

Attention: [Superintendent Name]
Date: [April 30, 2021]

Dear [Superintendent Name]:

I am sending you this notice as a parent, on behalf of myself, my spouse, and my children, [children names].

I understand that the _____ School District (the “**District**”) will be mandating daily health screenings, the use of facemasks and contact-tracing for the return of in-person school instruction. I regret that my family now finds itself in the uncomfortable situation of having to point out to the District that masking of children is wrong on legal, ethical, and common-sense grounds. We conscientiously object for health, religious, legal, ethical, and personal reasons.

My findings raise significant concerns, both medically and legally, of the current mask policy in place. Masks are medical devices covered by Health & Safety Code §109920 and the combination of masks upon the person along with contact tracing and health screenings constitute medical experiments that require informed consent under the law. Further, masks are ineffective for the purpose claimed by the mandate, potentially harmful, and only authorized for use by a U.S. Food and Drug Administration Emergency Use Authorization (an “**EUA**”). Promoting use of a non-FDA approved, Emergency Use Authorized masks, are unwarranted and illegal. Devices authorized under Emergency Use Authorization requires wearers to be informed of the option to refuse the wearing of such “device” under 21 U.S.C. Section 360bbb-3€(1)(A)(ii)(I-III). Involuntary masking is unlawful under well-established legal principles. The right to bodily autonomy, right to unrestricted breathing, the right to be recognized and the right to display and express one’s face are basic human rights grounded in individual liberty, one of the cornerstone principles of the United States. The right to breathe is fundamental and basic to all human life. California Education Code §49005.8 prohibits the use of “...a physical restraint technique that obstructs a pupil’s respiratory airway or impairs the pupil’s breathing or respiratory capacity” or “a behavioral restraint technique that restricts breathing, including, but not limited to, using a pillow, blanket, carpet, mat, or other item to cover a pupil’s face.” My children have not been diagnosed with COVID so forcing them to wear masks is a violation of presumption of innocent until proven guilty. In addition, the mask policy violates a host of other provisions of the U.S. and California Constitution that I detail below. Finally, masks, veils, bourkas etc. are practices of other religions that are incompatible with our family’s personal beliefs.

MASKS ARE INEFFECTIVE AND IN MANY WAYS THEY HARM.

It is a myth that masks prevent viruses from spreading. The overall evidence is clear: Standard cloth and surgical masks offer next to no protection against virus-sized particles or small aerosols.¹ The size of a virus particle is much too small to be stopped by a surgical mask, cloth, or bandana. A single virion of SARS-CoV-2 is about 60-140 nanometers or 0.1 microns.² The pore size in a surgical mask is 200-1000x that size. Consider that the CDC website states, “surgical masks do not catch all harmful particles in smoke.” And that the size of smoke particles in a wildfire are ~0.5 microns which is 5x the size of the SARS-CoV-2 virus! Wearing a mask to prevent catching SARS-CoV-2, or similarly sized

influenza, is like throwing sand at a chain-link fence: it doesn't work. There has been one large randomized controlled trial that specifically examined whether masks protect their wearers from the coronavirus. This study found mask wearing "did not reduce, at conventional levels of statistical significance, the incidence of Sars-Cov-2-infection."³

Consider also, that the existence of more particles does not mean more virus. Research shows less virus does not mean less illness. Dr. Kevin Fennelly, a pulmonologist at the National Heart, Lung and Blood institute debunked the view that larger droplets are responsible for viral transmission. Fennelly wrote:

"current infection control policies are based on the premise that most respiratory infections are transmitted by large respiratory droplets- i.e., larger than 5 [microns] – produced by coughing and sneezing, ...Unfortunately, that premise is wrong."⁴

Fennelly referenced a 1953 paper on anthrax that showed a single bacterial spore of about one micron was significantly more lethal than larger clumps of spores.⁵ Exposure to one virus particle is theoretically enough to cause infection and subsequent disease. This is not an alarming thought - it simply means what it has always meant, that our immune system protects us continually all our life.⁶

There have been hundreds of mask studies related to influenza transmission done over several decades. It is a well-established fact that masks do not stop viruses. "Part of that evidence shows that cloth facemasks actually increase influenza-linked illness."⁷ Bacteria are 50x larger than virus particles.⁸ As such, virus particles can enter through the mask pores, yet bacteria remain trapped inside of the mask, resulting in the mask-wearer continually exposed to the bacteria.

