



Niagara Catholic District School Board

## REQUEST FOR EXEMPTION: FACE MASK REQUIREMENT

### ADMINISTRATIVE OPERATIONAL PROCEDURES

100 – Board

No. 100.17

Adopted Date: September 13, 2021

Latest Reviewed/Revised Date:

## PURPOSE

The purpose of this Administrative Operation Procedure (“AOP”) is to outline the process for responding to requests for an exemption from the mandatory Ministry of Education requirement that students in grades 1 to 12 wear a non-medical face mask while indoors at school, on a school vehicle, and outdoors where physical distancing cannot be maintained.<sup>1</sup>

## RATIONALE

The Public Health Agency of Canada has stated that non-medical masks play a critical role in preventing the spread of COVID-19. Masks act as a barrier and reduce the chance of spreading infectious respiratory droplets to others and prevent infectious droplets from landing on surfaces from coughs or sneezes.

The Ontario Government has published its “*COVID-19: Health, safety and operational guidance for schools (2021 – 2022)*”<sup>2</sup> which requires that students in grades 1 to 12 wear properly fitted non-medical or cloth masks indoors in school and on school vehicles.

The Niagara Region Public Health Unit has stated that masks are one of the measures, along with vaccination, hand hygiene, self-screening and physical distancing, that protect against COVID transmission. Face masks are therefore important for protecting staff and students, and for keeping schools open.

It is not a parent’s choice whether their child will wear a mask while attending school. It is a school board requirement pursuant to Ministry of Education direction, in consultation with the Ontario Chief Medical Officer of Health for the health and safety of students and staff. The face mask requirement supports the Board’s obligation as an employer under the *Occupational Health and Safety Act*<sup>3</sup> to “take every precaution reasonable in the circumstances for the protection of a worker”,<sup>4</sup> and a duty of Niagara Catholic District School Board Principals under the *Education Act*,<sup>5</sup> s.265(1)(j)(k)(l)(m) to protect students in schools.

## NIAGARA REGION’S FACE COVERING BY-LAW

A municipal bylaw such as the Niagara Region’s By-law 2020-46 regarding mask wearing in spaces open to the public **does not** apply to schools. Specifically, the Region’s By-law that people do not need to provide proof that they have a medical condition to be exempt is not applicable to schools.

<sup>1</sup> See NCDSB’s “School Reopening and Safety Guide 2021-2022” <https://niagaracatholic.ca/school-reopening-guide/>

<sup>2</sup> <https://www.ontario.ca/document/covid-19-health-safety-and-operational-guidance-schools-2021-2022>.

<sup>3</sup> RSO 1990 c E.2

<sup>4</sup> Section 25(2)(h)

<sup>5</sup> RSO 1990, c.E.2

Schools are not public spaces, and s.2(4)(b) of Ont. Reg. 364/20 Rules of Areas in Stage 3, promulgated under the *Reopening Ontario (A Flexible Response to COVID-19) Act, 2020*,<sup>6</sup> exempts school boards from the general requirements and exemptions imposed on businesses and service providers open to the public.

## GROUNDS FOR MEDICAL EXEMPTION

The Niagara Catholic District School Board recognizes that, for medical or other reasons, it may not be possible for some students to wear a non-medical face mask at school, and that individual accommodations must therefore be developed.

An exemption on medical grounds is available only to those students who have been diagnosed by a regulated health professional with a disability which prevents them from wearing a face mask. A disability is defined under the Ontario *Human Rights Code*<sup>7</sup>, and has been reproduced as part of this AOP (Appendix A). A regulated health professional is defined at Schedule 1 of the *Regulated Health Professions Act 1991*,<sup>8</sup> attached to this AOP (Appendix B).

Examples of a disability which could limit or preclude wearing a face mask include a respiratory illness, or a sensory, developmental or mental health condition.

A parent/guardian seeking an exemption on the grounds of a disability must complete the Request for Exemption Form attached to this AOP (Appendix C), and provide the following information from their child's regulated health professional:

- the nature of the disability preventing their child from wearing a face mask;
- how the disability affects the child's ability to wear a mask;
- whether their child is medically prohibited from wearing a mask for some or all activities at school;
- whether their child's disability will temporarily or permanently prevent them from wearing a mask;
- measures if any which would assist their child to develop the skills or tolerance for wearing a mask;
- sufficient additional detail regarding the impact of the disability so that school staff can develop appropriate accommodations.

If a medical note contains insufficient details with respect to any of the above, a Principal is entitled to ask for further written clarification, or for consent to speak with the student's health professional directly.

