, where there is a link to the original document: “*COVID-19 Public Health Guidance for K-12 School Settings*” (Guidance).<sup>1</sup> 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.

### ***COVID-19 – contextually and factually***

I bring to your attention in this *Guidance*, the repeated admissions (**p. 1-3**) that risk of COVID-19 transmission in schools is and always has been, very low; nor is this a consequence of increased mask usage, which is also admitted in this document to be of very little effectiveness of preventing viral transmission (**p. 6, 19-21**).

The B.C. Ministry of Health, on **p. 5** of its *Guidance*, expressly recognizes that masks are the lowest form of protection from viral transmission, yet school officials improperly and unfairly continue to treat it, and shame non-mask wearers, as if it is the most critical. Additionally, the B.C. Ministry admits 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**)

Further facts from the B.C. Ministry of Health, include (**p. 2-3**) that:

- i. most children are not at high risk;
- ii. there is a low infection rate in children (0-19);
- iii. less than 1% of children tested have been positive for COVID-19, fewer have been infected;
- iv. 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;<sup>2</sup>
- v. the majority of infected children arise from transmission from adults, not the reverse;

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<sup>1</sup> [http://www.bccdc.ca/Health-Info-Site/Documents/COVID\\_public\\_guidance/Guidance-k-12-schools.pdf](http://www.bccdc.ca/Health-Info-Site/Documents/COVID_public_guidance/Guidance-k-12-schools.pdf)

<sup>2</sup> [http://www.bccdc.ca/Health-Info-Site/Documents/COVID\\_sitrep/Week\\_50\\_BC\\_COVID-19\\_Situation\\_Report.pdf](http://www.bccdc.ca/Health-Info-Site/Documents/COVID_sitrep/Week_50_BC_COVID-19_Situation_Report.pdf) “E”

- vi. most adults (up to 85%) are asymptomatic and experience mild to no symptoms and cannot transmit the virus; and,
- vii. there is little evidence of transmission of COVID-19 in the educational system.

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

### **Referenced Documents**

The nature of this document is such that it is a guideline only. It is not a statute. It is not a regulation. It is not a notice. It is not a legally binding document. It is not even an Order as set out in the *Public Health Act* or the *Emergency Program Act*.<sup>3</sup> As stated therein: “*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 – **p.1, para. 1**).

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

I have failed to locate any actual Order or other legal document that constitutes legal obligations upon the schools, including any from the **[insert name of School/School Board]** in relation to this issue, other than the Gatherings Order of the PHO, which as you know or should know, fails to apply and does not provide for mandatory mask requirements in any setting, including schools. 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,<sup>4</sup> 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. The most recent Gathering and Events Order, **[insert latest date of update]** from the PHO Bonnie Henry states that it does not apply to schools, as I quote from below:

#### *Definitions:*

*“event” refers to an in-person gathering of people in any place whether private or public, inside or outside, organized or not, on a one-time, regular or irregular basis, including drive-ins and drive-throughs, such as to see a display or to drop off items; events; meetings and conferences; a gathering in vacation accommodation, a private residence, banquet hall or other place; a gathering of passengers; a party; a worship or other religious service, ceremony or celebration; , a ceremony; a reception; a wedding; a baptism; a funeral; a celebration of life; a musical, theatrical or dance entertainment or performance; a live solo or band musical performance; a disc jockey performance; strip dancing; comedic act; art show; magic show; puppet show; fashion show; book signing; reading; recitation; display,*

<sup>3</sup> <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>

<sup>4</sup> As shown by the repeated use of the words, “*should*”, “*suggested*”, etc.

*including a seasonal light display; a movie; film; lecture; talk; educational presentation (except in a school or post-secondary educational institution)...*" (my emphasis)

9. *"For certainty, this Order does not apply to..... students, teachers or instructors at a school operating under the School Act [RSBC 1996] Ch. 412, the Independent School Act [RSBC 1996] Ch. 216 or a First Nations School, or a post-secondary educational institution when engaged in educational activities..."<sup>5</sup> (my emphasis)*

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, 2020 Orders of Bonnie Henry.

