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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

MOMS FOR AMERICA, Billings
Affiliate, a non-profit corporation;
STAND UP FOR MONTANA, a non-
profit corporation; LUKE and
BROOKE HUDSON; LUKE
ANDERSON; ROB BEDFORD and
ADDIE BEDFORD; NEIL FRIEDEL
and MYKEL FRIEDEL; JANINE
JOHNSON; KEZIAH LAWICKI; PAT
MOORE; DEREK RUFF and KELLY
RUFF,

Plaintiffs,

vs.

BILLINGS PUBLIC SCHOOL
DISTRICT NO. 2; and ELYSIAN
SCHOOL DISTRICT NO. 23,

Defendants.

Cause No. DV-21-01151

Judge: Ashley Harada

**BRIEF IN SUPPORT OF MOTION
FOR TEMPORARY
RESTRAINING ORDER AND
FOR A SHOW CAUSE HEARING
ON WHY A PRELIMINARY
INJUNCTION SHOULD NOT BE
GRANTED**

Plaintiffs, Moms for America, Stand Up For Montana, Luke and Brooke Hudson; Luke Anderson; Rob Bedford and Addie Bedford; Neil Friedel and Mykel Friedel; Janine Johnson; Keziah Lawicki; Pat Moore; Derek Ruff and Kelly Ruff (the “Parents”) submit the following in support of their motion for a temporary restraining order against enforcement of Defendants’ Billings Public School District No. 2 (“SD2”) and Elysian School District No. 23 (“Elysian”) forced student masking and improper delegation of authority to the Superintendents, and for a preliminary injunction.

BRIEF

ISSUES

A. Because Parents have made out a prima facie case for the infringement of fundamental constitutional rights, *de facto* irreparable harm, they are entitled to a preliminary injunction against the infringement pending an ultimate resolution on the merits. Driscoll v. Stapleton, 2020 MT 247, ¶14, 401 Mont. 405, 473 P.3d 386 (string citation omitted).

B. Because (a) the School Districts are well aware of the proceedings—having filed a Motion to Dismiss, and (b) delay would only cause further

immediate and irreparable injury to the Parents and their children, a temporary restraining order against forced student masking should be issued immediately.

BACKGROUND

A. Current Data Shows Masks Harm Children's Education.

1. From the first day of school, Parents have been collecting data that proves forcing school aged children to wear masks for 6-7 hours a day is not only ineffective but causes them educational, social, and physical harm.

2. Data from Yellowstone County schools shows either a) no appreciable difference in the prevention of Covid-19 cases between schools with forced masking policies and those with optional masking policies or b) a higher rate of Covid-19 cases in schools with forced masking policies. (See, Chart of Covid-19 cases among schools, attached as **Exhibit A**).

3. The type of masks school aged children are forced to wear during the school day offer no more than “minutes” of protection and are, therefore, ineffective if worn for 6-7 hours a day. (See, Declaration of Dr. David Graham, M.D., attached as **Exhibit B**).

4. Educators from Yellowstone County are reporting serious harm to the education, health, and socialization of school aged children related to being forced to wear masks 6-7 hours a day, including but not being limited to an

increase of behavioral issues, a decrease in classroom participation, a negative impact on concentration and learning, an increase in bullying, a negative impact on phonics, language, and articulation learning, health issues, and an increase in emotional issues related to socialization. (See, educator affidavits and public e-mail correspondence to SD2 Board of Trustees, attached hereto as **Exhibit C**).

5. Studys have documented cognitive decline in infants and young children (See, *Impact of the Covid-19 Pandemic on Early Child Cognitive Development: Initial Findings in a Longitudinal Observational Study of Child Health*, the “Child Cognitive Development Study” attached hereto as **Exhibit D**). This information, coupled with other studies regarding the efficacy and harm of mask wearing (see, Declaration of Rodney X. Sturdivant, PhD., “Sturdivant Declr.,” attached hereto as **Exhibit E**), show that covering children’s faces for 6-7 hours a day is having an ill effect.

6. The School Districts have not responded to complaints by its educators and parents regarding the harm to students’ education caused by forced masking.

7. Because masks are not an effective solution to curb Covid-19 cases within the School Districts and because they result in harm to a child’s education,

socialization, and health, the School District's forced masking policies should be immediately stopped and prevented from being reinstated.

B. The Parties' Involved:

8. Plaintiff, Moms for America is a national movement of mothers with the stated purpose of getting mothers engaged in civics, education, and culture. It is a non-profit corporation with registered members in Yellowstone County, Montana. (See, Declar. of Moms for America, attached as **Exhibit F**.)

9. Plaintiff, Stand Up For Montana is a registered Montana non-profit corporation in good standing with its principal place of business in Gallatin County, Montana. Its mission is to encourage Montanas, during the COVID-19 restrictions, to "stand up for the constitutionally protected liberties, to provide resources and support to individuals and businesses who have been discriminated against or harassed by unfair rules and regulations, and to support similar initiatives." It has a membership of hundreds of individuals, including many in Yellowstone County who are the parents of children enrolled at Defendants' schools and who object to the student mask mandates described herein. (See, Declar. of Stand Up For Montana, attached as **Exhibit G**).

10. Plaintiffs, Luke and Brooke Hudson reside in Yellowstone County, Montana. They are the parents of children enrolled at Defendant School District 2

schools Will James Middle School and Big Sky Elementary. The Hudsons object to the Defendants' forced student masking because their children have significant issues with breathing in masks, experience anxiety related to having their faces covered for 7 hours, find it very difficult to learn in an environment where the teachers' and other students' faces are covered, and experience confusion and distrust regarding the inconsistency with which the School District enforces and not enforces the mandate. Their children are losing their love of learning. They believe their parental rights are being harmed because they are not able to individually assess the benefits and risks to their children without the influence of an unelected Superintendent with no accountability for his decision making through imposed limits or standards. (See, Declars. of Luke and Brooke Hudson, included with all Parents' Declarations attached as **Exhibit H**)

11. Plaintiff, Luke Anderson resides in Yellowstone County, Montana. He is the parent of a child enrolled in Defendant Elysian School District No. 23. He believes there is proof now that the masks are a more significant potential health threat to our children than the risk of viral spread. He also think masks impair the learning environment significantly. Nonsterile masks in a nonsterile environment are not effective to protect students and others from COVID-19 infection. Forced masking is a violation of his child's right to human dignity.

Masks should be optional and left to the parental choice. Also, based on science and experience, cloth masks are not effective against the COVID-19 virus in any context, but especially not in a public school.

(See, Declar. of Luke Anderson, Exhibit H).

12. Plaintiffs, Rob Bedford and Addie Bedford reside in Yellowstone County, Montana. They are the parents of a son districted for West High School in Defendant School District 2. They have withdrawn their son and now pay tuition to enroll him at Laurel High School where there is no mask mandate. They object to the Defendants' forced mask policy because their son is healthy and finds masking difficult, unpleasant, and detrimental to his physical, social, and emotional health. He could not fully see or understand his teachers or his peers. He found it difficult to make friends in a new school due to covered faces. He found the mask distracting and unhelpful, as well as uncomfortable to wear, but was given very few options to take a break. When he found a compromise he could live with (covered mouth, uncovered nose) he was refused this option and removed from campus. They believe the mask mandate violates their rights as parents to make medical decisions for their minor children, as they are in the best position to know their children's best interests. They also believe, based on the

science, that masks are not medically necessary or efficacious. (See, Declars. of Rob Bedford and Addie Bedford, Exhibit H).

13. Plaintiffs, Neil Friedel and Mykel Friedel reside in Yellowstone County, Montana. They are the parents of a son enrolled in Defendant School District No. 2's Eagle Cliff Elementary School. They maintain that parents should have the right to decide on health choices for their children. They have reached out to their School Board Trustee but have never been answered. They asked their school Principal to provide them a written statement that their son could not enter the school without a mask on, was not offered any remote learning or alternative to education, and was not allowed in the school without complying. They believe the forced masking policy denies them the right to an equal education. They do not believe masks are effective for the purposes the Superintendent is stating. (See, Declars. of Neil Friedel and Mykel Friedel, Exhibit H)

14. Plaintiff, Janine Johnson resides in Yellowstone County, Montana and is the parent to two children enrolled in Defendant Elysian School District No. 23. She opposes the Defendants' forced masking policy on the basis of mental health issues. Her children both suffer from anxiety and ADHD. She presented a note to the school principal regarding the use of masks and the negative effects on her children. The Defendant school will not accept the letters and refuses to

consider them despite their assurances that they are complying with the DPHHS August 30, 2021 Directive, instructing Montana school districts to consider parents' concerns regarding their children. She also believes the school is in violation of the Student Rights Policy and is violating her children's right to an equal and quality education. She has attempted to communicate with the School District on these issues but has been ignored. (See, Declar. of Janine Johnson, Exhibit H).

15. Plaintiff, Keziah Lawicki resides in Yellowstone County, Montana and is the parent of a daughter districted for McKinley Elementary School in Defendant School District No. 2. Ms. Lawicki has pulled her daughter out of school because of the physical harm to her daughter caused by wearing a face covering for 7 hours a day and because of the emotional harm of reliving very traumatic memories of the abusive and controlling religious upbringing she endured that required similar amounts of control. She opposes the forced face masking mandate. She attempted to communicate with her school principal about alternative education and was not given any alternatives other than being refused entry to the school. Her requests to discuss the matter with the School District No. 2 administration were ignored. She believes her daughter would not receive an equal and quality education with a face covering on or in the remote learning

she now knows is available to students. (See, Declar. of Keziah Lawicki, Exhibit H).

16. Plaintiff, Pat Moore resides in Yellowstone County, Montana and is a parent to two elementary children enrolled in Defendant School District No. 2 schools. He opposes the forced mask policy. His oldest daughter was in 1st grade last year while there was a forced mask policy. She developed bad sores around her mouth and massively chapped lips from the wearing of masks. She also complained of headaches often and stated that it was difficult for her to communicate at times while wearing the mask. She was excited to go back to school this year until the last-minute mask mandate was announced. When this happened, her anxiety rose significantly and her mood plummeted. She doesn't like talking about school anymore and dreads every day she has to pick out a mask to wear. The basis for the forced mask policy is inconsistent and was not subjected to public scrutiny or comment. The insistence of following "the numbers" and science to back up this mandate is flawed and not supported with science. He also believes his parental rights to direct his children's education and decisions regarding their health care are being infringed upon by the Defendant School District. He has attempted to communicate with the School District over this issue and has been ignored. (See, Declar. of Pat Moore, Exhibit H).

17. Plaintiffs, Derek Ruff and Kelly Ruff are residents of Yellowstone County, Montana and the parent of children within Defendant School District No. 2. They oppose the forced mask policy and believe that they as parents have the right to determine what is best for their children. One of their three children significantly suffers from anxiety, headaches, and difficulty breathing while being forced to wear a mask. After last year, when masks were forced upon the children, they discovered the harm it was causing their son. He began to experience serious emotional and physical issues related to the mask wearing. The option of using the Defendant School District No. 2's remote learning platform is no option at all. It is inferior and insufficient and does not provide an education for children. This year, when the Superintendent made the last-minute masking policy, their son suffered so greatly that they were forced to remove him from school and attempt to school him at home. They experienced the School Board ignoring their concerns or personal issues. The Superintendent is not accountable to them, made this decision without notice to them or their right to participate, and has no limits on what he can decide regarding the mask policy. (See, Declar. of Kelly Ruff, Exhibit H).

18. Defendant, Billings Public School District No. 2 is a Montana, Yellowstone County school district in Billings, MT governed by a School Board,

that authorized the conduct challenged in this action and is served by a superintendent charged with administering the School Board's policies on behalf of the School District.

19. Defendant Elysian School District No. 23 is a Montana, Yellowstone County school district in Billings, MT that consists of a Kindergarten through Eighth Grade school located on the southwest side of Billings, Montana. It is governed by a School Board that authorized the conduct challenged in this action and is served by a superintendent charged with administering the School Board's policies on behalf of the School District.

ARGUMENT

A. The School District's forced masking is reviewed under strict scrutiny.

When determining if Parents have made a prima facie showing of constitutional injury or appear to be entitled to the relief sought, this court must employ the correct level of scrutiny to evaluate the government action. Driscoll v. Stapleton, 2020 MT 247, ¶ 18, 401 Mont. 405, 415, 473 P.3d 386, 392. The most stringent level of scrutiny is "strict scrutiny," which is used when a statute implicates a fundamental right found in the Montana Constitution's declaration of rights. (Id.; cf. Arneson v. State, By Dept. of Admin., (1963) 262 Mont. 269, 272, 864 P.2d 1245, 1247). Under strict scrutiny, statutes will be found

unconstitutional “unless the State can demonstrate that such laws are necessary to promote a compelling governmental interest.” (Id.).

As discussed herein, the School District’s actions implicate fundamental rights of education (Article X of the Montana Constitution), right to participate (Article II, §8), right to know (Article II, §9), privacy (Article II, §10) and human dignity (Article II, §4). The Parents’ claims that the School Districts violated Senate Bill 400 also requires proof of a compelling state interest to violate its terms. Therefore, for all claims, the Court must employ a strict scrutiny analysis.

“Under the strict scrutiny standard, Defendants bear the burden of showing that the law, or in this case the policy, is narrowly tailored to serve a compelling government interest.” Snetsinger v. Montana University System, 2004 MT 390, ¶17, 325 Mont. 148, 104 P.3d 445. Thus, it falls solely on Defendants to prove that both the legislation is “justified by a compelling state interest” *and* that it is “narrowly tailored to effectuate only that compelling interest.” (Id.; Gryczan, 283 Mont. at 449, 942 P.2d at 122; State v. Pastos, (1994) 269 Mont. 43, 47, 887 P.2d 199, 202. Furthermore, it is important to remember that unless two fundamental rights are in opposition (e.g., the right to privacy versus the right to know), strict scrutiny does *not* involve a balancing test.

Under the strict scrutiny standard, at the threshold issue, the School Districts — not the Parents — must first prove there exists a compelling state interest *before* moving to the narrowly tailored/least restrictive means test. Montana Human Rights Div. v. City of Billings, (1982), 199 Mont. 434, 649 P.2d 1283. For example, in the Montana Human Rights Division, the question was whether — in investigating claims of employment discrimination — the Montana Human Rights Commission (“HRC”) could lawfully subpoena private and personnel information of employees who had neither consented to disclosure nor complained of discrimination. (*Id.* at 443-45). Before ever reaching the question of what steps should be taken to protect the private information sought to be disclosed, the Court *first* determined that there was a compelling state interest at stake. It decided that the defendants had a compelling interest in investigating illegal discrimination.

We do not find that the HRC has failed to establish a *compelling state interest* by failing to contact and obtain the permission of those employees and ex-employees of the City and County whose files they seek. The practical realities of the situation and *the greater importance of the protection from discrimination* convince us that the HRC has made a sufficient showing of a *compelling state interest*, and that the disputed files and materials must be made available to the HRC.

Id. at 446 (emphasis added). Thus, the right of privacy came in conflict with—and in the circumstances was required to yield to—the fundamental right of due process. But only *after* such holding did the Court then turn to what protections should be in place to reasonably ensure that private material was protected from public disclosure. However, had there been no compelling state interest, there could have been no public disclosure—regardless of the amount of security. (Id., and see Reesor v. Montana State Fund, 2004 MT 370, ¶13, 325 Mont. 1, 5, 103 P.3d 1019, 1022).

The School Districts can argue all they want that preventing or curbing the spread of Covid-19 is a compelling government interest. But, because their action – the forced masking of school-aged children – is the method by which they attempt to serve this interest, the School Districts must prove the forced mask policy is both narrowly tailored and effective. Id., and Driscoll, ¶18. This, they cannot do. As discussed herein, the evidence shows forced masking is irrelevant to any effect on the spread of Covid-19 in the schools or the communities. (Exhibits A, B, C, and D). The evidence shows the forced masking policy is having a harmful effect. (Id.).

Forcing children to wear a cloth mask for health care reasons violates the fundamental constitutional rights discussed above. The School Districts cannot

rebut the *prima facie* showing of a violation of these rights with a policy that is not narrowly tailored to be effective to promoting a government interest.

Therefore, the policy is illegal and subject to preliminary and permanent injunctive relief. E.g., Butte Cnty. Union v. Lewis, (1986) 219 Mont. 426, 435, 712 P.2d 1309, 1314.

B. Forced masking is not working to curb Covid-19 and harms children.

1) Forced masking is not working.

The data Parents have been gathering shows the School District's forced masking policies have made no appreciable dent on Covid-19 cases in the schools or within the community. (Exhibit A). Despite the forced masking policy, the School District's Covid-19 numbers are either on par with schools with optional masking policies, or are even higher than those schools. (Id.). More telling, the School District's numbers do not match the declining Covid-19 cases within the County at large. (Id.). A forced masking policy is simply not effective to do what the School Districts intended with the policy.

Likewise, a respected infectious disease doctor with years of experience treating infectious diseases and even specifically studying the Covid-19 disease, explains that the cotton face masks required to be worn by the School District's students – an even distributed by the schools themselves – are ineffective to

prevent Covid-19 transmission more than a few minutes into wearing the masks. (Exhibit B). The proper mask that should be worn to effectively prevent or stymie Covid-19 transmission would be the N-95 mask that could not safely be worn by a child for 6-7 hours a day. (Id.).

A CDC study of May 28, 2021 (“Mask Use and Ventilation Improvements to Reduce COVID-19 Incidence in Elementary Schools — Georgia, Nov. 16–Dec. 11, 2020”¹) finds that *before* the availability of COVID-19 vaccines, the incidence of COVID-19 was 37% lower in schools that required mask use among *teachers and staff members* and was 39% lower in schools that reported implementing one or more strategies to *improve classroom ventilation.*” (See, Exhibit E, Sturdivant Declr., ¶¶42-65, emphasis added).

The study found “The 21% lower incidence in schools that required mask use *among students* was *not statistically significant* compared with schools where mask use was *optional.*”² (Id., Emphasis added.) Other scientific data suggests that such a mandate for widespread and universal masks is not justified or effective. (Id.).

Well documented studies cast doubt on how much impact asymptomatic

¹ <https://www.cdc.gov/mmwr/volumes/70/wr/mm7021e1.htm>

² <https://www.cdc.gov/mmwr/volumes/70/wr/mm7021e1.htm>

people play in transmission, calling into question the entire justification for the CDC guidelines that rested on asymptomatic spread concerns. (Id., ¶43.) This is consistent with the experience in Montana where despite the Governor’s early summer 2020 order, requiring nonsterile cloth masks be worn to access public accommodations, COVID-19 moved through the population freely with no correlation between forced masking and a drop in cases. (Id.). The forced masking did nothing to “flatten the curve.” In early 2021 the instances of COVID-19 began falling sharply even as forced masking was still solidly in place. (Id.)

The New England Journal of Medicine stated in May 2020: “We know that wearing a mask outside health care facilities offers little if any, protection from infection... In many cases, the desire for widespread masking is a reflexive reaction to anxiety over the pandemic.” (Id., ¶44).

In 2019, the World Health Organization (“WHO”), supported by Marine Corps and “Danish Mask” studies, concluded “there was no evidence that face masks are effective in reducing transmission of laboratory-confirmed influenza.” (Id., ¶¶40, 45).

Cloth and surgical masks allow particles the size of COVID-19 to pass through. (Id., ¶46). A 2009 study of small particles involving five different

surgical masks concluded that “included particles in the same size range of viruses confirm that surgical masks should not be used for respiratory protection.” (Id.). Other recent studies consider small particles and used human volunteers to test masks and find the best-case mask filtered 70% of particles, with others filtering less than 50%. (Id.). Another study, done even before COVID-19, measured the filtering efficacy and the size of mask pores particularly, concluding very poor filtering made worse with wear time and washing of the masks. (Id.). The airborne nature of COVID-19 means that this performance is not effective when exposure is more than brief to the virus; the time of wear and proper use is better in the studies than when people wear masks for many hours. (Id.).

Translating results from a lab setting to conclude similar rates of spread reduction requires evidence. Data and science do not support a finding that masks offer significant ability to reduce spread in the entire population. Attempts to find data supporting this hypothesis are notably lacking in scientific rigor. A study of 1083 U.S. counties showing a decrease in hospitalizations after forced masking had to be withdrawn as rates increased shortly after publication. (Id., ¶47.)

Even if masks filter some percentage of particles, the number of such particles is far greater than needed to cause a serious infection. An infectious dose of COVID-19 is approximately 300 particles. The number of particles

emitted in a single minute of speaking is greater than 700,000. Even a 50% reduction would have no impact on transmissibility. (Id., ¶48.)

In 2020, the WHO's "interim guidance" document on Dec. 1, 2020, discusses new guidelines and states that "a mask alone, even when it is used correctly, is insufficient to provide adequate protection or source control." (Id., ¶49). It reiterates this point by adding masks are "insufficient to provide an adequate level of protection for an uninfected individual or prevent onward transmission from an infected individual (source control)." (Id.). They remarkably then continue on to recommend use "despite the limited evidence of protective efficacy of mask-wearing in community settings." (Id.).

The CDC's "scientific" support for mask is inconsistent. Guidance prior to 2020 in pandemic planning documents was consistent with that of the WHO, yet it has since tried to support a policy change without additional evidence. (Id.). None of CDC's work would pass rigorous scientific peer review and the studies on which it is based have serious flaws. (Id., ¶¶49-52).

Additional evidence in the CDC scientific brief is based on simulations or models rather than actual data or flawed observational studies, which are anecdotal. None would rise to the WHO 2019 standard for evidence. (Id., ¶53).

A CDC notice about the use of masks for protection against wildfire smoke,

titled “Cloth masks will not protect you from wildfire smoke,” states that masks “do not catch small, harmful particles in smoke that can harm your health.” (Id., ¶54.) COVID particles are significantly smaller than smoke particles. (Id.).

The preponderance of evidence from the pandemic, utilizing proper scientific method, indicates no effect. (Id., ¶55). A growing body of data and literature published in 2020, including a meta-analysis of 10 different studies since 1946 concludes, “We did not find evidence that surgical-type face masks are effective in reducing laboratory-confirmed influenza transmission, either when worn by infected persons (source control) or by persons in the general community to reduce their susceptibility.” Another analysis, examining 15 randomized trials, concluded “[c]ompared to no masks, there was no reduction of influenza-like illness cases or influenza for masks in the general population, nor in healthcare workers.” A third meta-analysis included both randomized trials and observational studies totaling 31 and concluding “evidence is not sufficiently strong to support widespread use of facemasks as a protective measure against COVID-19.” (Id., ¶56).

The European CDC, in a similar fashion to the WHO December 2020 update, conducted an extensive review of evidence regarding mask wear. The WHO review found “limited evidence on the effectiveness...in the community”

and yet continued to recommend use. (Id., ¶57).

Two more randomized trials conducted in 2020, involving hospital workers, confirmed the group wearing cloth masks had a significantly higher rate of lab-confirmed influenza-like illness than a group wearing no masks. (Id., ¶58). The study also examined the penetration rates finding over 97% of particle penetration in cloth masks and 44% in medical masks. (Id.). A Covid-19 study in Denmark found a non-significant difference in the control and mask groups (2.1% compared to 1.8% positive) when high-quality surgical masks were worn. (Id.). The difference was even smaller when they considered participants who reported the highest compliance with mask use. (Id.).

An extremely extensive Cochrane review of over 60 studies found that face mask use did not reduce cases either in the general population or among health care workers. (Id., ¶59). A quasi-experimental study of European data similarly concludes “requiring facemasks or coverings in public was not associated with any additional independent impact.” (Id.). Despite pressure to retract for fear their article would be used to “support non-mask wearing,” researchers from the University of Illinois stood by an article showing that the data does not support mask efficacy. (Id.).

The evidence of mask use effectiveness is such that there are even studies that show a negative impact. A study by C. Raina MacIntyre et al. was conducted pre-COVID-19 but showed an actual increase in infection with cloth masks in a hospital setting. (Id., ¶60). A more recent review noted a similar conclusion. (Id.). Physical and chemical attributes of respiration through a mask may scientifically describe reasons for increases in infections. (Id.).

A comprehensive study of all U.S. counties shows the difference in COVID-19 outcomes in those with mask mandates is not just different from those without mandates – it is *worse*. For example, comparing similar large counties in Florida, there were 64 cases per 1,000 in mask mandate counties and those without only 40 per 1,000. (Id., ¶61). The results are the same in almost every State where counties with and without mandates to compare. (Id.). Similar results were found looking more broadly: for example, at state level, the numbers were 27 per 100,000 with mask mandates and only 17 for no mandates. (Id.).

The evidence from states, counties, and countries worldwide is remarkably consistent. Mask use, which reached very high levels well before the winter virus season, had no discernable impact on the virus outcomes when considering trends. (Id., ¶62). Cases increase dramatically often after or despite increased mask wear. (Id.). Comparisons of the disease trajectory for like countries/counties

consistently depict remarkably similar trajectories despite various mask mandates and usage levels. (Id.).

2) Masks not only do not work; they harm children.

There are potential consequences to extended mask use, both physiological and psychological. Studies are beginning to emerge of actual physical harms from mask wear. (Id., ¶63). Other studies have found issues with oxygen saturation levels, which impact healthy immune systems. (Id.). This issue could lead to increase susceptibility to COVID-19 and other viruses long term. Other risks include foreign particles causing lung damage and microbial infections. (Id.).

Harms related to forcing masks on children for long periods of time is an increasing concern. While children are at very low risk of infection and tend to spread the virus at a much lower rate, masks have also become common for school openings. A large study in Germany among over 25,000 children reports impairments such as headache in over 50%, fatigue (37%), difficulty concentrating (50%), and irritability (60%), among others. (Id., ¶64). A second study documents the risks for children from COVID-19 and a substantial number of harms from mask wearing. (Id.).

The biggest impact, however, is on the children's ability to be educated.

Under Montana's Constitution, Article X, each child is guaranteed the equality of

educational opportunity. “Pursuant to Article X, section 1, of the Montana constitution, the legislature is required to provide a basic system of free quality public elementary and secondary schools throughout the state of Montana that will guarantee equality of educational opportunity to all.” Mont. Code Ann. § 20-9-309. The School Districts, educators, and Parents all agree that the “on-line” educational option offered to those who do not want their children to be masked during the school day is wholly insufficient for provision of a basic education. (See, Exhibits C and H).

But, the impact is not felt just with on-line educational options. Education provided *in person* is not satisfactory when coupled with a forced masking policy because forcing the children to cover their faces during the 6-7 hour school day harms their ability to learn. (See, Exhibits B, C, D, E, and H).

The recent Child Cognitive Development Study, funded by the National Institutes of Health, led by researchers from the Rhode Island Hospital and the Department of Pediatrics and Diagnostic Radiology at the W. Alpert Medical School at Brown University, and supported by a Resonance Consortium of professors from Brown University, Wellesley College, the Neurobehavioral Research Unit, University of Colorado at Boulder, University of California at Davis, and Johns Hopkins University, studied the cognitive impact on infants and

children related to the Covid-19 virus. (Exhibit D). The Child Cognitive

Development Study reports that:

Results highlight that even in the absence of direct SARS-CoV-2 infection and Covid-19 illness, the environmental changes associated [with the] Covid-19 pandemic is significantly and negatively affecting infant and child development.

(Id., Abstract).

Even though the study primarily focused on children born 1 year before 2019 and after July 2020, the findings could be extrapolated to implications on school aged children. “Across all measures, we found cognitive scores were significantly reduced during the pandemic by 27 to 37 points (or almost two full standard deviations)” (Id., Results). “[M]asks worn in public settings and in school or daycare settings may impact a range of early developing skills such as attachment, facial processing, and socioemotional processing.” (Id., Discussion). “What is unclear from our data, however, is if observed declines or impairments are temporary and will normalize as employment and school closures are lifted and children return to pre-pandemic levels of play and interaction. . . It is clear, however, that young infants and children are developing differently than pre-pandemic, and that addressing this now while their brain is at its most plastic and responsive, is imperative.” (Id.).

Forced mask wearing is having a negative impact on children's education and socialization. (Exhibit D and E). This information, coupled with empirical evidence from the field in the form of educator and parent reports (Exhibits C and H) of the harm masks are having on children during the day, mean that forced wearing of masks is not a neutral act – it is harming our children in ways the School District can prevent.

Because the data shows masks offer zero benefit towards the prevention or curbing of Covid-19 transmission and because masks cause harm to a child's education, health, or socialization, the zero efficacy of mask wearing is outweighed by a mask's harm and the School Districts should be prevented from forcing mask wearing.

3) Forced masking is not the least restrictive means available.

Even if forcing students to wear masks was effective in saving lives, which could qualify its use to serve a compelling state interest, the forced masking policy is not narrowly tailored to serve that interest by the means least restrictive to the fundamental right at issue. The School Districts routinely make accommodations for Parents who opt out of health-related mandates for their children. For years, the School Districts have honored the decision of parents choosing to opt out of State immunization mandates governing the School Districts. Those children are

allowed to attend full access and in-person school and receive an equal and adequate education. Opting-out of state immunizations is relevant here.

If the School Districts believe masks are effective to slow the spread of Covid-19 and that the number of Parents who do not want their children masked is minimal, then allowing those children to attend without masks in the sparse situations the School Districts believe to exist will cause no greater harm than allowing a child to continue attending school without one of the required immunizations. The data would support a policy of allowing parents to make the decision on whether their child is masked or not.

If the School Boards believe the number of parents who do not want their children masked is a far greater number than those who want children to wear masks, then the least restrictive solution is to invite parents who want their children masked to enroll in the on-line educational platform, rather than force the larger number of Parents to opt for on-line education.

The School Districts could also use the more tailored approach of identifying the vulnerable who, due to co-morbidity issues, are more likely to suffer severe complications and target them for special attention and assistance, leaving the low-risk population, including the students, to freely exercise their fundamental right to choose their healthcare options.

This tailored strategy is called “Focused Protection,” as stated in the recent Great Barrington Declaration. The Great Barrington Declaration is a document authored by three preeminent epidemiologists, with more than 890,000 signatures of “infectious disease epidemiologists and public health scientists [with] grave concerns about the damaging physical and mental health impacts of the prevailing Covid-19 policies.” (See, Declaration attached as **Exhibit I**). The signors say:

The most compassionate approach that balances the risks and benefits of reaching herd immunity, is to allow those who are at minimal risk of death to live their lives normally to build up immunity to the virus through natural infection, while better protecting those who are at highest risk. We call this Focused Protection.

...

Those who are not vulnerable should immediately be allowed to resume life as normal. Simple hygiene measures, such as hand washing and staying home when sick should be practiced by everyone to reduce the herd immunity threshold. Schools and universities should be open for in-person teaching. Extracurricular activities, such as sports, should be resumed. Young low-risk adults should work normally rather than from home. Restaurants and other businesses should open. Arts, music, sport and other cultural activities should resume. People who are more at risk may participate if they wish, while society as a whole enjoys the protection conferred upon the vulnerable by those who have built up herd immunity.³

³ <https://gbdeclaration.org/>

E. The forced masking policy violates the Parents' and their children's rights.

Revised Policy 1905, and the literature surrounding it, fails to include any express finding that forced student masking is (a) supported by any compelling government interests; (b) narrowly tailored to serve the compelling government interest, or (c) the least restrictive means for serving the compelling government interest. The School Districts have no expertise or competence to make such findings. They did not retain or rely on a single competent professional in necessary fields, such as public health virology or biostatistics, to make a reliable assessment of the interests at stake or the alternative means to pursue and serve such interests.

Given the science of cloth face coverings and masks, the connection between masks and public health is so tenuous that the School Districts cannot meet the compelling government interest test, even if they had applied it, which they did not.

1) Forced masking violates the right to education under Article X.

As described above, forced masking violates a child's right to a quality education. The School Districts cannot show proof that masks promote or are neutral toward educational growth. Respectable studies show forced masking is harming educational growth (Exhibits D and E) and first-hand information from

educators and parents within the School District (Exhibits C and H) prove that forcing children to wear a face covering for 6-7 hours a school day negatively impacts their education, socialization, and health. Behavioral issues, bullying, impairment in phonics learning, lack of accommodation for disabilities, and concentration and participation declines are related to the forced masking policy.

2) Forced masking violates the right to know and participate under Article II.

Under Montana's Constitution, Parents have a right to know about the processes that result in the policies that affect their school-aged children. The Montana Constitution (Art. II, §8) gives Parents the "right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law." It also states (Art. II, §9) that "[N]o person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure."

Even though the Board of Trustees allowed the public to comment on Policy 1905 and Revised Policy 1905, they voted in an end-run around Parents' constitutional rights of participation and to know to remove the decision-making

power from a public proceeding and place it in back room discussions of an unelected Superintendent who does not answer to the people. Parents had no opportunity to know the factors going into the mask mandate (indeed the reasons the Superintendent gave and those the Board of Trustees gave were completely different) and had zero chance to speak into such factors and give the Superintendent information that could have affected his decision. The School Districts have structured the masking decision in a way that it is made without giving the public full right to know or participate.

3) Forced masking violates the Parents' and their children's right to privacy under Article II, §10.

Restrictions and impositions on people who do not have a communicable disease and are not reasonably believed to have a communicable disease are an illegal infringement upon fundamental constitutional rights of individuals. Specifically, in this case, the forced student masking implicates the right of individual privacy guaranteed by Article II, §10. Under Gryczan v. State, (1997) 283 Mont. 433, 942 P.2d 112 and Armstrong v. State, 1999 MT 261, 296 Mont. 361, 989 P.2d 364, the Montana Supreme Court holds that medical care choices are protected by the right of individual privacy. "The personal autonomy component of this right broadly guarantees each individual the right to make

medical judgments affecting her or his bodily integrity and health in partnership with a chosen health care provider free from the interference of the government . . .” Armstrong, ¶75; and see Baxter v. State, 2009 MT 449, ¶65, 354 Mont. 234, 224 P.3d 1211 (Nelson, J., concurring).

In Armstrong, the plaintiffs challenged a state law prohibiting certified physicians’ assistants from performing abortions. The Montana Supreme Court struck down the law because it infringed on an individual’s personal autonomy protected by the right to privacy. Armstrong, ¶75. The Court concluded the right to health care is a fundamental privacy right. (Id.). The Court, in Wiser v. State, 2006 MT 20, ¶ 16, 331 Mont. 28, 129 P.3d 133, tclarified “the right to privacy is certainly implicated when a statute infringes upon a person’s ability to obtain *or reject* a lawful medical treatment.” Mont. Cannabis Indus. Ass’n v. State, 2012 MT 201, ¶ 27, 366 Mont. 224, 232, 286 P.3d 1161 (emphasis added).

Similarly, in the broader context of one’s right to choose or refuse medical treatment, we must likewise conclude that these sorts of decisions are protected under the personal autonomy component of the individual privacy guarantees of Montana’s Constitution. And properly so. . . . Few matters more directly implicate personal autonomy and individual privacy than medical judgments affecting one’s bodily integrity and health.

Armstrong, ¶52-55.

Quoting from Joel Feinberg, a philosophy professor at the University of Arizona, describing the interrelationship between privacy and personal or “bodily” autonomy, the Armstrong Court continued:

After all, we speak of “bodily autonomy,” and acknowledge its violation in cases of assault, battery, rape, and so on. But surely our total autonomy includes more than simply our bodily “territory,” and even in respect to it, more is involved than simple immunity to uninvited contacts and invasions. Not only is my bodily autonomy violated by a surgical operation (“invasion”) imposed on me against my will; it is also violated in some circumstances by the withholding of the physical treatment I request (when due allowance has been made for the personal autonomy of the parties of whom the request is made). For to say that I am sovereign over my bodily territory is to say that I, and I alone, decide (so long as I am capable of deciding) what goes on there. My authority is a discretionary competence, an authority to choose and make decisions.

(Id., citing to 3 Joel Feinberg, *Harm to Self* 53 (1986)).

The Armstrong Court continued that “like America’s historical legal tradition acknowledging the fundamental common law right of self-determination, *acceptance of the right to make personal medical decisions as inherent in personal autonomy* is a long-standing and integral part of this country’s jurisprudence. Armstrong, ¶¶ 52-55 (emphasis added).

“Montana adheres to one of the most stringent protection of its citizens’ right to privacy in the United States--exceeding even that provided by the federal constitution.” Armstrong, ¶34. Privacy is “one of the most important rights guaranteed to the citizens of this State, and its separate textual protection in our Constitution reflects Montanans’ historical abhorrence and distrust of excessive governmental interference in their personal lives.” (Id., quoting Gryczan, 283 Mont. at 455, 942 P.2d at 125, emphasis added). “For this reason, legislation infringing the exercise of the right of privacy must be reviewed under a strict-scrutiny] analysis--i.e., the legislation must be justified by a compelling state interest and must be narrowly tailored to effectuate only that compelling interest.” (Id.). (string cite omitted).

4) Forced masking violates right to human dignity under Article II, §4.

The Montana Constitution provides each citizen the right to human dignity:

Individual dignity. The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the State nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

Article II, Section 4 (the “Dignity Clause”).

The Dignity Clause is a stand-alone, fundamental constitutional right. See,

Walker v. State, 2003 MT 134, ¶¶74, 82, 316 Mont. 103, 68 P.3d 872 (explaining that the rights found in Article II are “fundamental” and that the plain meaning of the Dignity Clause “commands that the intrinsic worth and the basic humanity of persons may not be violated”); Matthew O. Clifford and Thomas P. Huff, *Some Thoughts on the Meaning and Scope of the Montana Constitution’s “Dignity” Clause with Possible Applications*, 61 Mont. L.Rev. 301, 305–07 (2000). As former Justice Nelson⁴ noted in his concurrence in Baxter v. State, 2009 MT 449, ¶79, 354 Mont. 234, 224 P.3d 1211, this interpretation “is consistent with the debate on Article II, Section 4 at the 1971–1972 Constitutional Convention.”

“Human dignity is, perhaps, the most fundamental right in the Declaration of Rights.” (Id., ¶83).

This right is “inviolable,” meaning that it is “[s]afe from violation; incapable of being violated.” . . . Significantly, the right of human dignity is the only right in Montana’s Constitution that is “inviolable.” It is the only right in Article II carrying the absolute prohibition of “inviolability.” No individual may be stripped of her human dignity under the plain language of the Dignity Clause. No private or governmental entity has the right or the power to do so. Human dignity simply cannot be violated—no exceptions.

(Id., internal citations omitted).

⁴ Retired Justice Nelson is particularly respected for his constitutional expertise. For example, the Missoula v. Mountain Water, the City of Missoula retained him as its constitutional law expert.

“[I]n our Western ethical tradition, especially after the Religious Reformation of the 16th and 17th centuries, dignity has typically been associated with the normative ideal of individual persons as intrinsically valuable, as having inherent worth as individuals, at least in part because of their capacity for independent, autonomous, rational, and responsible action.” (Id., ¶ 84). As Justice Nelson continued:

Or dignity is indirectly violated by denying a person the opportunity to direct or control his own life in such a way that his worth is questioned or dishonored. For example, dignity could be indirectly undermined “by treatment which is paternalistic—treating adults like children incapable of making autonomous choices for themselves, or by trivializing what choices they do make about how to live their lives.”Significantly, this Court has held that “[r]espect for the dignity of each individual . . . demands that people have for themselves the moral right and moral responsibility to confront the most fundamental questions about the meaning and value of their own lives and the intrinsic value of life in general, answering to their own consciences and convictions.” Armstrong v. State, 1999 MT 261, ¶ 72, 296 Mont. 361, 989 P.2d 364.

Baxter, ¶84.

In this case, the School Districts’ paternalistic arrogation of the parental right to make decisions for their children’s education and health care strips them of their human dignity.

Equally, forcing children to cover their faces demeans their human dignity. Human dignity is inseparable from individuality and well-adjusted maturation.

“The ability to recognize facial expressions of emotion is vital for effective social interaction.” Beverly L. Sheaffer, Jeannie A. Golden & Paige Averett, “Facial Expression Recognition Deficits and Faulty Learning: Implications for Theoretical Models and Clinical Applications,” *Intern’l Journal of Behavioral Consultation and Therapy*, Vol. 5, No. 1.⁵ Facial expressions convey emotional cues, and accurate recognition of these cues is necessary for evaluating interpersonal interactions and for the subsequent application of appropriate social skills. (*Id.*) Research has shown support for the association between facial expression recognition (FER) abilities and social competency, relationship difficulties, and various psychological and psychiatric conditions, including anxiety, bipolar disorder, and psychopathology. (*Id.*) Other studies have shown support for associations between FER deficits and childhood maltreatment and attachment. (*Id.*) According to emotions theorists, the inability to recognize nonverbal forms of emotional expression can negatively affect intra-and interpersonal behavior. It may serve as a risk factor for poor adjustment and future adverse outcomes. (*Id.*)

“The middle and lower face are noted to be very influential with regards to emotional recognition.” Nour Mheidly, et al., “Effect of Face Masks on Interpersonal Communication During the COVID-19 Pandemic,” *Frontiers in*

⁵ <https://files.eric.ed.gov/fulltext/EJ861352.pdf>.

Public Health.⁶ Children need to see the mouth to recognize a neutral expression and “is best for recognizing the emotion of happiness. (Id.). Children’s ability to recognize fear, surprise, disgust, and anger is based on information from the upper, middle, or lower face; children can recognize fear, surprise, and anger using expressions involving the lower face, and disgust using expressions involving their being able to see the middle face. (Id.). “While the upper face is also pivotal for the development of emotional expressions, the roles of the middle and lower face cannot be understated.” (Id.). In sum, if human dignity for children means anything, especially for children, it can mean nothing if it does not include the freedom from being forced to cover one’s face. (Id.).

5) Forced masking violates Montana law.

a. Revised Policy 1905 violates Senate Bill 400:

On October 1, 2021, Senate Bill 400 took effect as the law of Montana. Senate Bill recognizes the interest and role of a parent in the care, custody, and control of their children. It affirmed the unalienable right under Montana’s Constitution to parent one’s children, which includes the fundamental right to nurture and direct a child’s health care and education. (See, copy of Senate Bill 400, attached hereto as **Exhibit J**).

⁶ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7755855/>

Under Senate Bill 400, the School Districts are prohibited from interfering with the fundamental rights of parents to direct the education, health, and mental health of their children. (Id.). The only exception to this prohibition is – like the constitutional test for the mask mandate itself – is if the School Districts can demonstrate that the interference furthers a compelling government interest *and* is narrowly tailored and the least restrictive means available for the furthering of the interest. (Id.).

The School Districts are interfering with the Parents’ rights to direct the education, health care, and mental health of their children by forcing those children to wear face masks against the directives those children have received from their parents. The School Districts are unlawfully denying the parents the option to determine if their child is best served with a mask.

In their Motion to Dismiss the School Districts argued against SB400 by claiming that masks were not medical devices. Parents refuted that meritless claim by showing the Food and Drug Administration, responsible for regulating masks intended to have an impact on Covid-19, treats face masks for this purpose as “medical devices.” (See, Response to Motion to Dismiss, Exhibit A). In addition, this argument ignores that SB400 is not limited to a parent’s decision on

medical care, but also gives Parents the right to direct their children's education, which the evidence shows is harmed by forced mask use.

Like with the constitutional analysis of the masking mandate, the same test applies to whether the School Districts can violate SB400. Because the School Districts cannot prove a compelling state interest served by a forced student masking policy as the least restrictive means, the policy cannot violate SB400.

b. Revised Policy 1905 violates Montana's quarantine authority:

Forced masking policies is considered a "quarantine" under Montana law. Mont. Admin. R. 37.114.101(29). A "quarantine" is those measures required by a *local health officer or the department* to prevent transmission of disease to or by those individuals who have been or are otherwise likely to be in contact with an individual with a communicable disease." (*Id.*, emphasis added). The School Districts argued in their Motions to Dismiss that masks are intended to "mitigate the spread of Covid-19 in their schools." (Motion, p. 8).

The authority to quarantine is squarely placed with the local or state health department, not the School Districts. Mont. Admin. R. 37.114.101(29).

If a communicable disease requires quarantine of contacts, a local health officer or the department shall institute whatever quarantine measures are necessary to prevent transmission, specifying in writing the person or animal to be quarantined, the place of quarantine, the frequency with which possible or known contacts must be medically observed to

determine if physiological signs of the disease are occurring, and the duration of the quarantine.

Mont. Admin. R. 37.114.307.

The local and state health departments have not issued a health directive requiring school-aged children to wear masks. Forced masking is an unlawful quarantine without local or state health department directive.

c. Revised Policy 1905 violates the School District's governing policies:

The School District cannot implement a quarantine and it cannot also abdicate its authority to an unelected Superintendent to make decisions under Revised Policy 1905. Under Montana law and their own internal policies, the School District's Board of Trustees have the ultimate responsibility for the policies that govern Yellowstone County children and to provide these children an equal and quality education. (Article X, Montana Constitution).

Montana law mandates that the School Boards hold the sole responsibility for adopting policies that govern and promote education and safety. Article X, §8; Mont. Code Ann. §§20-9-309(2)(h) and 20-3-324; Admin. R. Mont. 10.55.701(2)(s) and 10.55.721 (2021).

Boards of Trustees may adopt various policies to govern its internal procedures, Montana law and the School District's internal policy prohibit the

School Districts from abdicating to another person, board, or entity their ultimate responsibilities. This limitation includes district superintendents, who are subject to the control and direction of the Boards of Trustees and adopt administrative plans for carrying out the School Board's policies, but are not allowed to make the policies themselves. "The district superintendent is the executive officer of the trustees and, subject to the direction and control of the trustees . . . shall implement and administer the policies of the trustees of the district." Mont. Code Ann. § 20-4-402(2). District superintendents are not elected, accountable to the public, or required to make their decisions within the constitutional confines of public notice and public rights to participate.

The SD2 policies state that "[o]n controversial matters or on certain other matters identified by the Board, the Superintendent shall submit proposed procedures to the Board for review prior to their adoption." (School District 2 Policy 1312, attached hereto with SD2 School Board Policies as **Exhibit K**). The Board of Trustees have a responsibility to review and limit any decision by the district superintendent in this regard. Covid-19 mitigation efforts, including their scope and efficacy and application to school-aged children, is a "controversial matter" as demonstrated by the rallies, letters, protests, calls, and correspondence regarding these issues.

The Elysian Policy requires the Superintendent to confer with the Board of Trustee and call a special meeting if a mask mandate is required. Elysian Policy 1905, stating “If a mask mandate is deemed necessary by the superintendent based on the above metrics, the superintendent will discuss with the School Board Chair in regards to calling a special board meeting, if necessary.” (Exhibit Q, *infra*). As discussed below, neither SD2’s nor Elysian’s Superintendent followed the directives of the School District’s Policies when implementing a face covering mandate.

i) School District 2 Policy 1905.

When the Board of Trustees adopted Policy 1905 in January of 2021, it claimed to be implemented during the “state of emergency declared by the Board of Trustees.” (Policy 1905, Exhibit K).

The Policy stated:

The School District requires all staff, volunteers, visitors, and school-aged students to wear a face covering while present in any school building, regardless of vaccination status. The School District also requires all staff, volunteers, visitors, and school-aged students to wear a face covering while present at any outdoor school activity with fifty (50) or more people where physical distancing is not possible or is not observed. Face covering means disposable or reusable masks that cover the nose and mouth. The School District will provide masks to students, volunteers, and staff, if needed. If a student or staff wears a reusable mask, the School District expects that the masks be washed on a regular basis to ensure maximum protection.