Related to the 1918-1919 influenza pandemic, there was almost universal agreement among experts, that deaths were virtually never caused by the influenza virus itself but resulted directly from severe secondary pneumonia caused by well-known bacterial "pneumopathogens" that colonized the upper respiratory tract.⁹ Dr. Fauci and his National Institute of Health studied pandemics and epidemics and concluded, "the vast majority of influenza deaths resulted from secondary bacterial pneumonia."¹⁰

All parties mandating the use of facemasks are not only willfully ignoring established science but are engaging in what amounts to a whole school clinical experimental trial. This conclusion is reached by the fact that facemask use and COVID-19 incidence are being reported in scientific *opinion* pieces promoted by the CDC and others.¹¹ The fact is **after reviewing ALL of the studies worldwide, the CDC found "no reduction in viral transmission with the use of face masks."**¹²

Additionally, Children have been repeatedly shown not to be drivers of this contagion. It is well-accepted that children have a statistically zero chance of dying from COVID. The CDC shows the K-12 mortality rate from or with COVID is .00003.¹³ Any intervention, especially one that is prophylactic, must cause fewer harms to the recipient than the infection. Since children have the lowest death rate from COVID infection, the cost-benefit of requiring children to wear an investigational face-covering with emerging safety issues is especially difficult to justify. Anthony Fauci was very clear that asymptomatic transmission was not a threat. He stated, "in all the history of respiratory-borne viruses of any type, asymptomatic transmission has never been the driver of outbreaks. The driver of outbreaks is always a symptomatic person."¹⁴

Wearing respirators come(s) with a host of physiological and psychological burdens. These can interfere with task performances and reduce work efficiency. These burdens can even be severe enough to cause life-threatening conditions if not ameliorated.¹⁵ Fifteen years ago, National Taiwan University Hospital concluded that the use of N-95 masks in healthcare workers caused them to experience hypoxemia, a low level of oxygen in the blood, and hypercapnia, an elevation in the blood's carbon dioxide levels.¹⁶ Studies of simple surgical masks found significant reductions in blood oxygen as well. In one particular study, researchers measured blood oxygenation before and after surgeries in 53 surgeons. Researchers found the mask reduced the blood oxygen levels significantly, and the longer the duration of wearing the mask, the greater the drop in blood oxygen levels.¹⁷

Moreover, people with cancer, will be at a further risk from hypoxia, as cancer cells grow best in a bodily environment that is low in oxygen. Low oxygen also promotes systemic inflammation which, in turn, promotes “the growth, invasion and spread of cancers.”¹⁸ Repeated episodes of low oxygen, known as intermittent hypoxia, also “causes atherosclerosis” and hence increases “all cardiovascular events” such as heart attacks, as well as adverse cerebral events like stroke.¹⁹

Furthermore, the mandatory mouth mask in schools is a major threat to a child’s development. It ignores the essential needs of a growing child. The well-being of children and young people is highly dependent on the emotional connection with others. Masks create a threatening and unsafe environment, where emotional connection becomes difficult.²⁰

SUBSTANTIVE DUE PROCESS RIGHT TO BODILY INTEGRITY

The Supreme Court has repeatedly held that there is a right to be free from unjustified intrusions on personal bodily integrity, suggesting that such a right is protected by the due process clause of the Fourteenth Amendment." The lower courts have also recognized this right and have applied it in a variety of contexts. These include unsolicited medical procedures, forcible stomach pumping, corporal punishment in schools, the decision to forego medical treatment, decisions regarding birth control, and abortion. The progression of bodily integrity in the courts from the right to be let alone, to a well-founded substantive due process right, helps define the scope of this right and supports its expansion into non-consensual masking. Forced masking is a regulatory minefield filled with potential for abuse.