I also bring to your attention at **p. 21** of the *Guidance, Appendix "A"* Summary of School Based Control Measures, where there is a complete and conspicuous absence of any mandatory compulsion to wear masks, indeed the issue of masks is not even mentioned as a recommended preventative measure.

I further bring to your attention the instructions contained in the *Guidance* on **p. 13** and **p. 19**,<sup>A</sup> where the Ministry recognizes that neither you, nor the School/School Board can compel my daughter to wear a mask if she is unable to so do. The Ministry places no obligation on us, nor our daughter to even provide a medical note in this regard; her declaration to you of her inability to tolerate wearing a mask is sufficient unto itself to be recognized in this manner and she is not required to wear a mask at school.

- <sup>A</sup> *"No student should be required to wear a non-medical mask if they do not tolerate it."* and:  
*"No student should be required to wear a mask if they do not tolerate it."* (my emphasis)

These suggestions apply, as worded, to both medical and non-medical masks. My daughter's refusal to wear a mask and/or alternatively that 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 daughter cannot "tolerate" use or wearing of any such masks, and you and the School/School Board are Constitutionally required to respect 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.

### ***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 daughter'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 daughter's Constitutional right to privacy, protected pursuant to the security of the person and liberty components of her **s. 7, 8** Charter rights and freedoms, which ourselves and my daughter 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.

<sup>5</sup> *Gathering and Events Order* December 24, 2020 <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/covid-19/covid-19-pho-order-gatherings-events.pdf>

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 daughter's private health issues are strictly between herself, ourselves as her parents, and her doctor. There is no legal or any other obligation at law requiring us or our daughter, to divulge the nature of 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 our daughter.

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 daughter's health conditions, especially as a condition of entry to or remaining in school, is a violation of my daughter's and our Constitutional privacy rights. I re-emphasize: the nature of my daughter'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.<sup>6</sup> Neither [insert Student Name] nor myself nor ourselves as her parents, 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 daughter 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 daughter's consent or agreement to wear the mask, which 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

### 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*

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<sup>6</sup> Reference re Genetic Non-Discrimination Act, 2020 SCC 17 (CanLII) para. 82; R. v. Plant 1993 CanLII 70 (SCC)

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 daughter cannot provide you with her consent to wear this mask, unless 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 conclude<sup>7</sup> it is in the best interest of my daughter’s health care for 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 daughter to wear a mask, and then only if [insert Student Name] has agreed to such a course of health care as wearing a mask, neither the School, School Board nor yourself as **[insert Principle, Vice Principle, etc.]** have any legal power to force her 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 **[insert Student Name]** to a course of health care conduct, including wearing a mask, unless you have a medical note and approval from her doctor, after the doctor has complied with **s. 17(3)(a)(b)** of the *Act*.

Notwithstanding the above, ours and **[insert Student Name]** doctor have determined that it is not in our daughter’s 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 no statutory power for yourself or the School or School board, to force her to so do.

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<sup>7</sup> 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.

In the absence of a medical note confirming that my daughter should or must wear a mask as being in her best health care interests, which neither the School, the School Board or yourself have the Constitutional or other power to force upon her to obtain, nor the doctor to provide, you cannot force 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 your *Guidance* manual that doctor's notes are not required, and that you respectfully do not have the statutory or any other power to force [insert Student Name] to wear a mask without her consent to so do obtained via a doctor's note. It is not that a medical doctor's note is required, is that the legislation does not permit you to force a mask to be worn by [insert Student Name] without 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, 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) 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 daughter's rights, freedoms and powers not to wear a mask, and in relation to health care, her inability and/or choice not to so do. My daughter 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 daughter'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 her with respect and equality at all times, and ensure that she is treated with the same candour by all students and school officials.

Yours truly

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Mother's Name

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Father's Name

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Student's Name

Insert your address  
Insert you phone number  
Insert your fax number  
Insert your email address

**Instructions:** Please type the appropriate words in the yellow highlighted boxes. Be sure to note whether the word requires plurality, ie: Jennifer or Jennifer's.

After inserting all appropriate words, sign and date.

Note that some of the information, such as email address, can be voluntary depending on how you choose to communicate.

This can be personalized and amended as required.

*This is not legal advice and should not be interpreted as legal advice. If you require legal assistance, it is recommended you contact a lawyer or licenced legal advisor.*