On July 19, 2021, the Board of Trustees amended the Policy 1905 to give the Superintendent authority to implement a forced mask mandate. (See, Revised Policy 1905, adopted at July 19, 2021 Meeting, attached as Exhibit K). Again, this revised policy was said to have applied during the Covid-19 “state of emergency declared by the Board of Trustees or other local, state or federal agency, official or legislative body.” (Executive Summary to July 19, 2021 Board Meeting, attached with SD2 Minutes as Exhibit L). There is no state of emergency declared by the Board of Trustees. There is no state of emergency declared by any local, state, or federal agency, official or legislative body. This basis for Revised Policy 1905 is non-existent.

Based on Policy 1905, the SD2 required masks be work in its school buildings for the remainder of the 2020-2021 school year. Yet, during the summer 2021 session, SD2 did not require students or staff to wear a face covering. The summer 2021 session proceeded with full education, without any online learning delays or interruptions due to Covid-19.

On Friday afternoon of July 16, 2021 (4:00 p.m.) the SD2 Board placed as an agenda item for the Monday, July 19, 2021, 5:30 p.m. SD2 Board meeting the issue of the Superintendent’s authority regarding SD2 Policy 1905. This time frame was not proper notice to protect the Parents’ Constitutional Rights to

participate (Article II, §8) and to know (Article II, §9). (See, Agenda included with SD2 Minutes in Exhibit L).

At the July 19, 2021 meeting, the SD2 Board suspended its regular policies for the duration of the meeting and took action with only one reading to modify SD2 Policy 1905. (See, Minutes regarding July 19, 2021 Meeting, Exhibit L). The SD2 Board has only twice suspended an internal procedural policies for the duration of a single meeting. Both times this suspension was of the 3 Reading Policy and regarded implementation of the controversial Policy 1905 regarding forced student masking. Parents have not had an adequate ability to know and participate in the adoption of Policy 1905.

During the July 19, 2021 meeting, the SD2 Board amended SD2 Policy 1905 to give Greg Upham, the Billings Public School District No. 2 Superintendent (the “SD2 Superintendent”) full “discretion” to force student masking or make masks optional within the school buildings. (Exhibits K and L). Again, this revised policy was not subject to three readings.

As revised, the SD2 Policy 1905 gives the SD2 Superintendent complete and unfettered authority to make all policy decisions regarding forced student masking. It reads:

At the discretion of the Superintendent, the The School District requires all staff, volunteers, visitors, and school-aged students to wear a face covering while present in any school building, regardless of vaccination status. At the discretion of the Superintendent, the The School District also requires all staff, volunteers, visitors, and school-aged students to wear a face covering while present at any outdoor school activity with fifty (50) or more people where physical distancing is not possible or is not observed. Face covering means disposable or reusable masks that cover the nose and mouth. The School District will provide masks to students, volunteers, and staff, if needed. If a student or staff wears a reusable mask, the School District expects that the masks be washed on a regular basis to ensure maximum protection. The Superintendent is directed to brief the Board regularly concerning the District's COVID-19 protocols including required masking.

(Revised Policy 1905, included with Policies under Exhibit K).

Revised Policy 1905 contains no limitations, no provisions regarding an open meeting or public comment, no end date, and no criteria or standards by which the Superintendent will be judged to set any policy regarding forced student masking. (Id.). There is nothing in SD2 Policy 1905 that evaluates the policy's effectiveness or necessity. (Id.). The SD2 Superintendent has, with the revision of SD2 1905, stepped into the shoes of the SD2 Board of Trustees. His only obligation is to "brief" SD2, but there is no provision anywhere within the Policy that gives the SD2 School Board authority to review, overturn, or correct the Superintendent's decision. The Board of Trustees have told the public it has nothing to say on the policy and all communications are directed to the SD2 Superintendent. (Interview, attached as **Exhibit M**).

On August 6, 2021, the Governor of Montana stated that local school boards should consider public comment when deciding to force student masking. This statement comports with the rights provided by the Montana Constitution within Article II, §§8 and 9 and Mont. Code Ann. §2-3-203(1) regarding the public's right to know and participate in school board decisions, and the open and transparent transaction of business by school boards. (Aug. 6, 2021 Letter, attached as **Exhibit N**).

On August 16, 2021, during the SD2 Board of Trustee's regularly scheduled meeting, public comment was held regarding the issue of whether under SD2 Policy 1905 student masking should or should not be forced during the 2021-2022 school year. Public comment during the meeting was overwhelmingly in favor of keeping the student masking an optional decision for parents. (Minutes, Exhibit L).

On August 19, 2021, the SD2 Superintendent announced his decision regarding student masking within SD2 Policy 1905 was to keep them optional for the 2021-2022 school year.

On August 21, 2021, a mere two days before school started, the SD2 Superintendent, without a noticed meeting and without public opportunity to participate or comment, unilaterally changed the policy of Billings Public School

District No. 2 to force student masking. (8/21/21 Decision, attached with SD2 Superintendent Communications under **Exhibit O**).

The basis for his decision was stated as an “outbreak” on the Skyview High School football team. (Id.). The public, including many parents of children this decision would affect, were prevented of ever having an opportunity to understand the factors going into the Superintendent’s decision, a chance to speak to them, or ability to submit countering evidence to participate in the decision itself. The public’s and parents’ rights to know and participate were violated.

On August 22, 2021, a statement produced by the SD2 Board stated that the SD2 Superintendent changed the forced student masking policy to make masks mandatory for all staff, students, and visitors in any school building. (8/22/21 Statement, Exhibit O). This statement, entitled *Billings Public Schools Face Covering Guidelines and Requirements*, gave rationale for the decision that said nothing about the Skyview High School football team “outbreak,” which was the SD2 Superintendent’s rationale, but rather stated that the reasons for the last minute change of mind was the presence in Montana of the “Delta Variant” of the Covid-19 virus and the fact that children younger than age 12 were not approved for vaccination against Covid-19. (Id.).

The presence of the Covid-19 Delta Variant and inability of children younger than age 12 to get a Covid-19 vaccine are both conditions that existed well before August 21, 2021, and were not the stated reason for the SD2 Superintendent's last-minute change of the forced student masking policy. (Id.).

There was no Skyview "outbreak" to warrant forced student masking. The internal evidence from Defendant School District 2 and the Department of Health and Human Services ("DPHHS") showed that immediately before August 21, 2021 there was less than 0.01% of the Skyview Highschool population with Covid-19. (Data, attached as **Exhibit P**). This was hardly an "outbreak."

After making his unilateral decision, the SD2 Superintendent directed school principals to force children, including those of the Parents, to wear masks regardless of their parents' lack of consent and objection to their children wearing face coverings during the school day. SD2 Superintendent also threatened SD2 employees with firing if they did not comply. (See, 8/22 Memorandum, Exhibit O). They complied.

The SD2 Superintendent set no end date on the forced student masking. He omitted any criteria to judge the efficacy of the policy. There are absolutely zero standards within the policy to measure its success, its duration, its limitations, or how parents of children within SD2 can address problems surrounding the policy.

The SD2 School Board does not have an emergency declaration regarding Covid-19. Neither the local board of health nor State of Montana have issued an emergency declaration regarding Covid-19. By its clear language, SD Policy 1905 is contingent upon such declaration being in place. “This policy applies during the COVID19 state of emergency declared by the Board of Trustees or other local, state or federal agency, official, or legislative body.” Therefore, without the emergency declaration, SD Policy 1905 is no effective.

ii) The Elysian Policy 1905

In some ways, the School Board for Elysian School District No. 23 (the “Elysian Board”) followed the SD2 Board’s actions. On March 2, 2021, the Elysian Board adopted the original Policy 1905, (the “Elysian Policy 1905”). (Elysian School Board Policies, attached as **Exhibit Q**). The policy was revised on June 8, 2021, August 12, 2021, and August 18, 2021. (Id.). Again, the policy states that “This provision is required due to the COVID-19 state of emergency declared by the Board of Trustees or other local, state or federal agency, official, or legislative body.” There is no state of emergency declaration by the Elysian Board or the state, local or federal agencies governing the Elysian Board. Therefore, this Elysian Policy 1905 is no longer in effect. (Id.)

The Policy read:

The School District will make optional for all staff, volunteers, visitors, and school-aged students to wear a face covering, mask, or face shield while present in any school building, regardless of vaccination status. The School District will provide masks to students, volunteers, and staff, if needed. If a student or staff member wears a reusable mask, the School District expects that the masks be washed on a regular basis to ensure maximum protection.

On August 18, 2021 the Elysian Board held a special meeting wherein a Trustee made a motion to require masks be forced. (Id.). The Elysian Board voted to reject the motion making Elysian Policy 1905 mandatory, keeping the policy optional. (Id.). In so doing, the Elysian Board adopted additional language that gave the Superintendent power to override the optional masking policy and mandate student face coverings under certain circumstances.

Each week the superintendent receives the Yellowstone County Schools Weekly Report from the Yellowstone County Unified Health Command. If that report shows two of the four indicators in RED;
OR

2. Communication between the school administrators and the public health authorities state there is a high outbreak in our area; OR
3. An outbreak takes place at Elysian School noticed by the Administration and Nurse at Elysian

The superintendent shall coordinate with the county health department and Board Chair to determine whether face coverings are a necessary response to a potential or actual COVID-19 outbreak. In the event face coverings are required, the superintendent shall announce the face covering requirement to students, parents, staff, and visitors for the immediate successive school day each day by 3:00 pm. If the superintendent determines masks are required, signs will be installed to inform students, parents, staff, and visitors of

mask requirements while present in the identified District buildings. If a mask mandate is deemed necessary by the superintendent based on the above metrics, the superintendent will discuss with the School Board Chair in regards to calling a special board meeting, if necessary.

It continued that “If any of those metrics has happened, [the Superintendent] has the authority to immediately call for a mask mandate at Elysian School. After initiating an immediate mask mandate, [the Superintendent] will call a special meeting of the board of trustees to discuss. If a determination for face covering is required, Elysian will send messages out via all our media options with instructions.” (Exhibit Q).

The Elysian Policy 1905 did what the SD2 Policy should have done – implement standards to guide the Superintendent’s recommendation regarding masks, and a review and confirmation of the Superintendent’s recommendations by a “special meeting” with the Elysian Board.

On August 19, 2021, the Elysian Board had an optional masking policy for its School District. On August 23, 2021, the Superintendent implemented a mask policy in violation of Elysian Policy 1905. (See, Communication from Elysian Superintendent, attached as **Exhibit R**). This Elysian Policy 1905 is invalid because it was not based on two of four indicators showing RED, a “high outbreak” in the community, or even an outbreak within the Elysian School as

noticed by the nurse or administration. The Superintendent unilaterally implemented a forced mask policy based on “several positive Covid-19 cases in [the] immediate community.” (Id.). He gave no information about the “community” “positive Covid-19 cases” that would enable the public and Parents to evaluate, understand, comment, and participate in the analysis of this alleged data. He failed to address any of the standards for creation and implementation of such policy that were stated in the Elysian Policy 1905. He failed to call a special meeting with the Elysian Board to discuss the decision on forced student masking until 17 days later on September 7, 2021. (Exhibit R, and see Elysian Minutes, attached as **Exhibit S**). Elysian School Board violated Policy 1905.

Elysian District’s Policy 6110 states that the Superintendent is “responsible for the administration and management of the District school, *in accordance with Board policies and directives and state and federal law*. The administrator is authorized to develop administrative procedures to *implement Board policy* and to delegate duties and responsibilities. (*Policy 6110*, Exhibit Q). The Superintendent implements the Elysian Board’s policies, but does not establish or create them.

d) The School Districts unlawfully delegated legislative authority.

“The law-making power may not be granted to an administrative body to be exercised under the guise of administrative discretion. Accordingly, in delegating powers to an administrative body with respect to the administration of statutes, the legislature must ordinarily prescribe a policy, standard, or rule for their guidance and must not vest them with an arbitrary and uncontrolled discretion with regard thereto, and a statute or ordinance which is deficient in this respect is invalid.”

In Bacus v. Lake County, (1960) 138 Mont. 69, 354 P.2d 1056, cited in Williams v. Bd. of Cty. Comm’rs of Missoula Cty., 2013 MT 243, ¶ 44.

“[The] lawful delegation of legislative authority ‘must contain standards or guidelines’ to inform the propriety of the exercise of that power. . . . When no standards or guidelines are present, the exercise of the delegated power may result in ‘arbitrary and capricious’ actions, ‘dependent wholly on the will and whim’ of others. . . . Unlawful delegations of legislative authority run afoul of the due process guarantees of the Fourteenth Amendment to the United States Constitution and Article II, Section 17 of the Montana Constitution.” Williams, ¶45 (dealing with the context of zoning regulations (internal citations omitted)).

The Supreme Court has struck down several statutes and ordinances as unconstitutional delegations of legislative authority. See e.g., In the Petition to

Transfer Territory, 2000 MT 342, 303 Mont. 204, 15 P.3d 447 (holding a statute giving a superintendent the authority to grant or deny petitions to transfer territory among school districts was an unconstitutional delegation of legislative power because the superintendent's broad discretion was “unchecked by any standard, policy, or rule of decision”); Ingraham v. Champion Int’l, (1990) 243 Mont. 42, 793 P.2d 769 (deeming a workers’ compensation statute an unconstitutional delegation of legislative power because it granted the insurer “absolute discretion” as to what terms, under what circumstances, and in what amounts a lump-sum conversion payment could occur); In the Matter of Savings & Loan Activities, (1979) 182 Mont. 361, 597 P.2d 84 (declaring a statute granting the Department of Business Regulation the power to approve or disapprove applications for the merger of savings and loan associations was an unconstitutional delegation of legislative power because it lacked guidelines or substantive criteria); Douglas v. Judge, (1977) 174 Mont. 32, 568 P.2d 530 (holding unconstitutional a statute authorizing the Department of Natural Resources and Conservation to make loans to farmers and ranchers who proposed “worthwhile” renewable resource development projects because the statute lacked adequate parameters). Williams, ¶ 47.

When governmental action does “not provide the necessary guidelines or standards for a protest and as a result, it allowed the use of a person’s property ‘to be held hostage by the will and whims of neighboring landowners’ without reason or justification.” Williams, ¶50, citing Cary v. City of Rapid City, 559 N.W.2d 891, 895. “[A] standardless protest statute allows for unequal treatment under the law and is in clear contradiction of the protections of the due process clause of the Fourteenth Amendment.” (Id.). “[T]he absence of a legislative bypass or review provision impermissibly allowed a potentially small number of neighboring property owners to make the ultimate determination of the public’s best interest.” (Id.). “Without a legislative bypass provision, a small number of agricultural or forest landowners, or even a single landowner, is granted absolute discretion to make the ultimate determination concerning the public’s best interests with no opportunity for review.” Williams, ¶ 53.

As in this line of cases, the Board of Trustees abdicated their policy making duties to the Superintendents, thereby unlawfully delegating their authority to unaccountable and unelected individuals without any limits of time, scope, standard, or review. Policy-making decisions, as was done in this case, must be accompanied by guidelines, standards, or check-and-balances. Cf. In re Petition to Transfer Territory from High Sch. Dist. No. 6, Lame Deer, Rosebud Cty., to

High Sch. Dist. No. 1, Hardin, Big Horn Cty., 2000 MT 342, ¶ 15, 303 Mont. 204, 209, 15 P.3d 447, 450, holding that “[a] statute granting legislative power to an administrative agency will be held to be invalid if the legislature has failed to prescribe a policy, standard, or rule to guide the exercise of the delegated authority. If the legislature fails to prescribe with reasonable clarity the limits of power delegated to an administrative agency, or if those limits are too broad, the statute is invalid.”

Because the School Districts give District Superintendents unfettered ability to create policies on controversial issues, without standards, guidelines, limits, accountability, and without the benefits and burdens of public notice and participation, the decisions are unlawful and should be overturned and the Board of Trustees declared to have failed to uphold their oaths of office and execution of their duties. The Elysian Policy 1905 purports to state standards and guidelines, but the Board of Trustees has allowed the Superintendent to implement a mask mandate without following the standards and guidelines.

e. Department of Health and Human Services Rule:

On August 31, 2021, the Montana Department of Health and Human Services issued an emergency rule in effect for 120 days that governs the School Districts. (See, the “DPHHS Rule” attached hereto as **Exhibit T**). The DPHHS

Rule states the School Districts should consider a parent's objection to his or her child wearing a mask during the school day and consider exceptions to the forced student masking policy that exceed what exceptions are provided for in SD2 or Elysian Policy 1905, including but not limited to emotional, mental, psychosocial, and moral or principled reasons for objecting to the face-covering mandate. (Id.).

After the DPHHS Rule was handed down, the School Districts issued statements to the public maintaining that they were already in compliance with the Rule. (Exhibits 0 and S) These statements acknowledged the import of the DPHHS Rule and its applicability to their School Districts. The School Districts, however, continued to maintain their forced student masking policies without modification or further consideration and claimed that by giving parents the option to pull their children from the school building and enter into an online platform they are considering parents' wishes. (Id.).

In response to the last-minute changes by the SD2 and Elysian Superintendents, the Parents, along with hundreds of others from the public, attempted to communicate with the Superintendents that face-coverings were harmful to their school-aged children and their children's ability to be educated, socialized, and healthy at school. They wrote letters, placed calls, and even tried to speak to the Superintendents in person. (Exhibit H).

The Superintendents have not responded to the Parents' communications, have refused phone calls, and have ignored the Parents' requests for more information or discussion regarding their children's education. (Id.). The Parents and others on their behalf have contacted their elected board trustees and have been ignored or told that the School Boards are deferring all comments on the forced student masking to the Superintendents. (Id., and Exhibits C, O, and S).

Parents who conveyed their lack of consent with their children being masked were ignored and saw their children forcibly masked or excluded from school. (Exhibit H). Some Parents provided notes from the children's medical professionals stating that the wearing of masks would harm the children and their ability to learn. (See, Declaration of J. Johnson, contained in Exhibit H). The Superintendents have ignored those notes and maintained their position.

The School Districts continue to refuse entry to the school building any student, including the Parents' children, who does not consent to wearing a face covering. The School Boards are doing anything but considering the parents' objections on this controversial topic. And, the School Boards have failed to modify their 1905 Policies to include the more expansive exception list carved out by the DPHHS Rule. (Exhibits K, Q, and T).

Initially, the Parents were given *no* option of accommodation for their children if they could not wear a face covering during the school day. Any “school work” that was given to the Parents was different from what was being taught in class and not equal in amount or quality to what was being offered to the in-person children. (Exhibit H). Parents asked their administrators about on-line educational options, but the School Districts did not respond for several weeks when they informed Parents that an on-line educational platform was available.

The on-line educational platform offered is inadequate to provide an equal and quality education as guaranteed by the Montana Constitution under Article X. (Exhibits C and H). The School Districts have admitted on-line offering for schooling is wholly insufficient for educating children and creates “canyons” of separation from those same-aged children who are educated through in person education. (Exhibit O and see comments specifically about the ineffectiveness of on-line learning attached as **Exhibit U**).

The Parents have determined on-line educational offering is inadequate to educate their children, yet the School Districts ignore the Parents. (Exhibit H). The on-line educational offering is the only option the School Districts advance as an “accommodation” for the Parents. This option was only open until September 3, 2021, and requires a semester-long commitment. (Exhibit O). Parents not

consenting to their children wearing masks after September 3, 2021, are without an on-line offering. And, even if the forced student masking policy is rescinded, children within the on-line offering are not allowed to return to school despite the termination of the very reason for on-line education being offered.

The educational “alternative” for those who want to opt out of forcing their students to mask is inconsistent to the educational alternative for those who opt out of the immunization requirements of the School Districts. In violation of Montana law, the School Districts are not making effective accommodations to the forced student masking policies for any parent who has determined it is not in the best interests of his or her child to wear a mask during the school day.

The forced masking imposes restrictions on Parents’ children without considering whether the children are infected or reasonably believed to be infected with a communicable disease. The forced masking does not consider or accommodate children’s individual medical or psychological needs under particular circumstances such as autism and asthma. It does not consider or accommodate children’s individual educational or developmental needs. It has no end date. The forced student masking sets a precedent and foreshadows an intention to impose a universal vaccine mandate when it becomes available for those aged 0-19.

D. On a *prima facie* showing, the Court is authorized to issue a preliminary injunctive relief to minimize irreparable harm to fundamental constitutional rights.

Based on applicable findings of fact and conclusions of law, district courts have broad discretion to grant preliminary injunctive relief on any of the five grounds enumerated in §27-19-201, MCA. Driscoll v. Stapleton, 2020 MT 247, ¶32, 401 Mont. 405, 413, 473 P.3d 386, 391. In considering whether to issue a preliminary injunction, a district court must exercise its otherwise broad discretion only “in furtherance of the limited purpose of [a] preliminary injunction[:] to preserve the status quo and minimize the harm to all parties pending final resolution on the merits.” (Id., ¶14 (string citation omitted)). The “status quo” is the “last actual, peaceable, non[-]contested condition which preceded the pending controversy.” (Id.) In this case, the noncontested status quo was a parental choice in student masking.

The Montana Supreme Court has held the “status quo” does not mean the condition extant at the filing of the “pending” lawsuit, but instead is “the last actual, peaceable, noncontested condition which *preceded* the pending controversy.” Weems v. State by & through Fox, 2019 MT 98, ¶26, 395 Mont. 350, 440 P.3d 4; and see, Davis v. Westphal, 2017 MT 276, ¶24, 389 Mont. 251, 405 P.3d 73. The Ninth Circuit Court of appeals recently explained the concept in

this way: “The ‘purpose of a preliminary injunction is to preserve the *status quo ante litem* pending a determination of the action on the merits.’” Boardman v. Pac. Seafood Grp., 822 F.3d 1011, 1024 (9th Cir. 2016) (quoting Sierra Forest Legacy v. Rey, 577 F.3d 1015, 1023 (9th Cir. 2009)). “The *status quo ante litem* refers not simply to any situation before the filing of a lawsuit, [which c]ould lead to absurd situations, in which plaintiffs could never bring suit once [unlawful] conduct had begun,” but “instead to ‘the last *uncontested* status which preceded the pending controversy.’” GoTo.com, Inc. v. Walt Disney Co., 202 F.3d 1199, 1210 (9th Cir. 2000), quoting Tanner Motor Livery, Ltd. v. Avis, Inc., 316 F.2d 804, 809 (9th Cir. 1963) (emphasis added), Boardman, 822 F.3d at 1024.

Here, the condition that “preceded” the controversy over forced student masking was parental choice. The rights the Parents seek to preserve in *status quo* are their rights guide their children’s education and health care, to know about and participate in actions the School Districts take affecting their children, and to have School Districts that follow Montana law in these matters, and their children’s rights to a quality education, privacy regarding medical decisions, and the human dignity of their individuality. The Parents’ Complaint “contests the later-enacted [School District rules’] alleged infringement on those rights.” (Id.). To “preserve the *status quo*,” the Court should enjoin the School Districts’ prima facie

infringement on the Parents’ constitutional rights to restore them to where they were before the contested infringement took place. In sum, on “evidence or competent affidavit considered upon hearing, a court may issue a preliminary injunction at any time before final judgment.” Davis, ¶24. It should do so here.

Beyond that, a district court need find only that parties seeking a preliminary injunction “made a *prima facie* showing she will suffer a harm or injury—‘whether under the great or irreparable injury’ standard of subsection (2), or the lesser degree of harm implied within the other subsections of § 27-19-201, MCA.” (Id.). “Prima facie is defined as ‘at first sight’ or ‘on the first appearance but subject to further evidence or information.’” (Id.).

For a preliminary injunction, the loss of a constitutional right constitutes an irreparable injury. (Id., ¶15). “Because a preliminary injunction does not decide the ultimate merits of a case, however, parties need to establish only a *prima facie* violation of their rights to be entitled to a preliminary injunction—even if such evidence ultimately may not be sufficient to prevail at trial.” (Id., citing cases and 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948.3, 201 (3d ed. 2013) that “[a]ll courts agree that a plaintiff must present a prima facie case but need not show a certainty of winning”).

E. Plaintiff's request for a TRO is warranted under Mont. Code Ann. §§27-19-314 through 316.

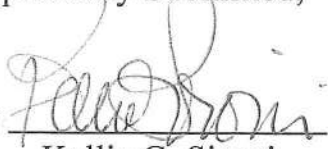
Montana law authorizes the court to temporarily restrain the School Districts from violating the Parents' fundamental constitutional rights before the show cause hearing on the injunction request. Mont. Code Ann. §27-19-314. Such a TRO may be issued without notice to the adverse party only if it clearly appears that delay would cause immediate and irreparable injury before the adverse party could be heard in opposition. The applicant certifies to the Court that it notified the adverse party about this Motion. Mont. Code Ann. § 27-19-315. In this case, the Exhibits attached hereto demonstrate that further delay will cause immediate and irreparable injury to the rights of the Parents and their children. The exigency of circumstance supports issuing of a TRO without notice.

REQUEST FOR RELIEF

Accordingly, Parents request the Court to enter a TRO and issue an Order to Show Cause for a hearing on why a preliminary injunction should not be issued in the Parents' favor and against the School Districts barring the forced student masking pending a final resolution on the merits.

DATED this 20th day of December 2021.

Respectfully Submitted,

By: 
Kellie G. Sironi
Attorney for Parents

CERTIFICATE OF SERVICE

I certify that on 20th of December 2021, I mailed a true and correct copy of the foregoing, via email, to the following:

Laurence R. Martin, Esq.
Roberta A. Berkhof, Esq.
2825 3rd Ave. N., Ste 100
Billings, MT. 59101
Attorney for Defendants

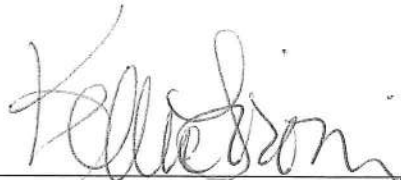

Kellie G. Sironi

EXHIBIT A

Mask Required vs Mask Optional Schools

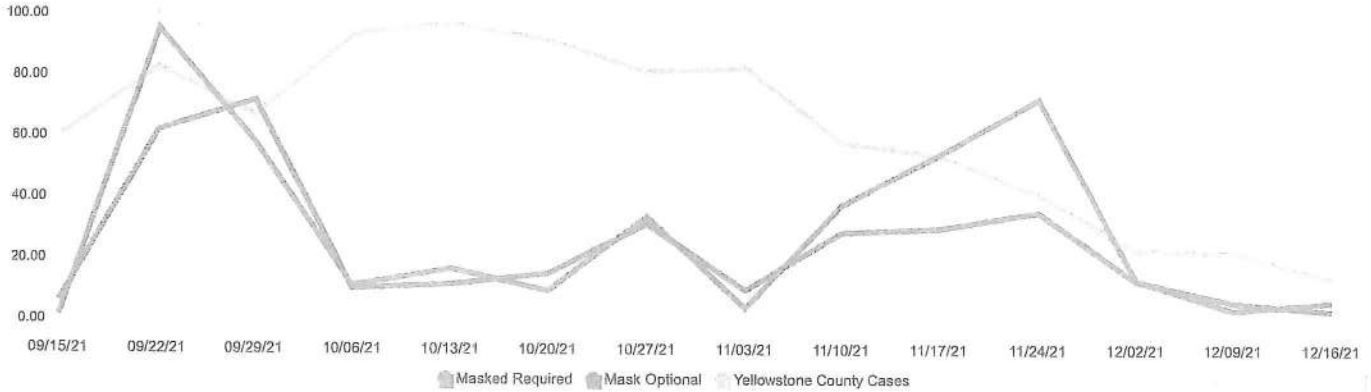
Schools with Mask Mandates compared to schools with no Mask Mandates.

report dates: between 09/01/2021 - 12/17/2021

*Enrollment Numbers were not readily available for all schools. Estimates based off of Best Available Data and [State OPI Website](#)

Case numbers are based on data provided by the Montana [DPHHS Demographics & Billings Public Schools](#).

Masked Required vs Mask Optional Schools Cases per 10,000 students (Residents for Yellowstone County Cases)



BLUE -The number of new reported cases of covid-19 per week in schools with a mask mandate that requires a face covering on school property, per 10,000 students, is shown as a blue line. GREEN -The number of new reported cases of covid-19 per week in schools where masking is optional on school property, per 10,000 students, is shown as a green line. The YELLOW area shows covid-19 cases reported in Yellowstone County by [RiverStone Health](#) on their covid-19 dashboard by week per 10,000 residents. The calculation used to determine student's cases is: (# covid cases * 10,000) / enrollment. The calculation used to determine county cases is: (# covid cases * 10,000) / County population.

Between 09/01/2021 - 12/17/2021 we found that Mandatory Mask Schools reported a higher percent of cases in 9 out of 14 weeks, while Mask Optional Schools reported a higher percent of cases 5 times during that same period, when adjusted for cases per 10,000 students.

Mask Required Schools

Mask Required Schools: 42 Total Cases:778

*Est Enrollment: 18,325 || Percentage Positive: 4.25%

School:	Total Cases:	ENR:	Percent:
Alkali Creek School	23	332	6.93%
Arrowhead School	26	417	6.24%
Beartooth School	8	352	2.27%
Ben Steele Middle School	13	802	1.62%
Bench School	8	298	2.68%
Big Sky Elementary	11	358	3.07%
Billings Central High School	5	326	1.53%
Billings Public Schools	14	0	0.00%
Billings Senior High School	76	1,773	4.29%
Billings West High School	76	2,075	3.66%
Bitterroot School	21	300	7.00%
Boulder School	17	485	3.51%
Sum Totals:	778	18,325	4.25%

School:	Total Cases:	ENR:	Percent:
Broadwater School	12	313	3.83%
Burlington School	9	119	7.56%
Canyon Creek School	4	194	2.06%
Career Center School	6	0	0.00%
Castle Rock Middle School	27	682	3.96%
Central Heights School	7	281	2.49%
Eagle Cliffs Elementary	19	403	4.71%
Elysian Elementary School	2	262	0.76%
Elysian Middle School	2	120	1.67%
Elysian School	11	262	4.20%
Highland School	9	250	3.60%
Independent School	9	293	3.07%
Lewis and Clark Middle School	22	717	3.07%
Lincoln Center	4	0	0.00%
McKinley School	8	268	2.99%
Meadowlark School	19	508	3.74%
Medicine Crow Middle School	30	579	5.18%
Miles Avenue School	13	252	5.16%
Newman School	16	219	7.31%
Orchard School	10	283	3.53%
Poly Drive School	14	306	4.58%
Ponderosa Elementary School	14	280	5.00%
Riverside Middle School	19	546	3.48%
Rose Park School	10	245	4.08%
Sandstone School	14	406	3.45%
School District 2	29	0	0.00%
Skyview High School	80	1,617	4.95%
St Francis Catholic School	23	542	4.24%
Washington School	13	262	4.96%
Will James Middle School	25	598	4.18%
Sum Totals:	778	18,325	4.25%

Mask Optional Schools

Mask Optional Schools: 29 Total Cases:253

*Est Enrollment: 7,393 || Percentage Positive: 3.42%

School:	Total Cases:	ENR:	Percent:
Billings Christian School	17	251	6.77%
Sum Totals:	253	7,393	3.42%

School:	Total Cases:	ENR:	Percent:
Blue Creek School	13	178	7.30%
Broadview School	1	148	0.68%
Custer Public School	1	104	0.96%
Elder Grove Schools	19	617	3.08%
Grace Montessori	2	169	1.18%
Graff Elementary School	6	283	2.12%
Huntley Project Schools	24	717	3.35%
Laurel High School	20	632	3.16%
Laurel Middle School	10	593	1.69%
Laurel West Elementary School	3	258	1.16%
Lockwood High School	31	219	14.16%
Lockwood Intermediate School	13	363	3.58%
Lockwood Middle School	9	417	2.16%
Lockwood Primary	8	331	2.42%
Lockwood Schools	3	0	0.00%
Morin Elementary	0	42	0.00%
Mount Olive Lutheran School	1	59	1.69%
New Day School	3	81	3.70%
Pioneer School	6	63	9.52%
Roundup Elementary	8	258	3.10%
Roundup School	11	257	4.28%
Shepherd Schools	20	777	2.57%
Shiloh Christian	0	15	0.00%
South Elementary School	3	115	2.61%
Sunrise Montessori	3	0	0.00%
Trinity Lutheran School	9	168	5.36%
West School	8	258	3.10%
Yellowstone Boys and Girls Ranch	1	20	5.00%
Sum Totals:	253	7,393	3.42%

EXHIBIT B

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

MOMS FOR AMERICA, Billings Affiliate, a non-profit corporation; STAND UP FOR MONTANA, a non-profit corporation; LUKE and BROOKE HUDSON; LUKE ANDERSON; ROB BEDFORD and ADDIE BEDFORD; NEIL FRIEDEL and MYKEL FRIEDEL; JANINE JOHNSON; KEZIAH LAWICKI; PAT MOORE; DEREK RUFF and KELLY RUFF,

Plaintiffs,

vs.

BILLINGS PUBLIC SCHOOL DISTRICT NO. 2; and ELYSIAN SCHOOL DISTRICT NO. 23,

Defendants.

Cause No. DV-21-01151

Judge: Jessica T. Fehr

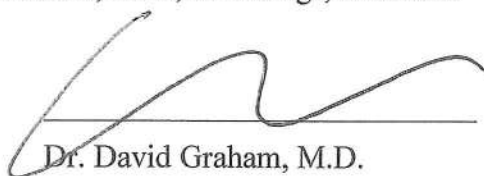
**DECLARATION OF DR. DAVID
GRAHAM, M.D.**

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:

1. I, Dr. David Graham, M.D., am over the age of eighteen (18) years. I am competent to testify to the facts set forth in this declaration and make the statements below based on my personal knowledge.
2. I am a medical doctor, earning my medical degree from the University of Michigan Medical School.
3. I am a Board-Certified practicing infectious disease physician, specializing in a broad array of diseases caused by microorganisms, ranging from flu to hospital acquired infections to pneumonia.
4. I have practiced in Billings, Montana for 18 years.
5. I have written extensively on the Covid-19 virus, including the book From Killer To Common Cold: Herd Protection and the Transitional Phase of Covid-19, (FiPhysician, September 25, 2020).
6. From both my practice as an infectious disease physician, and my survey of the scientific literature in the preparation of my professional writings, I have gained deep expertise and knowledge about the prevention of virus effects using face masks.
7. The function of masks, as they are being used in the school setting in School District 2 or Elysian School Districts, are not providing effective results for the prevention of viral infections from or effects of Covid-19.
8. Masks are not intended to be worn for 6-7 hours per day and any benefit they offer is limited to minutes of protection.
9. The efficacy of masks also is affected by the wearer's correct use of the mask, which is not guaranteed in school-aged children.

10. Using masks for prolonged period of time expose school-aged children to no benefit at all and have no effect in keeping Covid-19 from being present in schools.
11. Because there is no effectiveness of wearing masks within a school setting, any negative harm to a school-aged child in terms of his or her education, mental health, socialization, or otherwise, means the harms outweigh the benefits.
12. If schools want to experience any positive effect of mask wearing, they would have to require school-aged children to wear KN95 masks, which may produce some effect in terms of slowing Covid-19 infections. However, because these masks are intolerable for wearing for long periods of time and children should not cover their faces with them for hours on end, they are not a viable option in schools.
13. I declare under penalty of perjury that foregoing is true and correct.

Dated this 19 day of November, 2021, in Billings, Montana.



Dr. David Graham, M.D.

EXHIBIT C

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MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

MOMS FOR AMERICA, Billings Affiliate, a non-profit corporation; STAND UP FOR MONTANA, a non-profit corporation; LUKE and BROOKE HUDSON; LUKE ANDERSON; ROB BEDFORD and ADDIE BEDFORD; NEIL FRIEDEL and MYKEL FRIEDEL; JANINE JOHNSON; KEZIAH LAWICKI; PAT MOORE; AFFIDAVIT OF ROBIN SCHAUERS DEREK RUFF and KELLY RUFF, Plaintiffs, vs. BILLINGS PUBLIC SCHOOL DISTRICT NO. 2; and ELYSIAN SCHOOL DISTRICT NO. 23, Defendants.	Cause No. DV-21-01151 Judge: Jessica T. Fehr
---	---

State of Montana)
 :SS
County of Missoula)

Comes now, Robin Schauers, and testifies as follows:

1. I am over the age of eighteen (18) years. I am competent to testify to the facts set forth in this declaration and make the statements below based on my personal knowledge.
2. I am currently a Paraeducator and have been in that role for 12 years. I interact with school-aged children on a daily basis.
3. As a part of my job, I see what forcing students to wear masks is doing to the students, and the negative effects on them.
4. Forcing students to wear masks all day at school harms their ability to be educated.
5. Masks keep a child from seeing important aspects of their education: the board, all of the papers, desk surfaces. They are a distraction to many children from being able to concentrate or focus on the lesson.
6. Masks keep children from hearing everything being said or being fully heard by the teacher

or the other students. If they are learning phonics and articulation, masks impeded the process and causes children to repeat themselves or give up after trying to understand.

7. Masks decrease precision in phonics instruction and learning.

8. Masks keep children from properly socializing. Part of learning is reading facial cues or learning to understand nonverbal communication. These abilities directly relate to emotional well-being and being prevented from developing those skills increases depression and mental health issues.

9. Masks interfere with lip reading, which some students rely on. They interfere with proper breathing, and make it very hard to be a student wearing glasses.

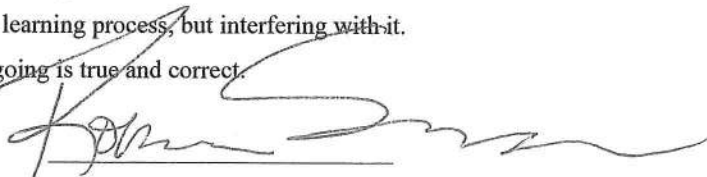
10. Masks tend to exacerbate the anxiety and stress of attending school and reduce some students' participation in and engagement with social settings. They make some children more timid or introverted.

11. Masks increase the risk of nose bleeds, tooth, lung, or skin infections, and headaches.

12. In my experience, masks are not aiding the learning process, but interfering with it.

13. I declare under penalty of perjury that foregoing is true and correct.

Dated this 12 day of November, 2021.



SUBSCRIBED and SWORN to before me this 12th day of November, 2021.

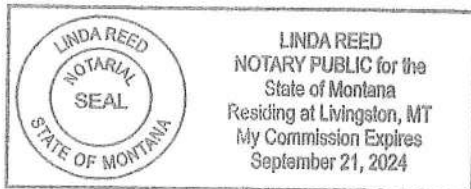


Notary Public for the State of Montana

Printed Name:

Residing at: _____, Montana

My commission expires:



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Cause No. DV-21-01151

Judge: Jessica T. Fehr

AFFIDAVIT OF KATIE GILBERT

State of Montana)
 :SS
County of Missoula)

Comes now, Katie Gilbert, and testifies as follows:

1. I am over the age of eighteen (18) years. I am competent to testify to the facts set forth in this declaration and make the statements below based on my personal knowledge.

2. I am an elementary education educator and am in my 14th year in education (13th as a classroom teacher). I currently teach kindergarten.

3. I witness firsthand the negative effects on students due to being forced to wear masks all day at school.

4. Forced student masking harms a child's education in many ways. It interferes with the proper articulation and understanding of instruction and decreases precision in phonics instruction and learning. It creates a distraction to unimpeded learning, preventing a child from reading or conveying facial social cues that directly relate to emotional well-being and increasing depression and mental health issues. It interferes with breathing and increases the problems for my students wearing glasses (fogging up, falling down, etc.).

5. Masks interfere with students seeing classroom boards, papers, screens, desk surfaces and surrounding safety conditions. They can decrease a student's ability to think or concentrate. Masks tend to exacerbate the anxiety and stress of attending school and reduce some students' participation in and engagement with social settings. They obscure non-verbal communication, which is a crucial part of a student's learning.

6. Masks can also increase a student's risk of physical health diseases that distract from effective learning, such as tooth, lung, or skin infection.

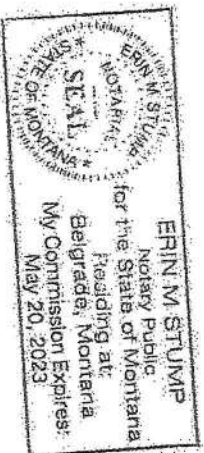
7. Masks are not aiding in learning, they are interfering with learning.

8. I declare under penalty of perjury that foregoing is true and correct.

Dated this 8 day of ^{November}~~August~~, 2021.

Kate Gilbert

SUBSCRIBED and SWORN to before me this 27 day of November, 2021.



ERIN M. STUMP

Notary Public

for the State of Montana

Residing at:

Belgrade, Montana

My Commission Expires:
May 20, 2023

Erin M. Stump
Notary Public for the State of Montana

Printed Name:

Residing at:

Montana

My commission expires:

Mr. Upham, Mr. Robison and Board members,

I am writing this email in the hopes that you do truly read it and take it into consideration as you have stated at your meetings. I understand that this is a very difficult time to be in a position of leadership. I encourage all of you to take that role seriously and listen to the people in our community, including teachers. We are the ones in the trenches every day trying to teach our students, love them, take care of them and enforce a mask mandate that was put upon us forcibly. I have been a teacher for 23 years, 16 of those in title schools in SD2. I love my job, my students and my school. But, I also feel like I need to stand up for my students, parents and myself in this situation. I have been debating sending this email for a long time, but haven't for fear of retribution or backlash. I can't continue to stand by any longer.

This mask mandate is dividing our community and creating hostile work environments at our schools. You have created an environment of anger, fear, anxiety and disgruntled employees. I am so thankful for the school I work at that we have a strong "family", but I know of several schools where this is not the case. Please take this into consideration before you lose valuable employees who have worked tirelessly throughout this pandemic to do what is best and are just worn out.

My main concern, however, is for the students. These young kids are being forced to wear a mask all day, endure headaches, skin rashes, nose bleeds, etc. to "help their community". This is quite a burden to put on these children! They are taking the brunt of this pandemic and it is, quite honestly, just wrong! I have watched several of your board meetings with all of the #'s and data being shown by Mr. Felton. However, not once, has it been shown that these schools with mandated mask policies are doing any better than schools with an optional policy. Kids can get COVID, regardless if they wear a mask or not, it's that simple. The schools with optional policies are not seeing a huge # of cases, anymore than we are. It makes zero sense to keep enforcing this on our students! The data Mr. Felton has been presenting shows that our hospitals have high #'s, and I empathize with them. I have many friends who are nurses and this is an incredibly hard and exhausting time. However, the hospitals are not being overrun by children taking up COVID beds. In fact, as you know, children typically have very mild cases. So, once again, why are we making the kids take on the responsibility of "caring for the community"? Also, when you show these graphs and data of case #'s in children, it seems somewhat irrelevant. These are CASES, not hospitalizations and deaths! Kids are going to get sick, they are going to get COVID, they are going to get other viruses - the masks are NOT stopping that! I'm sure you have had peer reviewed studies presented to you showing that masks are not making a significant difference. I have read several of them, so if you need more information I'd be happy to provide it.

I don't like to gripe about a problem without giving some kind of solution. I am not anti-mask. I am anti-mandate. One solution could be to put an optional policy back in place & have a consent form for parents to sign stating they will not hold the school district

liable if their child gets sick. Seems like an easy solution to a hard problem. Is this a possibility? If not, can you give me an explanation of why it won't work?

Thank you for your time and I look forward to hearing from you.

--

Tanya Watt

2nd grade

Newman Elementary

mask mandate 61 views



Tanya Watt

Oct 22, 2021, 2:28:25 PM



to board...@billingssschools.org, Greg Upham, Douglas Robison

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EXHIBIT D

Impact of the COVID-19 Pandemic on Early Child Cognitive Development: Initial Findings in a Longitudinal Observational Study of Child Health

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ABSTRACT

Since the first reports of novel coronavirus in the 2020, public health organizations have advocated preventative policies to limit virus, including stay-at-home orders that closed businesses, daycares, schools, playgrounds, and limited child learning and typical activities. Fear of infection and possible employment loss has placed stress on parents; while parents who could work from home faced challenges in both working and providing full-time attentive childcare. For pregnant individuals, fear of attending prenatal visits also increased maternal stress, anxiety, and depression. Not surprising, there has been concern over how these factors, as well as missed educational opportunities and reduced interaction, stimulation, and creative play with other children might impact child neurodevelopment. Leveraging a large on-going longitudinal study of child neurodevelopment, we examined general childhood cognitive scores in 2020 and 2021 vs. the preceding decade, 2011-2019. We find that children born during the pandemic have significantly reduced verbal, motor, and overall cognitive performance compared to children born pre-pandemic. Moreover, we find that males and children in lower socioeconomic families have been most affected. Results highlight that even in the absence of direct SARS-CoV-2 infection and COVID-19 illness, the environmental changes associated COVID-19 pandemic is significantly and negatively affecting infant and child development.

INTRODUCTION

Since the beginning in March of 2020, the outbreak of the SARS-CoV-2 (COVID-19) pandemic in the USA, and the accompanying economic shut-down has brought about significant upheavals to the social, economic, and public health environments in which children live, grow and play. While children, and those under age 5, have largely been spared from the severe health and mortality complications associated with SARS-CoV-2 infection [1, 2], they have not been immune to the impact of the stay-at-home, masking, and social distancing policies. These policies, meant to limit spread of the SARS-CoV-2 virus, have closed daycares, schools, parks, and playgrounds [3, 4], and have disrupted children's educational opportunities [5], limited explorative play and interaction with other children [6], and reduced physical activity levels [7]. From the beginning of the pandemic, there has been concern that these public-health policies would adversely impact infant and early child development and mental health. While there is no past analogue or example of non-conflict related wide-spread and prolonged lock-downs from which to draw information from, concern for child development stemmed principally from the known impact that family and home stress, parent and child anxiety, lack of stimulating environments, and other economic and environmental adversities can have on the developing infant and child brain [8, 9].

Like many other states and regions in the United States, elementary, secondary, and post-secondary schools were closed throughout the state of Rhode Island (RI) to in-person instruction from March 16, 2020 through to the beginning of the 2020/2021 school year. However, with the surge of virus infections in the fall of 2020, most schools in RI continued to operate with fully remote or with hybrid in-person/on-line learning until January 2021. For younger children, daycare centers were also closed in March of 2020, but were allowed to reopen with reduced capacity in June, 2020. Restrictions on daycare capacity remained in effect until June 2021. Broader state-wide travel restrictions and stay-at-home orders were enforced from March to May, 2020, with many businesses operating with reduced on-site work forces and/or work-from-home options until mid-2021. Indoor and outdoor mask policies were also in place throughout 2020 and 2021 following CDC guidance. Despite being one of the smaller US states with a population of just over 1 million, RI has suffered high numbers of SARS-CoV-2 infections, with approximately 154,000 cases of COVID-19 illness and almost 3,000 deaths. RI has mirrored national trends with respect to disproportionate infections and deaths in Hispanic or Latino and Black or African American communities [10, 11] as well as lower income families [12].