MASK MANDATES HAVE BEEN HELD TO BE UNCONSTITUTIONAL IN CALIFORNIA AS UNCONSTITUTIONAL VIOLATIONS OF THE FIRST AND FOURTEENTH AMENDMENTS.

In 1923, California enacted Penal Code Section 650a, which was reenacted and codified in 1953, as follows:

“It is a misdemeanor for any person, either alone or in company with others, to appear on any street or highway, or in other public places or any place open to view by the general public, with his face partially or completely concealed by means of a mask or other regalia or paraphernalia, with intent thereby to conceal his identity. This section does not prohibit the wearing of such means of concealment in good faith for the purposes of amusement, entertainment or in compliance with any public health order.”

Thus, Penal Code Section 650a was a statute that prohibited the use of masks to conceal a person's face partially or completely. In *Ghafari v. Municipal Court*, 87 Cal. App. 3d 255, 262 (1978) the California Court of Appeals ruled that the Penal Code 650a was overbroad. The court held that rights of freedom of speech, peaceful assembly and free association under the First and Fourteenth Amendments of the United States Constitution and are unquestionably protected activities which "lie at the foundation of a government based upon the consent of an informed citizenry..." (*Bates v. Little Rock* (1960) 361 U.S. 516, 522-523, 80 S.Ct. 412, 416, 4 L.Ed.2d 480; *Britt v. Superior Court* (1978) 20 Cal.3d 844, 852, 143 Cal.Rptr. 695, 574 P.2d 766.) The court agreed with appellants that the statute was overbroad on its face because it flatly prohibits anonymity under circumstances where these protected activities may be involved and because the restriction is not required by a compelling state interest nor is it implemented in the least restrictive manner possible. The court in *Ghaffari* held that mask mandates that prohibited the use of masks as unconstitutional violations of the First and Fourteenth Amendments.

The District now intends to mandate opposite: the compulsory use of masks for the broad stated goal of public health and specifically prevention of transmission of COVID-19. If prohibitions on masks are unconstitutional, what makes the District believe that compulsory masking of students would be constitutional? I remind you that the default position in normal American society is to be free from masks and breathe fresh air. Compulsory masking will entail the effective muzzling of both healthy and unhealthy students. Masks prevent personal individual facial expression and intimacy. It is a person's individual choice whether to voluntarily give up this protected right of expression. It cannot be mandated under the law.

MASKS ARE DEVICES COVERED BY CALIFORNIA HEALTH AND SAFETY CODE §109920.

California Health and Safety Code §109920 provides:

"Device" means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is any of the following:

- (a) Recognized in the official National Formulary or the United States Pharmacopoeia, or any supplement to them.
- (b) Intended for use in the diagnosis of disease or other condition, or in the cure, mitigation, treatment, or prevention of disease in humans or any other animal.
- (c) Intended to affect the structure or any function of the body of humans or any other animal and that does not achieve any of its principal intended purposes through chemical action within or on the body of humans or other animals and that is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

Accordingly, masks for "the cure, mitigation, treatment or prevention of disease" are devices within the scope of 109920(b).

MASKS USE FOR VIRAL TRANSMISSION PREVENTION IS AUTHORIZED FOR EMERGENCY USE ONLY UNDER 21 U.S.C §360bbb-3.

Regardless of the lack of safety and efficacy behind the decision to require a child to wear a mask, it is illegal to mandate EUA approved investigational medical therapies without informed consent. Mask use for viral transmission prevention is authorized for Emergency Use only under 21 U.S.C §360bbb-3.²¹ Emergency Use Authorization by the FDA, means “the products are investigational and experimental” only.²² The statute granting the FDA the power to authorize a medical product of emergency use requires that the person being administered the unapproved product be advised of his or her right to refuse administration of the product.²³ This statute further recognizes the well-settled doctrine that medical experiments, or “clinical research,” may not be performed on human subjects without the express, informed consent of the individual receiving treatment.²⁴

INFORMED CONSENT IS REQUIRED FOR MEDICAL EXPERIMENTS IN CALIFORNIA.