If a student has been diagnosed with a prevalent medical condition as defined by the Ministry of Education's Policy/Program Memorandum 161 "*Supporting children and students with prevalent medical conditions (anaphylaxis, asthma, diabetes, and/or epilepsy) in schools*"<sup>9</sup>, the Board will also be responsible for ensuring that it has enough detailed information to establish a Plan of Care. The Niagara Catholic District School Board will work with parents/guardians and health care providers to develop and

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<sup>6</sup> SO 2020, c 17

<sup>7</sup> RSO 1990, c H.19

<sup>8</sup> SO 1991 c 18

<sup>9</sup><https://www.ontario.ca/document/education-ontario-policy-and-program-direction/policyprogram-memorandum-161>

implement a Plan of Care, which will include accommodations for the student's disability and any limitations on their ability to wear a face mask.

## ACCOMMODATION OF DISABILITY

The Ministry of Education's direction to consider a student's need for a medical exemption from the Board's mask requirement are consistent with the Ontario *Human Rights Code*, which states that school boards must provide educational services without discriminating on the basis of disability.<sup>10</sup>

A person alleging discrimination on the basis of a disability has the burden of establishing that they have a disability, as defined by the *Code*.<sup>11</sup> Where a disability has been established, pursuant to the process outlined above, Niagara Catholic District School Board has a duty to accommodate the disability to the point of undue hardship, taking into account "*the cost, outside sources of funding, if any, and health and safety requirements, if any.*"<sup>12</sup>

While a medical condition must be diagnosed by a regulated health professional, the manner in which the medical condition is to be accommodated is determined by the Principal, in consultation with the student, their family, and the health professional, as may be appropriate under the circumstances.

Determining the appropriate accommodation for a student who cannot wear a face mask due to a disability is a process requiring an individualized assessment of the student's particular needs, taking into account school safety requirements during a pandemic.

Parents have a responsibility to actively participate in the accommodation process, which includes providing sufficient medical information to support the development of appropriate accommodations.

Alternative measures to accommodate a student with a disability, while providing safe work and learning spaces, may include:

- mask breaks;
- gradual extension of mask time to increase tolerance;
- a face shield;
- installation of a plexi-glass barrier;
- increased social distancing;
- a separate learning environment; and/or
- remote learning.

## OTHER GROUNDS FOR EXEMPTION

The Ontario *Human Rights Code* also prohibits discrimination on the basis of creed. However, the Human Rights Tribunal has ruled that a belief about the efficacy of masks in reducing the risks of

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<sup>10</sup> Section 1

<sup>11</sup> Section 10(1)

<sup>12</sup> Section 17(2), emphasis added

COVID-19, or an opinion about whether masks should or can be mandated in schools, does not constitute a creed under the *Human Rights Code*.<sup>13</sup>

A person asserting a claim that their creed prevents their child from wearing a face mask at school will be asked to provide evidence that their belief system, and this tenet of their faith, meets the criteria set out by the Human Rights Commission in its “*Policy on Discrimination Based on Creed*”,<sup>14</sup> and related jurisprudence.

Section 2 of the *Charter of Rights and Freedoms*<sup>15</sup> states that:

Everyone has the following fundamental freedoms:

(a) freedom of conscience and religion;

A mere assertion that a person is exempt from the face mask requirement on the basis of the Charter is insufficient to invoke the protection of the Charter. In order to be exempt from Niagara Catholic District School Board’s face mask requirement on the basis of Section 2 of the *Charter*, a person must provide a court declaration that the Board’s mask requirement breaches their right to freedom of conscience and religion.

## PRIVACY

The *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sch. A (“**PHIPPA**”) does not prevent school boards from collecting the personal health information of students.

Niagara Catholic District School Board’s authority for collecting personal information, including personal health information, is found in s.28(2) and 29 of the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c.M.56. The health information being collected is not for the purpose of providing health care, but rather to provide accommodation pursuant to the *Human Rights Code* to facilitate a student’s attendance at school.<sup>16</sup>

Information regarding a student’s disability and related needs must be maintained pursuant to the Board’s policies and procedures relating to privacy and confidentiality.

The *Personal Information Protection and Electronic Documents Act*, SC 2000, c 5 (“**PIPEDA**”) is federal legislation, which does not apply to school boards.

## A STUDENT’S RIGHT AND OBLIGATION TO ATTEND SCHOOL

The *Education Act* provides that children of separate school supporters residing in the jurisdiction of the Board have the right to access education,<sup>17</sup> and that the school attendance of such children aged 6 to 18 is compulsory.<sup>18</sup> Attendance at a virtual school of the Board satisfies the access to education and compulsory attendance requirements under the *Act*.

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<sup>13</sup> See *Sharma v. Toronto (City)*, 2020 HRTO 949 (CanLII).