From 2009, Brown University and the Warren Alpert Medical School at Brown University has been home to a longitudinal study of child health and neurodevelopment, termed the RESONANCE study. Now part of the NIH Environmental influences on Child Health Outcomes (ECHO) program, the RESONANCE cohort consists of approximately 1600 caregiver-child dyads, who have been continuously

enrolled between 0 and 5 years of age since 2009 and have been followed through infancy, childhood, and early adolescence. This cohort, therefore, offers a unique opportunity to explore the impact of the COVID-19 pandemic on child health trends in RI, which may reflect broader trends in the US.

In the absence of direct SARS-CoV-2 infection, environmental exposures associated with COVID-19 pandemic can affect the developing infant and child through multiple pathways. The human brain is unique in its prolonged developmental timeline [13, 14]. Infants are born with relatively immature brains that, like them, are simultaneously competent and vulnerable. Infants are inherently competent in their ability to initiate relationships, explore, seek meaning, and learn; but are vulnerable and depend entirely on caregivers for their survival, emotional security, modeling of behaviors, and the nature and rules of the physical and socio-cultural world that they inhabit [15]. The infant brain is likewise born with immense capacity to learn, remodel, and adapt, but is sensitive and vulnerable to neglect and environmental exposures that begin even before birth [16-18]. Optimal brain development depends on secure and trusting relationships with knowledgeable caregivers who are responsive to the infant's needs and interests. Neurodevelopmental processes, including myelination and synaptogenesis, for example, are stimulated by external cues and experiences like maternal interaction, and physical skin-to-skin "kangaroo" care, touch, and warmth [19-22]. The brain's adaptive plasticity, however, is a double-edged sword. While positive and enriching environments can promote healthy brain development [23-27], neglect insecurity, stress, and lack of stimulation can impair maturing brain systems and disrupt cognitive and behavioral outcomes [28-30].

Maternal stress, anxiety, and depression in pregnancy can impact the developing fetal and infant brain structure and connectivity, leading to potential delays in motor, cognitive, and behavioral development [31, 32]. It is believed that alterations in fetal exposure to stress-related hormones, including cortisol, affect these changes in brain structure and function [33-35]. Past analysis has revealed strong associations between maternal prenatal stress and anxiety related to maternal or paternal displacement and job loss and infant health (birth weight and gestation duration), mortality, temperament, and cognitive development [36]. Throughout the COVID-19 pandemic, maternal and paternal job-loss, employment furloughs, or increased food / housing insecurity have been experienced by many families. Survey results at the beginning of the pandemic showed significantly increased rates of clinically relevant symptoms of maternal depression and anxiety [37].

Given these changes in children's home, education, and social environments, it is not surprising that cross-sectional and longitudinal studies of child and adolescent mental health throughout the current pandemic have revealed increased stress, anxiety, and depression [38]. Studies of child learning further show reduced academic growth in math and language arts in elementary and high school children [4]. The impact on infant and child cognitive development, however, remains less clear. Despite the

known impact of parent and family stress, economic adversity, reduced parent and peer interaction and other stimulating environments, on child brain development [9], direct observation of reduced development as a result of the COVID-19 pandemic remains elusive, despite early findings of altered temperament in 3month old infants [39].

In this work, therefore, we specifically sought to explore individual and population-level trends in infant and early child neurodevelopment. Analyses of cognitive development, assessed using Mullen Scales of Early Learning [40], a population normed and clinically administered tool that assesses function across the five primary domains of fine and gross motor control, visual reception, and expressive and receptive language via direct observation and performance, provides some of the first direct evidence of the developmental impact of the COVID-19 pandemic. Comparing yearly mean scores since 2011, controlling for age, gender, demographic, and socioeconomic indicators, we find striking evidence of declining overall cognitive functioning in children beginning in 2020 and continuing through 2021. We find that males appear significantly more impacted than females, and that higher socioeconomic status (SES, as measured by maternal education [41]) helps buffer against this negative impact. On a more individual level, we examined longitudinal pre and during-pandemic trends in the same children from 2018 to 2021, again finding declines in ability in 2020 and 2021.

Finally, to examine the impact of the pandemic during pregnancy on subsequent child development, we compared developmental scores in children up to 1 year of age born prior to 2019 and after July 2020 (i.e., those born prior to the pandemic and those whose *in utero* development may have been impacted by the COVID-19 environment for at least the last trimester of pregnancy). Again, we find significantly reduced scores in children born since the start of the pandemic, with lower SES individuals and males more significantly affected. Throughout all analyses, however, we found that the perceived stress of mothers in our cohort was unchanged throughout the pandemic, and was not significantly associated with developmental scores.

These results provide compelling early evidence of the impact of the COVID-19 pandemic, even in the absence of direct SARS-CoV-2 infection, on infant and early child neurodevelopment.

METHODS

All data were acquired in accordance with ethical approval and oversight by the Rhode Island Hospital institutional review board, with informed consent obtained from all parents or legal guardians.

Since 2011, 1224 cognitive assessments were collected from 672 healthy, full-term, and neurotypically-developing children between 3 months to 3 years of age. Repeated measures were separated by at least 1 year (mean = 384 +/- 41 days). A general overview of all child assessment timings are shown in **Figure 1a**. This dataset included 1070 assessments (from 605 children) prior to March 2020; 154 assessments (from 118 children) between March 2020 and June 2021; with 39 children who were born just prior to the pandemic in 2018 and 2019, and following during the pandemic to 2021.

To start, we grouped measures by testing year from 2011 to 2021 and performed an analysis of covariance to compare the three primary composite measures: the early learning composite (ELC), verbal development quotient (VDQ) and non-verbal development quotient (NVDQ) between each pre and during pandemic year-pair; with child age, and maternal education (as a proxy for socioeconomic status, SES) as covariates.

To investigate the cognitive trends more rigorously, we next constructed a series of general linear mixed-effects models that modeled the cognitive measures while taking a step-wise approach to include additional predictive factors, beginning with

$$CM_{i,j} = \beta_{0,j} + \beta_{1,j} \times age_{i,j} + \beta_{2,j} COVID_{model} \quad [1]$$

Where CM is the cognitive measure of interest (ELC, VDQ, or NVDQ) of child j at time-point i . $\beta_{0,j}$ is the intercept and $\beta_{1,j}, \dots, \beta_{n,j}$ are the regression coefficients. $\beta_{0,j}, \beta_{1,j}$ combine a sample fixed effect and a subject-specific random effect (u_j), e.g.,

$$\beta_{0,j} = \beta_0 + \mu_{0,j}, \quad [1b]$$

and

$$\beta_{1,j} = \beta_1 + \mu_{1,j}. \quad [1c]$$

allow individual differences in mean cognitive function and change with age. The $COVID_{model}$ term is a binary factor that is 0 for any testing date prior to March 2020, and 1 for testing dates thereafter. Equation [1] was fit to the complete cohort dataset using the `fitlme` function in Matlab (MathWorks, Cam-

bridge, MA v2019b). The $COVID_{model}$ term allowed us to test the hypothesis that pandemic-related environmental changes are associated with a significant negative change in cognitive functioning.

Building from our simple function, we used a step-wise regression approach to systematically include additional factors and interactive terms in our general model, i.e.,:

$$CM_{i,j} = \beta_{0,j} + \beta_{1,j} \times age_{i,j} + \beta_{2,j} COVID_{model} + \beta_{3,j} SES, \quad [2]$$

$$CM_{i,j} = \beta_{0,j} + \beta_{1,j} \times age_{i,j} + \beta_{2,j} COVID_{model} + \beta_{3,j} SES + \beta_{4,j} Gender_j \quad [3]$$

to control for potential differences in gender and socioeconomic factors in the population. Given past findings associating COVID-19 stay-at-home orders and prematurity or potential low birth weight [42], we further included these birth outcomes as additional predictors,

$$CM_{i,j} = \beta_{0,j} + \beta_{1,j} \times age_{i,j} + \beta_{2,j} COVID_{model} + \beta_{3,j} SES + \beta_{4,j} Gender_j + \beta_{5,j} Birthweight + \beta_{6,j} Gestation \quad [4]$$

Finally, we also tested the interaction between the $COVID_{model}$ and SES and Gender terms to test whether these factors had additive or buffering effects,

$$CM_{i,j} = \beta_{0,j} + \beta_{1,j} \times age_{i,j} + \beta_{2,j} COVID_{model} + \beta_{3,j} SES \times COVID_{model} + \beta_{4,j} Gender_j \times COVID_{model} \quad [5]$$

At each stage of analysis, we examined the parsimonious fit of the model using the Bayesian Information Criterion (BIC) [43], stopping when additional factors no longer improved the model fit. In the final model, we then examined the significance level of each model parameter, specifically the $COVID_{model}$ term, which denotes a potential significant difference in pre- and during pandemic scores.

Recognizing that the analysis from 2011 to 2021 contained differing sets of children we next reduced our dataset to 39 children who were enrolled up to a year prior to the pandemic and who had at least 1 visit before and 1 visit during the pandemic (**Table 1, Figure 1b**). To this reduced set of data, we performed analogous mixed-effects modeling using the series of general linear models constructed above (Eqns. 1 to 5).

Given the potential impact of the pandemic on maternal stress and, consequently, the developing fetal brain, we next compared the cognitive measures in 291 children under 1 year of age who were born

before January 2019 (i.e., their prenatal and first postnatal year of development occurred before the pandemic) to 118 children born after July 2020 (i.e., at least one term of pregnancy and the first post-natal year occurred during the pandemic) (**Table 1, Figure 1c**). As above, we used a mixed-effects approach to model our series of general linear models (Eqns. 1 to 5).

To test whether maternal stress was a potential causative factor, we replaced the Model term in our general linear models with the total score from the perceived stress scale (PSS) [44], a 10-item self-report that provides a continuous scale of perceived and experienced stress due to life situations.

$$CM_{i,j} = \beta_{0,j} + \beta_{1,j} \times age_{i,j} + \beta_{2,j}PSS + \beta_{3,j}SES \times PSS + \beta_{4,j}Gender_j \times PSS \quad [6]$$

PSS scores were obtained from each pregnant mother prior to birth and at each child visit starting in 2017. We performed this analysis twice. In the first set, we used the post-natal scores collected at the same time as the child cognitive measures, in the second, we used the prenatal PSS scores obtained from the mother during pregnancy.

RESULTS

Demographic summaries of the children included in each set of analysis (complete set; children followed pre- and during pandemic; and children under 1 year of age born before and during the pandemic) are shown in **Table 1**.

Results from our ANCOVA comparing each year pre- and during-pandemic year pair is shown in **Table 2**. In general, we find mean ELC values from 2011 to 2019 ranging from 98.5 to 107.3, with standard deviations of 15.2 to 19.7 (**Fig. 2**), in general agreement with the expected mean of 100 and standard deviation of 15. Means and standard deviations for 2020 (March to December) and 2021 (January through Aug) were: 86.3+/-17.9 and 78.9+/-21.6, respectively. Controlling for differences in age and maternal education, we find inconsistent differences in mean ELC between 2011-2019 and 2020, but consistent and significant reductions between 2011-2019 and 2021 ($p < 0.001$). Results are similar for the verbal and non-verbal composite measures (**Fig. 2, Table 2**). In all cases maternal education was a significant and positive factor on ELC, VDQ, and NVDQ measures.

Results from our mixed model analysis using our complete data set are summarized in **Table 3** and reinforce the results obtained from our initial ANCOVA. For each composite score, the model including child age, maternal education, child gender, birth weight, gestation duration, and test timing (pre vs. during the pandemic)), as well as interaction terms of timing, gender, and maternal education was the most parsimonious model (lowest BIC). Across all measures, we found cognitive scores were significantly reduced during the pandemic by 27 to 37 points (or almost two full standard deviations), p values < 0.01 , with higher maternal education, increased birth weight and increased gestation duration being protective; while males were more heavily affected. We did not find significant differences in birth weight or gestation duration overall in the pre vs during pandemic children ($p > 0.3$), **Fig. 3**.

Repeating this set of analysis in the subset of 39 children who were born immediately before the beginning of the pandemic and whom we have followed up over the past 18 months (**Table 4**) presents contrasting results. Longitudinal plots of individual cognitive measures are shown in **Fig. 4**. Across all composite cognitive measures, we find that the inclusion of a term that distinguishes between pre vs. during the COVID-19 pandemic does not improve the model fit, and no significant decrease in cognitive measures in these children. This result suggests that much of the reductions observed in **Figure 2**, and **Tables 2** and **3** may be driven by the infants born during the pandemic. Results from our last set of analysis (**Table 5**), restricted to newborns and infants under 1 year of age born before or during the pandemic, support this hypothesis. Here we find a significant decrease in child cognitive scores in children born during the pandemic with males affected more than females, and higher maternal education being a protective factor.

The strong effect of the pandemic on early neurodevelopment suggests that maternal stress, already shown to be increased in mothers at the start of the pandemic may be an important factor. However, including maternal stress, recorded both prenatally and following delivery into our model, in place of the Model term was not significant (**Table 6**). Indeed, when examining perceived stress in mothers by year we find (**Fig. 5**) no significant increase or decrease during the pandemic compared to pre-pandemic years.

DISCUSSION

Children are inherently shaped by their environment. Across the fetal, infant, and early childhood life-stages, a child's brain undergoes immense structural and functional growth that is driven by an integrative mixture of genetic and environmental factors. The outbreak of the COVID-19 pandemic, and the associated economic shut-down, school disruptions, and social distancing, stay-at-home, and mask policies have fundamentally altered the environment in which children and pregnant individuals have lived, over the past 18 months. Despite much speculation, the short and long-term impacts of the COVID-19 pandemic on fetal and child health and neurodevelopment in the absence of direct infection are not yet known [45]. This gap makes it difficult to develop evidence-based guidelines of care for expectant mothers and individuals, design effective strategies for follow-up care of sensitive infants; or provide informed guidance for school and daycare reopening and in-person vs. online learning.

Leveraging data collected continuously over the past decade in Providence, RI and surrounding areas, we sought to investigate how the pandemic has impacted cognitive development and function in newborns and young children. Included pregnant individuals and children reported no symptoms of SARS-CoV-2 infection or had evidence of positive antibody or RT-PCR testing. Families also reported having adhered to stay-at-home and on-going mask and social distancing policies, suggesting observed effects are environmentally driven rather than due to potential direct effects of infection. However, we did not perform antibody testing to confirm past infection status.

Overall, we find that measured verbal, non-verbal, and overall cognitive scores are significantly lower since the beginning of the pandemic. Looking further, we find that children born before the pandemic and followed through the initial stages do not show a reduction in skills or performance, but rather that young infants born since the beginning of the pandemic show significantly lower performance than infants born before January 2019. Thus, our results seem to suggest that early development is impaired by the environmental conditions brought on by the pandemic.

In contrast to other on-going studies through the pandemic [37, 39], we did not find an increase in general maternal stress and, thus, this was not a significant predictor factor in our analysis. This may reflect a general insensitivity of the PSS tool used here to pandemic-related stress; the potential selection bias in the families included in our study; or strong family and social support networks available to the pregnant individuals. The PSS is a standardized ten-item questionnaire that asks about general life stressors and how stressful individuals find their lives but does not include specific questions related to health or wellbeing. In contrast, the MOM-COPE study utilized retrospective data collection using an ad-hoc developed questionnaire focused on worry and anxiety of COVID-19 infection, pregnancy risk, and their own and their infant's health [39]. The survey-based study by Lebel and colleagues [37] also used a specially developed questionnaire to gauge maternal concern of the pandemic and its im-

pact on their own and their infant's health. Additional measures of depression and anxiety were assessed using the standardized Edinburgh Depression Scale (EDS [46]) and PROMIS Anxiety Adult 7-item short form [47] instruments.

With respect to included participants, families in our study were drawn from the local Providence and surrounding communities with focus on typical child development. Exclusion criteria for enrollment has been consistent across the duration of the study and includes: twin or multiple pregnancy; preterm birth prior to 37 weeks; small for gestational age and/or birthweight less than 1500g; 5min APGAR scores ≤ 8 ; major psychiatric illness in the mother, including depression requiring medication within 6 months of pregnancy; use of alcohol, tobacco, or illicit substances during pregnancy; diagnosed neurological disorder (e.g., epilepsy) in the child. During the pandemic, we did not target individuals with COVID-19 exposure or illness. However, since all study visits take place in a clinical setting, parents less concerned about the pandemic, and those with strong social support networks, may have been more likely to participate than those with greater concerns. Thus, our observation that maternal stress (PSS) did not significantly increase may simply reflect the reality that we only tested less stressed and anxious mothers. These parents may also have greater financial security or other socioeconomic characteristics. However, in ad hoc analysis of maternal education measures of our full cohort by year, we did not observe a significant difference in maternal education between families tested before or during the pandemic (**Fig. 5b**). This, however, is an area requiring further investigation.

Family and social support is also an important contributor to maternal health and wellbeing [48] that can also affect infant temperament, behavior, and cognitive development [49]. Building from our discussion of maternal stress, we unfortunately did not collect additional measures related to daycare or working from home status of our parents. It is possible that parents of lower socioeconomic means may have been less able to afford daycare or prolonged parental leave. These are additional areas of focus, which could provide important guides for public health policies.

The first 1,000 days of a child's life are commonly cited as an important and sensitive period of child development. Environmental factors, including maternal mental and physical health, nutrition, stimulation, and supportive caregiving can individually and in combination affect the developing fetal and infant brain throughout this early life period [19-22]. Many of these factors have been substantively impacted by public health policies enacted in response to the SARS-CoV-2 outbreak. Work-from-home and shelter-in-place orders, for example, along with closed daycares, nurseries, and preschools may have dramatically changed the quantity and quality of parent, caregiver, and teach-child interaction and stimulation. Studies in older children and adolescents over the past year have found reduced social interaction, increased media consumption, and reduced physical activity [50-52]. It is likely these same trends are true for younger children and infants as well with the closure or reduced capacity of

daycares and preschools, and may be associated with impaired motor development, motor coordination and visual processing, language development, and socioemotional processing. In addition, masks worn in public settings and in school or daycare settings may impact a range of early developing skills, such as attachment, facial processing, and socioemotional processing.

Unfortunately, we do not have direct or parent-reported measures indicative of parent or caregiver-child interaction, early media exposure, or physical activity to investigate the potential causative role of these factors.

One aspect also not investigated here is the impact of mask-wearing by the study staff during child visits and assessments [53]. The inability of infants to see full facial expressions may have eliminated non-verbal cues, muffled instructions, or otherwise altered the understanding of the test questions and instructions.

For parents who were able to work from home, and did not face furlough or employment loss, the dual role of childcare and work has increased the strain on parents, in particular mothers, resulting in increased parental stress and anxiety. For families who have suffered job loss, they may experience greater stress, depression, anxiety, as well as food and housing insecurity. Although we found no significant changes in the degree of maternal perceived stress, and we did, however, find that maternal education, often used as a marker of surrogate of socioeconomic status, was generally associated with improved cognitive function and, as an interactive term, had a buffering effect against the impact of the pandemic. This is particularly salient given the disproportionate effect the pandemic has had on lower income families [54], who have not only dealt with job loss and financial insecurity, but are also over-represented in front line and essential service employment with increased risk of SARS-CoV-2 infection and COVID-19 illness [55].

What is unclear from our data, however, is if observed declines or impairments are temporary and will normalize as employment and school closures are lifted and children return to pre-pandemic levels of play and interaction, and family financial insecurity and mental health challenges subside. Unfortunately, when that will occur is also unknown given the ongoing surge of infections associated with new virus variants. It is clear, however, that young infants and children are developing differently than pre-pandemic, and that addressing this now while their brain is at its most plastic and responsive, is imperative. Programs such as unemployment insurance, Supplemental Nutrition Assistance Program (SNAP), the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), and housing assistance, may help minimize the impact of the pandemic on the most sensitive of children. In addition, further research directly exploring aspects of parent-child attachment, interaction, nutrition,

food security, and environmental stimulation is needed to understand the primary driving factors underlying the trends presented here.

CONCLUSION

The COVID-19 pandemic has fundamentally altered the child health landscape, with pregnant mothers and individuals, and children living in a strikingly different economic, psychosocial, and educational environment than what was present just 18 months ago. Against this environmental backdrop, unanswered questions remain regarding the impact of the work-from-home, shelter-in-place, and other public health policies that have limited social interaction and typical childhood experiences on early child neurodevelopment. In this work, we provide early evidence suggestive of significant reductions in attained cognitive function and performance in children born over the past 18 months during the pandemic. While socioeconomic factors appear to mitigate against the negative consequences of the pandemic, the primary factors underlying our observed trends remain unknown. Understanding these factors are critical to helping ensure affected children rebound as the pandemic winds down and they re-enter daycares and schools; as well as implementing additional public health and educational policies that address the most affected of children, particularly those in lower income families.

DATA SHARING

All data acquired and presented here is freely available upon request to the authors.

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Funding for this study was provided by the National Institutes of Health (SCD). Neither funder played any role in the acquisition, analysis or interpretation of the data, or were involved in the drafting or approval of this manuscript.

CONTRIBUTOR ROLES

All listed authors were involved in the study design, data acquisition and analysis, drafting and revising this manuscript, and provide final and accountable approval for its contents. SCD and DV verify the underlying data.

FINANCIAL DISCLOSURES

The authors report no significant financial conflicts of interest with respect to the subject matter of this manuscript.

Tables & Figures

Table 1. Group demographics for each child cohort, including the complete set of data tested over the past decade; children born just before the pandemic and followed during the pandemic; and children under 1 year of age born before January 2019 or after July 2020.

		Complete Set	Matched Pre & During	Under 1 Year
Biological Sex	Male	292	17	186
	Female	381	22	223
Race	Hispanic	112	9	70
	Not Hispanic	561	30	339
Ethnicity	Caucasian / White	320	29	248
	African American / Black	43	2	28
	Asian	8	0	6
	Mixed Race	111	5	76
	Unknown / Declined	191	3	51
Maternal Education	Some Primary School	0	0	0
	Primary School Graduate	0	0	0
	Some High School	20	2	10
	High School Graduate	91	7	66
	Some College	157	13	104
	College Graduate	143	8	82
	Graduate	262	9	147
Birth Outcomes	Birth Weight (lbs)	7.3 (1.3)	7.36 (1)	7.3 (1.3)
	Gestation (weeks)	38 (3.7)	38 (1.7)	39 (2)

Table 2. Year-pair comparisons of mean ELC, VDQ, and NVDW composite scores measured before and during the COVID-19 pandemic. While we see inconsistent differences between each pre-pandemic year and 2020, we find consistent statistically significant reductions between each pre-pandemic year and 2021, controlling for child age and maternal education.

ELC			VDQ			NVDQ		
	2020	2021		2020	2021		2020	2021
2011	0.023	<0.0001	2011	0.045	<0.0001	2011	0.029	<0.0001
2012	0.79	<0.0001	2012	0.97	<0.0001	2012	0.92	<0.0001
2013	<0.0001	<0.0001	2013	<0.0001	<0.0001	2013	0.007	<0.0001
2014	<0.0001	<0.0001	2014	<0.0001	<0.0001	2014	<0.0001	<0.0001
2015	<0.0001	<0.0001	2015	0.0004	<0.0001	2015	0.0006	<0.0001
2016	0.0001	<0.0001	2016	0.14	<0.0001	2016	<0.0001	<0.0001
2017	0.015	<0.0001	2017	0.042	<0.0001	2017	0.16	<0.0001
2018	0.12	<0.0001	2018	0.11	<0.0001	2018	0.35	<0.0001
2019	0.002	<0.0001	2019	0.008	<0.0001	2019	0.04	<0.0001

Table 3. Results of our sequential or step-wise general linear models investigating differences in pre vs. during-pandemic composite ELC, VDO, and NVDQ measures. The COVID-model term is 0 for all test dates prior to March 2020, and 1 for all dates following, allowing us to test for a significant change in pre vs. during-pandemic scores. Across all models, we find this term is significant ($p < 0.01$). We also note that males appear more heavily affected than females, but that higher maternal education appears to be protective against the effects of the pandemic.

ELC	Model 1		Model 2		Model 3		Model 4		Model 5	
BIC	10288.062846		9321.271505		9305.278285		9469.120136		8461.154085	
Term	Estimate	pValue	Estimate	pValue	Estimate	pValue	Estimate	pValue	Estimate	pValue
Intercept	95.27373 2	0.000000	77.15468 5	0.000000	79.75920 5	0.000000	5.697486	0.635849	7.342544	0.540383
Child Age	0.004234	0.002910	0.004015	0.005853	0.004240	0.003387	0.004745	0.001152	0.004722	0.001149
COVID-Model	- 12.10102 5	0.000000	- 11.99400 3	0.000000	- 12.03450 1	0.000000	- 12.56996 4	0.000000	- 31.70724 2	0.000091
Maternal Ed.			3.375311	0.000000	3.376083	0.000000	3.062195	0.000000	2.553374	0.000000
Male					-4.795305	0.000020	-4.218355	0.000122	-3.629912	0.001307
Gestation							1.644557	0.000005	1.670624	0.000004
Birth Weight							1.618325	0.003349	1.608542	0.003496
Male x Model									-5.210031	0.118383
Maternal Ed. x Model									4.089579	0.003280
VDO	Model 1		Model 2		Model 3		Model 4		Model 5	
BIC	11252.715679		10190.924489		10179.861822		9299.916193		9299.341288	
Term	Estimate	pValue	Estimate	pValue	Estimate	pValue	Estimate	pValue	Estimate	pValue
Intercept	93.53301 0	0.000000	66.89222 9	0.000000	69.93796 3	0.000000	3.376040	0.844570	4.581158	0.790121
Child Age	0.007594	0.000044	0.005348	0.004688	0.005635	0.002886	0.005894	0.002397	0.005890	0.002391
COVID-Model	- 20.12408 6	0.000000	- 19.70636 5	0.000000	- 19.74255 3	0.000000	- 19.45135 4	0.000000	- 37.34855 2	0.001706
Maternal Ed.			5.109479	0.000000	5.105734	0.000000	4.503137	0.000000	4.038469	0.000000
Male					-5.633027	0.000276	-5.549127	0.000455	-4.986241	0.002484
Gestation							1.408398	0.005929	1.440316	0.005010
Birth Weight							2.083655	0.008176	2.072341	0.008587
Male x Model									-4.726815	0.338660

NVDC	Model 1		Model 2		Model 3		Model 4		Model 5	
BIC	11011.785624		9960.852998		9950.889997		9037.219460		9036.929494	
Term	Estimate	pValue	Estimate	pValue	Estimate	pValue	Estimate	pValue	Estimate	pValue
Intercept	108.5042 97	0.000000	81.26229 8	0.000000	84.14567 1	0.000000	8.099286	0.600946	9.080857	0.558075
Child Age	-0.004783	0.005940	-0.007278	0.000047	-0.007061	0.000072	-0.008527	0.000002	-0.008541	0.000002
COVID-Model	- 15.30586 5	0.000000	- 14.71208 9	0.000000	- 14.70860 6	0.000000	- 14.67272 4	0.000000	- 27.07196 1	0.009252
Maternal Ed.			5.149235	0.000000	5.117169	0.000000	4.791398	0.000000	4.425289	0.000000
Male					-4.982514	0.000539	-4.711620	0.000963	-4.120723	0.005689
Gestation							1.743029	0.000149	1.764651	0.000133
Birth Weight							1.568929	0.026826	1.566894	0.027418
Male x Model									-5.459957	0.207356
Maternal Ed. x Model									2.836307	0.116332

NVDC	Model 1		Model 2		Model 3		Model 4		Model 5	
BIC	1179.560518		1181.306747		1192.293166		1028.841428		1032.726942	
Term	Estimate	pValue	Estimate	pValue	Estimate	pValue	Estimate	pValue	Estimate	pValue
Intercept	116.3016 31	0.000000	115.0556 96	0.000000	117.8856 55	0.000000	61.13313 6	0.429975	62.08237 9	0.427188
Child Age	-0.028338	0.004479	-0.029330	0.003731	-0.028594	0.004333	-0.025756	0.019887	-0.025880	0.019502
COVID-Model	-4.038943	0.429808	-3.518395	0.498170	-3.961846	0.441532	-3.823532	0.505631	-4.243381	0.715800
Maternal Ed.			0.346362	0.610793	0.252290	0.709778	0.435734	0.675374	0.283903	0.829291
Male					-4.714430	0.305498	-4.454052	0.390088	-3.770467	0.526075
Gestation							0.437372	0.845883	0.418870	0.852975
Birth Weight							4.950345	0.127611	4.979334	0.126569
Male x Model									-2.011659	0.807478
Maternal Ed. x Model									0.306913	0.861942

Table 5. Results of our step-wise general linear models investigating the impact of the pandemic on newborns and young infants under 1 year of age born pre-pandemic (before Jan 2019) and during the pandemic (after July 2020). Like results in **Table 3**, we not again that child born during the pandemic exhibit significantly lower cognitive performance than children born before the pandemic ($p < 0.001$) but that maternal education is a protective factor.

ELC	Model 1		Model 2		Model 3		Model 4		Model 5	
BIC	4574.859772		4149.364403		4124.183573		3662.885010		3551.746593	
Term	Estimate	pValue	Estimate	pValue	Estimate	pValue	Estimate	pValue	Estimate	pValue
Intercept	98.86778 5	0.000000	89.28601 5	0.000000	91.23906 0	0.000000	-4.010653	0.784098	-1.668205	0.907809
Child Age	-0.007007	0.213556	-0.010064	0.080259	-0.009064	0.112001	-0.008868	0.127818	-0.009452	0.100363
COVID-Model	- 10.32953 9	0.000000	- 10.54104 0	0.000000	- 10.59565 1	0.000000	- 11.641199	0.000000	- 49.88214 4	0.000070
Maternal Ed.			1.955167	0.000549	1.922774	0.000617	1.567565	0.003179	0.990045	0.066967
Male					-3.540089	0.006954	-2.253041	0.072222	-1.719909	0.176304
Gestation							2.280328	0.000000	2.286943	0.000000
Birth Weight							1.168585	0.071640	1.233054	0.054573
Male x Model									-3.132217	0.504954
Maternal Ed. x Model									7.239489	0.000396
VDC	Model 1		Model 2		Model 3		Model 4		Model 5	
BIC	5201.271496		4723.637711		4723.500494		4100.649566		4096.222650	
Term	Estimate	pValue	Estimate	pValue	Estimate	pValue	Estimate	pValue	Estimate	pValue
Intercept	104.1753 52	0.000000	93.96528 6	0.000000	95.98510 7	0.000000	- 25.91846 6	0.320788	- 23.80413 1	0.356684
Child Age	-0.038547	0.000114	-0.046407	0.000007	-0.045482	0.000010	-0.046321	0.000018	-0.047249	0.000011
COVID-Model	- 18.52041 7	0.000000	- 18.81946 1	0.000000	- 18.84788 7	0.000000	- 17.28608 0	0.000016	- 76.61423 7	0.000738
Maternal Ed.			2.346477	0.012257	2.267559	0.015649	1.435786	0.123670	0.639073	0.503533
Male					-3.241651	0.138492	-0.972784	0.658666	-0.352928	0.875775
Gestation							2.974616	0.000141	3.023880	0.000096
Birth Weight							1.445501	0.205085	1.491077	0.188468
Male x Model									-0.876683	0.915634

Table 6. To determine the influence of maternal pre and post-natal perceived stress, we replaced the COVID-model term in our general linear model with perceived stress scale (PSS) scores self-reported by the child's mother. Overall, we found that this term was not significant and did not contribute to the model fit, suggesting that while stress may play an important biological role in fetal and infant brain development, it does not appear to be solely explain the reduced cognitive scores presented in this work.

Postnatal Stress	ELC		VDO		NVDO	
Term	Estimate	pValue	Estimate	pValue	Estimate	pValue
PSS	0.002642	0.412242	0.003645	0.462384	-0.475995	0.613823
Male x PSS	0.133976	0.683750	0.206981	0.683043	0.363321	0.406477
Maternal Ed. x PSS	-0.042414	0.732502	-0.273539	0.155058	0.010763	0.948116
Prenatal Stress	ELC		VDO		NVDO	
Term	Estimate	pValue	Estimate	pValue	Estimate	pValue
PSS	1.045007	0.157838	1.832849	0.177509	1.712337	0.226585
Male x PSS	-0.216887	0.555744	-0.277688	0.676534	-1.050890	0.128812
Maternal Ed. x PSS	-0.095475	0.496830	-0.215181	0.389910	-0.067473	0.798480

Figure 1. Visual overview of all child study visits used in each set of analysis. (a) All children between 0 and 3 years of age; (b) Children with at least one assessment before and one during the pandemic; and (c) Children under 1 year of age born prior to 2019 or after July 2020.

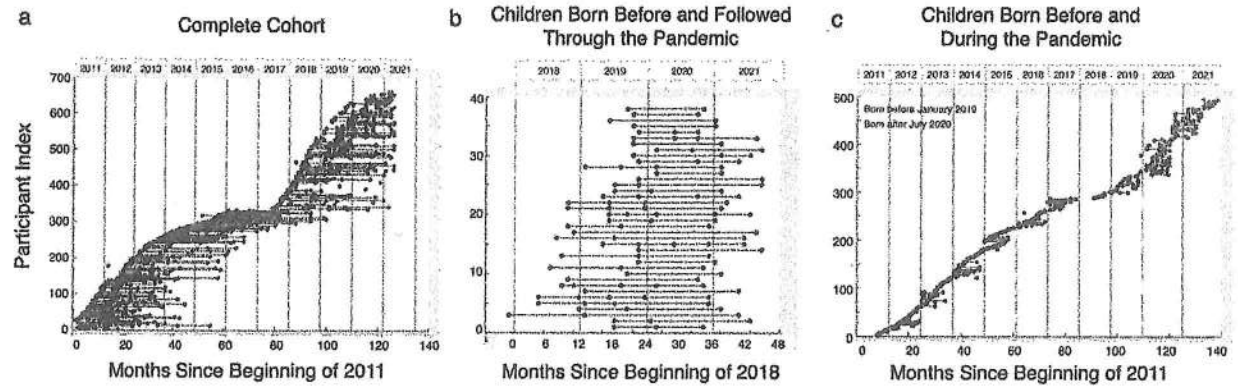


Figure 2. Visual comparison and trends of yearly ELC, VDQ, and NVDQ composite scores of the Mullen Scales of Early Learning. In each panel, the black line and gray bar represent the expect mean (100) and standard deviation (15). Overall, we note a consistent trend of measures from 2011 to 2019, and then a significant decline in 2020 and 2021, corresponding to the COVID-19 pandemic. Significance of these reductions, controlling for important confounders, is presented in Table 3.

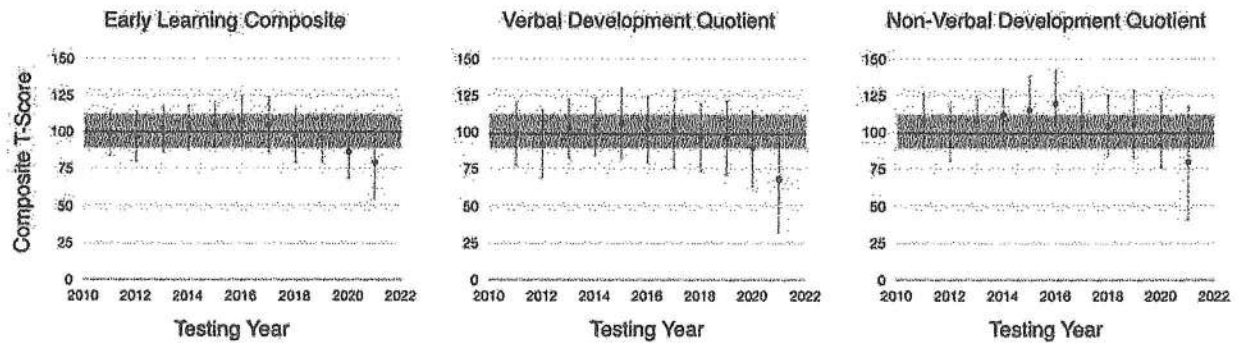


Figure 3. Comparison of yearly gestation duration and child birth weights for children tested in our study. Overall, we find no significant change between pre- or during the pandemic.

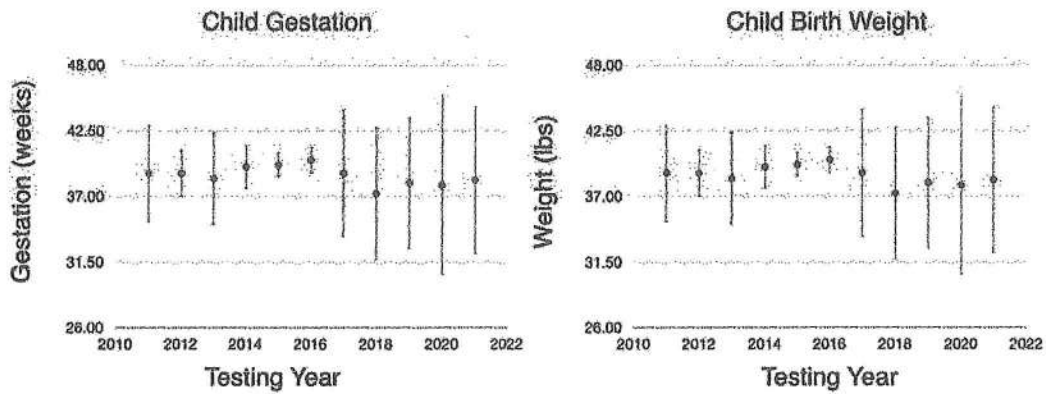


Figure 4. Plots of individual longitudinal ELC, VDQ, and NVDQ measures in the children born before the pandemic (2018) with at least 1 pre- and during pandemic measure. We do not observe any clear increasing or decrease trends through the pandemic.

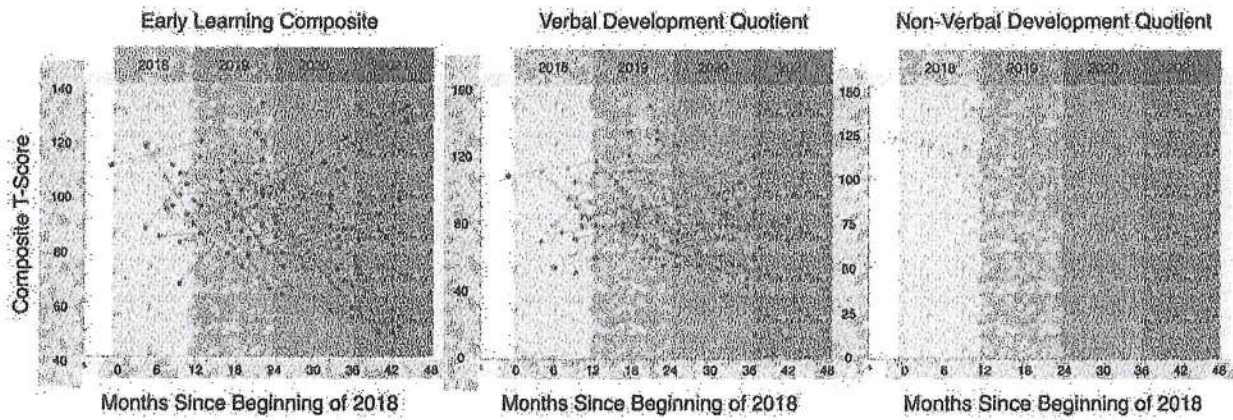
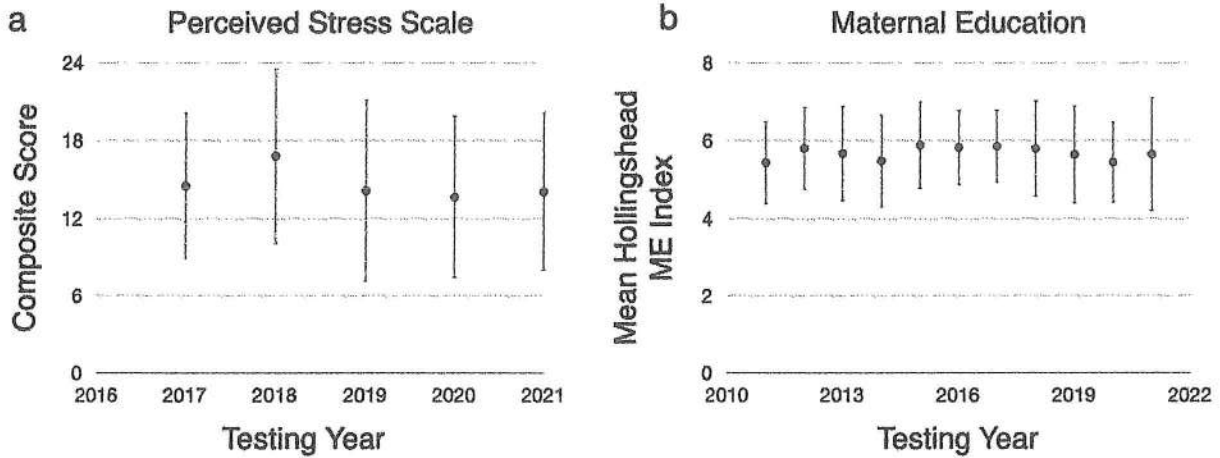


Figure 5. (a) Yearly maternal PSS scores, obtained during pregnancy and following child birth. In contrast to other studies reported at the beginning of the pandemic, we do not observe a significant increase in maternal stress in 2020 or 2021. We also examined maternal education as a marker of socioeconomic status of families tested in each year (b). Like PSS, we found no significant increase or decrease in families tested during the COVID-19 pandemic.



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EXHIBIT E

DECLARATION OF RODNEY X. STURDIVANT, PH.D.

I, Rodney X. Sturdivant, Ph.D., pursuant to § 1-6-105, MCA, hereby declare, under penalty of perjury, the following to be true and correct:

1. I am a resident of San Antonio, Texas. I am 56 years old and am otherwise competent to render this declaration. I am mentally sound and competent to attest to the matters set forth herein. The matters set forth in this Declaration are based upon my own personal knowledge, unless otherwise stated. I have personal knowledge of the matters set forth below, and could and would testify competently to them if called upon to do so.

Professional Background

2. I am an Associate Professor of Statistics at Baylor University and director of the Baylor Statistical Collaboration Center. I have been on the Baylor faculty since July, 2020. Prior appointments and professional experiences include Research Biostatistician, Henry M. Jackson Foundation (HJF) supporting the Uniformed Services University of Health Sciences, Professor of Applied Statistics and Director of the M.S. in Applied Statistics and Analytics at Azusa Pacific University, Chair of Biostatistics and Clinical Associate Professor of Biostatistics in the College of Public Health at The Ohio State University and Professor of Applied Statistics and Academy Professor in the Department of Mathematical Sciences, West Point. I hold two M.S. degrees from Stanford, in Operations Research and Statistics, and a Ph.D. in biostatistics from the University of Massachusetts – Amherst. I have taught courses involving advanced statistical methods at four institutions, and worked on collaborative research with researchers in a wide variety of medical and public health settings.

3. My primary research area involves application of applied statistics, particularly in fields of medicine and public health. Between 1996 and 2020, I have published articles in peer-reviewed journals and presented results at national and international conferences, including top-ranked journals and conferences in statistics, public health, epidemiology, medicine, and health policy. My work has included studies of infectious diseases or outbreaks such as Leishmania, Anthrax, Bird Flu, HIV/AIDS and recently COVID-19. I co-authored a popular textbook, Applied Logistic Regression, 3rd Edition, which has over 60,000 citations. I have used the text to teach the subject in universities and in workshops for applied statisticians around the country.

4. I have been actively researching the COVID-19 epidemic using my expertise in applied statistics and mathematical modeling, particularly the Susceptible-Infected-Recovered (SIR) models, commonly in use to forecast the COVID-19 epidemic. While working for HJF, I served as a senior advisor for a data analytics group supporting the White House OSTP and FEMA, and four analytics organizations within DoD working on Covid modeling and data analysis. To

date, I have published three papers^{1,2,3}, in peer-reviewed journals related to the epidemic and have two other articles currently in review. One of my published papers on COVID-19 is a review of appropriate use of models for forecasting. Issues with policy have been, in some part, due to the very issues discussed in this article. I have also been asked to act as reviewer for several publications of articles related to Covid research.

5. In November 2020, I testified for the County Commissioners and Judge of Colorado, Texas concerning a declaration challenging restrictions imposed by the Texas Governor. I extensively reviewed the evidence and data regarding the relatively low mortality and morbidity risk that SARS-CoV-2 infection poses to most people, particularly the young and healthy, as well as the evidence about the health impacts of policies involving restrictions, and the overall effectiveness of restrictions.

6. In October 2020, Harvard Professor Dr. Martin Kulldorff invited me to co-sign the Great Barrington Declaration he co-authored with Oxford Professor Dr. Sunetra Gupta and Stanford Professor Jay Bhattacharya. The Declaration was written from a global public health and humanitarian perspective, with special concerns about how the current COVID-19 strategies are forcing our children, the working class and the poor to carry the heaviest burden. I was joined in co-signing by over 40 highly regarded scientists analyzing the pandemic from a variety of perspectives.

7. The Declaration offers an alternative approach to the current COVID-19 strategies being implemented in jurisdictions across the United States and the world called Focused Protection. According to Focused Protection, the most compassionate approach to the COVID-19 pandemic is one that balances the risks and benefits of reaching herd immunity by allowing those who are at minimal risk of death and serious health outcomes to live their lives normally, while better protecting those who are at highest risk. Since October, the Declaration has been co-signed by at least 12,000 medical and public health scientists, and 35,000 medical practitioners. The Great Barrington Declaration is available at <https://gbdeclaration.org/>

Expert Opinions

Addendum to previous declaration which include extensive discussion of mask effectiveness

8. The CDC posted a press release on September 24, 2021 titled “Studies Show More COVID-19 Cases in Areas Without School Masking Policies”.⁴ I have reviewed this press release

¹ Koehlmoos, T.P., Janvrin, M.L., Korona-Bailey, J., Madsen, C., and Sturdivant, R. (2020). COVID-19 Self-Reported Symptom Tracking Programs in the United States: Framework Synthesis. *Journal of Medical Internet Research* 22(10):e23297. DOI: 10.2196/23297

² Thomas, D.M., Sturdivant, R., Dhurandhar, N.V., Debroy, S., and Clark, N. (2020). A primer on COVID-19 Mathematical Models. *Obesity* 28(8), 1375-1377, doi:10.1002/oby.22881.

³ Ronca, S.E., Sturdivant, R.X., Barr, K.L., and Harris, D. (2021). SARS-CoV-2 Viability on 16 common indoor surface finish materials. *Health Environments Research & Design Journal*, 1-16, doi:10.1177/1937586721991535

⁴ CDC, September 24, 2021, *Studies Show More COVID-19 Cases in Areas Without School Masking Policies*, <https://www.cdc.gov/media/releases/2021/p0924-school-masking.html>

and conclude that the evidence presented does not support any claim about mask effectiveness in schools. In fact, statistically the cited reports cannot be used to justify any claim of a causal relationship between mask use and decreases in COVID-19 cases. Further the reports suffer from numerous fundamental flaws; they are not statistically sound and would not pass any reasonable review for scientific merit.

9. The third report listed⁵ in the press release does not discuss mask effectiveness at all. The report merely points out that schools need to be open and claims, without evidence, that is only possible with CDC protocols. Many schools worldwide have successfully been open throughout the pandemic without such protocols. The CDC report does not examine or consider these schools.