The Nuremberg Code of Ethics in Medical Research (the “**Nuremberg Code of 1947**”) was developed after the trial of Nazi war criminals for unethical use of persons in medical experiments; subsequently, the Declaration of Helsinki additionally established recommendations guiding doctors in experimentation involving human subjects. The right to avoid the imposition of human experimentation is fundamental, rooted in the Nuremberg Code of 1947 and the Declaration of Helsinki, and further codified in the United States Code of Federal Regulations. In addition to the United States regarding itself as bound by these provisions, these principles were adopted by the FDA in its regulations requiring the informed consent of human subjects for medical research.²⁵ The law is very clear; It is unlawful to conduct medical research (even in the case of emergency), unless steps taken to ... secure informed consent of all participants.²⁶

The California legislature has adopted principals of the Nuremberg Code of 1947 and the declaration of Helsinki by enacting “The Protection of Human Subjects in Medical Experimentation Act” (Health and Safety Code Sections 24170 – 24179.5). The Protection of Human Subjects in Medical Experimentation Act provides minimum statutory protection for the citizens of California with regard to human experimentation and to provide penalties for those who violate such provisions. The use of devices under California Health and Safety Code §109920 upon human subjects in the practice of medicine (the prevention of transmission of disease) that is not reasonable related to maintaining or improving the health or otherwise directly benefitting the subject are medical experiments covered by California Health and Safety Code §24174, which provides:

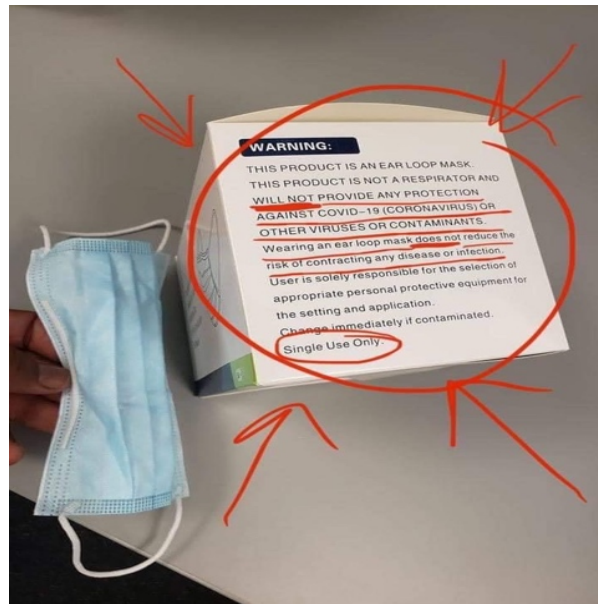
As used in this chapter, “medical experiment” means:

- (a) The severance or penetration or damaging of tissues of a human subject or the use of a drug or device, as defined in Section 109920 or 109925, electromagnetic radiation, heat or cold, or a biological substance or organism, in or upon a human subject in the practice or research of medicine in a manner not reasonably related to maintaining or improving the health of the subject or otherwise directly benefitting the subject.
- (b) The investigational use of a drug or device as provided in Sections 111590 and 111595.
- (c) Withholding medical treatment from a human subject for any purpose other than maintenance or improvement of the health of the subject.

Mandating masks that are subject to emergency use authorization under 21 U.S.C §360bbb-3 are “medical experiments” covered by California Health and Safety Code §24174(a) and California Health and Safety Code §24174(b). Such “medical experiments” require written informed consent pursuant to Health and Safety Code §24172 and §24175.