<sup>14</sup> <http://www.ohrc.on.ca/en/policy-preventing-discrimination-based-creed>

<sup>15</sup> *The Constitution Act, 1982*, Schedule B to the Canada Act 1982 (UK), 1982, c 11

<sup>16</sup> Further information about the Board’s legal authority to collect personal information may be found on the website of the Information and Privacy Commissioner of Ontario at the <https://www.ipc.on.ca>.

<sup>17</sup> Sections 33(3) and 36(3)

<sup>18</sup> Section 21(1)

## EXEMPTION VS. REFUSAL

Principal's are responsible for ensuring that all students not subject to an approved exemption wear a face mask while indoors at school, except when eating or drinking, and on school vehicles.

If a student attends school without a mask, Principals should provide the student with a mask, and request that they attend in future with their own mask.

If a student refuses to wear a mask, even after one has been provided, Principals are directed to call the student's parent/guardian to remove their child from school. Students will be asked to wait for their parents in an alternate space, separate from other staff and students.

Students who continue to attend without a mask and without an approved exemption may be excluded from physically attending school pursuant to s.265(1)(m) of the *Education Act*, and will be provided with access to remote learning.

Parents are encouraged to advise of any intent for refusal to wear a mask in advance of school attendance, so that all possible steps can be taken to avoid making a student uncomfortable.

**Adopted Date:** September 13, 2021

**Revision History:**

## APPENDIX A

Human Rights Code RSO 1990, c H.19:

### **Definition of Disability**

**S.10** (1) In Part I and in this Part,

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“disability” means,

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the [Workplace Safety and Insurance Act, 1997](#); (“handicap”)

APPENDIX B

Regulated Health Professions Act 1991, SO 1991, c 18

SCHEDULE 1  
SELF GOVERNING HEALTH PROFESSIONS

| <i>Health Profession Acts</i>                      | <i>Health Profession</i>                 |
|--|--|
| Audiology and Speech-Language Pathology Act, 1991  | Audiology and Speech-Language Pathology  |
| Chiropractic Act, 1991                             | Chiropractic                             |
| Chiropractic Act, 1991                             | Chiropractic                             |
| Dental Hygiene Act, 1991                           | Dental Hygiene                           |
| Dental Technology Act, 1991                        | Dental Technology                        |
| Dentistry Act, 1991                                | Dentistry                                |
| Denturism Act, 1991                                | Denturism                                |
| Dietetics Act, 1991                                | Dietetics                                |
| Homeopathy Act, 2007                               | Homeopathy                               |
| Kinesiology Act, 2007                              | Kinesiology                              |
| Massage Therapy Act, 1991                          | Massage Therapy                          |
| Medical Laboratory Technology Act, 1991            | Medical Laboratory Technology            |
| Medical Radiation and Imaging Technology Act, 2017 | Medical Radiation and Imaging Technology |
| Medicine Act, 1991                                 | Medicine                                 |
| Midwifery Act, 1991                                | Midwifery                                |
| Naturopathy Act, 2007                              | Naturopathy                              |
| Nursing Act, 1991                                  | Nursing                                  |
| Occupational Therapy Act, 1991                     | Occupational Therapy                     |
| Opticianry Act, 1991                               | Opticianry                               |
| Optometry Act, 1991                                | Optometry                                |
| Pharmacy Act, 1991                                 | Pharmacy                                 |
| Physiotherapy Act, 1991                            | Physiotherapy                            |
| Psychology Act, 1991                               | Psychology                               |
| Psychotherapy Act, 2007                            | Psychotherapy                            |
| Respiratory Therapy Act, 1991                      | Respiratory Therapy                      |
| Traditional Chinese Medicine Act, 2006             | Traditional Chinese Medicine             |

APPENDIX C

Niagara Catholic District School Board  
Request for Exemption Form

**Student Name:** \_\_\_\_\_

**Home Address** \_\_\_\_\_

**School:** \_\_\_\_\_ **Grade:** \_\_\_\_\_

**Reason for Mask Exemption (check all that apply):**

Disability:

- Asthma
- Breathing difficulties caused by underlying health condition (e.g. severe allergies, heart or lung disease)
- Intellectual/developmental
- Sensory processing
- Hearing/communication
- Physical/Other cannot wear or remove mask without assistance

Religion/Creed \_\_\_\_\_

Other \_\_\_\_\_

**Parent/Guardian Contact Information:**

Name: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

I have read the NIAGARA CATHOLIC DISTRICT SCHOOL BOARD Administrative Operational Procedure "Request for Exemption: Face Mask Requirement" and attach the required medical or other documentation as described in the Procedure, verifying the grounds on which I seek an exemption. I attest that the information I hereby provide in support of my request for an exemption is accurate to the best of my knowledge, and I agree to engage in the accommodation process as outlined in the above Procedure.

\_\_\_\_\_  
**Parent/Guardian Signature**

\_\_\_\_\_  
**Date**