10. The other two reports are both observational studies. As such, they are not useful in what is known as “causal inference”. While both appear to suggest a causal link between masks and COVID-19 cases, such studies cannot be interpreted in this manner. In fact, doing so is quite dangerous when population data is used. A well-known phenomenon, “spurious correlation”, can result from such studies. Thus, the press release should not be used to draw any conclusions about mask effectiveness in schools.

11. The two mask reports (henceforth the first will be referred to as the Arizona report⁶ and the second the US report⁷) are also very flawed statistically, even among observational studies. A serious problem with observational studies is that of selection bias; both studies have forms of this bias.

12. In the US study, the data used is from counties in which all schools had either a “no mask” or all schools did not mandate masks. Thus, only 16.5% of counties were included which is problematic for several reasons.

- a. The study itself only considers county level data and not school data, so it does not actually study the effectiveness of masks at all. It merely looks at county data based on school policies. Further, the exclusion of over 85% of schools hurts any ability draw inference and makes selection bias much more likely.
- b. Selection bias is very likely given the exclusion criteria. Counties in which all schools do not have mask mandates are likely to differ from those in which all

⁵ CDC, September 24, 2021, COVID-19 - Related School Closures and Learning Modality Changes — United States, August 1–September 17, 2021, https://www.cdc.gov/mmwr/volumes/70/wr/mm7039e2.htm?s_cid=mm7039e2_w

⁶ CDC, September 24, 2021, Association Between K–12 School Mask Policies and School-Associated COVID-19 Outbreaks — Maricopa and Pima Counties, Arizona, July–August 2021

⁷ CDC, September 24, 2021, Pediatric COVID-19 Cases in Counties With and Without School Mask Requirements — United States, July 1–September 4, 2021

schools do mandate in many ways. An example is geographic. No mask counties are far more probable in southern states (Texas, Georgia, Florida). The South in the U.S. has a summer virus season which occurred relatively later in 2021 than usual. Thus, as school began, the virus season was at or near its peak in those counties. Given that the study was solely based on county level (rather than school level) data the observed results are impacted by the fact there was generally more spread ongoing, and this cannot be tied to schools or school masking policies.

13. In the Arizona study, selection bias occurs in the choice of just two counties out of the many counties possible in the U.S. The selection bias is clearly manifested as schools in these counties differ in meaningful ways. The schools with mask policy were those with fewer and younger students. These are likely to be schools with less spread, especially using the “2 or more case” metric selected for study (discussed below).

14. Some additional issues noted:

- a. The US report included all children <18 years of age – not just those attending school and focused on pediatric case rates which could also include home schooled children. As mentioned earlier, it is not a study of mask use in schools.
- b. The Arizona report compares the outcome in schools with an “outbreak” (2 or more cases, discussed further below). However, 81% of the schools did not have such an outbreak. The report does not discuss how many of these schools did not have a mask requirement and yet had essentially no cases.
- c. Neither report has any way to identify if the cases occurred in school or out of school. It is very common for the primary viral spread to occur in homes not in schools. Such spread is therefore independent of the mask policy in the school.
- d. Neither report provides any data on meaningful outcomes such as cases, hospitalizations or deaths. The fact that these values are not reported is troubling as it suggests the authors searched to find a metric that was statistically significant. The Arizona report uses as an outcome “2 or more cases” in a 14-day period after the first 7 days of school starting. The outcome is very flawed as a school with 40 cases in the period would be considered the same as one with only 2. Further, the difference in schools noted earlier would lead to this metric favoring the “mask” schools.
- e. The outcome in the US report is the “change in cases” in the county during first 2 weeks of school. The report itself shows that cases were already rising faster in the

counties with no mask policies before school started. In other words, the noted “effect” could easily have been due to spread in the community prior to school start.

- f. Both reports consider only a very short time period (2 weeks). For COVID-19 such short time windows are inadequate and misleading.
- g. Testing, particularly with the PCR test, plays a big role in the resulting “case” counts. Neither report accounts for this factor.
- h. Neither report has any ability to consider numerous additional factors that could account for differences to include: the level of spread in the community, vaccination rates among families and staff in the schools, mask compliance/enforcement, and classroom sizes. There are many other possible factors; observational studies of the sort done in these reports cannot control for these variables.

15. The CDC press release does not warrant inclusion as evidence about mask use based on the discussion above. The reports are examples of how data can be found to justify a hypothesis regardless of whether it is true. Overwhelming evidence from around the world dwarfs these two flawed reports in suggesting that schools can remain open without mask wear. These observational studies must be considered in terms of the larger public health context and complete data about mask use. In Sweden, for example, schools were open throughout the pandemic without masks. There were 0 deaths in children and teachers/staff had lower rates of Covid adverse outcomes than those in other professions.⁸ A much more complete observational study than the CDC reports is based on a very large database in U.S. schools and showed no difference in spread in schools with and without mask wear.⁹

16. Finally, it is worth noting that the “spread” of the virus among children is not a primary public health concern with COVID-19. Children are at extremely low risk of serious outcomes. Not mentioned in either report is how severe the “cases”; data suggests most are mild or even asymptomatic. Further, due to several factors including how quickly children fight off the virus, children are far less likely to spread the virus and quickly become “spreaders of immunity” as they make it more difficult for the virus to find a host. Neither report has any information on where the spread actually occurred, and neither can suggest any serious adverse outcomes either in the schools or out.

I DECLARE UNDER PENALTY OF PERJURY AND UNDER THE LAWS OF THE STATE OF MONTANA THAT THE FOREGOING IS TRUE AND CORRECT.



⁸ Jonas F. Ludvigsson et al, February 18, 2021, *Open schools, Covid-19, and child and teacher morbidity in Sweden*, *New England Journal of Medicine*, <https://www.nejm.org/doi/full/10.1056/NEJMc2026670>.

⁹ Oster, E., et al., *COVID-19 Mitigation Practices and COVID-19 Rates in Schools: Report on Data from Florida*, *New York and Massachusetts*, May 21, 2021, *BMJ*, <https://www.medrxiv.org/content/10.1101/2021.05.19.21257467v1>

Rodney X. Sturdivant, Ph.D.

Date of Signature: September 27, 2021

Waco, Texas

DECLARATION OF RODNEY X. STURDIVANT, PH.D.

I, Rodney X. Sturdivant, Ph.D., pursuant to § 1-6-105, MCA, hereby declare, under penalty of perjury, the following to be true and correct:

1. I am a resident of San Antonio, Texas. I am 56 years old and am otherwise competent to render this declaration. I am mentally sound and competent to attest to the matters set forth herein. The matters set forth in this Declaration are based upon my own personal knowledge, unless otherwise stated. I have personal knowledge of the matters set forth below, and could and would testify competently to them if called upon to do so.

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Expert Opinions

Contrary to Good Public Health Practice, Restrictions Do Not Address the Key Risk Metrics, and Assume that COVID-19 Is Equally Dangerous to All Populations.

8. State restrictions reference case counts and percent positivity as metrics to decide whether to impose activity restrictions. These metrics, contrary to good public health practice, do

¹ Koehlmoos, T.P., Janvrin, M.L., Korona-Bailey, J., Madsen, C., and Sturdivant, R. (2020). COVID-19 Self-Reported Symptom Tracking Programs in the United States: Framework Synthesis. *Journal of Medical Internet Research* 22(10):e23297. DOI: 10.2196/23297

² Thomas, D.M., Sturdivant, R., Dhurandhar, N.V., Debroy, S., and Clark, N. (2020). A primer on COVID-19 Mathematical Models. *Obesity* 28(8), 1375-1377, doi:10.1002/oby.22881.

³ Ronca, S.E., Sturdivant, R.X., Barr, K.L., and Harris, D. (2021). SARS-CoV-2 Viability on 16 common indoor surface finish materials. *Health Environments Research & Design Journal*, 1-16, doi:10.1177/1937586721991535

not consider the level of mortality risk of the disease or distinguish between people who face high mortality risk should they become infected and people who face low mortality risk. Good public health practice requires that the fraction of the population that is vulnerable, and the level of that risk, be considered among the criteria for imposing activity restrictions. In the paragraphs that follow, I review evidence on the size of the mortality risk with respect to COVID-19 infection, including evidence that shows that the risk is not uniformly imposed on the population.

9. The best evidence on the infection fatality rate from SARS-CoV-2 infection (that is, the fraction of infected people who die due to the infection) comes from seroprevalence studies. The definition of seroprevalence of COVID-19 is the fraction of people within a population who have specific antibodies against SARS-CoV-2 in their bloodstream. Seroprevalence studies provide better evidence on the total number of people who have been infected than do case reports, which miss infected people who are not identified by the public health authorities. Because they ignore unreported cases in the denominator, fatality rate estimates based on case reports are substantially biased upwards.

10. According to a meta-analysis⁴ by Dr. John Ioannidis of every seroprevalence study conducted with a supporting scientific paper (74 estimates from 61 studies and 51 different localities around the world), the median infection survival rate from COVID-19 infection is 99.77%. For COVID-19 patients under 70, the meta-analysis finds an infection survival rate of 99.95%. A more recent meta-analysis by scientists independent of Dr. Ioannidis' group, published in the National Bureau of Economic Research working paper series, reaches qualitatively similar conclusions⁵.

11. The mortality risks based on data now for COVID-19 are, for most age groups, very similar to those of the seasonal flu, typically around 0.1% overall, as pointed out by Dr. Anthony Fauci, Dr. H. Clifford Lane and Dr. Robert R. Redfield in a March *New England Journal of Medicine* article⁶, and much lower than for respiratory viruses such as SARS or MERS. For younger age groups, in particular, the rates are lower.

12. Very clearly, the mortality risk for those infected with SARS-CoV-2 is not the same for all patients. Older patients are at substantially higher risk of death if infected, while younger patients face a vanishingly small risk. In September 2020 the CDC updated its current best estimate of the infection fatality ratio—the ratio of deaths to the total number of people infected—for various age groups.⁷ The CDC estimates that the infection fatality ratio for people ages 0–19 years is .00003, meaning infected children have a 99.997% survivability rate. The CDC's best estimate of the infection fatality rate for people ages 20–49 years is .0002, meaning that young adults have

⁴ John P.A. Ioannidis, *The Infection Fatality Rate of COVID-19 Inferred from Seroprevalence Data*, Bulletin of the World Health Organization BLT.20.265892.

⁵ Andrew T. Levin, et al., *Assessing the Age Specificity of Infection Fatality Rates for COVID-19: Meta-Analysis & Public Policy Implications* (Aug. 14, 2020) MEDRXIV, <https://bit.ly/3gpIoIV>

⁶ Anthony S. Fauci, et al., *Covid-19 Navigating the Uncharted*, *The New England Journal of Medicine*, 382;13 (March 26, 2020), DOI: 10.1056/NEJMe2002387.

⁷ Coronavirus Disease 2019 (COVID-19), *COVID-19 Pandemic Planning Scenarios* (Sep. 10, 2020) CDC, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

a 99.98% survivability rate. The CDC's best estimate of the infection fatality rate for people age 50–69 years is .005, meaning this age group has a 99.5% survivability rate. The CDC's best estimate of the infection fatality rate for people ages 70+ years is .054, meaning seniors have a 94.6% survivability rate.

13. A study of the seroprevalence of COVID-19 in Geneva, Switzerland (published in the *Lancet*)⁸ provides a detailed age break down of the infection survival rate in a preprint companion paper⁹: 99.9984% for patients 5 to 9 years old; 99.99968% for patients 10 to 19 years old; 99.991% for patients 20 to 49 years old; 99.86% for patients 50 to 64 years old; and 94.6% for patients above 65.

14. Age is an important factor for COVID-19 deaths. The other is co-morbidities, or other existing and serious medical conditions. As of November 21, 2020, the CDC reported that 94% of deaths reported for COVID-19 included at least one comorbidity, with an average of 2.6 additional conditions noted.¹⁰ Some comorbidities listed are clearly deaths not due to Covid at all – for example over 8,000 due to “intentional and unintentional injury”. The latter point has impacts about overall disease severity, suggesting it may be lower than estimated.¹¹ Regardless, it is clear that in addition to age, the other group at higher risk is those with underlying health issues.

15. Although COVID-19 affects various age groups and health conditions very differently, government restrictions assume that the disease affects everyone equally. This, too, is not justified by the scientific literature and represents poor public health practice. By assuming the disease affects everyone equally in its criteria for reopening, the State is forcing unnecessary restrictions on a large segment of the population that will needlessly devastate the lives of millions.

Public Health Principles Consider All Health Implications of Policies Rather than a Single Outcome

16. There is clear evidence that Plaintiffs and others have been and can be harmed from lockdowns and similar restrictions.

17. As numerous peer reviewed publications have demonstrated, and as the former FDA Commissioner has admitted, the lockdowns themselves are depriving people of life. They are literally causing people to die, including by suicide.¹² These deaths, sadly, are often in younger

⁸ Silvia Stringhini, et al., Seroprevalence of Anti-SARS-CoV-2 IgG Antibodies in Geneva, Switzerland (SEROCoV-POP): A Population Based Study (June 11, 2020) *The Lancet*, <https://bit.ly/3187S13>

⁹ Francisco Perez-Saez, et al., *Serology-Informed Estimates of SARS-COV-2 Infection Fatality Risk in Geneva, Switzerland*, (June 15, 2020) OSF PREPRINTS, <https://osf.io/wdbpe>

¹⁰ See https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm table 3.

¹¹ Karl Dierenbach, CDC data suggest lockdowns could kill as many people as COVID, November 4, 2020, *The Federalist*, <https://thefederalist.com/2020/11/04/cdc-data-suggest-lockdowns-could-kill-as-many-people-as-covid/>

¹² Dr. Mike deBoisblanc, the head of California's John Muir Medical Center's trauma team says his area has seen more death from lockdown suicides than from the pandemic itself. “We've never seen numbers like this, in such a short period of time...I mean, we've seen a year's worth of suicide attempts in the last four weeks”, Dr. deBoisblanc said in May, only two months after the lockdown was initiated. See <https://nypost.com/2020/05/24/california-city-has-seen-more-deaths-by-suicide-than-covid-19-doctor/>.

individuals representing far more life years lost than the median age of COVID-19 deaths which is greater than 75 years of age in the United States.¹³ Former FDA Commissioner Scott Gottlieb stated on October 21, 2020: “I would suspect that a good portion of the deaths in that younger cohort were deaths due to despair, due to other reasons. We’ve seen a spike in overdoses, and I would suspect that a good portion of those excess deaths in that younger cohort were from drug overdoses and other deaths that were triggered by some of the implications of we’ve gone through to try to deal with COVID-19.”¹⁴

18. One study acknowledges that “Medical and Public Health experts are not expert in this type [cost-benefit] of analysis” and argues that “cost and benefit should be measured in terms of human welfare in the form of length, quality, and wellbeing of lives, and ‘to make no assessment is just to make policy in a vacuum.’”¹⁵ The author, Joffe, MD, FRCPC, “present[s] a cost-benefit analysis of the response to COVID-19 that finds lockdowns are far more harmful to public health than COVID-19 can be.”¹⁶ The author finds that “on balance the lockdowns cost a minimum of 5X more WELLBY [wellbeing quality of life years los] than they save, and more realistically, cost 50-87X more. Importantly, this cost does not include the collateral damage discussed above [from disrupted healthcare services, disrupted education, famine, social unrest, violence, and suicide] nor the major effect of loneliness and unemployment on lifespan and disease.”¹⁷ Dr. Joffe concludes, that “[w]e must open up society to save many more lives than we can by attempting to avoid every case (or even most cases) of COVID-19. It is past time to take an effortful pause, calibrate our response to the true risk, make rational cost-benefit analyses of the trade-offs, and end the lockdown groupthink.”¹⁸

19. During the period from January to August, the average total number of deaths during the last three years in California has been 179,901 deaths. During this same period for 2020, the total deaths have been 201,007. This represents an excess mortality of 21,105 deaths. During this same period, however, there have only been 12,933 deaths attributed to (but not necessarily caused by) COVID-19. The remaining 8,172 deaths, and others across the country just like them, have been confirmed by the CDC’s Director Redfield to be caused by lockdowns and restrictions like those instituted by many local leaders: “We’re seeing, sadly, far greater suicides now than we are deaths from COVID. We’re seeing far greater deaths from drug overdose, that we are above

¹³ See <https://data.cdc.gov/NCHS/Provisional-COVID-19-Death-Counts-by-Sex-Age-and-S/9bhg-hcku>.

¹⁴ <https://www.dailywire.com/news/new-cdc-numbers-show-lockdowns-deadly-toll-on-young-people>.

¹⁵ <https://www.preprints.org/manuscript/202010.0330/v1>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* *Revolver News* conducted another study that analyzed the cost of lockdowns and that reached an alarming conclusion: “COVID-19 lockdowns are ten times more deadly than the actual COVID-19 virus in terms of years of life lost by American citizens.”¹⁸ <https://www.revolver.news/2020/08/study-covid-19-lockdowns-deadlier-than-pandemic-itself/>. In its study, *Revolver* found that “an estimated 18.7 million life-years will be lost in the United States due to the COVID-19 lockdowns. Comparative data analysis between nations shows that the lockdowns in the United States likely had a minimal effect in saving life-years. Using two different comparison groups, we estimate that the COVID-19 lockdowns in the U.S. saved between a quarter to three quarters of a million life-years.” *Id.*

excess, than we had as a background, than we are seeing deaths from COVID.”¹⁹ A CDC report on excess deaths suggests over 90,000 excess deaths due to COVID lockdown policies as of October 3, 2020.²⁰

20. These deaths caused by government action in response to COVID-19 include people being afraid to go to the hospital for another condition for fear of catching the coronavirus, loss of health insurance after layoffs, inability to afford medications after pay cuts, or the skyrocketing rates of depression in America’s adults, a condition that negatively impacts many aspects of health.²¹

21. “To assess mental health, substance use, and suicidal ideation during the pandemic, representative panel surveys were conducted among adults aged ≥ 18 years across the United States during June 24–30, 2020” by the CDC COVID-19 Response Team and others.²² The August 14, 2020 CDC Morbidity and Mortality Weekly Report titled “Mental Health, Substance Use, and Suicidal Ideation During the COVID-19 Pandemic” reported that in the midst of the lockdowns, “40% of U.S. adults reported struggling with mental health or substance use.”²³ Further, the CDC reported that 11% of U.S. adults surveyed had seriously considered suicide in the previous 30 days before they completed the survey.²⁴

22. An October study titled “Well-being of Parents and Children During the COVID-19 Pandemic: A National Survey” published in *Pediatrics* indicated that three months of restrictions (March through May) had a similar impact on children as well as their parents: more than one in four U.S. parents (27%) reported a decline in their own mental health, and about one in seven (14%) perceived a corresponding decline in their children’s behavioral health.²⁵

23. As acknowledged by the Assistant Secretary for Mental Health and Substance Use, Elinore F. McCance-Katz, M.D., Ph.D., and Michael Caputo, then assistant secretary for Public Affairs at the Department of Health and Human Services, lockdowns have resulted in: “calls to our Disaster Distress Helpline...[have] gone up 1,000 percent;” “throughout the country, you can see...calls to the Suicide Prevention Lifelines greatly increasing...we’ve seen an increase in the

¹⁹ <https://www.cnn.com/2020/07/14/health/us-coronavirus-tuesday/index.html>.

²⁰ Lauren M. Rossen, et al., Excess deaths associated with COVID-19, by age and race and ethnicity – United States, January 26 – October 3, 2020, October 23, 2020, CDC, https://www.cdc.gov/mmwr/volumes/69/wr/mm6942e2.htm?s_cid=mm6942e2_w

²¹ In late September 2020, the New York Times analyzed COVID-19 and excess deaths and found that “[f]rom March 15 through Sept. 5, the most recent date with reliable death statistics, estimated excess deaths were about 42 percent higher than the official coronavirus fatality count.” <https://www.nytimes.com/interactive/2020/05/05/us/coronavirus-death-toll-us.html>. It explained that this excess could, in part, be explained by the fact that “people have been scared to seek care for ailments that are typically survivable” and that “[d]rug deaths have also risen an average of 13 percent so far this year over last year.” *Id.*

²² https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm?s_cid=mm6932a1_e&deliveryName=USCDC_921-DM35222.

²³ *Id.*

²⁴ https://www.cdc.gov/mmwr/volumes/69/wr/mm6932a1.htm?s_cid=mm6932a1_e&deliveryName=USCDC_921-DM35222.

²⁵ <https://pediatrics.aappublications.org/content/146/4/e2020016824>.

proportion of emergency department visits that are due to suicide attempts;” “people reported...that they were new users of substances or increasing their use of substances;” deaths due to alcohol and drug use; people losing their jobs and their businesses; families losing their homes; people unable to access medical care; and increased domestic abuse. Dr. McCance-Katz described overbroad lockdowns best as the government having “used a sledgehammer when I think we needed a scalpel.”²⁶

24. A study of overdose related cardiac arrests²⁷ shows that the number in 2020 is 53% higher than 2018-2019 averages and rose sharply in April to 123% above baseline. The authors conclude: “the fallout from the COVID-19 pandemic—perhaps especially social isolation—is sharply accelerating fatal overdose trends”.

25. This is why the World Health Organization’s Dr. David Nabarro recently stated:

“We in the World Health Organization do not advocate lockdowns as the *primary* means of control of this virus. The only time we believe a lockdown is justified is to buy you time to reorganize, regroup, rebalance your resources, protect your health workers who are exhausted, but by and large, we’d rather not do it. ... And so, we really do appeal to all world leaders: stop using lockdown as your primary control method. Develop better systems for doing it.”²⁸

26. A recent review article which points out that paradoxically lockdown measures may increase risks from Covid-19 by compromising the immune system and physical and mental health of people.²⁹ The article also points out the disproportionate impacts on groups already facing inequalities.

Policies that Restrict and Remove Freedoms and Impact Overall Health and Well Being of Citizens must be Able to Demonstrate Potential for Significant Effectiveness Based on Science and Data

27. Data and science to support restrictions on freedom by the government, particularly those that deprive citizens of constitutionally guaranteed rights, should be extremely compelling. Epidemiological theory and best practices garnered over decades of research provide important

²⁶ <https://www.hhs.gov/podcasts/learning-curve/learning-curve-14-elinore-mccance-katz-assistant-secretary-of-substance-abuse-and-mental-health-services-administration.html?fbclid=IwAR0YOPSNPvjB0-5dkWGeCtM4gVPMHQHT4zImyj7WNU0NBqhTE8UJkojq2VM>.

²⁷ Joseph Friedman, et al., Overdose-related cardiac arrests observed by emergency medical services during the US COVID-19 epidemic, December 3, 2020, JAMA Psychiatry, <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2773768>

²⁸ <https://www.youtube.com/watch?v=x8oH7cBxgwE&feature=youtu.be&t=915>.

²⁹ Michaela C. Schippers, *For the greater good? The devastating ripple effects of the Covid-19 crisis*, September 29, 2020, Frontiers in Psychology, <https://www.frontiersin.org/articles/10.3389/fpsyg.2020.577740/full>

guidance in handling the pandemic, and strongly advise against many of the measures currently used. Studies of the data on measures employed by states and countries around the world suggest that they do not significantly alter the course or outcomes of the pandemic.

The Epidemic Science

28. A solid body of literature exists about epidemics such as Covid-19 which has informed planning documents for handling such an outbreak. The approaches differ from those used more than 50 years ago as scientist have better understanding of viruses, and data analysis has discovered important evidence about what works. Planning documents for pandemics in the US³⁰ as well as all major European countries³¹ reflect this literature which is well summarized in a paper by Donald Henderson, esteemed epidemiologist and leader of the effort to eradicate smallpox, and colleagues³². Specific interventions are discussed subsequently.

29. Quarantines. “The interest in quarantine reflects the views...when much less was known about the epidemiology...It is difficult to identify circumstances in the past half-century when large-scale quarantine has been effectively used in the control of any disease. The negative consequences of large-scale quarantine are so extreme...that this mitigation measure should be eliminated from serious consideration Voluntary home quarantine for individuals who are asymptomatic...to keep possibly contagious, but still asymptomatic, people out of circulation...raises significant practical and ethical issues”.³³

30. Travel restrictions. “Travel restrictions, such as closing airports and screening travelers at borders, have historically been ineffective.”³⁴ The article then cites the World Health Organization which notes: “screening and quarantining entering travelers at international borders did not substantially de- lay virus introduction in past pandemics . . . and will likely be even less effective in the modern era.”³⁵

31. Social gatherings. “public events with an expected large attendance have sometimes been cancelled or postponed, the rationale being to decrease the number of contacts with those who might be contagious. There are, however, no certain indications that these actions have had any definitive effect on the severity or duration of an epidemic...this prohibition might include church services, athletic events, perhaps all meetings of more than 100 people...closing theaters, restaurants, malls, large stores, and bars. Implementing such measures would have seriously disruptive consequences for a community if extended through the 8-week period of an epidemic

³⁰ CDC, *The National Strategy for Pandemic Influenza*, November, 2009 with 2017 update
<https://www.cdc.gov/flu/pandemic-resources/national-strategy/index.html>

³¹ European Centre for Disease Prevention and Control, *Influenza pandemic preparedness plans*,
<https://www.ecdc.europa.eu/en/seasonal-influenza/preparedness/influenza-pandemic-preparedness-plans>

³² Thomas V. Inglesby, et al., Disease mitigation measures in the control of pandemic influenza, September 5, 2006, *Biosecurity and Bioterrorism: Biodefense Strategy, Practice, and Science* 4:26, DOI: [10.1089/bsp.2006.4.366](https://doi.org/10.1089/bsp.2006.4.366)

³³ *Id.*

³⁴ *Id.*

³⁵ World Health Organization Writing Group. *Nonpharmaceutical public health interventions for pandemic influenza, national and community measures*. 2006, *Emerg Infect Dis*; 12:88–94.

in a municipal area, let alone if it were to be extended through the nation's experience with a pandemic (perhaps 8 months)...a policy calling for communitywide cancellation of public events seems inadvisable."³⁶

32. Social distance. "It has been recommended that individuals maintain a distance of 3 feet or more during a pandemic...the efficacy of this measure is unknown...such a recommendation would greatly complicate normal daily tasks like grocery shopping, banking, and the like."³⁷

33. Masks and PPE. The science suggests use in certain settings, such as hospitals, and the N95 is recommended during a pandemic. Further, "studies have shown that the ordinary surgical mask does little to prevent inhalation of small droplets bearing influenza virus."³⁸

34. School closures. "In previous influenza epidemics, the impact of school closings on illness rates has been mixed...schools are often closed for 1–2 weeks early in...outbreaks of influenza primarily because of high absentee rates...this would seem reasonable on practical grounds. However, to close schools for longer periods is not only impracticable but carries the possibility of a serious adverse outcome."³⁹ The article is specifically considering previous epidemics, primarily influenza, which often were more severe for children. Covid-19 is different in that it holds little risk of serious outcomes for children.

35. A principal tenet of the Great Barrington Declaration (GBD) is that policies that apply to the entire population are actually likely to produce worse results when there is a clear age differential in terms of outcomes, as is the case for Covid-19. Epidemic theory, summarized by Dr. Ted Cohen and Dr. Marc Lipsitch, supports this position. The authors conclude: "for those pathogens that cause more severe disease among hosts of an older age, interventions that limit transmission can paradoxically increase the burden of disease in a population."⁴⁰

Covid Data and Science Confirms Existing and Previous Epidemic Theory

36. Analysis of data collected throughout the pandemic confirms the theory. A comprehensive study of 188 countries over the first 8 months of pandemic⁴¹ shows that the primary factors associated with Covid-19 mortality are impacted by factors inherent to the country – latitude and longitude, age distribution, stagnation in life expectancy and economy for example. Stringency measures, to include lockdowns, are not associated with the outcome. Others have

³⁶ Thomas V. Inglesby, et al., Disease mitigation measures in the control of pandemic influenza, September 5, 2006, *Biosecurity and Bioterrorism: Biodefense Strategy, Practice, and Science* 4:26, DOI: [10.1089/bsp.2006.4.366](https://doi.org/10.1089/bsp.2006.4.366)

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Ted Cohen and Marc Lipsitch, *Too little of a good thing: A paradox of moderate infection control*, March 26, 2008, *Epidemiology*, DOI: [10.1097/EDE.0b013e31817734ba](https://doi.org/10.1097/EDE.0b013e31817734ba)

⁴¹ Quentin De Larochelamber, et al., *Covid-19 mortality: a matter of vulnerability among nations facing limited margins of adaptation*, November 2020, *Frontiers in Public Health*, <https://www.frontiersin.org/articles/10.3389/fpubh.2020.604339/full>

found similar results in comparing the data across countries⁴² and states.⁴³ In addition to factors such as age and income, levels of obesity and other population factors were associated with the outcomes. However, “full lockdowns, and wide-spread testing were not associated with COVID-19 mortality per million people”⁴⁴

37. Much of the support cited for use of lockdowns and other non-pharmaceutical measures has been mathematical and statistical models. The models have been consistently wrong in their predictions and often misinterpreted or used incorrectly⁴⁵. One of the most often cited and utilized models is that of the Imperial College. However, the model and its conclusions have been analyzed and disproven. An analysis⁴⁶, based on the data, suggests in fact that the imperial college model that best fits the actual data is one which shows no effect of lockdowns or NPI's. The paper concludes by pointing out the dangers of use of the models given their sensitivity to parameter estimates and that “claimed benefits of lockdown appear grossly exaggerated.”

38. Data for individual countries and locations is overwhelming in demonstrating that mitigation measures and lockdowns are not effective. As an example, in September an article in Scientific American describes how the state of New Mexico “controlled” spread.⁴⁷ Just a few months later headlines described an alarming “surge” in cases and hospitalizations.⁴⁸ The story is easily repeated in other states and countries.

39. Perhaps the most extreme example of lockdown and mitigation measure ineffectiveness is found in Peru.⁴⁹ Unlike neighboring Brazil, heavily criticized for not taking strict measures, Peru locked down their country extremely early and with some of the harshest restriction in the world enforced by the military. They kept people in their homes, mandated both masks and

⁴² Bjørnskov, Christian, *Did Lockdown Work? An Economist's Cross-Country Comparison*, August 2, 2020. Available at SSRN: <https://ssrn.com/abstract=3665588> or <http://dx.doi.org/10.2139/ssrn.3665588>

⁴³ James L. Doti, *A model to explain statewide differences in Covid-19 death rates*, November 20, 2020, available at SSRN: <https://ssrn.com/abstract=3731803> or <http://dx.doi.org/10.2139/ssrn.3731803>

⁴⁴ Rabail Chaudhry, et al. *A country level analysis measuring the impact of government actions, country preparedness and socioeconomic factors on COVID-19 mortality and related health outcomes*, July 2, 2020, *EClinicalMedicine*, <https://doi.org/10.1016/j.eclinm.2020.100464>

⁴⁵ Thomas, D.M., Sturdivant, R., Dhurandhar, N.V., Debroy, S., and Clark, N., 2020, *A primer on COVID-19 Mathematical Models*, *Obesity* 28(8), 1375-1377, doi:10.1002/oby.22881

⁴⁶ Vincent Chin, et al., December 10, 2020, *Effects of non-pharmaceutical interventions on COVID-19: a tale of three models*, <https://www.medrxiv.org/content/10.1101/2020.07.22.20160341v3>

⁴⁷ Christie Aschwanden, *How New Mexico controlled the spread of Covid-19*, September 15, 2020, *Scientific American*, <https://www.scientificamerican.com/article/how-new-mexico-controlled-the-spread-of-covid-19/>

⁴⁸ Jessica Garate, et al., *New Mexico health officials make dire predictions as Covid-19 cases surge*, November 5, 2020, KRQE <https://www.krqe.com/health/coronavirus-new-mexico/new-mexico-health-officials-make-dire-predictions-as-covid-19-cases-surge/>

⁴⁹ Jordan Schachtel, *The world's toughest lockdown has resulted in the world's highest COVID-19 death toll*, August 18, 2020, *The Dossier*, <https://jordanschachtel.substack.com/p/the-worlds-toughest-lockdown-has>

face shields, incorporated strict curfews and closed all but the most essential services. By August, Peru had among the highest per capita death rates with surges in cases greater than Brazil.

40. In addition to observed data, a randomized control trial (RCT) study of US Marine Recruits⁵⁰ examines effectiveness of mitigation measures. The study is published in a top journal, the *New England Journal of Medicine*, and is an extremely well designed and conducted study with very high compliance. The study group or more than 1800 participated in a two-week quarantine that included high quality cloth mask wearing, social distancing, isolation, and daily temperature and symptom checks. They lived on a closed college campus which they could not leave. They did not even have access to “personal electronics and other items that might contribute to surface transmission.” At the end of the study, roughly 2% of recruits in the study group tested positive. Meanwhile, in a group of over 1,500 marines who did not quarantine and follow the protocols slightly fewer (1.7%) tested positive over the same period.

41. A common criticism of the GBD approach is that it allows increased spread that makes it more, not less, possible to protect the most vulnerable. The assumption is that lockdown and other mitigation measures actually do reduce overall spread. Further, a study in England⁵¹ examined the risks for adults living in households with children. Among over 2.5 million adults over the age of 65 – therefore at increased risk – they found no association with Covid-19 outcomes for any age group of children in the home. The study further found that while there was a slight increase in infections when there were children ages 11-18 for adults under age 65, there was no increase of death. For children aged under 11, there was actually a reduction in the risk of death for adults under age 65.

Example of Universal Mask Mandates

42. A specific example of a mitigation measure governments have consistently mandated, is the use of facemasks, touted as “science”. Both data and science suggest such a mandate for widespread and universal use is not justified or effective.

43. When the CDC and public health officials suddenly shifted from the well-established scientific positions about the marginal effectiveness of masks there was little to no new evidence of effectiveness. At that time, the entire justification for the CDC guidelines rested on asymptomatic spread concerns. In the time since, new studies have even cast doubt on how much impact asymptomatic people play in transmission. A recent study⁵² involving contact tracing of over 3400 close contacts of 391 confirmed cases found only 0.3% attack rate among asymptomatic cases compared to 3.3% for those with mild symptoms (or 10 times less). The rate increases further as symptoms become severe to 5.6% and 6.2% for those with moderate or severe symptoms. A

⁵⁰ A.G. Letizia, et al., *SARS-CoV-2 transmission among Marine recruits during quarantine*, November 11, 2020, *The New England Journal of Medicine*, DOI: 10.1056/NEJMoa2029717

⁵¹ Harriet Forbes, et al., *Association between living with children and outcomes from COVID-19: an OpenSAFELY cohort study of 12 million adults in England*, November 2, 2020, *BMJ* <https://www.medrxiv.org/content/10.1101/2020.11.01.20222315v1>

⁵² Lei Luo, et al., *Contact settings and risk for transmission in 3410 close contacts of patients with COVID-19 in Guangzhou, China: a prospective cohort study*, December 1, 2020, *Annals of Internal Medicine*, <https://pubmed.ncbi.nlm.nih.gov/32790510/>

remarkably large study⁵³, testing over 10 million people, in Wuhan China found “there was no evidence of transmission from asymptomatic positive persons”. They found 303 cases, all asymptomatic, and traced 1174 close contacts. This is also important in terms of who should quarantine; locking down asymptomatic people is not supported by these studies.

44. The ineffectiveness of masks was well known prior to 2020 as stated in a New England Journal of Medicine perspective from May 2020: “We know that wearing a mask outside health care facilities offers little, if any, protection from infection... In many cases, the desire for widespread masking is a reflexive reaction to anxiety over the pandemic.”⁵⁴

45. The evidence prior to 2020 is captured in a review by the WHO. In 2019 they completed a systematic review of the scientific literature for all NPIs.⁵⁵ The thorough study found 10 studies, all randomized control trials (RCTs), of sufficient scientific quality for meta-analysis. They concluded that “there was no evidence that face masks are effective in reducing transmission of laboratory-confirmed influenza.” They rated the quality of the evidence as “moderate” – this highest rating of available evidence for any of the 16 NPIs analyzed. Additional studies, particularly in the community settings, were suggested to increase the quality. Two such studies: The Marine Corps study mentioned previously and the “Danish Mask Study” significantly add to the quality of the literature, specifically in the community setting.

46. Support for mask effectiveness is largely based on laboratory studies. However, the evidence even in that setting is at best inconclusive. The problem is that cloth and surgical masks allow particles the size of Covid-19 through. A 2009 study of small particles involving 5 different surgical masks concludes for “included particles in the same size range of viruses confirms that surgical masks should not be used for respiratory protection.”⁵⁶ A more recent study considered small particles and used human volunteers to test masks. The very best-case mask filtered 70% of particles with others filtering less than 50%.⁵⁷ Another study, done even before Covid, measured the filtering efficacy and the size of mask pores particularly, concluding very poor filtering made worse with wear time and washing of the masks.⁵⁸ The airborne nature of Covid-19 means that this performance is not effective when exposure is more than brief to the virus.⁵⁹ The studies cited

⁵³ Shiyi Cao, et al., Post-lockdown SARS-CoV-2 nucleic acid screening in nearly ten million residents of Wuhan, China, November 20, 2020, Nature Communications, <https://www.nature.com/articles/s41467-020-19802-w>

⁵⁴ Michael Klompas, et al., Universal masking in hospitals in the Covid-19 era, May 21, 2020, New England Journal of Medicine, <https://www.nejm.org/doi/full/10.1056/NEJMp2006372>.

⁵⁵ World Health Organization, 2019, *Non-pharmaceutical public health measures for mitigating the risk and impact of epidemic and pandemic influenza*.

⁵⁶ Samy Rengasamy, et al., *Filtration performance of FDA-cleared surgical masks*, 2009, J Int Soc Respir Prot, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7357397/pdf/nihms-1604065.pdf>

⁵⁷ Emily E. Sickbert-Bennett, et al., *Filtration efficiency of hospital face mask alternatives available for use during the COVID-19 pandemic*, August 11, 2020, JAMA Network, <https://jamanetwork.com/article.aspx?doi=10.1001/jamainternmed.2020.4221>

⁵⁸ Bhanu Bhakta Neupane, et al., June 2019, *Optical microscopic study of surface morphology and filtering efficiency of face masks*, DOI 10.7717/peerj.7142.

⁵⁹ John A. Lednicky, et al., *Viable SARS-CoV-2 in the air of a hospital room with COVID-19 patients*, September 11, 2020, International Journal of Infectious Diseases, <https://doi.org/10.1016/j.ijid.2020.09.025>

here involve surgical masks, likely better than most cloth masks worn by people.⁶⁰ Further, the time of wear and proper use is also likely better in the studies than when people wear masks for many hours.

47. Translating results from a lab setting to conclude similar rates of spread reduction requires evidence. A significant ability of masks to reduce spread in the entire population is not supported by data and science. Attempts to find data supporting this hypothesis have been particularly lacking in scientific rigor. A study of 1083 counties in the US which showed a decrease in hospitalizations after mask mandates had to be withdrawn as rates actually increased shortly after publication.⁶¹

48. Even if masks filter some percentage of particles, the number of such particles is far greater than needed to cause a serious infection.⁶² An infectious dose of COVID-19 is approximately 300 particles. The number of particles emitted in a single minute of speaking is greater than 700,000. Even a 50% reduction would have no impact on transmissibility.

49. The WHO, in 2020, changed recommendations about mask use quite suddenly in June or July. They published an “interim guidance” document⁶³ on December 1, 2020 to discuss their new guidelines. The first key point of this document states “a mask alone, even when it is used correctly, is insufficient to provide adequate protection or source control.” Later they reiterate this point and add a mask “is insufficient to provide an adequate level of protection for an uninfected individual or prevent onward transmission from an infected individual (source control).” They remarkably then continue on to recommend use “despite the limited evidence of protective efficacy of mask wearing in community settings.”

50. The WHO interim guidance suffers from some additional shortcomings. For example, they mention studies that “use country or region-level data” to support mask effectiveness but fail to point out that most of those reports have since been invalidated by surges in cases and that there are other studies such as those discussed subsequently that show no effect.

51. The CDC “scientific” support for mask use has been particularly troubling. Guidance prior to 2020 in pandemic planning documents was consistent with that of the WHO. Without any additional evidence the CDC recommended masks and have since attempted to produce support for this change in policy. None of their work would pass rigorous scientific peer review. A study involving counties in Kansas⁶⁴ suffers numerous flaws, most notably use of large counties for the

⁶⁰ Samy Rengasamy, et al., *Simple respiratory protection – Evaluation of the filtration performance of cloth masks and common fabric materials against 20-1000 nm size particles*, October 7, 2010, *Annals of Work Exposures and Health*, <https://academic.oup.com/annweh/article/54/7/789/202744>.

⁶¹ Dhaval Adjodah, et al., *Decrease in Hospitalizations for Covid-19 after mask mandates in 1083 US counties*, WITHDRAWN October 21, 2020, medRx, <https://www.medrxiv.org/content/10.1101/2020.10.21.20208728v2>

⁶² Lisa M. Brosseau et al, November 19, 2020, Letter to the Editor: Facial Masking for COVID-19, *New England Journal of Medicine*, <https://www.nejm.org/doi/full/10.1056/NEJMc2030886>

⁶³ World Health Organization, December 1, 2020, *Mask use in the context of COVID-19 Interim Guidance*.

⁶⁴ Van Dyke, et al., *Trends in County-Level COVID-19 Incidence in Counties With and Without a Mask Mandate – Kansas, June 1–August 23, 2020*, <https://www.cdc.gov/mmwr/volumes/69/wr/mm6947e2.htm>.

mask group and small counties for the non-mask, thus inflating the amount of change in virus spread due to lower denominators. Further, the study authors' carefully select the time frame; examining the same counties over a longer time frame removes the effect. A more extensive study is for mask mandates and their relationship to hospitalizations⁶⁵ using the time period March 1 – October 17, 2020 in very similar fashion to the retracted study mentioned previously. Despite the clear and dramatic increase in hospitalizations almost immediately after the study time period, which completely invalidates the study conclusions, the CDC did not retract the study and, in fact, published it in early February 2021.

52. Additional evidence from the CDC⁶⁶ includes primarily laboratory studies with flaws as noted previously. In one such study the authors note major “leakage jets” for cloth and surgical masks.⁶⁷ A second notes an issue of the mask actually breaking the larger droplets into smaller particles that they were unable to measure, which would essentially aerosolize the virus.⁶⁸

53. Additional evidence in the CDC scientific brief is based on simulations or models rather than actual data, or flawed observational studies some of which are basically anecdotal. None would rise to the WHO 2019 standard for evidence. Examples include a study in New York⁶⁹ which begins at a time well after the incidence of cases had already begun to fall. There is no discernable change to the case trend after mask use began. Another considers Arizona from January to August.⁷⁰ The study is another that should be retracted – not long after the study timeframe the incidence rates increased in both counties with and without mask use. The “hairdresser” study is included as evidence despite a host of flaws: all reports are purely anecdotal, there is no control group, and less than 50% of clients actually responded. Further, some reported getting sick just not testing for Covid.⁷¹

54. Perhaps the greatest evidence that mask use in the community is ineffective is provided by two guidance documents published by the CDC during the pandemic. The first was a notice

⁶⁵ Heeson Joo, et al., February 5, 2021, *Decline in COVID-19 hospitalization growth rates associated with statewide mask mandates – 10 states, March – October 2020*, MMWR / February 5, 2021 / Vol. 70

⁶⁶ CDC, November 20, 2020, *Scientific Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2*, <https://www.cdc.gov/coronavirus/2019-ncov/more/masking-science-sars-cov2.html>

⁶⁷ I.M.Viola et al., 2020, *Face coverings, aerosol dispersion and mitigation of virus transmission risk*. <https://arxiv.org/abs/2005.10720>external icon

⁶⁸ E.P. Fischer et al, 2020, *Low-cost measurement of face mask efficacy for filtering expelled droplets during speech*. <https://www.ncbi.nlm.nih.gov/pubmed/32917603>external icon

⁶⁹ W. Lyu et al, 2020, *Community use of face masks and COVID-19: evidence from a natural experiment of state mandates in the US*. <https://www.ncbi.nlm.nih.gov/pubmed/32543923>

⁷⁰ M.S. Gallaway et al, 2020, *Trends in COVID-19 incidence after implementation of mitigation measures – Arizona, January 22 – August 7, 2020*. <https://www.ncbi.nlm.nih.gov/pubmed/33031366>

⁷¹ M.J. Hendrix et al, May 2020, *Absence of apparent transmission of SARS-CoV-2 from two stylists after exposure at a hair salon with a universal face covering policy – Springfield Missouri*, <https://www.ncbi.nlm.nih.gov/pubmed/32673300>

about the use of masks for protection against wildfire smoke⁷² that is titled “Cloth masks will not protect you from wildfire smoke” and continues the masks “do not catch small, harmful particles in smoke that can harm your health.” Covid particles are significantly smaller than smoke particles. The second was a recent study in support of wearing two masks⁷³. The study itself is scientifically flawed; a laboratory study using mannequins. The authors note the significant limitations and suggest the findings should not be interpreted as “being representative of the effectiveness of these masks when worn in real world settings.” The study is at least a tacit admission that mask use has not been effective in reducing transmission of the virus.

55. A basic principle of scientific hypothesis testing of the effectiveness of interventions is that they should demonstrate clear and convincing evidence that they “work.” Finding examples of success should not be difficult for an effective medical intervention. The opposite is clearly the case with community use of face masks – studies of effectiveness are extremely limited, and reduced increasingly to a very small group that are the exceptions rather than the rule. Proving that something “doesn’t work” is statistically and scientifically difficult. However, the preponderance of evidence from the pandemic indicates no effect.

56. A growing body of data and literature published in 2020 supports what was available prior to Covid. A meta-analysis of 10 different studies since 1946 concludes “We did not find evidence that surgical-type face masks are effective in reducing laboratory-confirmed influenza transmission, either when worn by infected persons (source control) or by persons in the general community to reduce their susceptibility.”⁷⁴ Another examining 15 randomized trials concludes “Compared to no masks, there was no reduction of influenza-like illness cases or influenza for masks in the general population, nor in healthcare workers.”⁷⁵ A third meta-analysis included both randomized trials and observational studies, a total of 31, and concluded “evidence is not

⁷² CDC, 2020, *Wildfire smoke and COVID-19*, https://www.cdc.gov/disasters/covid-19/wildfire_smoke_covid-19.html

⁷³ John T. Brooks, et al, February 19, 2021, *Maximizing fit for cloth and medical procedure masks to improve performance and reduce SARS-CoV-2 transmission and exposure, 2021.*
https://www.cdc.gov/mmwr/volumes/70/wr/mm7007e1.htm?s_cid=mm7007e1_x

⁷⁴ Jingyi Xiao, et al., *Nonpharmaceutical measures for pandemic influenza in nonhealthcare settings – personal protective and environmental measures*, May 2020, *Emerging Infectious Diseases*,
https://wwwnc.cdc.gov/eid/article/26/5/19-0994_article

⁷⁵ T Jefferson, et al., *Physical interventions to interrupt or reduce the spread of respiratory viruses*, April 7, 2020, *MedRxiv*, <https://www.medrxiv.org/content/10.1101/2020.03.30.20047217v2>

sufficiently strong to support widespread use of facemasks as a protective measure against COVID-19.”⁷⁶

57. The European CDC, in similar fashion to the WHO December 2020 update, conducted an extensive review⁷⁷ of evidence regarding mask wear. As with the WHO review they found “limited evidence on the effectiveness...in the community” and yet continued to recommend use.