Furthermore, by requiring children to wear a mask, you are promoting the idea that the mask can prevent or treat a disease, which is an illegal deceptive practice. It is unlawful to advertise that a product or service can prevent...disease unless you possess competent and reliable scientific evidence... substantiating that the claims are true.²⁷

The FDA EUA for surgical and/or cloth masks explicitly states, “the labeling must not state or imply... that the [mask] is intended for antimicrobial or antiviral protection or related, or for use such as infection prevention or reduction.”²⁸ As you can see from the image below, masks do not claim to keep out viruses.



CALIFORNIA EDUCATION CODE §49005.8 PROHIBITS PHYSICAL RESTRAINT TECHNIQUES THAT OBSTRUCTS A PUPIL’S RESPIRATORY AIRWAY OR IMPAIRS THE PUPIL’S BREATHING OR RESPIRATORY CAPACITY

California Education Code §49005.8 provides, in pertinent part:

(a) An educational provider shall not do any of the following:

...

(3) Use a physical restraint technique that obstructs a pupil’s respiratory airway or impairs the pupil’s breathing or respiratory capacity, including techniques in which a staff member places pressure on a pupil’s back or places his or her body weight against the pupil’s torso or back.

(4) Use a behavioral restraint technique that restricts breathing, including, but not limited to, using a pillow, blanket, carpet, mat, or other item to cover a pupil’s face.

Masks are clearly a restraint technique that restrict breathing and respiratory capacity. The whole point seems to be filtration for inhaled and exhaled air. The fact that they are being mandated for “public health” reasons does not negate California Education Code §49005.8. The California legislature has had ample opportunity to repeal this section. Further, more than one year has elapsed since Governor Newsom declared a state of emergency on March 3, 2020.

ILLEGALLY MANDATING AN INVESTIGATIONAL MEDICAL THERAPY GENERATES LIABILITY.

There are no efficacy standards on child-sized masks and respirators under OSHA, but there are proven microbial challenges as well as breathing difficulties that are created and exacerbated by masking children. Microplastics are used in the manufacturing of masks and the inhalation of such microplastics by children is a very real risk to child health and development.

Requiring children to wear a mask sets the stage for contracting any infection, including COVID-19, and making the consequences of that infection much graver. In essence, a mask may very well put children at an increased risk of infection, and if so, having a far worse outcome.²⁹

The fact that mask wearing presents a severe risk of harm to the wearer should – standing alone – not be required for children, particularly given that these children are not ill and have done nothing wrong that would warrant an infringement of their constitutional rights and bodily autonomy. Promoting use of a non-FDA approved, Emergency Use Authorized mask, is unwarranted and illegal. This mandate is in direct conflict with Section 360bbb-3€(1)(A)(ii)(I-III), which requires the wearer to be informed of the option to refuse the wearing of such “device.”

Misrepresenting the use of a mask as being intended for antimicrobial or antiviral protection, and/or misrepresenting masks for use as infection prevention or reduction is a deceptive practice under the Federal Trade Commission. It is clear, there is no waiver of liability under deceptive practices, even under a state of emergency. As such, forcing children to wear masks, or similarly forcing use any other non-FDA approved medical product without the child’s (or the child’s parental) consent, is illegal and immoral.

This letter serves as official notice that my children, [children names] do not consent to being forced to wear a mask. As parents and advocates we will not fail to take the maximum action permissible under the law against your organization, and against individuals personally. Accordingly, I urge you to comply with Federal and State law and advise children they have a right to refuse to wear a mask as a measure to prevent or reduce infection from COVID-19. Any other course of action is contrary to the law. I am willing to testify as to the veracity of the contents in this document. Please confirm no further pressure will be exerted upon [children names] to follow this illegal mask mandate, and that they will not face any retaliatory disciplinary action.