58. In 2020 two more randomized trials including a control group add to the quality of available evidence documented by the WHO. The first involved hospital workers with the group wearing cloth masks actually having a significantly higher rate of lab confirmed influenza-like illness than a group wearing no masks. The study also examined the penetration rates finding over 97% of particle penetration in cloth masks and 44% in medical masks.⁷⁸ A more recent study involves Covid-19 spread in Denmark. The study found a non-significant difference in the control and mask groups (2.1% compared to 1.8% positive) when high quality surgical masks were worn. The difference was even smaller when they considered participants who reported the highest compliance with mask use.⁷⁹

59. Numerous studies of data during the Covid pandemic confirm the known science prior to 2020. An extremely extensive Cochrane review of over 60 studies found that face mask use did not reduce case either in the general population or among health care workers.⁸⁰ A quasi-experimental study of European data⁸¹ similarly concludes “requiring facemasks or coverings in public was not associated with any independent additional impact.” Despite pressure to retract for fear their article would be used to “support non-mask wearing” researchers from the University of Illinois stood by an article showing that the data does not support mask efficacy.⁸²

60. The evidence of mask use effectiveness is such that there are even studies that show a negative impact. The study by C. Raina MacIntyre et al mentioned previously was conducted pre-COVID but showed an actual increase in infection with cloth masks in a hospital setting. A more

⁷⁶ Julii Brainard, et al., *Facemasks and similar barriers to prevent respiratory illness such as COVID19: A rapid systematic review*, April 1, 2020, MedRxiv, <https://doi.org/10.1101/2020.04.01.20049528>

⁷⁷ ECDC, February 15, 2021, *Using face masks in the community: first update*, <https://www.ecdc.europa.eu/sites/default/files/documents/covid-19-face-masks-community-first-update.pdf>

⁷⁸ C Raina MacIntyre, et al., *A cluster randomized trial of cloth masks compared with medical masks in healthcare workers*, April 22, 2015, BMJ Open, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4420971/>

⁷⁹ Henning Bundgaard, et al., *Effectiveness of Adding a Mask Recommendation to Other Public Health Measures to Prevent SARS-CoV-2 Infection in Danish Mask Wearers A Randomized Controlled Trial*, November 18, 2020, *Annals of Internal Medicine*, <https://www.acpjournals.org/doi/10.7326/M20-6817>

⁸⁰ T. Jefferson, et al., November 20, 2020, *Do physical measures such as hand-washing or wearing masks stop or slow down the spread of respiratory viruses*, https://www.cochrane.org/CD006207/ARI_do-physical-measures-such-hand-washing-or-wearing-masks-stop-or-slow-down-spread-respiratory-viruses

⁸¹ Paul R. Hunter, et al, May 6, 2020, *Impact of non-pharmaceutical interventions against COVID-19 in Europe: a quasi-experimental study*, <https://www.medrxiv.org/content/10.1101/2020.05.01.20088260v1.full.pdf>

⁸² Lisa M Brosseau and Margaret Sietsema, April 1, 2020, *Commentary: Masks-for-all for COVID-19 not based on sound data*, <https://www.cidrap.umn.edu/news-perspective/2020/04/commentary-masks-all-covid-19-not-based-sound-data>

recent review noted a similar conclusion.⁸³ Physical and chemical attributes of respiration through a mask may scientifically describe reasons for increases in infections.⁸⁴

61. Empirical evidence overwhelmingly confirms the scientific literature. While observational, the data should not be ignored. Mask effectiveness should not be hidden in what actually occurs. A comprehensive study⁸⁵ of all counties in the U.S. shows that the difference in Covid-19 outcomes in those with mandates is not only not different than those without mandates, but actually worse. As an example, comparing similar large counties in Florida there were 64 cases per 1,000 in mask mandate counties, and in those without only 40 per 1,000. The results are the same in almost every state where there were counties with and without mandates to compare.⁸⁶ Similar results were found looking more broadly: for example, at state level the numbers were 27 per 100,000 with mask mandates and only 17 for no mandates.

62. The evidence from states, counties and countries worldwide is remarkably consistent. Mask use, which reached very high levels well before the winter virus season, had no discernable impact on the virus outcomes when considering trends – in fact, cases increase dramatically often after or in spite of increased mask wear.^{87,88} Comparisons of the disease trajectory for like countries/counties consistently depict remarkably similar trajectories despite various level of mask mandates and usage.⁸⁹

63. The example of mask use is important for several reasons. First, there are potential consequences to extended mask use, both physiological and psychological.^{90,91,92} Studies are just beginning to emerge of actual physical harms from mask wear. Other studies have found issues

⁸³ <https://www.thieme-connect.com/products/ejournals/html/10.1055/a-1174-6591>

⁸⁴ Colleen Huber, December 7, 2020, Proposed mechanisms by which masks increase risk of COVID-19, PDMJ, https://pdmj.org/papers/masks_false_safety_and_real_dangers_part4/

⁸⁵ Scott Morefield, December 21, 2020, New study shows mask mandates had zero effect in Florida or nationwide, <https://townhall.com/columnists/scottmorefield/2020/12/21/new-study-shows-mask-mandates-had-zero-effect-in-florida-or-nationwide-but-the-l-n2581879>

⁸⁶ Justin Hart, December 20, 2020, RationalGround.com analysis, https://twitter.com/justin_hart/status/1340725090514653184/photo/1

⁸⁷ Ian Miller, November 2020, More mask charts, <https://rationalground.com/more-mask-charts/>

⁸⁸ Ian Miller, December 2020, Post-Thanksgiving mask charts: still no evidence that masks work, <https://rationalground.com/post-thanksgiving-mask-charts-still-no-evidence-that-masks-work/>

⁸⁹ Ian Miller, November 2020, Mask charts, <https://rationalground.com/mask-charts/>

⁹⁰ Baruch Vainshelboim, *Facemasks in the Covid-19 era: a health hypothesis*, November 19, 2020, Medical Hypothesis, doi: <https://doi.org/10.1016/j.mehy.2020.110411>

⁹¹ Sven Fikenzer, et al., *Effects of surgical and FFP2/N95 facemasks on cardiopulmonary exercise capacity*, June 30, 2020, Clinical Research in Cardiology, <https://doi.org/10.1007/s00392-020-01704-y>

⁹² Russell Blaylock, May 11, 2020, *Face masks pose serious risks to the healthy*, Technocracy, <https://www.technocracy.news/blaylock-face-masks-pose-serious-risks-to-the-healthy/>

with oxygen saturation levels^{93, 94} which impacts healthy immune systems.⁹⁵ This issue could actually lead to increase susceptibility to Covid and other viruses long term.⁹⁶ Other risks include foreign particles causing lung damage⁹⁷ and microbial infections⁹⁸.

64. Harms for mask wear for children is an increasing concern. While children are at very low risk of infection, and tend to spread the virus and a much lower rate, masks have also become common for school openings. One is a large study in Germany among over 25,000 children⁹⁹ and reports impairments such as headache in over 50%, fatigue (37%), difficulty concentrating (50%) and irritability (60%) among others. A second documents both the risks for children from Covid and a substantial number of harms from mask wear.¹⁰⁰

65. A second impact of mask mandates is removing the freedom to choose from individuals and without compelling scientific or data to support such a restriction. Other restrictions are often similarly unsupported. Such mandates are one size fits all, therefore ignoring clear situations where a mask is not needed – for example, for people with immunity. A third issue is that the mask debate itself proves a distraction from other policies and decisions that have had devastating consequences.¹⁰¹ Finally, mandates that are ineffective done in the name of “science” erode the public trust and potentially contribute to poor response when scientifically justified interventions are recommended by government agencies and health officials, such as a potentially

⁹³ A. Beder, et al, 2008, *Preliminary report on surgical mask induce deoxygenation during major surgery*, Neurocirugia, <http://scielo.isciii.es/pdf/neuro/v19n2/3.pdf>.

⁹⁴ Boris Borovoy, et al, September 13, 2020, *Hypoxia, hypercapnia and physiological effects*, PDMJ, https://pdmj.org/papers/masks_false_safety_and_real_dangers_part3/

⁹⁵ Dmitriy Lukashov, et al., 2006, *Cutting Edge: Hypoxia-inducible factor 1alpha and its activation-inducible short isoform functions of CD4 and CD8 T lymphocytes*, The Journal of Immunology, <https://www.jimmunol.org/content/177/8/4962>

⁹⁶ Colleen Huber, July 6, 2020, *Masks are neither effective nor safe: a summary of the science*, Primary Doctor Medical Journal, https://pdmj.org/papers/masks_are_neither_effective_nor_safe/index.html

⁹⁷ Boris Borovoy, et al, September 13, 2020, *Friable mask particulate and lung vulnerability*, PDMJ, https://pdmj.org/papers/masks_false_safety_and_real_dangers_part1/

⁹⁸ Boris Borovoy, et al, September 13, 2020, *Microbial challenges from masks*, PDMJ, https://pdmj.org/papers/masks_false_safety_and_real_dangers_part2/

⁹⁹ Silke Schwarz et al., January 2021, *Corona children studies “Co-Ki”: first results of a Germany-wide registry on mouth and nose covering (mask) in children*, <https://orcid.org/0000-0002-8199-8874>

¹⁰⁰ Carla Peeters, September 9, 2020, *Rapid response: Psychosocial, biological, and immunological risks for children and pupils make long-term wearing of mouth masks difficult to maintain*, the BMJ <https://www.bmj.com/content/370/bmj.m3021/rr-6>

¹⁰¹ Tom Jefferson and Carl Heneghan, July 23, 2020, *Masking the lack of evidence with politics*, <https://www.cebm.net/covid-19/masking-lack-of-evidence-with-politics/>

effective and safe vaccine should one be developed. Public distrust of medical professions, and actual science/data increases with potentially detrimental impacts.¹⁰²

Policies that Restrict and Remove Freedoms must be Supported by Appropriate and Correct Data

66. Testing, generally involving the RT-PCR test for the SARS-CoV-2 virus is at the heart of many decisions regarding mandates imposed by government authorities. Criteria such as number of new daily cases, number of hospitalized and the percent positivity are often used and require analysis of results from these tests. The available scientific information regarding the accuracy of COVID-19 PCR tests, as conducted by clinical laboratories in the U.S., suggests that they are not sufficiently accurate regarding infectivity risk to warrant the central role they play in the criteria that government officials have adopted for restricting activity. There are two major problems that render these criteria scientifically unjustified.

67. First, neither the new daily cases number nor percent positivity number represent random samples of the population, but rather represent results from selected populations who have been referred, or have self-referred, for testing. The selection process for testing may occur because a physician has a clinical suspicion of COVID-19 disease, because a person came into contact with someone else who tested positive, or because a workplace requires employees to be tested regularly. The first two groups are typically more likely to have COVID-19-like symptoms and more likely to be positive than a randomly chosen population, while the third group is not a random subset of the population and includes many asymptomatic people as well as essential workers who are at higher risk of exposure to SARS-CoV-2. The percent positivity number is thus a biased estimate of the actual transmission risk of COVID-19 in the population. Without population representative sampling for testing, the number does not reflect the risk of transmission and thus is scientifically unjustified as a criterion for imposing restrictions on normal activities.

68. Second, the criteria do not account for the fact that the RT-PCR tests, as used in most laboratories around the US, likely register positive test results even for non-infectious viral fragments. Because the RT-PCR test is based on a very small sample of genetic material, the test amplifies the virus—if present—by a process of repeatedly doubling the concentration of viral genetic material.¹⁰³ If the sample genetic material is doubled enough times, the test will detect the presence of the virus even when the viral load is very small. Thus, although a positive test result indicates that a person has come into contact with the genomic sequence or some other viral antigen at some point in time, the mere presence of the viral genome is not sufficient, on its own, to indicate

¹⁰² Joseph A Ladapo, *Masks are a distraction from the pandemic reality*, October, 28, 2020, The Wall Street Journal, <https://www.wsj.com/articles/masks-are-a-distraction-from-the-pandemic-reality-11603927026>

¹⁰³ T. Jefferson, et al., *Viral Cultures for COVID-19 Infectivity Assessment – A Systematic Review (Update 3)* (Sept. 3, 2020), MEDRXIV, <https://www.medrxiv.org/content/10.1101/2020.08.04.20167932v3.full.pdf>.

infectivity.¹⁰⁴ In addition, viral genomic material can still be present—and thus detected if the sample is doubled enough times—weeks after an infected person has ceased to be infectious.¹⁰⁵

69. The problem arises from the fact that the implementation of the RT-PCR test for COVID-19 requires that clinical laboratories decide in advance how many doublings of the genetic material they will require before deciding that a sample is negative for the presence of the virus. This threshold, known as the “cycle time” of the test, determines both the rate at which a positive test result will be returned when the original sample does not include viral concentrations in sufficient amount to be infectious (hereafter, the functional false positive rate), and the rate at which a negative test result will be returned when the original sample does include viral concentrations in sufficient amount to be infectious (hereafter, the functional false negative rate). A higher cycle time threshold—requiring more doublings before declaring a negative test result—increases the functional false positive rate of the RT-PCR test because even if a non-infectious viral load is present in the sample obtained from the patient, a large number of permitted doublings could amplify whatever is present such that the test result is positive.

70. A systematic review of the literature on cycle time thresholds for the SARS-CoV-2 RT-PCR tests (encompassing 25 different published studies on the topic) concludes that “A binary Yes/No approach to the interpretation RT-PCR unvalidated against viral culture will result in false positives with segregation of large numbers of people who are no longer infectious and hence not a threat to public health.”¹⁰⁶ The scientific literature thus establishes the importance of cycle time thresholds in interpreting RT-PCR SARS-CoV-2 results.^{107,108}

71. This is important in the present context because RT-PCR tests are the basis of the case counts and percent positivity criteria used in many places. Both criteria are premised on a measurement that includes many people who are identified as SARS-CoV-2 positive but who pose little or no community transmission risk. When criteria do not make explicit the cycle time thresholds used by the laboratories analyzing the RT-PCR tests, the criteria are not scientifically justified in making decisions about policy.

72. Dr. Anthony Fauci spoke to this issue in July: “It's very frustrating for the patients as well as for the physicians...somebody comes in, and they repeat their PCR, and it's like 37 cycle threshold, but you almost never can culture virus from a 37 threshold cycle....so, I think if

¹⁰⁴ (*Id.*)

¹⁰⁵ (*Id.*)

¹⁰⁶ (*Id.*)

¹⁰⁷ Flora Marzia Liotti, et al., *Assessment of SARS-CoV-2 RNA test results among patients who recovered from COVID-19 with prior negative results*, November 12, 2020, JAMA Internal Medicine, doi:10.1001/jamainternmed.2020.7570

¹⁰⁸ Rita Jaafar, et al., *Correlation between 3790 qPCR positives samples and positive cell cultures including 1941 SARS-CoV-2 isolates*, September 28, 2020, Clinical Infectious Diseases, ciaa1491, <https://doi.org/10.1093/cid/ciaa1491>

somebody does come in with 37, 38, even 36, you got to say, you know, it's just dead nucleotides, period."¹⁰⁹ However, the guidelines in the US have largely remained unchanged.

73. In Europe, a group of over 20 scientists with incredible expertise in biology/virology and more, curated by the International Consortium of Scientists in Life Sciences (ICSLS) sent a letter¹¹⁰ to the editorial board of Eurosurveillance. They request retraction of a paper¹¹¹ published in January 2020 describing the RT-PCR method to detect SARS-CoV2. In an attached review¹¹², submitted to the journal for publication, they carefully and in detail describe “10 major scientific flaws” with “consequences for false positive results” in the original paper. Their analysis points out the importance of carefully interpreting PCR test results before automatically counting them as “cases”.

74. The WHO, in December, finally published guidance¹¹³ for PCR use to address the problem noting “the probability that a person who has a positive result (SARS-CoV-2 detected) is truly infected with SARS-CoV-2 decreases as positivity rate decreases, irrespective of the assay specificity.” The guidance points out that a positive test should be interpreted by looking at the Ct (cycles) and also consideration of “clinical signs and symptoms” before a diagnosis of a Covid case.

75. In many places, dramatic increases in testing among asymptomatic people (schools, workplaces for example) has led to inflated estimates of case numbers and corresponding policy decisions that needlessly impact healthy and non-contagious people. In addition, this approach distorts the true level of disease and distracts from efforts to protect those that are actually at risk and most vulnerable.¹¹⁴ When disease prevalence in a location is low, there is a danger from this approach of “pseudo-epidemics”, as previously observed in epidemics when PCR tests are

¹⁰⁹ Daniel Payne, *In newly surfaced July interview, Fauci warns that widely used COVID tests may pick up 'dead' virus*, November 8, 2020, <https://justthenews.com/politics-policy/coronavirus/newly-surfaced-video-july-fauci-tests-dead-virus>

¹¹⁰ Pieter Borger, et al., *Retraction request letter to Eurosurveillance editorial board*, November 28, 2020, <https://cormandrostenreview.com/retraction-request-letter-to-eurosurveillance-editorial-board/>

¹¹¹ Victor M. Corman, et al., *Detection of 2019 novel coronavirus (2019-nCoV) by real-time RT-PCR*, January 21, 2020, *Eurosurveillance* 25(8), <https://doi.org/10.2807/1560-7917.ES.2020.25.3.2000045>

¹¹² Pieter Borger, et al., *External peer review of the RTPCR test to detect SARS-CoV-2 reveals 10 major scientific flaws at the molecular and methodological level: consequences for false positive results*, November 27, 2020, <https://cormandrostenreview.com/report/>

¹¹³ WHO, December 14, 2020, *WHO information notice for IVD users*, <https://www.who.int/news/item/14-12-2020-who-information-notice-for-ivd-users>

¹¹⁴ Jay Bhattacharya and Martion Kulldorf, *The case against Covid tests for the young and healthy*, September 3, 2020, <https://www.wsj.com/articles/the-case-against-covid-tests-for-the-young-and-healthy-11599151722>

used¹¹⁵, in locations where the epidemic has passed due to false positives.^{116,117} Among the consequences observed when false positives occur are people then missing other medical treatment, in addition to unnecessary quarantine and isolation.¹¹⁸

76. Related to testing is the ultimate reporting of not just cases, but hospitalizations and deaths due to Covid-19. Hospitalizations are often a metric cited when justifying mandates. As testing has expanded, most hospitals now test all patients regardless of diagnosis. Thus, many admitted patients with a positive test result are not hospitalized for Covid-19, but are included in the reports on Covid-19 hospitalization. As an example, a Miami-Dade county survey¹¹⁹ found that over half of those listed as Covid-19 hospitalizations, 471 of 898, were not admitted for Covid-19. Similar issues then arise when deaths are counted.¹²⁰

77. Reporting of cases and deaths in many states are potentially inflated. As an example, in New York¹²¹ a “confirmed case” is a “positive test from a molecular test, such as a PCR test.” Thus, the issues with PCR testing play a role in the counts of cases. A “confirmed death” is a “death within 60 days of a positive molecular test.” Thus, again, PCR test issues play a role. Further, the death could be completely unrelated to Covid-19 using this definition.

August 2021 Update – Impact of New Variants

78. New variants of SAR-CoV2 are expected (Delta, Lambda, etc) as the virus seeks to live. The pandemic planning guidelines and response are unchanged – protect the vulnerable, care for the sick and allow and encourage others to live normal lives to avoid the devastating consequences outlined in this document. While new variants have different transmissibility and outcomes, the basic nature of the virus is the same in terms of effectiveness of NPIs such as mask wear. The virus is still spread via small airborne particles making masking, and many other behavior changes, ineffective as means to reduce spread in the population.

79. Data continues to show the lack of impact of masks in stopping an airborne virus. Countries praised for heavy mask wear (Japan, Iceland, Thailand, Czech Republic, Vietnam and

¹¹⁵ Marilyn Larkin, *Curbing false positives and pseudo-epidemics*, March, 2007, *The Lancet*, [https://doi.org/10.1016/S1473-3099\(07\)70044-0](https://doi.org/10.1016/S1473-3099(07)70044-0)

¹¹⁶ Association of American Physicians and Surgeons (AAPS), October 7, 2020, *Do we have a coronavirus pandemic or a PCR test pandemic*, <https://aapsonline.org/covid-19-do-we-have-a-coronavirus-pandemic-or-a-pcr-test-pandemic/>

¹¹⁷ Mike Yeadon, *The PCR false positive pseudo-epidemic*, December 1, 2020, <https://lockdownsceptics.org/the-pcr-false-positive-pseudo-epidemic/>

¹¹⁸ Brandon Healy et al., January 1, 2021, *The impact of false positive COVID-19 results in an area of low prevalence*, DOI: 10.7861/clinmed.2020-0839

¹¹⁹ Ben Conarck, *In Miami, a sign of widespread transmission: More non-COVID patients have the virus*, November 18, 2020, *Miami Herald*, <https://www.miamiherald.com/news/coronavirus/article247234864.html>.

¹²⁰ Jennifer Cabrera and Len Cabrera, *Death certificate review raises questions about official number of Covid-19 deaths*, October 30, 2020, *Alachua Chronicle*, <https://alachuachronicle.com/death-certificate-review-raises-questions-about-official-number-of-covid-19-deaths/>

¹²¹ NYC Health Covid-19: Data, December 13, 2020, <https://www1.nyc.gov/site/doh/covid/covid-19-data.page>.

many more) have since seen large outbreaks in keeping with locations with less mask use. Mask wear, among mitigation measures, is the most clearly ineffective based on months of observing the pandemic data. A few examples of analysis of the data recently published include a study based on a very large database in U.S. schools showing no difference in spread in schools with and without mask wear.¹²² Another study looked at all U.S. states and found no difference in case growth rates based on mask mandates.¹²³ Former President Biden Covid advisor Michael Osterholm recently admitted that cloth and surgical masks are ineffective, finally confirming what data and studies have shown both during and prior to the current pandemic.¹²⁴

80. Efforts to produce studies designed to justify mandates continue to use flawed models or statistical methods that overstate potential benefits. A NY Times article¹²⁵ offers an example. The authors cite a study of students in North Carolina to provide evidence of masks working based on relatively low cases and outbreaks in schools. However, the authors themselves point out that there were no schools in the study where masks were not worn to use as a comparison. As previously pointed out, there are numerous examples of schools without mask wear with similar outcomes. Such evidence has been available since June of 2020. In Sweden (and many other European countries) schools were in person, no masks, throughout the entire pandemic with no deaths among children and less risk for teachers than for other similar working adults.¹²⁶

I DECLARE UNDER PENALTY OF PERJURY AND UNDER THE LAWS OF THE STATE OF MONTANA THAT THE FOREGOING IS TRUE AND CORRECT.



Rodney X. Sturdivant, Ph.D.

Date of Signature: August 11, 2021

Waco, Texas

¹²² Oster, E., et al., *COVID-19 Mitigation Practices and COVID-19 Rates in Schools: Report on Data from Florida, New York and Massachusetts*, May 21, 2021, BMJ, <https://www.medrxiv.org/content/10.1101/2021.05.19.21257467v1>

¹²³ Guerra, D. and Guerra, D., *Mask mandate and use efficacy in state-level COVID-19 containment*, MedRX, <https://www.medrxiv.org/content/10.1101/2021.05.18.21257385v2>

¹²⁴ Courtney O'Brien, *Former Biden COVID advisor says cloth masks ineffective, suggests Americans start wearing N-95 masks*, <https://www.foxnews.com/media/biden-covid-adviser-americans-need-to-wear-n95-masks>

¹²⁵ Kanisha Zimmerman and Danny Benjamin Jr, August 10, 2021, *We studied one million students, universal masking works*, NY Times opinion, <https://www.nytimes.com/2021/08/10/opinion/covid-schools-masks.html>

¹²⁶ Jonas F. Ludvigsson et al, February 18, 2021, *Open schools, Covid-19, and child and teacher morbidity in Sweden*, New England Journal of Medicine, <https://www.nejm.org/doi/full/10.1056/NEJMc2026670>.

EXHIBIT F

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:

1. I, Jenna McKinney, am over eighteen years of age and I am a resident of Billings, Montana. I am mentally sound and competent to testify and swear to the matters set forth herein. The matters set forth herein are based on my personal knowledge, unless otherwise stated.

2. I reside in Yellowstone County, Montana.

3. I am a member of Moms for America, which is a national movement of mothers with the stated purpose of getting mothers engaged in civics, education, and culture. It is a non-profit corporation with registered members in Yellowstone County, Montana.

4. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 17th day of December 2021, in Billings, Montana.

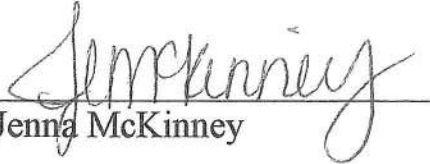

Jenna McKinney

EXHIBIT G

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:

1. I, Chellese Stamson, am over eighteen years of age and I am a resident of Bozeman, Montana. I am mentally sound and competent to testify and swear to the matters set forth herein. The matters set forth herein are based on my personal knowledge, unless otherwise stated.

2. I reside in Gallatin County, Montana.

3. I am a representative of Stand Up Montana, which is a registered Montana non-profit corporation in good standing with its principal place of business in Gallatin County, Montana.

4. Stand Up Montana's mission is to encourage Montanans, during the COVID-19 restrictions, to "stand up for the constitutionally protected liberties, to provide resources and support to individuals and businesses who have been discriminated against or harassed by unfair rules and regulations, and to support similar initiatives." It has a membership of more than 850 individuals, including many in Yellowstone County who are the parents of children enrolled at Defendants' schools and who object to the student mask mandates described herein.

5. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 16th day of December 2021, in Bozeman, Montana.

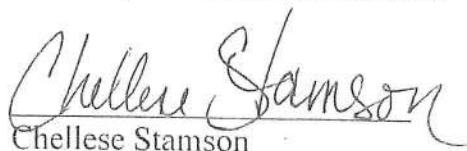

Chellese Stamson

EXHIBIT H

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:

1. I, Luke Hudson, am over eighteen years of age and I am a resident of Billings, Montana. I am mentally sound and competent to testify and swear to the matters set forth herein. The matters set forth herein are based on my personal knowledge, unless otherwise stated.

2. I reside in Yellowstone County, Montana.

3. I am the parent of children enrolled at Defendant School District 2 schools Will James Middle School and Big Sky Elementary. I object to the Defendants' forced student masking because my children have significant issues with breathing in masks, experience anxiety related to having their faces covered for 7 hours, find it very difficult to learn in an environment where the teachers' and other students' faces are covered, and experience confusion and distrust regarding the inconsistency with which the School District enforces and not enforces the mandate. My children are losing their love of learning. I believe my parental rights are being harmed because I am not able to individually assess the benefits and risks to my children without the influence of an unelected Superintendent with no accountability for his decision making through imposed limits or standards.

4. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 31st day of October 2021, in Billings, Montana.



Luke Hudson

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:


1. I, Brooke Hudson, am over eighteen years of age and I am a resident of Billings, Montana. I am mentally sound and competent to testify and swear to the matters set forth herein. The matters set forth herein are based on my personal knowledge, unless otherwise stated.

2. I reside in Yellowstone County, Montana.

3. I am the parent of children enrolled at Defendant School District 2 schools Will James Middle School and Big Sky Elementary. I object to the Defendants' forced student masking because my children have significant issues with breathing in masks, experience anxiety related to having their faces covered for 7 hours, find it very difficult to learn in an environment where the teachers' and other students' faces are covered, and experience confusion and distrust regarding the inconsistency with which the School District enforces and not enforces the mandate. My children are losing their love of learning. I believe my parental rights are being harmed because I am not able to individually assess the benefits and risks to my children without the influence of an unelected Superintendent with no accountability for his decision making through imposed limits or standards.

4. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 31st day of October 2021, in Billings, Montana.



Brooke Hudson

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:

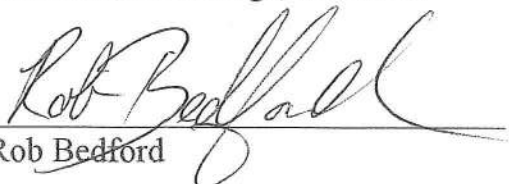
1. I, Rob Bedford, am over eighteen years of age and I am a resident of Billings, Montana. I am mentally sound and competent to testify and swear to the matters set forth herein. The matters set forth herein are based on my personal knowledge, unless otherwise stated.

2. I reside in Yellowstone County, Montana.

3. I am the parent of a son districted for West High School in Defendant School District 2. I have withdrawn my son and now pay tuition to enroll him at Laurel High School where there is no mask mandate. I object to the Defendants' forced mask policy because my son is healthy and finds masking difficult, unpleasant, and detrimental to his physical, social, and emotional health. He could not fully see or understand his teachers or his peers. He found it difficult to make friends in a new school due to covered faces. He found the mask distracting and unhelpful, as well as uncomfortable to wear, but was given very few options to take a break. When he found a compromise he could live with (covered mouth, uncovered nose) he was refused this option and removed from campus. I believe the mask mandate violates my right as a parent to make medical decisions for my minor child, as I am in the best position to know my son's best interests. I also believe, based on the science, that masks are not medically necessary or efficacious.

4. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 2nd day of December 2021, in Billings, Montana.


Rob Bedford

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:

1. I, Addie Bedford, am over eighteen years of age and I am a resident of Billings, Montana. I am mentally sound and competent to testify and swear to the matters set forth herein. The matters set forth herein are based on my personal knowledge, unless otherwise stated.

2. I reside in Yellowstone County, Montana.

3. I am the parent of a son districted for West High School in Defendant School District 2. I have withdrawn my son and now pay tuition to enroll him at Laurel High School where there is no mask mandate. I object to the Defendants' forced mask policy because my son is healthy and finds masking difficult, unpleasant, and detrimental to his physical, social, and emotional health. He could not fully see or understand his teachers or his peers. He found it difficult to make friends in a new school due to covered faces. He found the mask distracting and unhelpful, as well as uncomfortable to wear, but was given very few options to take a break. When he found a compromise he could live with (covered mouth, uncovered nose) he was refused this option and removed from campus. I believe the mask mandate violates my right as a parent to make medical decisions for my minor child, as I am in the best position to know my son's best interests. I also believe, based on the science, that masks are not medically necessary or efficacious.

4. I declare under penalty of perjury that the foregoing is true and correct.

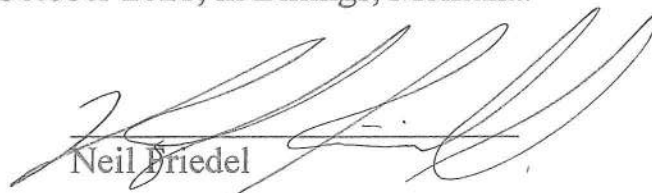
DATED this 2nd day of December 2021, in Billings, Montana.


Adele Bedford

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:

1. I, Neil Friedel, am over eighteen years of age and I am a resident of Billings, Montana. I am mentally sound and competent to testify and swear to the matters set forth herein. The matters set forth herein are based on my personal knowledge, unless otherwise stated.
2. I reside in Yellowstone County, Montana.
3. I am a parent of a son enrolled in Defendant School District No. 2's Eagle Cliff Elementary School. I maintain that parents should have the right to decide on health choices for their children. I have reached out to my School Board Trustee but have never been answered. I asked my school Principal to provide me a written statement that my son could not enter the school without a mask on, was not offered any remote learning or alternative to education, and was not allowed in the school without complying. I believe the forced masking policy denies my son the right to an equal education. I do not believe masks are effective for the purposes the Superintendent is stating.
4. I declare under penalty of perjury that the foregoing is true and correct.

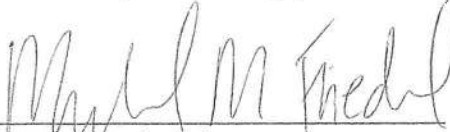
DATED this 23 day of October 2021, in Billings, Montana.


Neil Friedel

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:

1. I, Mykel Friedel, am over eighteen years of age and I am a resident of Billings, Montana. I am mentally sound and competent to testify and swear to the matters set forth herein. The matters set forth herein are based on my personal knowledge, unless otherwise stated.
2. I reside in Yellowstone County, Montana.
3. I am a parent of a son enrolled in Defendant School District No. 2's Eagle Cliff Elementary School. I maintain that parents should have the right to decide on health choices for their children. I have reached out to my School Board Trustee but have never been answered. I asked my school Principal to provide me a written statement that my son could not enter the school without a mask on, was not offered any remote learning or alternative to education, and was not allowed in the school without complying. I believe the forced masking policy denies my son the right to an equal education. I do not believe masks are effective for the purposes the Superintendent is stating.
4. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 23 day of October 2021, in Billings, Montana.


Mykel Friedel

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:

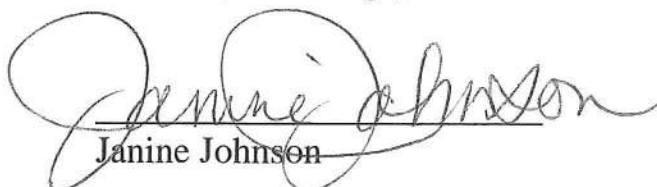
1. I, Janine Johnson, am over eighteen years of age and I am a resident of Billings, Montana. I am mentally sound and competent to testify and swear to the matters set forth herein. The matters set forth herein are based on my personal knowledge, unless otherwise stated.

2. I reside in Yellowstone County, Montana.

3. I am the parent to two children enrolled in Defendant Elysian School District No. 23. I oppose the Defendants' forced masking policy on the basis of mental health issues. My children both suffer from anxiety and ADHD. I presented the attached to the school principal regarding the use of masks and the negative effects on my children. The Defendant school will not accept the letters and refuses to consider them despite their assurances that they are complying with the DPHHS August 30, 2021 Directive, instructing Montana school districts to consider parents' concerns regarding their children. I believe the school is in violation of the Student Rights Policy and is violating my children's right to an equal and quality education. I have attempted to communicate with the School District on these issues but have been ignored.

4. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 2^d day of ^{December} October 2021, in Billings, Montana.


Janine Johnson

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:

1. I, Keziah Lawicki, am over eighteen years of age and I am a resident of Billings, Montana. I am mentally sound and competent to testify and swear to the matters set forth herein. The matters set forth herein are based on my personal knowledge, unless otherwise stated.

2. I reside in Yellowstone County, Montana.

3. I am the parent of a daughter districted for McKinley Elementary School in Defendant School District No. 2. I pulled my daughter out of school because of the physical harm to her caused by wearing a face covering for 7 hours a day and because of the emotional harm of reliving very traumatic memories of the abusive and controlling religious upbringing I endured that required similar amounts of control. I oppose the forced face masking mandate. I attempted to communicate with the school principal about alternative education and was not given any alternatives other than being refused entry to the school. My requests to discuss the matter with the School District No. 2 administration were ignored. I believe my daughter would not receive an equal and quality education with a face covering on or in the remote learning I now know is available to students.

4. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 10th day of December 2021, in Billings, Montana.


Keziah Lawicki

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:

1. I, Pat Moore, am over eighteen years of age and I am a resident of Billings, Montana. I am mentally sound and competent to testify and swear to the matters set forth herein. The matters set forth herein are based on my personal knowledge, unless otherwise stated.
2. I reside in Yellowstone County, Montana.
3. I am parent to two elementary children enrolled in Defendant School District No. 2 schools. I oppose the forced mask policy. My oldest daughter was in 1st grade last year while there was a forced mask policy. She developed bad sores around her mouth and massively chapped lips from the wearing of masks. She also complained of headaches often and stated that it was difficult for her to communicate at times while wearing the mask. She was excited to go back to school this year until the last-minute mask mandate was announced. When this happened, her anxiety rose significantly and her mood plummeted. She doesn't like talking about school anymore and dreads every day she has to pick out a mask to wear. The basis for the forced mask policy is inconsistent and was not subjected to public scrutiny or comment. The insistence of following "the numbers" and science to back up this mandate is flawed and not supported with science. I also believe my parental rights to direct my children's education and decisions regarding their health care are being infringed upon by the Defendant School District. I have attempted to communicate with the School District over this issue and have been ignored.

4. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 23rd day of November 2021, in Billings, Montana.

A handwritten signature in black ink, appearing to read 'Pat. Moore', is written above a horizontal line.

Pat. Moore

Per Mont. Code Ann. § 1-6-105, the undersigned declares as follows:

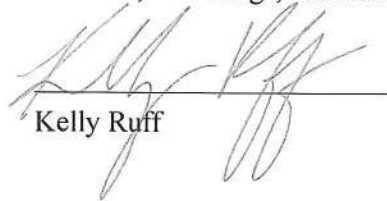
1. I, Kelly Ruff, am over eighteen years of age and I am a resident of Billings, Montana. I am mentally sound and competent to testify and swear to the matters set forth herein. The matters set forth herein are based on my personal knowledge, unless otherwise stated.

2. I reside in Yellowstone County, Montana.

3. I am the parent of children within Defendant School District No. 2. I oppose the forced mask policy and believe that as parent I have the right to determine what is best for my children. One of my three children significantly suffers from anxiety, headaches, and difficulty breathing while being forced to wear a mask. After last year, when masks were forced upon the children, I discovered the harm it was causing my son. He began to experience serious emotional and physical issues related to the mask wearing. The option of using the Defendant School District No. 2's remote learning platform is no option at all. It is inferior and insufficient and does not provide an education for children. This year, when the Superintendent made the last-minute masking policy, my son suffered so greatly that I was forced to remove him from school and attempt to school him at home. I experienced the School Board ignoring my concerns or personal issues. The Superintendent is not accountable to me, made this decision without notice to me or my ability to participate, and has no limits on what he can decide regarding the mask policy.

4. I declare under penalty of perjury that the foregoing is true and correct.

DATED this day of October 2021, in Billings, Montana.



Kelly Ruff

EXHIBIT I

<https://gbdeclaration.org>

The Great Barrington Declaration

The Great Barrington Declaration – As infectious disease epidemiologists and public health scientists we have grave concerns about the damaging physical and mental health impacts of the prevailing COVID-19 policies, and recommend an approach we call Focused Protection.

Coming from both the left and right, and around the world, we have devoted our careers to protecting people. Current lockdown policies are producing devastating effects on short and long-term public health. The results (to name a few) include lower childhood vaccination rates, worsening cardiovascular disease outcomes, fewer cancer screenings and deteriorating mental health – leading to greater excess mortality in years to come, with the working class and younger members of society carrying the heaviest burden. Keeping students out of school is a grave injustice.

Keeping these measures in place until a vaccine is available will cause irreparable damage, with the underprivileged disproportionately harmed.

Fortunately, our understanding of the virus is growing. We know that vulnerability to death from COVID-19 is more than a thousand-fold higher in the old and infirm than the young. Indeed, for children, COVID-19 is less dangerous than many other harms, including influenza.

As immunity builds in the population, the risk of infection to all – including the vulnerable – falls. We know that all populations will eventually reach herd immunity – i.e. the point at which the rate of new infections is stable – and that this can be assisted by (but is not dependent upon) a vaccine. Our goal should therefore be to minimize mortality and social harm until we reach herd immunity.

The most compassionate approach that balances the risks and benefits of reaching herd immunity, is to allow those who are at minimal risk of death to live their lives normally to build up immunity to the virus through natural infection, while better protecting those who are at highest risk. We call this Focused Protection.

Adopting measures to protect the vulnerable should be the central aim of public health responses to COVID-19. By way of example, nursing homes should use staff with acquired immunity and perform frequent testing of other staff and all visitors. Staff rotation should be minimized. Retired people living at home should have groceries and other essentials delivered to their home. When possible, they should meet family members outside rather than inside. A comprehensive and detailed list of measures, including approaches to multi-generational households, can be implemented, and is well within the scope and capability of public health professionals.

Those who are not vulnerable should immediately be allowed to resume life as normal. Simple hygiene measures, such as hand washing and staying home when sick should be practiced by everyone to reduce the herd immunity threshold. Schools and universities should be open for in-person teaching. Extracurricular activities, such as sports, should be resumed. Young low-risk adults should work normally, rather than from home. Restaurants and other businesses should open. Arts, music, sport and other cultural activities should resume. People who are more at risk may participate if they wish, while society as a whole enjoys the protection conferred upon the vulnerable by those who have built up herd immunity.

On October 4, 2020, this declaration was authored and signed in Great Barrington, United States, by:

Dr. Martin Kulldorff, professor of medicine at Harvard University, a biostatistician, and epidemiologist with expertise in detecting and monitoring infectious disease outbreaks and vaccine safety evaluations.

Dr. Sunetra Gupta, professor at Oxford University, an epidemiologist with expertise in immunology, vaccine development, and mathematical modeling of infectious diseases.

Dr. Jay Bhattacharya, professor at Stanford University Medical School, a physician, epidemiologist, health economist, and public health policy expert focusing on infectious diseases and vulnerable populations.

SIGN THE DECLARATION

Co-signers

Medical and Public Health Scientists and Medical Practitioners

Dr. Alexander Walker, principal at World Health Information Science Consultants, former Chair of Epidemiology, Harvard TH Chan School of Public Health, USA

Dr. Andrius Kavaliunas, epidemiologist and assistant professor at Karolinska Institute, Sweden

Dr. Angus Dalglish, oncologist, infectious disease expert and professor, St. George's Hospital Medical School, University of London, England

Dr. Anthony J Brookes, professor of genetics, University of Leicester, England

Dr. Annie Janvier, professor of pediatrics and clinical ethics, Université de Montréal and Sainte-Justine University Medical Centre, Canada

Dr. Ariel Munitz, professor of clinical microbiology and immunology, Tel Aviv University, Israel

Dr. Boris Kotchoubey, Institute for Medical Psychology, University of Tübingen, Germany

Dr. Cody Meissner, professor of pediatrics, expert on vaccine development, efficacy, and safety. Tufts University School of Medicine, USA

Dr. David Katz, physician and president, True Health Initiative, and founder of the Yale University Prevention Research Center, USA

Dr. David Livermore, microbiologist, infectious disease epidemiologist and professor, University of East Anglia, England

Dr. Eitan Friedman, professor of medicine, Tel-Aviv University, Israel

Dr. Ellen Townsend, professor of psychology, head of the Self-Harm Research Group, University of Nottingham, England

Dr. Eyal Shahar, physician, epidemiologist and professor (emeritus) of public health, University of Arizona, USA

Dr. Florian Limbourg, physician and hypertension researcher, professor at Hannover Medical School, Germany

Dr. Gabriela Gomes, mathematician studying infectious disease epidemiology, professor, University of Strathclyde, Scotland

Dr. Gerhard Krönke, physician and professor of translational immunology, University of Erlangen-Nuremberg, Germany

Dr. Gesine Weckmann, professor of health education and prevention, Europäische Fachhochschule, Rostock, Germany

Dr. Günter Kampf, associate professor, Institute for Hygiene and Environmental Medicine, Greifswald University, Germany

Dr. Helen Colhoun, professor of medical informatics and epidemiology, and public health physician, University of Edinburgh, Scotland

Dr. Jonas Ludvigsson, pediatrician, epidemiologist and professor at Karolinska Institute and senior physician at Örebro University Hospital, Sweden

Dr. Karol Sikora, physician, oncologist, and professor of medicine at the University of Buckingham, England

Dr. Laura Lazzeroni, professor of psychiatry and behavioral sciences and of biomedical data science, Stanford University Medical School, USA

Dr. Lisa White, professor of modelling and epidemiology, Oxford University, England

Dr. Mario Recker, malaria researcher and associate professor, University of Exeter, England

Dr. Matthew Ratcliffe, professor of philosophy, specializing in philosophy of mental health, University of York, England

Dr. Matthew Strauss, critical care physician and assistant professor of medicine, Queen's University, Canada

Dr. Michael Jackson, research fellow, School of Biological Sciences, University of Canterbury, New Zealand

Dr. Michael Levitt, biophysicist and professor of structural biology, Stanford University, USA. Recipient of the 2013 Nobel Prize in Chemistry.

Dr. Mike Hulme, professor of human geography, University of Cambridge, England

Dr. Motti Gerlic, professor of clinical microbiology and immunology, Tel Aviv University, Israel

Dr. Partha P. Majumder, professor and founder of the National Institute of Biomedical Genomics, Kalyani, India

Dr. Paul McKeigue, physician, disease modeler and professor of epidemiology and public health, University of Edinburgh, Scotland

Dr. Rajiv Bhatia, physician, epidemiologist and public policy expert at the Veterans Administration, USA

Dr. Rodney Sturdivant, infectious disease scientist and associate professor of biostatistics, Baylor University, USA

Dr. Simon Thornley, epidemiologist and biostatistician, University of Auckland, New Zealand

Dr. Simon Wood, biostatistician and professor, University of Edinburgh, Scotland

Dr. Stephen Bremner, professor of medical statistics, University of Sussex, England

Dr. Sylvia Fogel, autism provider and psychiatrist at Massachusetts General Hospital and instructor at Harvard Medical School, USA

Tom Nicholson, Associate in Research, Duke Center for International Development, Sanford School of Public Policy, Duke University, USA

Dr. Udi Qimron, professor of clinical microbiology and immunology, Tel Aviv University, Israel

Dr. Ulrike Kämmerer, professor and expert in virology, immunology and cell biology, University of Würzburg, Germany

Dr. Uri Gavish, biomedical consultant, Israel

Dr. Yaz Gulnur Muradoglu, professor of finance, director of the Behavioural Finance Working Group, Queen Mary University of London, England

EXHIBIT J

SENATE BILL NO. 400

INTRODUCED BY T. MANZELLA, K. BOGNER, B. BROWN, J. ELLSWORTH, C. GLIMM, B. HOVEN, D. KARY, B. KEENAN, B. MOLNAR, J. SMALL, C. SMITH, G. VANCE, S. BERGLEE, J. CARLSON, J. HINKLE, D. LENZ, B. LER, B. PHALEN, A. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT RESTRICTING A GOVERNMENTAL ENTITY'S ABILITY TO INTERFERE WITH FUNDAMENTAL PARENTAL RIGHTS; ESTABLISHING A CAUSE OF ACTION FOR INTERFERENCE WITH PARENTAL RIGHTS; PROVIDING A FILING FEE; AMENDING SECTION 25-1-202, MCA; AND PROVIDING AN APPLICABILITY DATE."

WHEREAS, the interests and role of parents in the care, custody, and control of their children are both implicit in the concept of ordered liberty and deeply rooted in our nation's history and tradition; and

WHEREAS, the right to parent is among the unalienable rights retained by the people under the Constitution of the United States; and

WHEREAS, the right to parent includes the high duty and right of parents to nurture and direct their children's destiny, including their upbringing, moral or religious training, health care, and education; and

WHEREAS, the State of Montana has independent authority to protect parents' fundamental right to nurture and direct their children's destiny, including their upbringing, moral or religious training, health care, and education; and

WHEREAS, parental rights are as fundamental to the human condition as to be considered inalienable. Termination of parental rights equals or exceeds the detriment of criminal sanctions. Therefore, parents whose parental rights are subject to termination must have the right to fundamental due process in all cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Interference with fundamental parental rights restricted -- cause of action. (1) A governmental entity may not interfere with the fundamental right of parents to direct the upbringing, education, health care, and mental health of their children unless the governmental entity



1 demonstrates that the interference:

2 (a) furthers a compelling governmental interest; and

3 (b) is narrowly tailored and is the least restrictive means available for the furthering of the compelling
4 governmental interest.

5 (2) This section may not be construed as invalidating the provisions of Title 41, chapter 3, or
6 modifying the burden of proof at any stage of the proceedings under Title 41, chapter 3.

7 (3) When a parent's fundamental rights protected by this section are violated, a parent may assert
8 that violation as a claim or defense in a judicial proceeding and may obtain appropriate relief against the
9 governmental entity. If the parent prevails in an action against the governmental entity as provided in this
10 subsection, the parent is entitled to reasonable attorney fees and costs.

11 (4) As used in this section, "governmental entity" has the meaning provided in 2-9-101.

12

13 **Section 2.** Section 25-1-202, MCA, is amended to read:

14 **"25-1-202. Additional filing fee fees.** (1) In addition to other filing fees, the following fees must be
15 paid to the clerk of the district court at the time of filing a civil action in the district court:

16 (a) a fee of \$20 must be paid to the clerk of district court at the time of filing a civil action in the district
17 court ; and

18 (b) if the action is brought pursuant to [section 1], in addition to the fee required under subsection
19 (1)(a), a fee of \$5.

20 (2) The fee-fees must be forwarded by the clerk to the department of revenue for deposit in the state
21 general fund. The prevailing party may have the amount paid by the prevailing party taxed in the bill of costs as
22 proper disbursements."

23

24 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as a new
25 part in Title 40, chapter 6, and the provisions of Title 40, chapter 6, apply to [section 1].

26

27 **NEW SECTION. Section 4. Applicability.** [This act] applies to an interference with parental rights
28 existing on or after [the effective date of this act].

1

- END -

EXHIBIT K

Billings School District 2

THE BOARD OF TRUSTEES

District Policy

Adoption, Amendment and Repeal of Policies

Proposed new policies or proposed changes to existing policies, and proposed repeal of existing policies shall be presented to the Board by the Board's Policy Review Committee in writing for readings and discussion as described herein.

Interested parties may submit views, present data or arguments, orally or in writing, in support of or in opposition to proposed policy changes.

The Board will follow the following steps when considering changes to District policy:

1. First Reading: The proposed change to District policy will be presented for a first reading and discussion by the Board at a regular Board meeting.
2. Second Reading: The proposed change to District policy will be presented for a second reading and discussion by a Board committee at a committee meeting or by the Board at a regular or special Board meeting.
3. Third Reading: The proposed change to District policy will be presented for a third reading, discussion and action by the Board at a regular Board meeting.

All new or amended policies shall become effective on adoption unless a specific effective date is stated in the motion for adoption.

Policies, as adopted or amended, shall be made a part of the minutes of the meeting at which action was taken and also shall be included in the District's policy manual. Policies of the District shall be reviewed annually by the Board.

Policy Manuals

The Superintendent shall develop and maintain a current policy manual that includes all policies of the District. Every administrator, as well as staff, students, and other residents, shall have ready access to the District policies.

Suspension of Policies

Under circumstances that require waiver of a policy, the policy may be suspended by a majority vote of the trustees present. To suspend a policy, however, all trustees must have received written notice of the meeting, which includes the proposal to suspend a policy and an explanation of the purpose of such proposed suspension. If such a proposal is not made in writing in advance

of the meeting, a policy may be suspended only by a unanimous vote of all trustees present.

Legal References: § 20-3-323, MCA District policy and record of acts
 10.55.701, ARM Board of Trustees

Policy History:

First Reading: January 19, 2004 - Board of Trustees
Second Reading: February 16, 2004 - Board of Trustees
Third Reading: March 15, 2004 - Board of Trustees
Adopted on: March 15, 2004
Effective on: July 1, 2004
Revised on: June 20, 2005

Billings School District 2

THE BOARD OF TRUSTEES

Administrative Procedures

The Superintendent shall develop such administrative procedures as are necessary to ensure consistent implementation of policies adopted by the Board.

When a written procedure is developed, the Superintendent shall submit it to the Board as an information item. Such procedures usually need not be approved by the Board, although the Board may revise them when it appears they are not consistent with Board intentions as expressed in its policies. On controversial matters or on certain other matters identified by the Board, the Superintendent shall submit proposed procedures to the Board for review prior to their adoption.

<u>Legal References:</u>	§ 20-3-323, MCA	District policy and record of acts
	§ 20-3-324, MCA	Powers and duties
	§ 20-4-402, MCA	Duties of district superintendent or county high school principal

Policy History:

First Reading:	January 19, 2004 - Board of Trustees
Second Reading:	February 16, 2004 - Board of Trustees
Third Reading:	March 15, 2004 - Board of Trustees
Adopted on:	March 15, 2004
Effective on:	March 15, 2004
Revised on:	

Billings School District 2

THE BOARD OF TRUSTEES

Face Coverings as Personal Protective Equipment

This policy applies during the COVID19 state of emergency declared by the Board of Trustees or other local, state or federal agency, official, or legislative body. This policy is adopted, implemented, and enforced in accordance with the supervisory authority vested with the Board of Trustees in accordance with Article 10, section 8 of the Montana Constitution. The Board of Trustees authorizes the Superintendent to develop and implement procedures to enforce this policy.

At the discretion of the Superintendent, the School District requires all staff, volunteers, visitors, and school-aged students to wear a face covering while present in any school building, regardless of vaccination status. At the discretion of the Superintendent, the School District also requires all staff, volunteers, visitors, and school-aged students to wear a face covering while present at any outdoor school activity with fifty (50) or more people where physical distancing is not possible or is not observed. Face covering means disposable or reusable masks that cover the nose and mouth. The School District will provide masks to students, volunteers, and staff, if needed. If a student or staff wears a reusable mask, the School District expects that the masks be washed on a regular basis to ensure maximum protection. The Superintendent is directed to brief the Board regularly concerning the District's COVID-19 protocols included required masking.

Students, staff, volunteers, and visitors are not required to wear a mask or face shield under this provision when:

1. consuming food or drink;
 2. engaged in strenuous physical activity;
 3. communicating with someone who is hearing impaired;
 4. identifying themselves;
 5. receiving medical attention; or
 6. precluded from safely using a face covering due to a medical or developmental condition.
- The superintendent, building principal, or their designee shall request documentation from a care provider when considering an exception to this provision for medical or developmental reasons. The School District will comply with all applicable disability and discrimination laws when implementing this provision.

When students and members of the public are not present, staff may remove their masks if they are at their individual workstation and six feet of distance is strictly maintained between individuals. If students are working in small groups, the students must be wearing masks.

All points of entry to any school building or facility open to the public shall have a clearly visible sign posted stating the mask requirement.

Allegations of harassment of any person wearing a mask or those with recognized exemptions to the face covering requirement will be promptly investigated in accordance with District policy. Failure or refusal to wear a mask by a staff member or student not subject to an exception noted above may result in redirection or discipline in accordance with District policy and codes of conduct, as applicable.

Legal References: § Article X, Section 8 Montana Constitution
 § Section 20-3-324, MCA Powers and Duties

Policy History:

First Reading: January 25, 2021 – Board of Trustees
Adopted on: January 25, 2021
Effective on: January 25, 2021
Revised on: July 19, 2021

EXHIBIT L

Meeting Date: 07/19/2021

Item Title: Amended Emergency Policy 1905 - Face Coverings as Personal Protective Equipment

Requested by: Craig VanNice

Prepared by: Craig VanNice

Recommended Action: Approve

Action:

Information

Executive Summary:

- The policy was originally developed in conjunction with the Montana School Boards Association and was approved by the Board on January 25, 2021
- As written, "This policy applies during the COVID19 state of emergency declared by the Board of Trustees or other local, state or federal agency, official, or legislative body."
- The policy provides guidance on disciplinary action related to failure or refusal to wear a mask or harassment related to protective face coverings.
- The policy has been adopted by other AA schools.
- As originally adopted Policy 1905 required masking in the District. After the last school year, Superintendent Upham lifted the mask mandate given the state of vaccinations and in consultation with local medical and public health officials.
- This amendment will permit Superintendent Upham to further modify masking requirements if circumstances change. It also permits the Superintendent to make changes in the masking protocols as needed in a timely fashion.

Suggested Action:

Approve amendments to Policy 1905 for immediate adoption.

Attachments

Revised Policy 1905

Board of Trustees Regular Meeting

10.b.

Meeting Date: 07/19/2021

Item Title: Temporary Suspension of Policy 1310

Requested by: Craig VanNice

Prepared by: Craig VanNice

Recommended: Approve

Action:

Information

Executive Summary:

Trustees are asked to approve a temporary suspension of Policy 1310 "District Policy" requiring three readings of a new policy or a change to a policy before adoption by the Board. The temporary suspension will allow an amendment to policy 1905 "Face Coverings as Personal Protective Equipment", which is the next item on the agenda, to be adopted by the Board immediately without requiring 2 additional readings. The temporary suspension and immediate amendment of Policy 1905 provides District administration the necessary flexibility to prepare for the upcoming school year. The temporary suspension will end at the conclusion of tonight's meeting.

Regarding Policy Suspension, Policy 1310 reads:

Under circumstances that require waiver of a policy, the policy may be suspended by a majority vote of the trustees present. To suspend a policy, however, all trustees must have received written notice of the meeting, which includes the proposal to suspend a policy and an explanation of the purpose of such proposed suspension. If such a proposal is not made in writing in advance of the meeting, a policy may be suspended only by a unanimous vote of all trustees present.

Suggested Action:

Approve the temporary suspension of Policy 1310 "District Policy" until the conclusion of tonight's Board Meeting.

Attachments

Policy 1310

**DRAFT
PROCEEDINGS OF
BOARD OF TRUSTEES, SCHOOL DISTRICT NO. 2
and
BILLINGS HIGH SCHOOL DISTRICT NO. 2
REGULAR BOARD MEETING**

Monday, July 19, 2021

5:30 p.m.-9:30 p.m.

Lincoln Education Center

Board Room

415 North 30th Street

WELCOME AND ORIENTATION TO THE MEETING

1.

THE CHAIR SHALL STATE:

Welcome to the meeting of the Board of Trustees of the Billings Elementary and High School Districts. Agendas and welcoming information about the conduct of the meeting are available at the table in the back of the room. If you plan to speak to the Board tonight, please familiarize yourself with that information, then fill out and submit the public comment form. This is used to help me to recognize you properly at the appropriate time, and to assist me in running the meeting smoothly. Chair Besch Moen called the meeting to order at 5:30 p.m. and led those assembled in the Pledge of Allegiance.

Those participating were Trustee Greta Besch Moen, Trustee Janna Hafer,

Trustee Scott McCulloch, Superintendent Greg Upham, CFO/District Clerk Craig VanNice, Trustee Jennifer Hoffman, Trustee Russ Hall, Career Counselor Director Bo Bruinsma, Special Education Executive Director Judy Povilaitis, Trustee Brian Yates, and Facilities Executive Director Scott Reiter. Trustees Ludwig and Leo were excused.

TRUSTEE APPOINTMENT/ADMINISTERING OATH OF OFFICE

2.

District Clerk VanNice administered the oath to Zack Terakedis who was selected to fill the trustee position in Zone 4 until the school election in May of 2022.

COMMUNICATION FROM THE PUBLIC

3.

The Board recognizes the value of public comment on educational issues and the importance of listening to members of the public in its meetings. The Board also recognizes the statutory and constitutional right of the public to participate in governmental operations. The Board encourages members of the public to participate in and express opinions about issues important to the District. This part of the Board's meeting is dedicated to public comment on any public matter that is not on the agenda of this meeting and is within the jurisdiction of the Board of Trustees. Members of the public may also address particular items on this agenda either now or at the time the Board considers the particular item.

Members of the public may offer verbal comments to the Board via a Zoom connection set up in the Lincoln Center auditorium. Anyone wishing to offer comments to the Board via the Zoom connection must sign in and fill out the public comment form available in the auditorium. This will allow the Chair to recognize you before you address the Board. Members of the public may observe the Board meeting via electronic means in the Lincoln Center auditorium, as well.

As during pre-pandemic in-person meetings, the Chair may direct public commentary to ensure an orderly progression of the meeting. This direction may include setting a time limit for public commentary on any particular item. The Chair may also interrupt or terminate an individual's statements when necessary, including when statements are out of order, too lengthy, personally directed, abusive, obscene, or irrelevant. The Board shall have the final decision in determining the appropriateness of all such rulings by the Chair.

Justin Kirchheck -- asked not to suspend Policy 1905 but to do away with it.

Keppi Kirchheck -- addressed new rules by CDC and for the State of Montana. Asked to repeal Policy 1310.

Ellie Lowe -- spoke against the mask policy.

Brad Lowe -- also spoke against students wearing masks.

Isaac Lowe -- voiced his opposition to masks in the school.

John VanLangen -- his children asked him to address the board to end the mask mandate.

Becca Otterson -- complained that people were not able to address the trustees in the board room. She wanted the mask policy ended along with the state of the emergency policy.

Scott Otterson -- Agreed with his wife's comments.

Shannon Johnson -- She gave mask details as to diseases. She felt more damage is being done to the students.

Norene Burris -- As a retired teacher (and representing other retired teachers), she voiced her concern of the increase in health/dental insurance for retirees whereas employees' rates were not raised. She proposed that a small portion of the reserves be used for retirees.

Sandi Shawhan -- She wanted to know why the retirees' rates were raised and wanted to know why Covid funds couldn't be used.

Rita Wells -- She voiced her concern over the raise in retirees' health rates.

Joan Sleeth -- She also voiced her concerns over the health rate raises for retirees. She asked the trustees to reconsider their decision.

Kasey Lowe -- She opposed any amendments to Policy 1905.

Hannah Hartzell -- Spoke against mask mandates.

Lisa Bevan -- Spoke against mask mandates and psychological factors.

Thomas Bevan -- Reminded everyone that parents trust their children to the district. Encouraged everyone to do the right thing.

Chad Lowry -- He was upset that he could not address the trustees in person and asked for no mask mandate.

Chad Nelson -- Policy 1905 and emergency funding. Parents will take children out of the schools if it is not repealed.

Brooke Hudson -- Repeal Policy 1905.

Luke Hudson -- Repeal Policy 1905.

Teresa Rowen -- As a grandparent, voiced her concern over the mask mandate.

Andrea Nemitz -- Also requested repealing Policy 1905.

Lisa Oppegaard -- Empowered by other parents and requested the repealing the mask mandate.

Stacy Ban -- It is about choice but the parents should be given the choice to wear the masks.

Tara Goodwin -- As a teacher and parent, asked for the wearing of masks to be by choice and to not require vaccinations for students.

Jeff Griffin -- Masks will accomplish nothing. Common sense is needed.

APPROVAL OF AGENDA

4.

Agenda items for Policy 1310 and Policy 1905 were moved forward in the agenda. Trustee Hall made the motion to approve the agenda as amended, with a second by Trustee McCulloch. The motion passed unanimously.

SUPERINTENDENT'S REPORT

5.

Mr. Upham stated staff is working on the startup for August 23rd with masking being optional with normal schedules in middle and high schools. He could see there was mask fatigue and the impact of no masks for summer school was positive. Last year, there were 14,000 students in school for the 180 days of open schools. Parents who have students with health issues should work through their principal for a virtual format, which will be different from last year. The Delta variance is being watched closed by medical personnel. School enrollment numbers are not known at this time but it is anticipated that home-schooled students will be back.

BUDGET DISCUSSION

6.

Mr. VanNice reported the fiscal year has ended and the books will be closed soon. It is anticipated that the ending balances are as expected but journal entries will be made for Covid funds. The budget adoption will take place at the August regular meeting with special meetings being scheduled on August 19th and 24th. The 2021-2022 budget must be adopted by August 25th. The elementary general fund is at break even and the high school general fund has a surplus of \$800,000.

The forensic audit discussions are ongoing with two more businesses to be interviewed.

The CARES funding will be the focus in the August meetings to show views and impacts of Covid on the district.

Trustee Hall addressed the concerns of the retirees and wanted to discuss why reserve funds can't be used to aid them. Auditors were asked if Covid funds can be used but there is broad guidance as to keeping the district running. The guidance is employee retainment. There have been discussions, including the BEA, but it must be determined what is in the best interest of the district. Covid funds can be earmarked for the upcoming year if the 11% health rate is realized. Rates may be able to be readjusted once more facts are known. Staff is taking an active role in saving costs and has found a lesser cost for stop/loss insurance.

a. Safe Return to School and Continuity of Services Plan

Mr. VanNice stated, as part of the ESSR funds or Covid funds, there are two deadlines with one being return to school. Information was posted on the district's website by the appointed date. This item is new and is a requirement of the Office of Public Instruction and will go into 2024. Mr. VanNice will keep the trustees updated on any adjustments or modifications.

BOARD OPERATIONS COMMITTEE

7.

The Chair reported committee assignments have been included in the agenda.

Trustee visitations have also been posted in the agenda which are the same as last year as those visits could not take place.

PLANNING AND DEVELOPMENT COMMITTEE REPORT

8.

Trustee Hafer stated the Downtown Business Partnership meeting was held in May with the parking on 29th and 30th streets discussed. The city did not give the district any additional parking spaces but Trustee Hafer can bring it up at the next meeting.

Two special meetings were held in June to discuss maintenance, CTE issues, and a possible bond in the fall of 2022. Pathways are being reviewed with four pathways only offering classes for freshmen at the Career Center. Answers are needed for what it would take to offer those classes at the home high schools. Mr. Upham reported Daylis Stadium issues are a priority. In order to offer classes at the home high schools are an issue as to space, especially for Senior High. Exposure for all students in all vocational areas must be met. Options to partner with MetraPark and a stadium at Amend Park did not come to fruition.

a. Riverside Land Update

Mr. Reiter shared the options from the engineers for development of the Riverside land. It has been determined that only one softball field is needed but could be added in the second phase. The possibility of adding a soccer field has been discussed but would only fit on the football field with a smaller soccer field possible on the remaining land. The parking lot on the northwest corner would need restructuring of the road. It was determined to put the parking lot on the northeast corner. The design group is needing instructions to move forward. The one softball field would cost \$900,000. Bids would need to go out for any project. Bond funds are available for the project with \$1,200,000 remaining for the elementary district. A TIF grant could also be applied for.

Trustee McCulloch made the motion to follow up with a soccer field and softball field, with a second by Trustee Hafer. The motion passed unanimously. This was an elementary issue only.

b. Update on Various Bond Projects

Mr. Reiter reported pictures of various bond projects are included in the agenda packet. Hail projects are being completed at this time. There have been issues with supply companies, especially for Castle Rock Middle School.

PERFORMANCE MONITORING COMMITTEE

9.

Trustee Hall reported there is a scheduled meeting on August 12th.

POLICY UPDATES

10.

a. Third Reading: Policy 3416 - Administering Medicines to Students

Policy 3416, administering medicine to students, is presented for the third reading. Trustee Hall made the motion to approve Policy 3416 on third reading, with a second by Trustee McCulloch. The motion passed unanimously.

b. Temporary Suspension of Policy 1310

Trustee Hall made the motion to suspend Policy 1310, with a second by Trustee Yates. This is not something that is done to pull the wool over peoples' eyes. The Chair stated there has been transparency by this Board. The motion passed unanimously.

c. Amended Emergency Policy 1905 - Face Coverings as Personal Protective Equipment

Policy 1905 was established in January of 2021 and provides guidance for the wearing of the masks, which has been adopted by other AA schools in the state. This amendment to allow for more tools to remain nimble. Trustee Yates made the motion to approve the amendment to Policy 1905, with a second by Trustee McCulloch. This item was brought forward by the district's legal counsel. Mr. Upham stated the amendment is being made to leave the option of wearing masks by the students up to those students/parents. He reminded those watching that all of the Covid decisions were made by health personnel. The trustees will be kept informed. Sodexo will wrap single meals in the first month. There will no longer be block scheduling and principals will be asked to cohort in their buildings. If something will occur quickly, decisions will be made to keep everyone safe. As of this time, masks will not be mandated on the first day of school, August 23rd. Mr. Upham has worked with medical professionals on what will be necessary. He takes into consideration public input also. Trustee Hall stated he took offense to the personal attacks this evening as the board works hard to keep students safe and to educate the children. The decision for Policy 1905 is left up to the medical professionals. The Delta variant of the virus is unknown at this time so the district must be ready. The motion passed unanimously.

MTSBA REPORT

11. The Chair stated on August 11 and 12 there will be a strategic meeting for legislative sessions.

CONSENT AGENDA

12. Trustee Hall made the motion to accept the Consent Agent without objection to recommended action, with a second by Trustee Hafer. Trustee McCulloch recused himself as a family member was on the Personnel Report. The motion passed unanimously.
- a. Personnel Report
 - b. Financial Reports June 2021 - Unaudited
 - c. Bills Paid - June 2021
 - d. Minutes of Board Meetings
 - e. Minutes of Committee Meetings
 - f. Boys & Girls Clubs of Yellowstone County MOU
 - g. ECI Annual Contract with Department of Public Health and Human Services
 - h. High School Textbook Adoption Request for approval of adoption of new high school textbooks as follows:

12th Grade U.S. Government - United States Government (2018) by Houghton Mifflin Harcourt Publishing Company \$97,243.35
Approve purchase of textbooks.
 - i. Tumbleweed Contract 21/22 School year
 - j. Yellowstone Boys and Girls Ranch MOUs

ADJOURNMENT

13. As there was no further business, the meeting was adjourned at 7:55 p.m.

Dr. Greta Besch-Moen, Chair

Diane Blevins, Recorder

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BOARD OF TRUSTEES, SCHOOL DISTRICT NO. 2
and
BILLINGS HIGH SCHOOL DISTRICT NO. 2

REGULAR BOARD MEETING

Monday, July 19, 2021

5:30 p.m.-9:30 p.m.

Lincoln Education Center

Board Room

415 North 30th Street

AGENDA

VISITORS WISHING TO RECORD THIS MEETING ELECTRONICALLY MAY DO SO PROVIDING THE RECORDING DOES NOT DISRUPT THE ORDERLY CONDUCT OF THIS MEETING.

1. WELCOME AND ORIENTATION TO THE MEETING

Pledge to Flag

Roll Call

THE CHAIR SHALL STATE:

Welcome to the meeting of the Board of Trustees of the Billings Elementary and High School Districts. Agendas and welcoming information about the conduct of the meeting are available at the table in the back of the room. If you plan to speak to the Board tonight, please familiarize yourself with that information, then fill out and submit the public comment form. This is used to help me to recognize you properly at the appropriate time, and to assist me in running the meeting smoothly.

2. TRUSTEE APPOINTMENT/ADMINISTERING OATH OF OFFICE

3. COMMUNICATION FROM THE PUBLIC

The Board recognizes the value of public comment on educational issues and the importance of listening to members of the public in its meetings. The Board also recognizes the statutory and constitutional right of the public to participate in governmental operations. The Board encourages members of the public to participate in and express opinions about issues important to the District. This part of the Board's meeting is dedicated to public comment on any public matter that is not on the agenda of this meeting and is within the jurisdiction of the Board of Trustees. Members of the public may also address particular items on this agenda either now or at the time the Board considers the particular item.

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As during pre-pandemic in-person meetings, the Chair may direct public commentary to ensure an orderly progression of the meeting. This direction may include setting a time limit for public commentary on any particular item. The Chair may also interrupt or terminate an individual's statements when necessary, including when statements are out of order, too lengthy, personally directed, abusive, obscene, or irrelevant. The Board shall have the final decision in determining the appropriateness of all such rulings by the Chair.

4. APPROVAL OF AGENDA
5. SUPERINTENDENT'S REPORT
6. BUDGET DISCUSSION
 - a. Safe Return to School and Continuity of Services Plan
7. BOARD OPERATIONS COMMITTEE
8. PLANNING AND DEVELOPMENT COMMITTEE REPORT
 - a. Riverside Land Update
 - b. Update on Various Bond Projects
9. PERFORMANCE MONITORING COMMITTEE
10. POLICY UPDATES
 - a. Third Reading: Policy 3416 - Administering Medicines to Students
 - b. Temporary Suspension of Policy 1310
 - c. Amended Emergency Policy 1905 - Face Coverings as Personal Protective Equipment
11. MTSBA REPORT
12. CONSENT AGENDA
 - a. Personnel Report
 - b. Financial Reports June 2021 - Unaudited
 - c. Bills Paid - June 2021
 - d. Minutes of Board Meetings
 - e. Minutes of Committee Meetings
 - f. Boys & Girls Clubs of Yellowstone County MOU
 - g. ECI Annual Contract with Department of Public Health and Human Services
 - h. High School Textbook Adoption
 - i. Tumbleweed Contract 21/22 School year

j. Yellowstone Boys and Girls Ranch MOUs

13. ADJOURNMENT

Board of Trustees Regular Meeting

5.

Meeting Date: 07/19/2021

Item Title: SUPERINTENDENT'S REPORT

Requested by: Greg Upham

Prepared by: Marta McAllister

Recommended Action: Presented for Information Only

Information

Executive Summary:

Superintendent Upham will report on the following:

- 21/22 School Year Start-up Information

Suggested Action:

Presented for information only.

Attachments

No file(s) attached.

Board of Trustees Regular Meeting

6.a.

Meeting Date: 07/19/2021**Item Title:** Safe Return to School and Continuity of Services Plan**Requested by:** Craig VanNice**Prepared by:** Craig VanNice**Recommended Action:** As Appropriate

Information**Executive Summary:**

1. Three rounds of the Elementary and Secondary School Emergency Relief (ESSER) Funds have been authorized by Congress in response to the COVID-19 pandemic. These emergency funds were appropriated to address the past, ongoing, and future impacts of COVID-19. The Montana Legislature passed appropriations authority for a portion of ESSER II and ESSER III funds not directly distributed to local school districts.
2. School districts that intend to access these funds must either develop a plan or must have adopted a plan prior to the enactment of ARP (March 11, 2021) about school re-opening. The plan:
 - Must include how it will maintain the health and safety of students, educators, and other staff, the extent to which it has adopted policies, and a description of any such policies on each of the CDC's safety recommendations including: universal and correct wearing of masks; modifying facilities to allow for physical distancing; handwashing and respiratory etiquette; cleaning and maintaining healthy facilities, including improving ventilation; contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, or Tribal health departments; diagnostic and screening testing; efforts to provide vaccinations to school communities; appropriate accommodations for children with disabilities with respect to health and safety policies; and coordination with State and local health officials.
 - Must describe how the LEA will ensure continuity of services, including but not limited to services to address students' academic needs and students' and staff social, emotional, mental health and other needs, which may include student health and food services.
 - Requires public input and review at least every 6 months.

Further guidance on the Plan reads as follows:

Consideration of the Safe Return to Schools and Continuity of Services Plan shall be added as a standing agenda item on each regular and special meeting of the board of trustees throughout the 2021-24 school years. The agenda item shall, at a minimum, include notice of any changes to the plan recommended by the administration with an invitation for input, notice of opportunity for public input, and consultation with:

- Students; families; school and district administrators (including special education administrators); teachers, principals, school leaders, other educators, school staff, and their unions; and
- To the extent present in or served by the school district- be sure to deliberately select as applicable) Tribes; civil rights organizations (including disability rights organizations); stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students.

Suggested Action:

As Appropriate.

Attachments

SD2 SRS & CSP

Board of Trustees Regular Meeting

10.b.

Meeting Date: 07/19/2021

Item Title: Temporary Suspension of Policy 1310

Requested by: Craig VanNice

Prepared by: Craig VanNice

Recommended Action: Approve

Information

Executive Summary:

Trustees are asked to approve a temporary suspension of Policy 1310 "District Policy" requiring three readings of a new policy or a change to a policy before adoption by the Board. The temporary suspension will allow an amendment to policy 1905 "Face Coverings as Personal Protective Equipment", which is the next item on the agenda, to be adopted by the Board immediately without requiring 2 additional readings. The temporary suspension and immediate amendment of Policy 1905 provides District administration the necessary flexibility to prepare for the upcoming school year. The temporary suspension will end at the conclusion of tonight's meeting.

Regarding Policy Suspension, Policy 1310 reads:

Under circumstances that require waiver of a policy, the policy may be suspended by a majority vote of the trustees present. To suspend a policy, however, all trustees must have received written notice of the meeting, which includes the proposal to suspend a policy and an explanation of the purpose of such proposed suspension. If such a proposal is not made in writing in advance of the meeting, a policy may be suspended only by a unanimous vote of all trustees present.

Suggested Action:

Approve the temporary suspension of Policy 1310 "District Policy" until the conclusion of tonight's Board Meeting.

Attachments

Policy 1310

Board of Trustees Regular Meeting

10.c.

Meeting Date: 07/19/2021**Item Title:** Amended Emergency Policy 1905 - Face Coverings as Personal Protective Equipment**Requested by:** Craig VanNice**Prepared by:** Craig VanNice**Recommended Action:** Approve

Information**Executive Summary:**

- The policy was originally developed in conjunction with the Montana School Boards Association and was approved by the Board on January 25, 2021
- As written, "This policy applies during the COVID19 state of emergency declared by the Board of Trustees or other local, state or federal agency, official, or legislative body."
- The policy provides guidance on disciplinary action related to failure or refusal to wear a mask or harassment related to protective face coverings.
- The policy has been adopted by other AA schools.
- As originally adopted Policy 1905 required masking in the District. After the last school year, Superintendent Upham lifted the mask mandate given the state of vaccinations and in consultation with local medical and public health officials.
- This amendment will permit Superintendent Upham to further modify masking requirements if circumstances change. It also permits the Superintendent to make changes in the masking protocols as needed in a timely fashion.

Suggested Action:

Approve amendments to Policy 1905 for immediate adoption.

AttachmentsRevised Policy 1905

**DRAFT
PROCEEDINGS OF
BOARD OF TRUSTEES, SCHOOL DISTRICT NO. 2
and
BILLINGS HIGH SCHOOL DISTRICT NO. 2
SPECIAL BOARD MEETING**

Thursday, July 29, 2021

1:00 p.m.

Lincoln Education Center

Room 213

415 North 30th Street

WELCOME AND ORIENTATION TO THE MEETING

1.

THE CHAIR SHALL STATE:

Welcome to the meeting of the Board of Trustees of the Billings Elementary and High School Districts. Agendas and welcoming information about the conduct of the meeting are available at the table in the back of the room. If you plan to speak to the Board tonight, please familiarize yourself with that information, then fill out and submit the public comment form. This is used to help me to recognize you properly at the appropriate time, and to assist me in running the meeting smoothly.

Vice-Chair Yates called the meeting to order at 12:00 p.m. and led those assembled in the Pledge of Allegiance.

Those present were CFO/District Clerk Craig VanNice, Trustee Scott McCulloch, Trustee Mike Leo (via speakerphone), Trustee Brian Yates, Trustee Russ Hall, Superintendent Greg Upham, and Trustee Zack Terakedis. Mary E. Duncan, district legal counsel, was also present.

COMMUNICATION FROM THE PUBLIC

2.

The Board recognizes the value of public comment on educational issues and the importance of listening to members of the public in its meetings. The Board also recognizes the statutory and constitutional right of the public to participate in governmental operations. The Board encourages members of the public to participate in and express opinions about issues important to the District. This part of the Board's meeting is dedicated to public comment on any public matter that is not on the agenda of this meeting and is within the jurisdiction of the Board of Trustees. Members of the public may also address particular items on this agenda either now or at the time the Board considers the particular item.

We will accept public comment through our Billings Public School portal starting 2 hours preceding the meeting and concluding 30 minutes prior to the start of the meeting. Although unlikely, this will allow the staff time to review the comments to ensure that no privacy issues have been compromised. Public comment can be submitted in electronic format using the Google Documents link provided on the District's webpage. When accessing the District's Homepage or School Board page a pop-up window will appear with a link to the Google Document. Submissions require a full name and home address in order to be submitted for the record and are limited to a 500 word count. Submissions will be screened and read verbally by the District Clerk or designee.

There were no public comments.

3. LEGAL ISSUE P.Z., Nikki Zimmer, and Pat Zimmer v. Amateur Athletic Union of the United States, Inc., Avalanche Volleyball Club, and High School District No. 2, Yellowstone County, Thirteenth Judicial District Court, Yellowstone County, Cause No. DV 18-1417. Mary E. Duncan, counsel for the District, will attend this meeting for the purpose of discussing the status of this claim and may ask the Board Chair to close the meeting for purposes of discussing litigation strategy, as permitted by state law, Mont. Code Ann. Section 2-3-203(4).

Plaintiffs filed this negligence claim arising out of P.Z.'s fall from the stairs in the West High gym, resulting in serious injuries that required surgery. The District tendered this matter to its insurance carrier which is providing a defense and has agreed to indemnify the District for amounts over the deductible. The insurer appointed the firm of Felt, Martin, Frazier & Weldon (Mary E. Duncan) to defend this suit. The parties negotiated a settlement during a court-ordered confidential mediation, conditional upon the Board's and the Court's approval. The District's insurer is paying the District's portion of the settlement and there is no expenditure of District funds.

Move to approve and ratify the settlement reached in court-ordered mediation that is being funded solely by insurance and further move to authorize the Superintendent to sign any necessary documents on behalf of the District.

Ms. Duncan reported this case was filed three years ago and includes a case against the high school district, Amateur Athletics, and Avalanche Volleyball. The child injured was five years old at the time and fell suffering a head injury. Natalie Bills from Avalanche Volleyball was in attendance but no child supervision was taking place. West High School is an older building and has no barrier except the pipes on the balcony and stairs. Mediation took place in November, 2020 with no settlement reached. A trial date was set for August but Judge Knisely asked for another mediation session.

Vice-Chair Yates closed the meeting for an executive session at 1:15 p.m. The meeting reconvened at 1:50 p.m.

Trustee Hall made the motion to approve and ratify the settlement reached in court-ordered mediation that is being funded solely by insurance and further move to authorize the Superintendent to sign any necessary documents on behalf of the District. Trustee McCulloch offered the second. The motion passed unanimously.

ADJOURNMENT

4.

As there was no further business, the meeting adjourned at 1:55 p.m.

Brian Yates, Vice-Chair

Diane Blevins, Recorder

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BOARD OF TRUSTEES, SCHOOL DISTRICT NO. 2
and
BILLINGS HIGH SCHOOL DISTRICT NO. 2
REGULAR BOARD MEETING

Monday, August 16, 2021

5:30 p.m.-9:30 p.m.

Lincoln Education Center

Board Room

415 North 30th Street

AGENDA

VISITORS WISHING TO RECORD THIS MEETING ELECTRONICALLY MAY DO SO PROVIDING THE RECORDING DOES NOT DISRUPT THE ORDERLY CONDUCT OF THIS MEETING.

1. WELCOME AND ORIENTATION TO THE MEETING

Pledge to Flag
Roll Call

THE CHAIR SHALL STATE:

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As during pre-pandemic in-person meetings, the Chair may direct public commentary to ensure an orderly progression of the meeting. This direction may include setting a time limit for public commentary on any particular item. The Chair may also interrupt or terminate an individual's statements when necessary, including when statements are out of order, too lengthy, personally directed, abusive, obscene, or irrelevant. The Board shall have the final decision in determining the appropriateness of all such rulings by the Chair.

3. APPROVAL OF AGENDA

4. SUPERINTENDENT'S REPORT
5. BUDGET DISCUSSION
 - a. Safe Return to School and Continuity of Services Plan
6. PLANNING AND DEVELOPMENT COMMITTEE REPORT
 - a. Bond and Various Projects Update
 - b. Will James Middle School Photovoltaic Project 2021
7. STAKEHOLDER RELATIONS COMMITTEE
8. PERFORMANCE MONITORING COMMITTEE REPORT
9. MTSBA/LEGISLATIVE REPORT
10. CONSENT AGENDA
 - a. Personnel Report
 - b. Financial Reports July 2021 - Unaudited
 - c. Bills Paid - July 2021
 - d. Minutes of Board Meetings
 - e. Minutes of Committee Meetings
 - f. Montana Job Corps MOU
 - g. Early Entrance
11. ADJOURNMENT

Board of Trustees Regular Meeting

4.

Meeting Date: 08/16/2021

Item Title: SUPERINTENDENT'S REPORT

Requested by: Greg Upham

Prepared by: Marta McAllister

Recommended Action: Presented for Information Only

Information

Executive Summary:

Superintendent Upham will report on the following:

- Opening of the 21/22 School Year

Suggested Action:

Presented for information only.

Attachments

No file(s) attached.

Board of Trustees Regular Meeting

5.a.

Meeting Date: 08/16/2021

Item Title: Safe Return to School and Continuity of Services Plan

Requested by: Craig VanNice

Prepared by: Craig VanNice

Recommended Action: As Appropriate

Information

Executive Summary:

1. Three rounds of the Elementary and Secondary School Emergency Relief (ESSER) Funds have been authorized by Congress in response to the COVID-19 pandemic. These emergency funds were appropriated to address the past, ongoing, and future impacts of COVID-19. The Montana Legislature passed appropriations authority for a portion of ESSER II and ESSER III funds not directly distributed to local school districts.
2. School districts that intend to access these funds must either develop a plan or must have adopted a plan prior to the enactment of ARP (March 11, 2021) about school re-opening. The plan:
 - Must include how it will maintain the health and safety of students, educators, and other staff, the extent to which it has adopted policies, and a description of any such policies on each of the CDC's safety recommendations including: universal and correct wearing of masks; modifying facilities to allow for physical distancing; handwashing and respiratory etiquette; cleaning and maintaining healthy facilities, including improving ventilation; contact tracing in combination with isolation and quarantine, in collaboration with the State, local, territorial, or Tribal health departments; diagnostic and screening testing; efforts to provide vaccinations to school communities; appropriate accommodations for children with disabilities with respect to health and safety policies; and coordination with State and local health officials.
 - Must describe how the LEA will ensure continuity of services, including but not limited to services to address students' academic needs and students' and staff social, emotional, mental health and other needs, which may include student health and food services.
 - Requires public input and review at least every 6 months.

Further guidance on the Plan reads as follows:

Consideration of the Safe Return to Schools and Continuity of Services Plan shall be added as a standing agenda item on each regular and special meeting of the board of trustees throughout the 2021-24 school years. The agenda item shall, at a minimum, include notice of any changes to the plan recommended by the administration with an invitation for input, notice of opportunity for public input, and consultation with:

- Students; families; school and district administrators (including special education administrators); teachers, principals, school leaders, other educators, school staff, and their unions; and
- To the extent present in or served by the school district- be sure to deliberately select as applicable) Tribes; civil rights organizations (including disability rights organizations); stakeholders representing the interests of children with disabilities, English learners, children experiencing homelessness, children in foster care, migratory students, children who are incarcerated, and other underserved students.

Suggested Action:

As Appropriate. No updates have been made since the plan was originally published in June.

Attachments

SD2 SRS & CSP

**DRAFT
PROCEEDINGS OF
BOARD OF TRUSTEES, SCHOOL DISTRICT NO. 2
and
BILLINGS HIGH SCHOOL DISTRICT NO. 2
REGULAR BOARD MEETING**

Monday, August 16, 2021

5:30 p.m.-9:30 p.m.

Lincoln Education Center

Board Room

415 North 30th Street

WELCOME AND ORIENTATION TO THE MEETING

1.

THE CHAIR SHALL STATE:

Welcome to the meeting of the Board of Trustees of the Billings Elementary and High School Districts. Agendas and welcoming information about the conduct of the meeting are available at the table in the back of the room. If you plan to speak to the Board tonight, please familiarize yourself with that information, then fill out and submit the public comment form. This is used to help me to recognize you properly at the appropriate time, and to assist me in running the meeting smoothly.

COMMUNICATION FROM THE PUBLIC

2.

The Board recognizes the value of public comment on educational issues and the importance of listening to members of the public in its meetings. The Board also recognizes the statutory and constitutional right of the public to participate in governmental operations. The Board encourages members of the public to participate in and express opinions about issues important to the District. This part of the Board's meeting is dedicated to public comment on any public matter that is not on the agenda of this meeting and is within the jurisdiction of the Board of Trustees. Members of the public may also address particular items on this agenda either now or at the time the Board considers the particular item.

Members of the public may offer verbal comments to the Board via a Zoom connection set up in the Lincoln Center auditorium. Anyone wishing to offer comments to the Board via the Zoom connection must sign in and fill out the public comment form available in the auditorium. This will allow the Chair to recognize you before you address the Board. Members of the public may observe the Board meeting via electronic means in the Lincoln Center auditorium, as well.

As during pre-pandemic in-person meetings, the Chair may direct public commentary to ensure an orderly progression of the meeting. This direction may include setting a time limit for public commentary on any particular item. The Chair may also interrupt or terminate an individual's statements when necessary, including when statements are out of order, too lengthy, personally directed, abusive, obscene, or irrelevant. The Board shall have the final decision in determining the appropriateness of all such rulings by the Chair.

Mr. Upham thanked the community for maintaining and supporting the schools during the pandemic. Staff is looking at everything and listening to everyone to keep the schools' staff. In moving forward, empathy is needed in returning to school this fall. Actions that need to be taken will be to keep the students in school for 180 days. Safety is very important. He pled with the community to work together for the best interests of the community.

Nathan Richards -- made a formal request of optional mask wearing.

Phil Richart -- requested that masks be kept optional. If the district doesn't listen to parents and grandparents, he hoped the legislators would not fund the schools.

Sandra Sanderson -- asked that schools mandate masks as her children have autoimmune issues.

Carey Smith -- as a state senator, asked the wearing of masks be optional.

Susan Smith -- as a grandparent, she was opposed to students wearing masks optional.

Jacob Troyer -- father of four, thanked the board for their service. Encouraged the board to be proactive and be flexible.

Kyle Porette -- thanked the board and superintendent. In Policy 3417 from 2014 for communicable diseases, he believed the public health and medical services should be used.

Luke Hudson -- this district does not have the right to mask his children this year.

Brook Hudson -- voiced her concern over the mandate to wear masks.

Elise Hudson -- as a student, masks should be optional.

Chad Nelson -- for safe return to school, parents should have a choice in masks.

Bartley Chaffenn -- requested that masks be optional. As he is a parent of a kindergartner, he will have a hard time learning.

Joel Lester -- parent of two students, masks should be optional. Felt a generation of children now have fear.

Ashley Chaffen -- make masks optional. Her teenage daughter developed anxiety and had to take medication.

Mike Berry -- urged the staff to look at the information coming out and felt it was an overload. Felt the board should go with their constituents. Keep masks optional.

Kepi Kercheck -- asked if the ones speaking matter. Masks should be optional.

Justin Kercheck -- masks should be optional.

Shannon Johnson -- stated Covid poses no risk to students and believed masks are child abuse. Psychological damage to children. There is no reason for students to wear masks.

Make masking optional.

Ken Ard -- strongly opposed to wearing masks. Will fight a mandate to wear masks.

Kelly Saronie -- the auditorium has many people cheering and stated she is in opposition to the mandatory mask policy. Her two adopted children have trouble learning when they cannot see mouths move.

Leah Fredrick -- parent of three elementary students. Masks should be optional.

Chris Inget -- allow parents to choose how to raise their children. Masks should be optional. Tired of his children being scared.

Rochelle Kirby -- masks should be optional.

Jeff Giffin -- Thanked the board for their service. Parents should be able to make the masks optional.

Sherri Rickards -- one main concern in wearing masks is carbon monoxide.

APPROVAL OF AGENDA

3.

-
Trustee Hoffman made the motion to accept the motion as presented, with a second by Trustee Hafer. The motion passed unanimously.

SUPERINTENDENT'S REPORT

4.

Mr. John Felton, Riverstone Health CEO, stated the numbers of Covid cases has risen slightly in the county. There were 40 cases per day in the data from last week. What the peak will be is unknown. Through August 15th, there are more cases and are rising. Mr. Upham felt it is pertinent to look at the trend. In looking at the week-by-week data, week 29 shows a jump in cases. Tomorrow, data will be received for week 32 from the state. In-patient hospitalizations are at 56 today which matches last January. As of today, ICUs have 32 patients in the two hospitals. For those under the age of 19, there were 45 cases last week. Approximately 45% of the county population are vaccinated with more being vaccinated during this slight rise. The number of children 12 years of age or older are 48,000 in the county. Out of 164,000,000 Americans vaccinated, 7,525 were diagnosed with Covid and hospitalized. From July 29 through August 8, the data shows that most cases are related to the Delta variant. Public health officials can make recommendations but there are fewer options at this time. Mr. Felton stated there are things that can be done such as masking, social distancing and staying home if ill. Consequences for people must also be considered.

The Delta variant is different as it is highly transmittable. It also can be transmitted

from a vaccinated individual. There are no risk-free options for the board. Putting 20-30 students in a classroom, there is more risk. Mr. Felton felt studies should be released for vaccinations for those under 12 at the end of this year. By the middle of September, more will be known as to the number of cases as last year the numbers increased in September and declined in November. Having a highly vaccinated staff is a plus for the district. Of the 16,641 enrolled students as of last Friday, Mr. Upham felt the unvaccinated number would be at 79%.

Mr. Upham reported the opening day of school is August 23rd. A decision for masking is not known tonight as new data will be received tomorrow. For this school year, there will be no contact tracing done by the district, but will be done by Riverstone Health. He voiced his concerns about reaching out to parents on an active case, a letter will be sent electronically of what to look for in their child. The district's legal team agreed with the method. For testing, the district will beef up antigen testing with the use of Covid funds. A Tier 2 testing is being reviewed to be done at the schools. He did not see masking as a long term solution. As for disinfecting, it will continue as was done last year.

Mr. Russell reported one of the biggest things is to encourage any staff/student to stay home if ill. Social distancing, where possible, will be done and the washing of hands is encouraged. Cohorts will also take place. Sodexo will continue to package individual meals through the end of September. As busing is under the federal authority, masking is required on school buses. More information will be posted on the district's website along with protocol for students and staff. The main goal is to stay in school and keep students safe. For summer school, there was good success with no masks mandated. One Mississippi school with masks optional, they had to close for two weeks due to the increase in cases. Trustee Hafer wanted to make sure that the non-bullying policy be followed closely, especially to the wearing of masks. Trustee Ludwig urged parents not to get mad if masks end up being mandated as it is for the good of the students. Trustee Leo asked the Superintendent to encourage staff to get vaccinated, with the possibility of incentive use.

BUDGET DISCUSSION

5.

Mr. VanNice reported a special meeting will be held on August 24th for the final results for the end of the year and to finalize the next year's budget. The general funds have a lot of bundled Covid funds, but the estimates will hold with a break even for the elementary district and a surplus of \$800,000 in the high school district. Staff expected the price tag of \$5,000,000 to \$7,000,000 due to the virus, but realized it is at \$4,000,000.

The forensic audit concept has been discussed with two other firms. Other school

districts in other regions have used this method. All companies saw the value of a forensic audit which would aid in negotiations. Mr. VanNice stated it is a matter of getting a push from the board as what is needed or possibly doing more research. He felt the outside assistance was not needed but it could be needed in the future. The discussion will continue at the next Board Operations meeting.

- a. Safe Return to School and Continuity of Services Plan was originally published in June. This will remain an item in the agenda if any changes are needed to keep everyone informed. Trustee Yates made the motion to continue the services plan, with a second by Trustee Ludwig. The motion passed unanimously.

PLANNING AND DEVELOPMENT COMMITTEE REPORT

6.

Trustee Hafer reported she was not able to attend the last Billings Downtown Partnership meeting but St. John's spoke on the possible uses for the Gainan's building.