Sincerely,

[Parent Name]

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- ¹ <https://www.jamanetwork.com/article.aspx?doi=10.1001/jamainternmed.2020.4221>
- ² Berenson, A (November 24, 2020). *Unreported Truths about Covid-19 and Lockdowns: Part 3: Masks*
- ³ <https://www.acpjournals.org/doi/10.7326/M20-6817>
- ⁴ [https://www.thelancet.com/journals.lanres/article/PIIS2213-2600\(20\)30323-4/fulltext](https://www.thelancet.com/journals.lanres/article/PIIS2213-2600(20)30323-4/fulltext)
- ⁵ [https://www.thelancet.com/journals.lanres/article/PIIS2213-2600\(20\)30323-4/fulltext](https://www.thelancet.com/journals.lanres/article/PIIS2213-2600(20)30323-4/fulltext)
- ⁶ <https://www.sciencedaily.com/releases/2009/03/090313150254.htm>
- ⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4420971/>
- ⁸ <https://www.merriam-webster.com/words-at-play/virus-vs-bacteria-difference>
- ⁹ The pathology and bacteriology of pneumonia following influenza. Chapter IV, Epidemic respiratory disease. The pneumonias and other infections of the respiratory tract accompanying influenza and measles, 1921 St, Louis CV Mosby (p. 107-281)
- ¹⁰ <https://academic.oup.com/jid/article/198/7/962/2192118>
- ¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>
- ¹² Nonpharmaceutical Measures for Pandemic Influenza in Nonhealthcare Settings—Personal Protective and Environmental Measures, Jingyi Xiao¹, Eunice Y. C. Shiu¹, Huizhi Gao, Jessica Y. Wong, Min W. Fong, Sukhyun Ryu, and Benjamin J. Cowling (Volume 26, Number 5, May of 2020).
- ¹³ <https://www.cdc.gov/coronavirus/2019-ncov/community/schoolschildcare/k-12-testing.html>
- ¹⁴ <https://www.youtube.com/watch?v=X1orSO094uY>
- ¹⁵ Arthur Johnson, *Journal of Biological Engineering* (2016).
- ¹⁶ The Physiological Impact of N95 Masks on Medical Staff, National Taiwan University Hospital (June 2005).
- ¹⁷ Bader A et al. Preliminary report on surgical mask induced deoxygenation during major surgery. *Neurocirugia* 2008;19:12-126..
- ¹⁸ Aggarwal BB. Nuclear factor-kappaB: The enemy within. *Cancer Cell* 2004;6:203-208, and Blaylock RL. Immunoexcitatory mechanisms in glioma proliferation, invasion and occasional metastasis. *Surg Neurol Inter* 2013;4:15.
- ¹⁹ Savransky V et al. Chronic intermittent hypoxia induces atherosclerosis. *Am J Resp Crit Care Med* 2007;175:1290-1297.
- ²⁰ <https://www.world-today-news.com/70-doctors-in-open-letter-to-ben-weyts-abolish-mandatory-mouth-mask-at-school-belgium/>
- ²¹ <https://www.fda.gov/media/137121/download>
- ²² <https://ca.childrenshealthdefense.org/wp-content/uploads/CDE-Superintendent-Letter0from-Childrens-Health-Defense-California-Chapter.pdf>
- ²³ 21 U.S.C. § 360bbb-3 (The FD&C Act)
- ²⁴ 21 U.S.C. § 360bbb-3(e)(1)(A) (“Section 360bbb-3”)
- ²⁵ C.F.R. § 50.20
- ²⁶ <http://www.invertedalchemy.com/2020/12/belief-is-not-medical-counter-measure.html>, 21 C.F.R. § 50.23, 21 C.F.R. § 50.20 21 C.F.R. § 50.24
- ²⁷ FTC Act, 15 U.S. Code § 41
- ²⁸ <https://www.fda.gov/media/137121/download>
- ²⁹ Russell Blaylock, Id. (quoting Shehade H et al. Cutting edge: Hypoxia-Inducible Factor-1 negatively regulates Th1 function. *J Immunol* 2015;195:1372-1376. See also: Westendorf AM et al. Hypoxia enhances immunosuppression by inhibiting CD4+ effector T cell function and promoting Treg activity. *Cell Physiol Biochem* 2017;41:1271-84. See further: Sceneay J et al. Hypoxia-driven immunosuppression contributes to the pre-metastatic niche. *Oncoimmunology* 2013;2:1 e22355.