The Riverside land will have a soccer field on the original football field with the parking lot being on the south of the property. There will also be a softball field with the possibility of a smaller soccer field on the green space. As soon as estimates are received, a TIF grant will be submitted.

A review is being done for Daylis Stadium and a review of the master plan. The next Planning & Development Committee meeting should see information from CTA on Daylis, with the possibility of more information on the master plan.

Trustee Hafer stated there are four pathways who do not offer classes at the three high schools. Mr. Bruinsma will pull numbers for those classes and review the licensure. Discussions with the hospitals are continuing as to the possibility of classes for med sciences.

- a. Bond and Various Projects Update

Mr. Reiter reported the Boulder sewer line and West High kitchen projects are almost complete. Other projects are also being completed for the 2013 bond. There are projects who had shipping problems due to the virus but will be completed as soon as possible. It is hoped that the 2013 bond projects will be completed next summer.

- b. Will James Middle School Photovoltaic Project 2021

Northwestern Energy granted the district's request for a \$50,000 grant for the Will James solar project. The total estimate of \$137,800 with the remaining funds, other than the grant, will come from the bond funds. Trustee Leo made the motion to

accept the Northwestern Energy grant, with a second by Trustee Ludwig. The motion passed unanimously. \$10,000,000 has been saved with the energy saving program since 2008.

STAKEHOLDER RELATIONS COMMITTEE

7.

Trustee Leo stated the next meetings for SHAC have been scheduled and are included in the agenda, with the next Stakeholder Relations meeting scheduled on September 7th at noon.

PERFORMANCE MONITORING COMMITTEE REPORT

8.

Mr. Dereszynski reported high school data was shared for 2019-20 school year at the last Performance Monitoring meeting. A handout showing the data was given to the trustees. A decrease in the drop-out rate was realized. There is decline in the MUS Remediation. Graduation rates will not be received until January. Some AP classes have declined in numbers which was a result of students not being prepared to take the tests. Trustee Besch Moen voiced her concern over the lower graduation rates for American Indians and Homeless students. Mr. Dereszynski is looking into that matter. It might be due to the Covid virus and possibly remote learning. Enrollment in dual credit credits has leveled off with more enrollments occurring in AP classes.

MTSBA/LEGISLATIVE REPORT

9.

The Chair reported the Montana School Board Association has changed the timeline for submission of resolutions. Some of the past resolutions presented by the district were not successful. Trustee Leo reported the two resolutions in the agenda were presented earlier. The MTSBA works with legislators to present and pass them. He wanted to revisit the resolutions and are due in early September. Resolutions should advance learning for everyone in Montana.

The first resolution for Synchronous Learning was first presented for AP students. Advancements need to be made in distant learning by telecasts. This would allow for funding to create opportunities for students statewide. Multi-district language is already in place.

Trustee Leo made the motion to approve the resolution, with a second by Trustee Hall. The motion passed unanimously.

The second resolution is for dual enrollment certification. A teacher must have a number of graduate credits and a master degree in order to teach the course. The teacher who needs the credits must pay for them which is a barrier. This resolution would create a fund for those instructors.

Trustee Leo made the motion to accept this resolution and advance it on to MTSBA in October, with a second by Trustee Yates. The motion passed unanimously.

CONSENT AGENDA

10.

Trustee Leo made the motion to accept the items within the consent agenda without objection to recommended action, with a second by Trustee Ludwig. The motion passed unanimously.

- a. Personnel Report
- b. Financial Reports July 2021 - Unaudited.
- c. Bills Paid - July 2021
-
-
- d. Minutes of Board Meetings
- e. Minutes of Committee Meetings
- f. Montana Job Corps MOU
- g. Early Entrance

ADJOURNMENT

11.

As there was no further business, the meeting adjourned at 8:45 p.m.

Dr. Greta Besch-Moen, Chair

Diane Blevins, Recorder

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**DRAFT
PROCEEDINGS OF
BOARD OF TRUSTEES, SCHOOL DISTRICT NO. 2
and
BILLINGS HIGH SCHOOL DISTRICT NO. 2
SPECIAL BOARD MEETING**

Tuesday, August 24, 2021

3:30 p.m..

Lincoln Education Center

Board Room

415 North 30th Street

WELCOME AND ORIENTATION TO THE MEETING

1.

THE CHAIR SHALL STATE:

Welcome to the meeting of the Board of Trustees of the Billings Elementary and High School Districts. Agendas and welcoming information about the conduct of the meeting are available at the table in the back of the room. If you plan to speak to the Board tonight, please familiarize yourself with that information, then fill out and submit the public comment form. This is used to help me to recognize you properly at the appropriate time, and to assist me in running the meeting smoothly.

Chair Besch Moen called the meeting to order at 3:30 p.m. and led those assembled in the Pledge of Allegiance.

Those participating were Trustee Greta Besch Moen, Trustee Janna Hafer, Trustee Zack Terakedis, Trustee Mike Leo, Trustee Tanya Ludwig, Superintendent Greg Upham, CFO/District Clerk Craig VanNice, Curriculum Executive Director Dr. Chris Olszewski, Trustee Jennifer Hoffman, Trustee Russ Hall, Trustee Scott McCulloch, and Trustee Brian Yates.

COMMUNICATION FROM THE PUBLIC

2.

The Board recognizes the value of public comment on educational issues and the importance of listening to members of the public in its meetings. The Board also recognizes the statutory and constitutional right of the public to participate in governmental operations. The Board encourages members of the public to participate in and express opinions about issues important to the District. This part of the Board's meeting is dedicated to public comment on any public matter that is not on the agenda of this meeting and is within the jurisdiction of the Board of Trustees.

When virtual meetings are held, we will accept public comment through our Billings Public School portal starting 2 hours preceding the meeting and concluding 30 minutes prior to the start of the meeting. Although unlikely, this will allow the staff time to review the comments to ensure that no privacy issues have been compromised. Public comment can be submitted in electronic format using the Google Documents link provided on the District's webpage. When accessing the District's Homepage or School Board page a pop-up window will appear with a link to the Google Document. Submissions require a full name and home address in order to be submitted for the record and are limited to a 500 word count. Submissions will be screened and read verbally by the District Clerk or designee.

Those speaking for the revoking of the mask mandate:

Kyle Geffre

Anna Tooke

Hannah Hartzell

Lisa Bevan

Kayla Nelson

Brad Sebek

Alyssa Pierce

Kim Schell

Melissa Smith

Jamie Sebel

David Clausen

Whitney Nelson

Robin Engholm

Laie Black

Jenifer Steilen

Hanna Wagner

Abraham Engholm

Jazmin Szody

Dylan Stoltenberg

Darcy Mayer

Cheryl Ross

Tom Bevan

Craig Jardine

Vickie Jardine

Jessica Meyer

Steve Krutzfeldt

Danielle Eaton

Gage Wardell (student)

Alexa Wardell (Student)

Ashley Glassing

Michelle Vande Esch

Jaci Lafontaine

Jenn Schneider

Payton Wardell (student)

Danielle Eaton

Doug Robison (BEA President)

Chad Nelson

Nadia Brown

Pat Moore

Sonia Alcantar

Carmody Sloan
Chris Schneider
Tya Wardell (student)
Samantha Raye
Kyla Powell
Ginger O'Neil
Beckett Schneider {student)
Michael Purcell
Amy Darkenwald
Jared Dickerson
John VonLangen
Matthew Roy
Amanda Langve
Jamie O'Neil
Nasha Brown
Sean Dunn
Gina Leger
Kelly Ruff
Brandon Loomis
Gloria Geffre
Cristina Taylor
Brad Wright
Brooke Fauth
Adam Martin
Ed Alves
Beth Hewitt
Andrea Johnson
Linda Johnson
Tiffany Marshall\
Dave Schuyler
Heidi Funk
Laurie Schuyler
Kristin Gilfeather
Ty Rosean
Samantha Reay
Kayla Powell
Ginger Heale
Kari Bye
Jessica Green Evans
Jessica Angel
Melissa Townsend

Billy Neale
Brad Reich

Those speaking in support of the mask mandate:

Amber McDermott
Heather Webster Sather
Carrie Miller
Kiely Lammers
Michelle Troyer
Jill Vail
Kari Kaiser
Jacob Troyer
Heather Hendrickson
Betty Vail
Teresa Blaskovich
Melinda Cotton
Shelly Stanley Lehman
Lindsey Hayes Beasley
Jourdan Guidice
Gina Colton
Katie Resmondo
Shep Vail
Amy McGuire
Mandy Williams
Jordan Dydis
Lindsey Hays Beasley
Phyllis Porrett
Kelli Schrock
Megan Heenan
Alexis Urbaniak
Rita & Rob Wells
Shannon Davis
Megan White
Briana Bergeron
Spencer Anderson
Lucinda Butler
Ursula Richter
Shane Colton
Victoria Taylor
Kyle Porrett
Elizabeth McClelland

Nick Owens

Mike Creedin -voiced concerns over names of the employees in the budget being omitted.

Pam Christianson -- information on a timely manner

ADOPTION OF FY22 BUDGET

3.

Mr. VanNice thanked the trustees to meet for this special meeting to approve the budget during this Covid year. He thanked the business staff for their hard work. The new budget must be approved by August 25th.

The recap of the 2020-21 school year shows that the elementary district broke even with the high school district with a surplus of \$800,000. The surplus will be transferred to the multi-district fund. The last three years of the elementary fund showed a deficit that resulted in a reduction of staff and funds in the general fund. Eleven interventionists were cut along with librarians, as well as administration/support staff.

The high school fund has run a healthy surplus for the last seven years resulted in this last year's surplus of \$800,000.

Federal Covid funding are the CRF funds and ESSR funds for both districts for a total of \$53,600,000. Of that sum, only the CRF funds have been received with request for the ESSR funds being applied for. The journal entries total \$24,820,000 for costs for the out-of-pocket expenses for the district. \$3,250,000 were attributed to the last school year. For essential works last fall, \$2,950,000 was spent. Cleaning and sanitation supplies totaled \$1,600,000 and \$925,000 for increased/temporary labor costs. Summer school through June 30th was \$450,000. Items journaled were new costs to the district, but due to the Covid virus. The total federal Covid funding spent through FY21 was \$5,000,000. This amount included remote instructors with one administrator. \$14,100,000 was transferred in Covid funds to the multi-district fund. The retirement fund is at \$2,500,000. There is a requirement of budget load to the multi-district fund for relief. Some funds are restrictive. The Covid funds put into the multi-district account are related to the virus expenses. Auditors have approved the transfers. The funds now in the multi-district account are up for debate with the goal to be spent as to the best use of the funds.

The ESSR II funds are to be spent by September 30, 2024. Earmarks for the FY21-22 for Covid funds are identified to potential insurance fund with a projected 11% increase. Other earmarks are emergency paid sick leave, interventionists, temporary labor costs, cleaning/sanitation, virtual learning platform, Midas purchase, and summer school costs. The estimates for FY21-22 is \$6,300,000, FY22-23 ESSR funds, and \$2,300,000 for FY-23-24 school year. The estimates are based on a 24% reduction per year. The trustees are being asked to approve the spending authority for both districts. Funds from transportation and tuition are being reappropriated back to the taxpayers as those funds were not spent. Some reappropriations are done in certain funds to keep the spending authority.

In refinancing the 2013 bond, realizes another \$563,000. Mr. VanNice will review the amount being given back to the taxpayers and report to the trustees.

In the high school district, there are small amounts being given back to the taxpayers. Mr. VanNice shared the total elementary and high school mills levied for the last six years. The overall taxable valuation of the district increases versus last year. There was a significant increase in the tax base. If the district gets students back from home-schooling, a significant bounce back will be realized in mills. Legislature cancelled the enrollment process for the next two years due to Covid, if approved by the Office of Public Instruction.

The high school budget is projected for another \$600,000 surplus but that is dependent upon negotiations. Covid funds may be used in next year's budgets for salaries.

Multi-district funds may be reviewed to see if staff cut last year could be brought back on board.

Covid funds were paid to First Student during the shutdown to keep transportation viable.

Mr. Upham and the Chair thanked the business staff for their extraordinary efforts.

Trustee Yates made the motion to adopt the FY21-22 elementary district budget and allow administrators to make changes with OPI, with a second by Trustee Hafer. The motion passed unanimously. This was an elementary vote only.

Trustee Ludwig made the motion to approve the FY21-22 high school district budget and allow administrators to make changes with OPI, with a second by Trustee Hall. The motion passed unanimously.

ADJOURNMENT

4.

As there was no further business, the meeting adjourned at 7:15 p.m.

Dr. Greta Besch-Moen, Chair

Diane Blevins, Recorder

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EXHIBIT M

https://www.ktvq.com/news/local-news/billings-school-board-members-directing-communication-over-mask-mandate-to-superintendent?_amp=true

Billings school board members directing communication over mask mandate to superintendent

By: Q2 News

With such a high response level, both positive and negative, from parents to the Billings schools' mask mandate, Q2 News wanted to hear from each of the nine elected Billings School District 2 board members.

An email to the board's group account Tuesday received no response, and Q2 News sent another one Wednesday.

One board member, Vice Chair Brian Yates, was reached on the phone Wednesday afternoon.

Yates said the board has decided their communications will be run through Superintendent Greg Upham.

So, on this issue, the nine elected trustees will have the employee they oversee speak for each of them about the mask mandate.

Upham [announced Saturday](#) that he was reversing course and imposing a mask mandate for all schools following a COVID-19 outbreak among Billings Skyview's football team. He told Q2 News at the time that he had spoken with all board members about the decision, and he said all supported him.

RELATED: [Billings parents and students turn out in protest of school mask mandate](#)

EXHIBIT N



August 6, 2021

Dear Montana District Superintendents and Trustees,

As we all prepare for students to return to the classroom for the 2021-2022 school year, we join parents, students, and educators in looking forward to a return to normalcy in learning for those whose lives and educational opportunity were disrupted over the last 17 months.

As we have heard from hundreds of parents across Montana, it is critical our kids get back into the classroom in as normal a setting as possible so they may learn, develop, and grow.

As you know, the Montana Constitution grants elected boards of trustees in each school district the supervision and control of schools. As such, we urge you to refer to two key sources as you prepare to decide what environment Montana's kids will encounter when they return to their classroom.

First, we urge you to ensure the voices of Montana parents and families are heard before making decisions about children going back to school, particularly decisions regarding universal masking of students. We have heard from parents throughout the state who are concerned about the impact of universal masking on their kids' academic, emotional, and social development, particularly for elementary-aged students and students with disabilities and who believe strongly that wearing face masks and other coverings should be optional, voluntary, and a matter of family choice.

Second, we encourage you to refer to data from the Montana Department of Public Health and Human Services (DPHHS) as you consult with local health departments on any decisions. DPHHS officials have data on the virus' transmission rates among school-age children, as well as incidents of severe complications from the virus among children, including hospitalizations and death.

As you are aware, safe, effective COVID-19 vaccines have been available at no cost to all Montanans 16 years and older, including teachers and school administrators, since April 1, 2021. We continue to encourage Montanans who have not been vaccinated to consult with their health care provider about getting a vaccine. Parents are the primary decision makers for their children's health matters, and they must be at the center of any discussions on vaccinations.

While the CDC has repeatedly changed its mask recommendations over the last 16 months, trustees and superintendents should give due consideration to available data and the voices of Montana parents as it relates to whether their children are required to wear masks in schools.

As you consider how students will safely enter their classroom, know that we want this school year to be a success for our students, educators, and parents. We are here to help you as partners in any way we can. Our doors are always open; please reach out to us as you continue putting Montana students first.

Sincerely,



Greg Gianforte
Governor



Elsie Arntzen
Superintendent of Public Instruction

EXHIBIT O



Office of the Superintendent
Billings Public Schools
415 North 30th Street
Billings, Montana 59101-1298
Phone: (406) 281-5065 Fax: (406) 281-6186

August 21, 2021

Re: Required Masking

Dear SD2 Stakeholder:

Effective Sunday, August 22, 2021, I am reimplementing required masking for all students, employees, and visitors during the normal school day at our K-12 schools. As I have shared in the past, I communicate regularly, often daily, with our local medical community, to ensure I understand the real-time impact of COVID-19 in our community. I have now been notified of a COVID-19 outbreak among students participating in an extracurricular activity at Skyview High School. Parents of all potentially exposed students were notified as soon as we became aware of the situation. The level of outbreak among this team is significant enough to cancel a scheduled game and cause me to reevaluate masking.

Based on the reported COVID-19 infections in Yellowstone County, including the steadily rising number among school-aged children, the outbreak with our students, the fact our hospitals are at capacity, and that the Delta variant is highly infectious, I have concluded it is in our best interest to reimplement masking in our schools. This is necessary to slow the spread of COVID-19 and to keep our schools open. I recognize the timing of this decision is unfortunate. Just a couple of days ago I announced my decision that masking would be optional in SD2. At the time, I was hopeful we could start this year without required masking. However, in the last 48 hours I learned that what started as one positive student case of COVID-19, increased to at least ten percent of that team, in just a few days. These were students who, for the most part, were together at practice outside, not inside in close proximity like we see in a normal indoor school setting. If this same rate of transmission occurred in our classrooms during the first week of school, we could potentially have hundreds, if not thousands, of our students out of class within a short time frame if we do not mask. School districts in other states have already seen that occur.

I will continue to regularly communicate with our local health officials, and utilize the most recent Yellowstone County COVID-19 metrics, as I constantly reassess the necessity of masking. At this time, I believe this is a critical step to take, to allow us the chance to keep our students safe and our schools open for in-person education and extracurricular activities. My priority remains what it has always been: to protect and educate our students to the best of our ability. My decision today is with that goal in mind. I ask that everyone pull together for the sake of our students, to allow them to have a healthy and successful school year. I appreciate everyone's patience and grace as we continue to navigate this unpleasant reality.

Respectfully,

Mr. Greg Upham
Superintendent



Office of the Superintendent

Billings Public Schools

415 North 30th Street

Billings, Montana 59101-1298

Phone: (406) 281-5065 Fax: (406) 281-6186

Delivered via email

Memorandum

From: Greg Upham, Superintendent
To: All Billings Public Schools Employees
Date: August 22, 2021
Re: Masking Directive Effective Today

On Saturday, August 21st, I reissued a masking requirement for the entire School District. All students, employees, and visitors during the normal school day in our schools and other facilities are required to wear a mask to protect against the transmission of the coronavirus. This was not an easy decision and not where I wanted us to be at the start of this school year. My decision is explained in a letter that all employees received via email dated August 21, 2021; the letter can be found on the School District's website.

I want to address the questions being asked about staff who intend to refuse to comply and/or enforce the masking requirement of all students, employees, and visitors starting tomorrow morning. First, the masking requirement is a directive to all employees of the School District. Second, refusal to comply and/or enforce the masking requirement would be unacceptable insubordination and the employee will be disciplined. By this memorandum all School District teaching and support staff are advised that if a staff member refuses to comply and/or enforce my masking directive,¹ they are to be placed on unpaid leave for insubordination for a period of not less than five (5) working days, unless he or she comes to the administration before those days are passed and agrees to abide by the directive.

After those five days have concluded, if the staff member still refuses to comply and/or enforce my masking directive, additional discipline will be considered, up to and including a recommendation for the termination of the staff member's contract of employment with the School District.

Respectfully,

Mr. Greg Upham
Superintendent

¹ Exceptions and accommodations will be made for those who have a legitimate medical reason for not wearing a mask. Please reach out to your administrator if this applies to you.



Office of the Superintendent
Billings Public Schools
415 North 30th Street
Billings, Montana 59101-1298
Phone: (406) 281-5065 Fax: (406) 281-6186

BPS Face Covering Guidelines and Requirements

Effective August 22, 2021, until further notice

The following guidelines will be followed in all Billings Public Schools facilities.

While indoors and while on any BPS transportation (First Student or other):

- Face coverings are required for all students, staff and volunteers or guests, regardless of vaccination status.
- Face coverings are not required when outdoors.
- Face coverings are not required while eating/drinking.
- In some circumstances, staff may lower face covering while teaching, presenting, speaking or providing directions as long as they can maintain appropriate distance (6ft) from others. This decision will be left to the discretion of the individual staff member. However, face coverings should be used when working with small groups or individual students.
- When working alone, not with students or not with members of the public, staff may remove face coverings.
- To be determined by Staff, there may be opportunities for students for routine “mask breaks” throughout the day, if appropriate distancing can be maintained.
- For details regarding face coverings (types and proper use), BPS follows the CDC guidance titled: [“Your Guide to Masks.”](#)

These guidelines will remain in effect until further notice and will be routinely reviewed. These guidelines may be modified, reduced, or extended. These are consistent with the guidelines Missoula County Public Schools are using.

Rationale:

As provided by MT Chapter of the American Academy of Pediatrics, the CDC and MCCHD.

- Children younger than 12 years do not have the opportunity to be vaccinated, and will not likely have this opportunity until late fall/early winter.
- The Delta variant of this virus has now been detected in Montana, and this variant has been found to be much more contagious as well as even cause mild disease in vaccinated people. Cases and hospitalizations are increasing from earlier this month, and the Delta variant is rapidly becoming the predominant variant in Montana.

Greg Upham
Billings Public Schools Superintendent

www.billingspublicschools.org



Empowering Education

08/31/21

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RE: Memo in Response to Department of Public Health and Human Services Masking Statement

Billings Public Schools has reviewed the rule issued today by the Department of Public Health and Human Services, and the District reads the rule as permissive, not mandatory, as it specifically provides that school districts "should consider" parental concerns and "should provide" an opt-out system for certain reasons. The District will continue to enforce its face covering guidelines to ensure the safety and welfare of all students and staff. The District has received hours of public comment from parents and others in the community on this issue, demonstrating its clear desire to take the wishes of parents into account. Furthermore, the District provides parents and students the ability to opt-out of wearing a mask. However, should they opt out, for any reason, including health related reasons, they are opting into virtual learning. The School District is prepared to provide assistance to parents looking to exercise that option. The deadline for enrolling into virtual learning remains as Friday, September 3, 2021. Please contact Randy Russell or Brenda Koch at the District office for more information about virtual learning.

For additional COVID-19 information, please visit the school district website.

Sincerely,

Greg Upham
Superintendent
Billings Public Schools

Attendance Matters!

Working together to
show every day matters.

Empowering  Education



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Questions You've Asked

Billings Public Schools wants to take the opportunity to provide a consistent response to a number of questions we have received regarding the precautions we are taking to protect students, staff, visitors, and their families from COVID-19. If you have any questions that are not answered by this FAQ, please complete the "Contact Us" form at the bottom of this page.

What should I do if I do not want my student to wear a mask at school?

If you do not want your child to wear a mask in school, you have the option of enrolling your student in the virtual learning platform the School District is offering. Parents wishing to opt their child into the virtual learning platform or learn more about that option, should contact a K-12 Executive Director: Randy Russell, at russellrj@billingsschools.org or Brenda Koch, at kochb@billingsschools.org.

Parents wishing to exercise this option must do so by Friday, September 3, 2021.

At this time, students who are not in attendance at school as a result of their or their parents' choice to not abide by the masking requirement are not being reported as truant. However, beginning **Tuesday, September 7, 2021**, any student who has not opted into the virtual learning platform, but is still not attending school due to failure to abide by the masking requirement, will be reported as truant.

<https://billingsschoolsnews.org>

EXHIBIT P

2021-2022 Billings Public Schools COVID-19 Tracking

School	Total Cumulative Cases 2021-2022 School Year		8/22/21 - 8/28/21		8/29/21 - 9/4/21		9/5/21 - 9/11/21		9/12/21 - 9/18/21		9/19/21 - 9/25/21		9/26/21 - 10/2/21		10/3/21 - 10/9/21		10/10/21 - 10/16/21		10/17/21 - 10/23/21		10/24/21 - 10/30/21		10/31/21 - 11/6/21		11/07/21 - 11/13/21		11/14/21 - 11/20/21		11/21/21 - 11/27/21		11/28/21 - 12/4/21		12/5/21 - 12/11/21					
	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff	Students	Staff				
Alkali Creek	31	6	0	0	1	1	2	1	2	1	1	0	3	1	2	0	1	1	0	0	3	0	4	0	1	0	3	0	5	1	1	0	2	0				
Arrowhead	26	6	1	0	1	0	0	2	1	0	1	0	3	1	4	1	1	1	2	1	2	0	3	0	4	0	0	0	1	0	2	0	0	0				
Beartooth	24	6	2	0	1	0	1	0	1	0	4	0	4	0	2	0	1	2	2	1	4	1	0	1	0	1	0	0	0	2	0	0	0	0				
Bench	24	5	0	0	1	0	4	1	4	0	2	1	1	2	0	0	1	0	0	0	3	1	0	1	0	1	0	0	0	0	0	1	0	0				
Big Sky	25	4	2	0	0	1	5	0	2	0	1	0	6	0	1	1	1	1	0	0	3	1	4	0	2	0	0	0	1	0	1	0	0	0	0			
Bitterroot	24	5	3	1	1	0	0	2	0	0	3	0	4	0	1	1	1	1	0	1	2	0	1	0	1	0	0	0	0	0	2	0	0	1	0			
Boulder	22	5	0	2	2	1	1	0	2	1	2	0	4	0	2	1	0	0	0	0	2	1	5	1	4	0	1	0	0	0	0	0	0	0	0	0		
Broadwater	29	5	3	0	0	0	4	0	2	3	1	0	2	2	3	0	0	0	1	0	6	0	3	0	0	0	2	0	1	0	0	0	0	0	0	0		
Burlington	14	3	0	0	0	0	1	0	0	2	1	0	1	0	2	0	1	0	3	0	1	1	2	0	0	0	1	0	0	0	0	0	0	0	0	0		
Central Heights	15	6	0	0	1	0	0	2	2	1	1	0	1	0	1	0	1	2	1	0	1	0	0	0	4	1	1	0	0	0	0	0	1	0	0	0		
Eagle Cliffs	25	3	0	1	0	0	3	0	1	0	2	1	4	0	1	0	2	0	0	0	2	0	5	0	3	0	1	0	1	0	0	0	0	1	0	0		
Highland	12	6	0	1	1	0	2	1	1	0	3	0	1	0	2	3	1	1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
McKinley	11	3	0	0	0	0	0	0	0	0	0	1	0	1	0	1	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0		
Meadowlark	33	5	1	0	1	0	1	1	8	0	2	0	4	1	5	0	1	0	3	1	5	2	0	0	1	0	0	0	0	0	1	0	0	0	0	0	0	
Miles Avenue	19	1	0	0	0	0	0	0	2	0	1	0	0	0	0	0	0	0	0	0	5	0	8	0	1	1	2	0	0	0	0	0	0	0	0	0	0	
Newman	23	5	1	1	9	0	3	0	1	1	0	0	2	2	1	0	1	0	3	0	1	0	0	0	0	0	0	0	1	0	0	0	0	0	0	0	0	
Orchard	16	3	1	1	2	1	2	0	1	0	3	0	1	0	0	0	0	0	0	0	1	0	0	0	2	1	2	0	0	0	0	1	0	0	0	1	0	
Poly Drive	15	3	1	0	1	1	1	0	0	0	1	0	0	1	1	0	2	1	3	0	2	0	0	0	2	1	2	0	0	0	0	0	1	0	0	0	0	
Ponderosa	17	6	1	0	6	0	0	1	3	1	1	1	1	0	1	1	0	0	0	1	1	0	0	0	2	0	0	0	0	0	0	0	1	0	0	0	0	
Rose Park	14	4	4	1	1	0	1	0	0	0	0	0	0	0	2	1	0	1	3	0	1	1	0	0	1	1	1	0	0	0	0	0	0	0	1	0	0	
Sandstone	17	6	1	1	5	0	2	1	2	0	0	0	5	1	1	0	0	1	1	0	0	1	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	
Washington	26	10	0	0	3	0	2	0	3	0	0	1	0	1	4	1	4	1	1	1	0	4	3	1	3	0	0	0	1	0	1	0	1	0	1	0	0	0
TOTAL ELEM	462	106	21	9	37	5	35	12	38	10	30	5	47	13	36	10	20	12	28	6	45	12	43	4	33	5	18	1	12	1	10	1	9	0	0	0		
Ben Steele	27	3	0	0	1	1	4	1	4	0	4	0	3	0	4	0	4	1	0	0	0	0	0	0	2	0	0	0	0	0	0	0	0	0	0	1	0	0
Castle Rock	42	3	1	0	2	0	2	0	6	0	5	1	2	0	2	0	5	0	3	0	7	0	2	0	2	0	0	1	0	1	2	0	1	0	1	0	0	0
Lewis and Clark	37	10	5	1	3	1	4	2	1	0	5	0	1	1	4	1	1	0	0	0	6	2	2	0	3	0	1	0	0	0	1	1	0	1	0	1	0	1
Medicine Crow	39	5	2	0	3	0	2	1	6	0	2	0	2	0	2	0	5	1	8	2	1	0	2	1	1	0	1	0	1	0	1	0	1	0	0	0	0	0
Riverside	39	8	6	0	4	0	3	1	2	0	2	1	2	2	1	0	7	0	1	0	3	1	4	2	0	0	4	1	0	0	0	0	0	0	0	0	0	0
Will James	37	9	2	0	3	2	4	1	6	1	1	1	2	2	2	1	2	1	3	0	2	0	4	0	3	0	1	0	1	0	1	0	1	0	1	0	0	0
TOTAL MS	221	38	16	1	16	4	19	6	25	1	19	3	12	5	15	2	24	3	15	2	19	3	14	3	11	0	7	2	2	1	5	1	2	1	0	0		
Senior	113	25	5	1	19	3	16	2	13	1	8	4	4	2	4	1	10	3	5	2	11	1	8	1	5	2	3	0	0	0	2	2	2	2	0	0	0	
Skyview	109	10	11	1	17	1	14	1	11	1	14	2	7	1	9	0	8	0	3	1	5	0	4	1	1	0	3	1	1	0	2	0	1	0	2	0	1	0
West	118	27	2	0	9	1	10	4	9	1	3	2	12	3	17	6	22	1	14	1	10	4	2	1	3	2	2	0	0	0	2	1	1	0	2	1	0	0
Career Center	25	3	0	0	1	0	0	0	3	0	4	0	2	0	0	1	1	1	0	0	3	0	3	0	2	1	2	0	0	0	0	4	0	0	0	0	0	0
TOTAL HS	365	65	18	2	46	5	40	7	36	3	29	8	25	6	30	8	39	5	22	4	29	5	15	3	11	5	10	1	1	0	10	3	4	0	0	0		
Rimrock	5	9	0	0	0	0	0	0	3	5	0	1	0	0	0	0	1	1	1	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0
District Totals	1053	218	55	12	99	14	94	25	102	19	76	17	84	24	81	20	84	21	66	12	93	20	72	11	55	10	35	4	15	3	25	5	15	1	0	0		

A new case is a person who tested positive with COVID-19 and who was reported to the District by a parent, a guardian, and/or, in the case of an employee, by the employee.

EXHIBIT Q

District Policy and Procedures

Adoption and Amendment of Policies

Proposed new policies and proposed changes in existing policies shall be presented in writing for reading and discussion at a regular or special Board meeting. Interested parties may submit views, present data or arguments, orally or in writing, in support of or in opposition to proposed policy. Any written statement by a person, relative to a proposed policy or amendment, should be directed to the District Clerk prior to the final reading. The final vote for adoption shall take place not earlier than the second (2nd) reading of the particular policy. New or revised policies that are required, or have required language changes based on State or Federal law, or are required changes by administrative rule, may be adopted after the first (1st) reading if sufficient notice has been given through the board agenda.

All new or amended policies shall become effective upon adoption, unless a specific effective date is provided in the motion for adoption.

Policies, as adopted or amended, shall be made a part of the minutes of the meeting at which action was taken and shall also be included in the District's policy manual. Policies of the District shall be reviewed on a regular basis.

Policy Manuals

The administrator shall develop and maintain a current policy manual which contains the policies of the District. Staff, students, and other residents shall have ready access to the manual.

Suspension of Policies

Under circumstances which require a waiver of a policy, the policy may be suspended by a majority vote of the members present. In order to suspend a policy, all trustees must have received written notice of the meeting, which included a proposal to suspend the policies and an explanation of the purpose of such proposed suspension. If such a proposal is not made in writing in advance of the meeting, the policies may only be suspended by a unanimous vote of all trustees present.

Legal References: § 20-3-323, MCA
 10.55.701, ARM

District policy and record of acts
Board of Trustees

Policy History:

Adopted on:

Revised on: June 5, 2014 & January 8, 2015

Reviewed on: January 8, 2019

Elysian School District

COVID-19 Emergency Measures

1905

Student, Staff, and Community Health and Safety

The School District has adopted the protocols outlined in this policy during the term of the declared public health emergency to ensure the safe and healthy delivery of education services provided to students on school property in accordance with Policy 1906, and a safe workplace when staff are present on school property in accordance with Policy 1909, and the safety, health and well-being of parents and community members. The supervising teacher, principal, superintendent or designated personnel are authorized to implement the protocols in coordination with state and local health officials.

Symptoms of Illness

Students and staff who are ill, feeling ill, diagnosed as ill, or otherwise demonstrating symptoms of illness must not come to school or work. Students who have a fever or are exhibiting other signs of illness must be isolated in a designated area until such time as parents or caregiver may arrive at the school to retrieve the ill student. All surfaces and areas should be thoroughly cleaned and disinfected once the student has vacated the area by staff utilizing safety measures in accordance with state and/or local health standards as applicable. Students may engage in alternative delivery of education services during the period of illness or be permitted to make up work in accordance with District Policy 1906. Staff members will be provided access to leave in accordance with District Policy 1911 or the applicable Master Contract or Memorandum of Understanding.

Parents, guardians, or caregivers of students who are ill, feeling ill, diagnosed as ill, or otherwise demonstrating symptoms of illness must not be present at the school for any reason including but not limited events or gatherings or to drop off or pick up students excepted as provided by this policy. To avoid exposing others to illness, parents or caregivers who are ill must make arrangements with others to transport students to school or events, if at all practicable. If not practicable, parents, guardians or caregivers must not leave their vehicle during pickup or drop off and must arrange with District staff to supervise students in accordance with physical distancing guidelines in this Policy.

Physical Distancing

To the extent possible, students, staff, volunteers, and visitors will maintain a ~~six-foot~~ distance between themselves and their colleagues and peers throughout the school day inside any school building, and on school property before and after school. Staff members will arrange classrooms and restructure courses, and food service to maximize distancing to the best extent possible. Transportation services will be provided in accordance with cleaning and disinfection procedures outlined in this policy.

Drop off and pick up of students will be completed in a manner that limits direct contact between parents and staff members and adheres to social distancing expectations around the exterior of the school building while on school property.

Visitors to the school authorized by District Policy 1903 will maintain a ~~six-foot~~ distance between themselves and others. This distancing requirement does not apply to individuals who are a part of the visitor's regular household isolation group when the group is authorized to present at the school facility.

Face Coverings as Personal Protective Equipment

This provision is required due to the COVID-19 state of emergency declared by the Board of Trustees or other local, state or federal agency, official, or legislative body. This policy is adopted, implemented, and enforced in accordance with the supervisory authority vested with the Board of Trustees in accordance with Article 10, section 8 of the Montana Constitution and related statues and regulations. The Board of Trustees authorizes the Superintendent to develop and implement procedures to enforce this policy.

The School District will make optional for all staff, volunteers, visitors, and school-aged students to wear a face covering, mask, or face shield while present in any school building, regardless of vaccination status. The School District will provide masks to students, volunteers, and staff, if needed. If a student or staff member wears a reusable mask, the School District expects that the masks be washed on a regular basis to ensure maximum protection.

If, after this section is adopted, the following metrics are reached, the Board of Trustees authorizes the superintendent to implement a requirement for face coverings to be worn in identified District buildings during the instructional day, or any other time deemed necessary by the Superintendent, until such time as the Board of Trustees can adopt an applicable District policy:

1. Each week the superintendent receives the Yellowstone County Schools Weekly Report from the Yellowstone County Unified Health Command. If that report shows three of the four indicators in RED; OR
2. Communication between the school administrators and the public health authorities state there is a high outbreak in our area; OR
3. An outbreak takes place at Elysian School noticed by the Administration and Nurse at Elysian

The superintendent shall coordinate with the county health department and Board Chair to determine whether face coverings are a necessary response to a potential or actual COVID-19 outbreak. In the event face coverings are required, the superintendent shall announce the face covering requirement to students, parents, staff, and visitors for the immediate successive school day each day by 3:00 pm. If the superintendent determines masks are required, signs will be installed to inform students, parents, staff, and visitors of mask requirements while present in the identified District buildings. If a mask mandate is deemed necessary by the superintendent based on the above metrics, the superintendent will discuss with the School Board Chair in regards to calling a special board meeting, if necessary.

The Superintendent is also authorized to remove the mask mandate if the conditions outlined in the metrics by the Board of Trustees are not met.

Allegations of harassment of any person wearing or not wearing a face covering, mask, or face shield requirement will be promptly investigated in accordance with District policy. Failure or refusal to wear a face covering, mask, or face shield by a staff member or student not subject to an exception noted above may result in redirection or discipline in accordance with District policy and codes of conduct, as applicable.

Cleaning and Disinfecting

School district personnel will routinely both clean by removing germs, dirt and impurities and disinfect by using chemicals to kill germs on all surfaces and objects in any school building and on school property that are frequently touched. This process shall include cleaning objects/surfaces not ordinarily cleaned daily.

Personnel will clean with the cleaners typically used and will use all cleaning products according to the directions on the label. Personnel will disinfect with common EPA-registered household disinfectants. A list of products that are EPA-approved for use against the virus that causes COVID-19 is available from the supervising teacher or administrator. Personnel will follow the manufacturer's instructions for all cleaning and disinfection products. The District will provide EPA-registered disposable wipes to teachers, staff, and secondary students so that

commonly used surfaces (e.g., keyboards, desks, remote controls) can be wiped down before use. Supervising teacher or administrators are required to ensure adequate supplies to support cleaning and disinfection practices.

Student Arrival

Hand hygiene stations will be available at the entrance of any school building, so that children can clean their hands before they enter. If a sink with soap and water is not available, the School District will provide hand sanitizer with at least 60% alcohol. Hand sanitizer will supervised by staff.

A District employee will greet children outside the school as they arrive to ensure orderly compliance with the provisions of this policy.

Healthy Hand Hygiene Behavior

All students, staff, and others present in the any school building will engage in hand hygiene at the following times, which include but are not limited to:

- • Arrival to the facility and after breaks
- • Before and after preparing, eating, or handling food or drinks
- • Before and after administering medication or screening temperature
- • After coming in contact with bodily fluid
- • After recess
- • After handling garbage
- • After assisting students with handwashing
- • After use of the restroom

Hand hygiene includes but is not limited to washing hands with soap and water for at least 20 seconds. If hands are not visibly dirty, alcohol-based hand sanitizers with at least 60% alcohol can be used if soap and water are not readily available.

Staff members will supervise children when they use hand sanitizer and soap to prevent ingestion. Staff members will place grade level appropriate posters describing handwashing steps near sinks.

Vulnerable Individuals

Vulnerable individuals (defined by the Centers for Disease Control at the time of this policy's adoption as those age 65 or older or those with serious underlying health conditions, including high blood pressure, chronic lung disease, diabetes, obesity, asthma, and those whose immune system is compromised such as by chemotherapy for cancer and other conditions requiring such therapy) are authorized to talk to their healthcare provider to assess their risk and to determine if they should telework during the period of declared public health emergency.

Employees who have documented high risk designation from a medical provider are entitled to reasonable accommodation within the meaning of that term in accordance with the Americans with Disabilities Act and Section 504 as outlined in District Policy 5002. These accommodations may include but are not limited to teleworking in accordance with a work plan developed in coordination with and authorized by the supervising teacher, administrator or other designated supervisor. Such employees may also be eligible for available leave in accordance with the applicable policy or master agreement provision.

Food Preparation and Meal Service

Facilities must comply with all applicable federal, state, and local regulations and guidance related to safe preparation of food.

Sinks used for food preparation must not be used for any other purposes.

Staff and students will wash their hands in accordance with this policy.

Transportation Services

The Board of Trustees authorizes the transportation of eligible transportees to and from the school facility in a manner consistent with the protocols established in this policy. The transportation director and school bus drivers will clean and disinfect each seat on each bus after each use.

Public Awareness

The School District will communicate with parents, citizens, and other necessary stakeholders about the protocols established in this policy and the steps taken to implement the protocols through all available and reasonable means.

Confidentiality

This policy in no way limits or adjusts the School District's obligations to honor staff and student privacy rights. All applicable district policies and handbook provision governing confidentiality of student and staff medical information remain in full effect.

Transfer of Funds for Safety Purposes

The Board of Trustees may transfer state or local revenue from any budgeted or non-budgeted fund, other than the debt service fund or retirement fund, to its building reserve fund in an amount not to exceed the school district's estimated costs of improvements to school and student safety and security to implement this policy in accordance with District Policy 1006FE.

1 Legal Reference Governor's Directive Implementing Executive Order 2-2021 – February 12, 2021
Correspondence clarifying Governor's Directive – February 11, 2021
Article X, section 8 Montana Constitution
Section 20-3-324, MCA Powers and Duties
Section 20-9-806, MCA School Closure by Declaration of Emergency
0.55.701(2)(d)(s) Board of Trustees
State, ex rel., Bartmess v. Helena Board of Trustees, 726 P.2d 801

Cross Reference: Policy 1901 – School District Policy and Procedures
Policy 1903 – School District Events and Meetings
Policy 1903F – School Events Notice
Policy 1906 - Student Services and Instructional Delivery
Policy 1907 – Transportation Services
Policy 1006FE – Transfer of Funds for Safety Purposes
Policy 3410 – Student examination and screenings
Policy 3226 – Bullying and Harassment
Policy 3417 – Communicable Diseases
Policy 3431 – Emergency Treatment
Policy 5015 – Bullying and Harassment
Policy 1911 - Personnel Use of Leave
Policy 1910 – Human Resources and Personnel
Policy 4120 - Public Relations
Policy 5002 – Accommodating Individuals with Disabilities
Policy 5130 – Staff Health

Policy 5230 - Prevention of Disease Transmission
Policy 6110 – Superintendent Authority
Policy 6122 - Delegation of Authority

Adopted on: March 2, 2021

Reviewed on:

Revised on: June 8, 2021; August 12, 2021; August 18, 2021

Terminated on:

ADMINISTRATION

Administrator

Duties and Authorities

The administrator is the District's executive officer and is responsible for the administration and management of the District school, in accordance with Board policies and directives and state and federal law. The administrator is authorized to develop administrative procedures to implement Board policy and to delegate duties and responsibilities. Delegation of power or duty, however, shall not relieve the administrator of responsibility for the action which was delegated.

Qualifications and Appointment

The administrator shall have the experience and the skills necessary to work effectively with the Board, District employees, students, and the community. The administrator shall be appropriately licensed and endorsed in accordance with state statutes and Board of Public Education rules; or considered appropriately assigned if the Administrator is enrolled in an internship program as defined in ARM 10.55.602 and meets the requirements of ARM 10.55.607 and ARM 10.55.702.

Evaluation

The Board will evaluate, at least annually, the performance of the administrator, using standards and objectives developed by the administrator and the Board, which are consistent with the District's mission and goal statements. A specific time shall be designated for a formal evaluation session. The evaluation should include a discussion of professional strengths, as well as performance areas needing improvement.

Compensation and Benefits

The Board and the administrator shall enter into a contract which conforms to this policy and state law. This contract shall govern the employment relationship between the Board and the administrator.

Legal Reference:	§ 20-4-402, MCA	Duties of district superintendent or county high school principal
	ARM 10.55.602	Definition of Internship
	ARM 10.55.607	Internships
	ARM 10.55.702	Licensure and Duties of District Administrator - District Superintendent

Policy History:

Adopted on:

Revised on: April 3, 2014

Reviewed on: March 3, 2020

EXHIBIT R

Elysian School

SD #23, Yellowstone County, Billings, MT

Important message from Superintendent Shelton

8/23/2021

Elysian Community,

This past evening I was made aware of several positive COVID-19 cases in our immediate community. With the start of school this week and the high number of students, staff and parents in our buildings starting today, I must act on the side of caution. We all want to have a safe, healthy start, and full length school year. Because of this recent information we must act responsibly until we have more information. For this reason, with consultation from the Board, and under Policy 1905, I am enacting a face covering mandate starting today (8/23/21) for all staff, students and community during the normal school day and our Open House until further notice. I will be monitoring our local data, communicating with our local health and with our community. If that local threat of spread is determined to be low this is something that can be reversed in the future.

As much as anyone, I wanted this year to start and remain as close to normal as possible. However, our main priorities at Elysian are for the safety and education of all our students. With the added cases last night in our community and the potential impact of spread that could have on our population at Elysian, we must enact all available measures at this time. I appreciate your support and understanding in these strenuous times. I am hopeful with these measures in place we will navigate this surge, protecting our students, keeping our doors open and once again returning to a place of more normal in the near future.

Advertisement

Your support and positivity will go a long way to help all our students, staff and community as a whole to come together and start this year effectively and safely. We know how to do this, we showed the world last year we can navigate this successfully, it takes us all to accomplish that task. Let's all come together, get over this hurdle, reassess, and have a positive, successful and safe school year.

Respectfully,

Luke E. Shelton

Superintendent

8_23_21 Superintendent Letter.pdf

Advertisement



EXHIBITS

Elysian Elementary School
Board of Trustees
August 12, 2021

Board Chair, Brad McCall, called to order at 7:02AM the regular meeting of the Board of Trustees of School District #23, Yellowstone County, Montana. Trustees present were Board Chair Brad McCall, Vice Chair Monica Zieske, Trustee Ben Reichenbach, Trustee Mark Kane and Trustee Shanna Herrick. Superintendent Luke Shelton, Principal Ryan Truscott, Dean Jennifer Sundsted and Clerk Laurie Hickethier were present. Guest Present were Dr. Kyle Bodley, Charlene Ingraham, Tena Ruffatto and Traci Fitzgerald.

All present recited the Pledge of Allegiance.

Public Comment

Dr. Kyle Bodley, a pediatrician from the Children's Clinic, spoke to the board in regards to COVID-19 and specifically the delta variant.

Correspondence

Superintendent Shelton presented the board with letters of resignation from Mrs. Desjarlais (1st Grade) and Mrs. Swander (SPED Paraprofessional).

A letter from Kylee Bodley was presented to the board in regards to Masks and COVID-19.

Consent Agenda

Monica Zieske motioned to approve the consent agenda. Second from Mark Kane, all trustees present voting yes, motion passed. Consent agenda items were the minutes from the June 2nd regular board meeting, warrants 23026013 - 23026032 (June 7th), Warrants 23026033 – 23026050 (June 28th), Warrant 23026051 (June 29th), Warrants 23026052 – 230026070 (July 8th), Warrants 23026071 – 23026080 (July 22nd), Expenditure Report as of May 31st and June 30th, 2021, Year End Activity Account Balances and cancelled warrants as of June 30, 2021.

End of Year Transfers

Business Manager Hickethier stated to the board that the only transfer of funds that was done at the end of the 20-21 school year was a transfer of \$100,000 to Fund 82. This transfer will help Elysian in the 22-23 school year due to the decrease in ANB which caused a reduction in the General Fund Budget for 22-23 and also increases in insurance costs.

Final Budgets to Adopt / Trustees Report

Business Manager Laurie Hickethier discussed the Trustees Report for 2020-2021 and the 2021-2022 Elysian School Budget. Monica Zieske motioned to accept the Trustees Report and the 2021-2022 Elysian School Budget, with Shanna Herrick seconding the motion, all members present voting yes, motion passed.

Continue extra 2 Hours to Nurse Jaime Martian's contract – paid from ESSER funds

Supt. Shelton stated he recommends continuing the extra 2 hours to Nurse Jaime's contract for 21-22 school year. Having the nurse here for those extra hours helps tremendously with keeping children safe and healthy at the school. Monica Zieske motioned to continue with the extra 2 hours. Second to the motion was Mark Kane. All Members voting yes, motion passed unanimously.

New 1st Grade Teacher 2021-2022 – Katie Hertz

Supt. Shelton stated he recommends hiring Katie Hertz as the 1st Grade Teacher for the 2021-2022 school year. This position replaces Mrs. Desjarlais resignation. Mark Kane motioned to hire Ms. Hertz for the 1st Grade Teacher for 2021-2022. Second to the motion was Monica Zieske. All Members voting yes, motion passed unanimously.

At this time, Board Chair McCall stated that since a Trustee needed to leave the meeting early, he would like to move the Policy Change for 1905 to this point of the meeting.

Policy Change – 1905 Optional Language for Optional Mask Provision

After a long discussion in regards to mask provisions, Monica Zieske motioned to add the following optional language in policy 1905:

If, after this section is adopted, the number of active COVID-19 cases in the county where the school district is located increases to the point of being considered a "substantial" or "high" rate of transmission as defined by the Centers for Disease Control (CDC), the Board of Trustees authorizes the superintendent to implement a requirement for face coverings to be worn in identified District buildings until such time as the Board of Trustees can adopt an applicable District policy. The superintendent shall coordinate with the county health department and Board Chair to determine whether face coverings are a necessary response to a potential or actual COVID-19 outbreak. In the event face coverings are required, the superintendent shall announce the face covering requirement to students, parents, staff, and visitors for the immediate successive school day each day by 3:00 pm. If the superintendent determines masks are required, signs will be installed to inform students, parents, staff, and visitors of mask requirements while present in the identified District buildings.

This motion was only to add the language to policy 1905 and does not determine what mask option will be made for the start of the school year. Second to the motion was Ben Reichenbach. All Trustees present voting yes, motion passed.

At this point, Board Chair McCall stated he will call a Special Board meeting at 6PM on Wednesday, August 18th to discuss the mask mandate piece.

Trustee Zieske left the meeting after the Policy Change item at 8:35am.

New Classified – Full Time Paraprofessional; 4-hour kitchen; 2-hour kitchen

Shanna Herrick motioned to approve the Full-Time Paraprofessional and table the 4 and 2 hour following classified positions until a candidate is found:

a. Full-Time Paraprofessional – Elsy Crowther (replacing Amanda Swander)
Second to the motion was Mark Kane, all Trustees present voting yes, motion passed.

Long-Term Sub Contract – Courtney Peterson for Jennifer Tolton; Mary Kelley for Sarah Martinez

Shanna Herrick motioned to approve the following Long-Term Sub Contracts for the beginning of 2021-2022:

a. Courtney Peterson for Jennifer Tolton
b. Mary Kelley for Sarah Martinez
Second to the motion was Mark Kane, all Trustees present voting yes, motion passed.

Roving Sub Contract – Not Filled

A candidate has not been found as of yet per Supt. Shelton. This item is tabled.

Stipend Contracts 2020-2021

Shanna Herrick motioned to approve the following stipend contracts for the 2020-2021 school year:

- Head Football Coach – Rich Klein (Elysian, Elder Grove and Canyon Creek will all provide a football coach)
- Math Counts – Charlene Ingraham and Kerry Vanderkolk

Second to the motion was Mark Kane. All Trustees present voting yes, motion Passed.

New Guest Teachers – Kari Laboulle, Mary Kelley

Shanna Herrick motioned to approve Kari Laboulle and Mary Kelley as Guest Teachers at Elysian School. Second to the motion was Mark Kane, all Trustees present voting yes, motion passed.

Transportation Forms

Shanna Herrick motioned to approve the TR13 1st Semester Bus Inspections, and TR35 for Ellis Knows His Gun. The TR35 for Fergie Taylor and the TR35 for Holly Seitz are not finalized yet. Second to the motion was Mark Kane. All Trustees present voting yes, motion passed.

Out of District Requests – Recommend Approve #29, 52, 55-75 and Recommend Deny #None

Mark Kane motioned to approve the current students at Elysian School requesting out of district enrollment back to Elysian for the 2021-2022 school year as recommended by Principal Truscott. Second to the motion was Shanna Herrick. All Trustees present voting yes, motion passed.

Olness & Associate Audit 20-21 – Scheduled for Sept 20, 2021

Mark Kane motioned, seconded by Shanna Herrick, the Olness & Associate Audit for 20-21 – Scheduled for Sept 20, 2021. All trustees present voting yes, motion passed.

Elysian School Wellness Policy

Mark Kane motioned to approve the Elysian School Wellness Policy for the 2021-2022 school year. Second to the motion was Ben Reichenbach. All Trustees present voting yes, motion passed.

Guest Teacher daily Rate for 21-22 \$98

Shanna Herrick motioned to approve the current Guest Teacher daily rate at \$98 for the 21-22 school year. Second to the motion was Ben Reichenbach, all trustees present voting yes, motion passed.

E-Rate Representative Nicole Jones 21-22

Shanna Herrick motioned to approve Nicole Jones to act as Elysian School's communications representative / agent when dealing with Telecommunications companies and Internet Providers for funding year 2021-2022. This allows Nicole Jones to act on Elysian School's behalf to get e-Rate discounts on our bills. Second to the motion was Ben Reichenbach, all trustees present voting yes, motion passed.

Resolution to Dispose of Personal Property

Ben Reichenbach motioned to approve the resolution to dispose of Personal Property to dispose of property of the district that is or about to become abandoned, obsolete, undesirable or unsuitable for the school purposes of the district. A garage sale is to be

held and posted in the Billings times. Second to the motion was Mark Kane, all trustees present voting yes, motion passed.

Ace Membership 21-22

Superintendent Shelton stated this contract has not been received so will table until the September meeting.

Fund 82 Blue Creek, Elysian, Elder Grove and Canyon Creek Pre-School Agreement Changes

Supt. Shelton and Business Manager Hickethier stated that there will be some changes to the agreement to account for funding this program. This program is in its first year, and some items on how to continue the program sustainably are needed. As soon as the updated agreement is completed, Supt. Shelton will bring this to the board for a vote.

Safe Return to School & continuity of Service Plan & Elysian ARP ESSER Plan

Supt. Shelton stated that the Safe Return to School & Continuity of Service Plan was posted on the Elysian School website on June 8th and the Elysian ARP ESSER Plan needs to be posted before August 24, 2021. The ARP ESSER Plan states how the district will be spending the ESSER funds to help Prevent, Respond and Prepare for Covid related expenses. Shanna Herrick motioned to accept the Elysian ARP ESSER Plan. Second to the motion was Ben Reichenbach, all Trustees present voting yes, motion passed.

Supt. Authority to change Leveled Health Response as Necessary

Supt. Shelton asked the Board to grant him the authority to change the level at which Elysian School is at immediately based on what is happening in the school along with what is happening in the community with Covid. Shanna Herrick motioned to allow Supt. Shelton the authority. Second to the motion was Mark Kane. All Trustees present voting yes, motion passed.

At this time, Trustee Ben Reichenbach left the meeting at 9:15am.

Clerk's Report

Clerk Hickethier reported the following to the board of trustees:

- A. The Taxable Value for Elysian for 21-22 is \$29,107,217
- B. Elysian received 2 Out of District Student Agreements from Elder Grove for the 21-22 school year. Those students attend Elder Grove with the parents/Guardian paying all tuition and transportation to Elder Grove.

Principal Truscott's Report

Principal Truscott presented the following to the board:

- 13 days before school starts – everything is being put in place to have a great start to the school year.
- Next Monday and Tuesday is the Kindergarten Screening.
- 23rd and 24th are PIR days. One of the days will be used by Elysian School counselors to help put in common language used throughout the school to prevent Bullying and Harassment
- 23rd will be the open house for all families

Superintendent Shelton's Report

Mr. Shelton stated to the board that with new expansion around the school and the information that Tvetene Turf has been sold, the Board of Trustees needs to start really looking at school expansion. Elysian School may be able to purchase some additional land from the new owner of Tvetene Turf if needed, so a potential development plan should be created to make sure Elysian has enough land to build an additional building plus a sports field.

There being no further business to come before the Board at this time, Chair Brad McCall called to adjourn. This meeting adjourned at 9:42AM.

Approved: _____

Date: _____

ATTEST: _____

Elysian Elementary School
Board of Trustees
Special Board Meeting
August 18, 2021

Board Chair, Brad McCall, called to order at 6:00PM the special meeting of the Board of Trustees of School District #23, Yellowstone County, Montana. Trustees present were Board Chair Brad McCall, Vice Chair Monica Zieske, Trustee Ben Reichenbach, Trustee Mark Kane and Trustee Shanna Herrick. Superintendent Luke Shelton, Principal Ryan Truscott, and Clerk Laurie Hickethier were present. Approximately 40 guests were present seated in the gym bleachers.

All present recited the Pledge of Allegiance.

Correspondence

Clerk Laurie Hickethier read four letters sent to the clerk from the community. The letters were from JoAnna Frank, Meagan Lucara-Bell, Tasha Mills and Ella Szudera.

Public Comment

The board was addressed from the following during public comment with all either in support or against a mask mandate: John Clayton, Louie Watt, Allison Watt, Jeremie McCoy, Sarah Irigoin, Kylee Bodley, Amber Bertrand and Levi Novakovich.

Policy 1905 – Discussion on Mask Mandate

Superintendent Shelton stated that Elysian School will continue with Hand Sanitizing stations and continual disinfecting of the school and distancing as best as possible. Rapid Covid Tests will also be available at the school for students and staff that choose to be tested. The Administration is no longer deputized and therefore Elysian will not be close contact tracing and quarantining at school.

At that point, the Board of Trustees began discussing the idea of a mask mandate at Elysian School. Supt. Shelton stated to the trustees that after the survey sent to the staff at Elysian School 42 of the 54 staff members responded with 86% optional masks and 14% mandatory. Supt. Shelton stated that the community responded with 284 responses with 69% optional and 31% mandatory masks.

After a long discussion from the board of Trustees, Trustee Kane motioned to amend policy 1905 in the following way with masks mandated:

Face Coverings as Personal Protective Equipment

This provision is required due to the COVID-19 state of emergency declared by the Board of Trustees or other local, state or federal agency, official, or legislative body. This policy is adopted, implemented, and enforced in accordance with the supervisory

authority vested with the Board of Trustees in accordance with Article 10, section 8 of the Montana Constitution and related statues and regulations. The Board of Trustees authorizes the Superintendent to develop and implement procedures to enforce this policy.

The School District requires all staff, volunteers, visitors, and school-aged students to wear a face covering, mask, or face shield while present in any school building, regardless of vaccination status. The School District also requires all staff, volunteers, visitors, and school-aged students to wear a face covering, face covering, mask, or face shield while present during the school instruction day. Face covering, mask, or face shield means disposable or reusable covering that cover the nose and mouth. The School District will provide masks to students, volunteers, and staff, if needed. If a student or staff member wears a reusable mask, the School District expects that the masks be will washed on a regular basis to ensure maximum protection.

Students, staff, volunteers, and visitors are not required to wear a face covering, mask, or face shield under this provision when:

- 1. consuming food or drink;*
- 2. engaged in strenuous physical activity;*
- 3. communicating with someone who is hearing impaired;*
- 4. identifying themselves;*
- 5. receiving medical attention; or*
- 6. precluded from safely using a face covering, mask, or face shield due to a medical or developmental condition. The superintendent, building principal, or their designee shall request documentation from a care provider when considering an exception to this provision for medical or developmental reasons. The School District will comply with all applicable disability and discrimination laws when implementing this provision.*

When students and members of the public are not present, staff may remove their face covering, mask, or face shield if they are at their individual workstation.

All points of entry to any school building or facility open to the public shall have a clearly visible sign posted stating the face covering, mask, or face shield requirement. Allegations of harassment of any person wearing or not wearing a face covering, mask, or face shield requirement will be promptly investigated in accordance with District policy. Failure or refusal to wear a face covering, mask, or face shield by a staff member or student not subject to an exception noted above may result in redirection or discipline in accordance with District policy and codes of conduct, as applicable.

Trustee Kane also stated that this policy would be re-evaluated at the October 2021 Board Meeting. Second to the motion was Shanna Herrick. At this point, members of the public stated some questions and comments to the board over the motion:

Louie Watt commented that with a mask mandate, the board is putting a burden on kids when nobody else in the community is wearing masks. Also, why is the board ignoring

the will of the teachers and community? Nobody says don't wear masks, just make it optional. It is the role of the school board to listen to the community.

Levi Novakovich stated to Trustee Mark Kane's point, Levi believes the Board is following the will of the people and there is overwhelming evidence from the medical community to support Trustee Mark Kane's motion.

Amber Balcon stated that the #1 cause of death in 5–19-year age group is car accidents and asked if the board would be telling them to not put kids in cars then?

Kylee Bodley stated this this mask issue has become extremely political and it shouldn't be. Physicians realize and see the surge in young children with this delta variant. Mrs. Bodley stated Covid 19 is also in the top 10 of deaths in that age range and masks are a great tool in helping fight this pandemic. Masks are an extra insurance that can be used to help with transmission of the virus. Kylee Bodley stated that Missoula and Bozeman school districts have both passed mask mandates of some sort, so schools in Montana are following the advice.

Bethany Joy asked Supt. Shelton what the results of Summer School was without mask mandate on students? Supt. Shelton stated that there were 47 students at SOAR summer school and masks were optional. There were some kids that came with masks and some without. With only 47 kids though, students were able to spread out.

At this point, 7:40PM, Board Chair McCall asked for a 5-minute break. The meeting reconvened at 7:45PM.

Jeremie McCoy stated that influenza a couple years back killed more children and masks were not mandated then. He agrees that if you want to wear one, you should. John stated the board is elected officials and should listen to the thoughts of the staff and community.

John Clayton asked the board to be proactive and not reactive and asked board to revisit guidelines to mandate masks until 5–12 year-olds are allowed to receive the vaccine.

Ryan Irigoien stated last year the mask mandate was a disaster. If 80% voted against the mask mandate then the board is not listening. Ryan is a teacher at Elysian School for the past 12 years and the school is going to have push back if masks are required and teachers will start to leave Elysian for higher paying jobs in the area.

Charlene Ingraham stated that teachers have not moved on from Elysian. But masks are just a very few parts of what was done last year to combat the virus, washing hands, hand sanitizer, and sanitized desks each hour. My daughter got very sick from COVID but she was wearing a mask and still got sick. Charlene stated she doesn't believe masks will prevent the virus.

Kim Liter stated that administration did an amazing job last year. Kim Liter stated she thinks masks just became a vomit bag and chew toys for the kids. The students were closer together outside at recess. She believes the rules and sanitizing from last year is what kept the numbers low. Masks make it hard to connect with younger kids.

Principal Truscott stated that KTVQ2 just announced that Billings SD#2 just agreed to make masks optional for staff.

Tena Ruffatto stated that the masks are creating mental health issues with anxiety and claustrophobia and that there is a mental health waiting list to get your child in.

John stated he is a behavioral health professional and the levels of anxiety and stress are the "new normal" without Covid. John has a shared value care about kids. John hopes that the board and community can come together for a flexible solution that everyone can get behind and possibly just reassess every 2 to 4 weeks.

Board Chair McCall stated he really wanted to hear what everyone had to say. McCall stated he has really wrestled with this and does believe that COVID is real and is getting worse. McCall stated he wants everyone to get the vaccine as he states it is a miracle and is very thankful for the vaccine. If more people had been vaccinated, we wouldn't be in this spot to have to make this decision. This is really a no-win situation as the board cannot make everyone happy. Chair McCall stated he believes that 100% masks are the rightest thing for the kids. The thing Chair McCall is most concerned is about the Elysian Family – and the divide this has caused and the division in the community. At this point, McCall stated he will not vote to have masks right away but does realize that the ICUs are full and the delta variant is here.

At this point, Board Chair McCall called for a vote on Trustee Kane's motion. Trustees Shanna Herrick and Trustee Kane voted yes, and Trustee Ben Reichenbach, Trustee Monica Zieske and Board Chair Brad McCall voting no. Board Chair McCall stated even though he believes that masks are a very important piece to keeping our children safe at school, and hopes that children will choose to wear masks to keep themselves and others safe, Trustee McCall stated that he is an elected official and feels that he should listen to the survey results from the staff and community where the majority voted for masks optional. Motion Failed.

Trustee Monica Zieske made a motion to amend policy 1905 to add a metric for Superintendent Shelton to enact a mask mandate quickly at Elysian School. After a long discussion on what the metric would look like, the following metric was motioned for by Monica Zieske:

1. Each week Supt. Shelton receives the Yellowstone County Schools Weekly Report from the Yellowstone County Unified Health Command. If that report shows two of the four indicators in RED; OR
2. Communication between the school administrators and the public health authorities state there is a high outbreak in our area; OR

3. An outbreak takes place at Elysian School noticed by the Administration and Nurse at Elysian

If any of those metrics has happened, Supt. Shelton has the authority to immediately call for a mask mandate at Elysian School. After initiating an immediate mask mandate, Supt. Shelton will call a special meeting of the board of trustees to discuss.

Trustee Reichenbach believes that we should set the metric to look at numbers for our school age students, and not take high school student numbers in consideration. Chair McCall disagreed with that as they are all part of the community. Second to the motion was Shanna Herrick. Trustee Monica Zieske, Chair Brad McCall, Trustee Shanna Herrick and Trustee Mark Kane voted yes. Trustee Ben Reichenbach voted no. Motion passed.

There being no further business to come before the Board at this time, Chair Brad McCall called to adjourn. This meeting adjourned at 9:08PM.

Approved: _____

Date: _____

ATTEST: _____

Elysian Elementary School
Board of Trustees
September 7, 2021

Board Chair, Brad McCall, called to order at 6:01PM the regular meeting of the Board of Trustees of School District #23, Yellowstone County, Montana. Trustees present were Board Chair Brad McCall, Vice Chair Monica Zieske, Trustee Ben Reichenbach, Trustee Mark Kane and Trustee Shanna Herrick. Superintendent Luke Shelton, Principal Ryan Truscott, and Clerk Laurie Hicketier were present. Thirteen guests were present at the start of the meeting.

All present recited the Pledge of Allegiance.

Public Comment

There was no public comment.

Correspondence

A letter from John Clayton was read to the board at the start of the board meeting.

Consent Agenda

Mark Kane motioned to approve the consent agenda. Second from Monica Zieske, all trustees present voting yes, motion passed. Consent agenda items were the minutes from the August 12th regular board meeting, minutes from the August 18th Special Board Meeting Minutes, warrants 23026081 - 23026099 (August 11th), Warrants 23026100 – 23026121 (August 26th), Expenditure Report as of July 31, 2021, and Activity Account Balances as of August 31, 2021.

New Classified

Monica Zieske motioned to hire Deb O'Brien as the 2 Hour Kitchen Helper for 2020-2021. Second to the motion was Shanna Herrick, all trustees present voting yes, motion passed.

Roving Sub Contract – Mary Kelley (beginning Oct 25, 2021 when Sarah Martinez returns)

Mark Kane motioned to approve Mary Kelley for the Roving Sub Contract for 21-22 beginning Oct 25, 2021 when Para Sarah Martinez returns from Maternity Leave. Second to the motion was Monica Zieske, all trustees present voting yes, motion passed.

Full-Time Paraprofessional Posted

Supt. Shelton stated he recommends the hiring of Samantha Haan for the full-time paraprofessional position for 21-22. Monica Zieske motioned to approve the recommendation. Second to the motion was Mark Kane. All Members voting yes, motion passed unanimously.

New Guest Teacher – Summer Barrett

Monica Zieske motioned to hire Summer Barrett as guest teacher at Elysian School. Second to the motion was Mark Kane, all trustees present voting yes, motion passed.

Increase Adult Education Stipends

Supt. Shelton stated he recommends raising the Adult Education Stipends to \$18 in order to attract more individuals to coordinate Adult Education Classes. Mark Kane motioned to accept the recommendation. Second to the motion was Monica Zieske. All Members voting yes, motion passed unanimously.

Transportation Forms

Monica Zieske motioned to approve the TR35 for Fergie Taylor and the TR35 for Holly Seitz, the TR1 Bus Routes for 21-22 school year and the TR4 Individual Transportation Agreement for a student attending the co-op pre-school. Second to the motion was Ben Reichenbach. All Trustees present voting yes, motion passed.

Scope & Site Plan with A&E Architects

Superintendent Shelton presented a scope & site plan for a potential addition to Elysian School that A&E Architects developed for free for Elysian School. After a brief discussion, Monica Zieske motioned to have Supt. Shelton look into the cost of the land on the scope & Site plan below the dotted line that Coca-Cola is purchasing from Tvetene Turf. Second to the motion was Mark Kane. All Trustees present voting yes, motion passed.

Policies

After some discussion, Clerk Hickethier stated she will get more information on the Recommended NEW Policies: 8129 Chemical Safety, 8130 Air Quality on Outdoor Activities, Practice and Competition, 8131 Indoor Air Quality, 8302 Noxious Plant and Animal Control, 8303 Facility Cleaning and Maintenance, and 8502 Construction and Repairs from MTSBA and bring back to the October board meeting as 1st Readings.

Monica Zieske motioned, seconded by Ben Reichenbach, to accept the 1st Reading of Recommended Policy Changes for 8200 Food Services, 8301 District Safety, 8410 Operation and Maintenance of District Facilities with a correction in DPHHS, and 8421 Lead Renovation. The motion removed 3417 Communicable Diseases to be placed for a 1st Reading on the October agenda. All trustees present voting yes, motion passed.

Monica Zieske motioned, seconded by Mark Kane, to approve the 1st Reading of Required New Policies 5230 Prevention of Disease Transmission and 8411 Water Supply Systems and Wastewater. All trustees present voting yes, motion passed.

Monica Zieske motioned, seconded by Mark Kane, to approve the 1st Reading of Required Policy changes for policies 3310 Student Discipline, 3311 Firearms and Weapons with option 3, 3413 Student Immunization, 4315 Visitor and Spectator Conduct, 4332 Conduct on School Property with Red Option 1 selected, 5223 Personal Conduct and 5325 Breastfeeding Workplace. The motion removed 3416 Administering Medicine to Students to be placed for a 1st Reading on the October agenda. All trustees present voting yes, motion passed.

Mark Kane motioned to accept the 1st Reading of New Policy 2050 Student Instruction. Second to the motion was Monica Zieske, all Trustees present voting yes, motion passed.

Fund 82 Blue Creek, Elysian, Elder Grove and Canyon Creek Pre-School Agreement Changes

Supt. Shelton and Business Manager Hickethier stated that there will be some changes to the agreement to account for funding this program. This program is in its first year, and some items on how to continue the program sustainably are needed. As soon as the updated agreement is completed, Supt. Shelton will bring this to the board for a vote.

Review of Policy 1905

Superintendent Shelton gave a brief background on where Elysian started with Masks for the 21-22 school year. Initially after the Special Board Meeting on August 18, 2021, the board voted to make masks optional with a metrics for Supt Shelton to look at to make an immediate decision if masks should be required. Unfortunately, three days after the meeting, the number of positive cases within the Elysian Family and community were rising. With 400 to 600 people to be walking through the building at open house, Supt. Shelton made the decision to try to stop the spread in our community and made masks mandatory for all staff, students and visitors at Elysian School. Supt. Shelton continues to monitor the progression of numbers in the 0-19 age range from the weekly report from the Yellowstone County Unified Health Command. At the time of school starting, we were already at 2 of the 4 indicators on the Unified Health Command report in the RED. And, as of today, we are now at 3 of the 4 indicators in the RED.

Elysian is actively testing students and staff as needed at Elysian to try to contain the spread at school.

At this time, Board Chair McCall opened up to the public for comment.

Louie Watt stated that the people of Montana elected a Governor that has stated the individuals do not want to allow government to make decisions for them. Masks are not political, but the board imposing them on the students is political. There have been no deaths in Yellowstone County for ages 0-19 for Covid. Louie stated he believes the best thing for the current board to do is to resign or call for a special election. Louie is confident there are people that will run against them on the platform of mask optional. Louie asked the board to make masks optional tonight. Louie would also at a later time want to ask about vaccine mandates at Elysian.

Sonya Clayton stated she works at a hospital here in Billings and understands that masks are not fun – and have caused her to have sores by her ears. However, masks are a tool to help spread the virus. The current news release by the Billings Healthcare community recommends masks. There will also be fewer kids out of school due to close contacts if masks are required at school. Sonya is calling on the board to keep the policy 1905 as is at least until ages 0-12 can be vaccinated. Sonya thanked the board and the administration for all that they do and recognizes they are in a hard spot.

Janine Johnson stated she is a former student at Elysian and current parent. She stated her students suffer from mental health issues and learning disabilities. Janine is not against masks as she sewed masks in 2020 for staff and the immunocompromised. But she believes masks should be up to parents to decide. The school is a safe place for kids and 10% of students die from suicide not covid 19. Instead of adding fear to students with having to wear masks, Elysian should look at hiring an additional school counselor to help with the number of students at Elysian needing help. The Governor of Montana's directive states it is not good for students with mental health and learning disabilities to wear masks.

After the public comment, the board had a long discussion in regards to mask provisions. Board Chair McCall, asked Supt. Shelton to discuss the clarification from DPHHS in regards to the Governor's directive. Supt. Shelton placed the FAQ Emergency Rule Clarification from DPHHS on the screen with the following:

Question: As a parent, does this emergency rule provide me with authority to exempt my child from an existing school mask mandate?

Response: This emergency rule is advisory in nature with recommendations for schools as they craft their policies. It does not overrule existing or future policies for masking in schools.

Trustee Zieske stated she is willing to discuss along with policies in place based on an individual cases.

Trustee Kane stated his concern is about the two administrators and asked them to let the criticism about masks to fall on the boards' shoulders. The Elysian School leadership has been stellar even when they have disagreed with the School Board and their professionalism is above and beyond. Thank you to the Elysian School administration.

Monica Zieske she was happy to allow the public to share their thoughts and allow Supt. Shelton to share why he put the mask mandate in place. Trustee Zieske stated she likes the idea of the Superintendent being able to act quickly and keep that ability with Supt. Shelton.

Supt. Shelton stated that multiple schools in our area have had to close classes in the past week. Supt. Shelton's #1 goal is to keep kids safe and keep the doors of Elysian School open for education. Supt. Shelton asked the board to clarify what their expectation is for masks for after school activities.

Monica stated she goes back to the policies and policies are in place to give help in individual and collective learning needs. She believes that masks should be during school hours – instructional time – and the administration doesn't need to be monitoring doors during after hour extracurricular times.

Trustee Kane stated he would love to see the community mask and show love and respect to one another, but agrees that there should not be a mask mandate at extra-curricular activities.

Board Chair McCall stated he echoes Trustee Zieske. Potentially the board can look at in a later meeting if parent teacher meetings should require masks but that can be discussed at a later meeting. Board Chair believes the letter from Supt. Shelton was a correct reflection of policy 1905 for mandates during the school instructional day.

Monica motioned to add "during the instructional day" in the following paragraph of Policy 1905:

If, after this section is adopted, the number of active COVID-19 cases in the county where the school district is located increases to the point of being considered a "substantial" or "high" rate of transmission as defined by the Centers for Disease Control (CDC), the Board of Trustees authorizes the superintendent to implement a requirement for face coverings to be worn in identified District buildings during the instructional day until such time as the Board of Trustees can adopt an applicable District policy.

Second to the motion was Shanna Herrick. All Trustees present voting yes, motion passed.

Safe Return to School & continuity of Service Plan & Elysian ARP ESSER Plan

Supt. Shelton stated there are no changes to the Safe Return to School and Continuity of Service Plan OR the ARP ESSER Plan. Monica Zieske motioned to combine those items on the next board agenda. Second to the motion was Mark Kane. All Trustees present voting yes, motion passed.

Clerk's Report

Clerk Hickethier didn't have anything to report to the board.

Principal Truscott's Report

Principal Truscott presented the following to the board:

- We have had a great start to school and we have a great community and love Elysian School.
- Principal Truscott appreciates the board and all the support they give this school and staff.

Trustee Monica said Thank you for keeping the kids excited about school and her kids come home with epic stories everyday to share. She is thankful for Elysian School.

Trustee Herrick stated her kids are really excited to be back at school as well.

Superintendent Shelton's Report

Mr. Shelton applauded the community of Elysian and stated his door is always open to talk. Mr. Shelton appreciates the boards support. Again, his #1 goal is to keep kids safe and the doors open. That is his ultimate goal.

There being no further business to come before the Board at this time, Chair Brad McCall called to adjourn. This meeting adjourned at 8:40PM.

Approved: _____

Date: _____

ATTEST: _____

Elysian Elementary School
Board of Trustees
October 5, 2021

Board Chair, Brad McCall, called to order at 6:01PM the regular meeting of the Board of Trustees of School District #23, Yellowstone County, Montana. Trustees present were Board Chair Brad McCall, Vice Chair Monica Zieske, Trustee Ben Reichenbach, and Trustee Mark Kane. Trustee Shanna Herrick was absent. Superintendent Luke Shelton, Principal Ryan Truscott, Dean Jennifer Sundsted and Clerk Laurie Hickethier were present. Guest present was Bethany Joy.

All present recited the Pledge of Allegiance.

Public Comment

Clerk Hickethier read a letter sent in to the board from Tanya Watt.

Correspondence

Supt Shelton stated he has received a letter of resignation from Sarah Martinez, paraprofessional at Elysian School.

Consent Agenda

Mark Kane motioned to approve the consent agenda with the following changes to the September 7, 2021 board meeting minutes: Trustee Zieske stated she is willing to discuss along with policies (*instead of contingencies*) in place based on individual cases. Also, remove the paragraph on the last page beginning "This motion was only to add the language to policy 1905... ending with Trustee Zieske left the meeting after the Policy Change at 8:35am". That paragraph was accidentally left from the meeting minutes on August 11, 2021. Second from Monica Zieske, all trustees present voting yes, motion passed. Consent agenda items were the minutes from the September 7th regular board meeting, warrants 23026122 - 23026149 (September 8th), Warrants 23026150 – 23026160 (September 24th), Expenditure Report as of August 31, 2021, Activity Account Balances as of September 30, 2021, and Workers' Comp, Unemployment and Federal 941 3rd Qtr. 2021 Quarterlies.

New Classified

Monica Zieske motioned to hire Mary Kelley to replace Sarah Martinez as a full-time paraprofessional. Second to the motion was Mark Kane, all trustees present voting yes, motion passed.

Roving Sub Paraprofessional Job Posted

Supt. Shelton stated that the Roving Sub Paraprofessional job has been posted again and is currently open for applications.

Increase Homework Club Stipends

Supt. Shelton stated he recommends raising the Homework Club stipend to \$18/hr. to attract more staff to help with that program as well. The Homework Club really helps students that have fallen behind, and especially with the COVID gap when school was not in-person. Monica Zieske motioned to accept the recommendation. Second to the motion was Ben Reichenbach. All Members voting yes, motion passed unanimously.

Billings School District #2 Student Attendance Agreement – 2021-2022

Clerk Hicketier stated she received an FP-14 from School District #2 of a student that lives in Elysian district but is attending School District #2. The parents/guardians are responsible to pay the tuition for the student and provide the transportation to school. Monica Zieske motioned to accept the FP-14. Second to the motion was Mark Kane. All Trustees present voting yes, motion passed.

Elysian Crisis Manual 2021-2022

Principal Truscott stated the Elysian Safety Committee is working on getting an alternate site for an evacuation site in the chance the first site is not safe. Mark Kane motioned to approve the Elysian Crisis Manual for 2021-2022. Second to the motion was Monica Zieske. All Trustees present voting yes, motion passed.

Policies

Monica Zieske motioned, seconded by Mark Kane, to accept the 1st Reading of Recommended Policy Changes for 3417 Communicable Diseases with the correction of spelling "any", and the Required Policy Change for 3416 Administering Medicines to Students with the correction of spelling "lived". All trustees present voting yes, motion passed.

Mark Kane motioned, seconded by Monica Zieske, to accept the 2nd Reading of Recommended Policy Changes for 8200 Food Services, 8301 District Safety, 8410 Operation and Maintenance of District Facilities, and 8421 Lead Renovation. All trustees present voting yes, motion passed.

Monica Zieske motioned, seconded by Ben Reichenbach, to approve the 2nd Reading of Required New Policies 5230 Prevention of Disease Transmission and 8411 Water Supply Systems and Wastewater. All trustees present voting yes, motion passed.

Mark Kane motioned, seconded by Monica Zieske, to approve the 2nd Reading of Required Policy changes for policies 3310 Student Discipline, 3311 Firearms and Weapons, 3413 Student Immunization, 4315 Visitor and Spectator Conduct, 4332 Conduct on School Property, 5223 Personal Conduct and 5325 Breastfeeding Workplace. All trustees present voting yes, motion passed.

Monica Zieske motioned to accept the 2nd Reading of New Policy 2050 Student Instruction. Second to the motion was Mark Kane, all Trustees present voting yes, motion passed.

Fund 82 Blue Creek, Elysian, Elder Grove and Canyon Creek Pre-School Agreement Changes

Supt. Shelton and Business Manager Hickethier stated that there will be some changes to the agreement to account for funding this program. This program is in its first year, and some items on how to continue the program sustainably are needed. There is a meeting with the Pre-School on Thursday to finalize this agreement for the 2nd year. As soon as the updated agreement is completed, Supt. Shelton will bring this to the board for a vote.

Review of Policy 1905

Superintendent Shelton gave a brief background on where Elysian is in regards to students and staff being out due to Covid. Supt. Shelton stated he would recommend continuing with the mask mandate for now. Supt. Shelton stated that the DPHHS numbers they are publishing do not reflect the numbers of cases that we are having here at Elysian. Trustee Kane stated that he has looked into that as well and those numbers from DPHHS do not reflect what he sees at the school he works at either. Supt. Shelton also stated that the Covid gap is real and will be showing the most current MAPS tests results to the board in the coming months. This is why we absolutely need to do all we can to keep the doors of the school open. The Summer SOAR program does show that helped with some of the gaps in education that happened when the school was distance only for that quarter.

Trustee Ben Reichenbach stated he believes the numbers of Covid positives will not go down as people are not wearing masks outside school and that Covid is going to have to run its' course. Supt. Shelton stated he agrees people are not wearing them outside of school, but he believes we have not seen a significant spread of covid here within the school due to the measures that are in place such as masks, social distancing and disinfecting. Supt. Shelton agrees that the covid positives very well are from contacting outside of the school setting. But students and staff staying home when sick and the other measures help with containing a spread within the school and working on keeping the doors of the school open.

Trustee Kane stated that one of his worst scenarios is that the school will have to close again with a covid outbreak.

As nothing was changed on policy 1905 at this time, there was no motion made by the board.

Safe Return to School & continuity of Service Plan & Elysian ARP ESSER Plan

Supt. Shelton stated there are no changes to the Safe Return to School and Continuity of Service Plan. Supt. Shelton stated that with ARP ESSER Plan, he would like to recommend the board extend the 10 Covid days that were allowed in previous years for staff that are Covid positive or have to stay home with a family member due to Covid. Those days will be paid for out of the ESSER money for the school and the days have to be directly related to Covid reasons. Mark Kane motioned to extend the 10 days for the 21-22 school year for each staff member. Second to the motion was Monica Zieske. All Trustees present voting yes, motion passed.

Clerk's Report

Clerk Hickethier stated that she has finished the Seamless Summer Option Lunch program for the 2021-2022 school year. Through this program, breakfast and lunch are free to students for the 2021-2022 school year.

Clerk Hickethier stated that the 2020-2021 Audit has been completed and outside of the "normal" two findings, the audit was clean!

Clerk Hickethier stated the Fall Student Count Day was on October 4, 2021. The ANB count was 391. This count was up from 384 from the Spring 2021 count. Clerk Hickethier gave the Board of Trustees a breakdown of the Elysian Student Demographics beginning the 2021-2022 school year and what areas of the district comprise the 391 counts.

Principal Truscott's Report

Principal Truscott presented the following to the board:

- MAPS Testing is done and will be presented to the board in the coming months. The Summer SOAR program showed that 6 out of 8 within all grade levels went up in reading and 4 out of 8 improved in math.
- The Title Groups have started and the new Middle School Title program has a new curriculum.
- The Gifted and Talented program will be up and running for grades 1-5 with Mrs. Joy on Monday. Mrs. Joy will see kids about 8 times per month and the curriculum ranges from writing, science and research projects.
- MEA/MFT weekend is coming up and we have some staff signed up for professional development through that if they haven't replaced with another professional development.
- The end of 1st Quarter is only 3 weeks away!

Superintendent Shelton's Report

Mr. Shelton spoke to the board about a potential school expansion. With the board's approval at the last board meeting, Supt. Shelton met with a spokesman from Coke that purchased Tvetene Turf land adjacent to Elysian School. Within that discussion, using the layout that A&E Architects supplied for Elysian, the discussion was about the cost of adding 6 acres to Elysian School currently owned land. The cost of that per the spokesman would be around 1.4 million. The spokesman stated that cost is not hardened in stone and could be negotiable. The Coke Spokesman discussed the option of Elysian School purchasing potentially 12 acres to create a buffer zone of residential around the school. The price is due to Coke improving the land with water and sewer service and would range around \$5.50 to \$7.00 per square foot. Supt. Shelton asked that the board think about putting a committee together in order to meet again with Coke to begin the discussions.

Board Chair Brad McCall disclosed to the Board that a spokesman from Coke has also reached out to McCall Development to purchase some of the Tvetene Turf land as well to expand Annafeld Subdivision around Elysian School.

There being no further business to come before the Board at this time, Chair Brad McCall called to adjourn. This meeting adjourned at 7:28PM.

Approved: _____

Date: _____

ATTEST: _____

EXHIBIT T

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the adoption of)	NOTICE OF ADOPTION OF
Temporary Emergency Rule I to allow)	TEMPORARY EMERGENCY RULE
students and/or their parents or)	
guardians the ability to opt-out of)	
school health-related mandates for)	
health, religious, moral, or other)	
fundamental rights reasons)	

TO: All Concerned Persons

1. The Department of Public Health and Human Services (department) is adopting the following temporary emergency rule as part of the State’s response to the current COVID-19 global pandemic. The current COVID-19 global pandemic has placed great burdens on the State, and some of the responses to the pandemic, including mask mandates, have also imposed additional burdens on citizens, including on their health and well-being. While the department encourages citizens to receive the COVID-19 vaccine in consultation with their health care provider, this choice, which could mitigate not only the need to wear a mask, but also, potentially, the need for school-based mask mandates, is not yet available to the majority of students because of their age. The rule directs that, if schools or school districts impose a health-related mandate on students, such as a mask mandate, they should consider, and be able to demonstrate they considered, parental concerns in adopting the mandate, and should provide the ability for students, and/or parents or guardians on behalf of their children, to choose to opt-out based on physical, mental, emotional, or psychosocial health concerns, as well as on the basis of religious belief, moral conviction, or other fundamental right, the impairment of which may negatively impact such students’ physical, mental, emotional, or psychosocial health.

2. The Centers for Disease Control and Prevention (CDC) recognizes categories of people as exempt from the requirement to wear a mask, including children under age two; persons with disabilities who cannot wear a mask, or cannot safely wear a mask, for reasons related to the disability; and persons for whom wearing a mask would create a risk to workplace health, safety, or job duties (see “Guidance for Wearing Masks”, “Who should or should not wear a mask” at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-guidance.html>, last updated April 19, 2021). Similarly, mask wearing can interfere with the learning and general well-being of school-aged children, related to their age and development; their disabilities, and physical and mental health attributes; and classroom health, safety, and productivity. As those best suited and entitled to assess individual needs for the physical, mental, and developmental well-being of their minor children, parents or guardians, in consultation with their children’s health care provider as appropriate, should be afforded the ability to opt-out of mask requirements on behalf of their children.

3. The department is charged with providing consultation on conditions and issues of public health importance for schools, to school and local public health personnel, and to the superintendent of public instruction (50-1-202(1)(l), MCA). The department is also charged with adopting and enforcing rules regarding public health requirements for schools, including any matters pertinent to the health and physical well-being of pupils, teachers, and others (50-1-202(1)(p)(v), 50-1-206, MCA). To this end, for example, the department recommends students be evaluated by a health care provider periodically and as necessary to identify health problems with the potential for interfering with learning, including assessment of students' health and developmental status, vision, hearing, and mental health (ARM 37.111.825(7)). In furtherance of this obligation, and for the reasons set forth herein, the department has determined that schools and school districts that impose such health-related mandates as mandatory mask wearing should provide the ability for students through their parents or guardians to choose to opt-out of mandated mask wear in school.

4. The scientific literature is not conclusive on the extent of the impact of masking on reducing the spread of viral infections. The department understands that randomized control trials have not clearly demonstrated mask efficacy against respiratory viruses, and observational studies are inconclusive on whether mask use predicts lower infection rates, especially with respect to children.¹ The department understands, however, that there is a body of literature, scientific as well as survey/anecdotal, on the negative health consequences that some individuals, especially some children, experience as a result of prolonged mask wearing.²

¹ See, e.g., Guerra, D. and Guerra, D., *Mask mandate and use efficacy for COVID-19 containment in US States*, MedRX, Aug. 7, 2021, <https://www.medrxiv.org/content/10.1101/2021.05.18.21257385v2> ("Randomized control trials have not clearly demonstrated mask efficacy against respiratory viruses, and observational studies conflict on whether mask use predicts lower infection rates."). Compare CDC, *Science Brief: Community Use of Cloth Masks to Control the Spread of SARS-CoV-2*, last updated May 7, 2021, <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/masking-science-sars-cov2.html>, last visited Aug. 30, 2021 (mask wearing reduces new infections, citing studies) with David Zweig, *The Science of Masking Kids at School Remains Uncertain*, New York Magazine, Aug. 20, 2021, <https://nymag.com/intelligencer/2021/08/the-science-of-masking-kids-at-school-remains-uncertain.html> (author reviewed the 17 studies cited in CDC's K-12 guidance of evidence that masks on students are effective, noting that none looked at student mask use in isolation from other mitigation measures or against a control, with some studies demonstrating that lack of masking correlated with low transmission and noting issue with presentation of one study published in CDC's MMWR). See also Xiao, J., Shiu, E., Gao, H., Wong, J. Y., Fong, M. W., Ryu, S., Cowling, B. J. (2020). *Nonpharmaceutical Measures for Pandemic Influenza in Nonhealthcare Settings—Personal Protective and Environmental Measures*. CDC, Emerging Infectious Diseases, 26(5), 967-975, <https://doi.org/10.3201/eid2605.190994> (meta-analysis found that although mechanistic studies support potential effect of hand hygiene or face masks, evidence from 14 randomized controlled trials of such measures did not support a substantial effect on transmission of laboratory-confirmed influenza); Guerra, D. and Guerra, D. (not observing "association between mask mandates or use and reduced COVID-19 spread in US states").

² See, e.g., Kisielinski, K. et al., *Is a Mask That Covers the Mouth and Nose Free From Undesirable Side Effects in Everyday Use and Free of Potential Hazards?*, Int. J. Environ. Res. Public Health 2021, 18, 4344, <https://doi.org/10.3390/ijerph18084344> (scientific review of multiple studies revealed relevant adverse events over more than ten medical disciplines, including internal medicine, psychology, psychiatry, and pediatrics, finding statistically significant correlation in the quantitative

5. Similarly, there is also substantial literature that persons who are forced to act contrary to their religious beliefs or moral convictions may experience moral distress, and psychological and emotional harm.³ This moral distress and the associated impact on an individual's psychological and emotional health could also arise when a person is forced to act contrary to his or her views of his or her fundamental rights.⁴

6. Mask wearing has been shown to cause some children to suffer mental and emotional distress and issues.⁵ Mask wearing can also cause or aggravate physical conditions in some children, including interference with breathing related to asthma or other respiratory conditions or infections, or interference with the ability to see classroom boards, screens, papers and desk surfaces, and surrounding safety conditions, especially for students wearing glasses. The scientific literature has identified, with respect to pediatrics, diseases, or predispositions where masking may present significant risks, including respiratory diseases, cardiopulmonary diseases (asthma, bronchitis, cystic fibrosis, congenital heart disease, emphysema), neuromuscular diseases, and epilepsy.⁶ In addition, mask wearing can cause

analysis between the negative effects of blood-oxygen depletion and fatigue in mask wearers, and identifying what the authors called Mask-Induced Exhaustion Syndrome with symptoms including feeling of fatigue or exhaustion, decreased ability to concentrate, and decreased ability to think). *But see* CDC, Science Brief ("[r]esearch supports that mask wearing has no significant adverse health effects for wearers," citing studies mainly conducted with healthy research subjects).

³ See, e.g., Christy A. Rentmeester, *Moral Damage to Health Care Professionals and Trainees: Legalism and Other Consequences for Patients and Colleagues*, *Journal of Medicine and Philosophy*, 33: 27-43, 2008, p.37 ("moral distress is a sense of complicity in doing wrong. This sense of complicity does not come from uncertainty about what is right but from the experience that one's power to resist participation in doing wrong is severely restricted by one's work environment and from the experience that resisting participation in doing wrong is severely restricted by one's work environment and from the experience that resisting participation in doing wrong exposes one to harm."); Borhani et al., *The relationship between moral distress, professional stress, and intent to stay in the nursing profession*, *J. Med. Ethics Hist. Med.* 2014; 7:3.

⁴ Cf. Kisielinski, K. et al. (masks impair the wearer's field of vision and inhibit other habitual actions, which can be perceived "as a permanent disturbance, obstruction, and restriction"; "[w]earing masks, thus, entails a feeling of deprivation of freedom and loss of autonomy and self-determination, which can lead to suppressed anger and subconscious constant distraction, especially as the wearing of masks is mostly dictated and ordered by others").

⁵ *Id.* (noting a survey which showed masks can cause anxiety and stress reactions in children, an increase in psychosomatic and stress-related illnesses and depressive self-experience, reduced participation, social withdrawal, and lowered health-related selfcare); see also Carla Peeters, September 9, 2020, *Rapid response: Psychological, biological, and immunological risks for children and pupils makes long-term wearing of mouth masks difficult to maintain*, *BMJ*, <https://www.bmj.com/content/370/bmj.m3021/rr-6>.

⁶ Kisielinski, K. et al. These conditions tend to be ones with respect to which individuals would be excluded from research studies. See, e.g., Lubrano, R., Bloise, S., Testa, A., et al. *Assessment of Respiratory Function in Infants and Young Children Wearing Face Masks During the COVID-19 Pandemic*. *JAMA Netw Open*. Mar 2 2021;4(3):e210414. doi:10.1001/jamanetworkopen.2021.0414, (cited in CDC, Science Brief at note 64) (noting the exclusion from study of infants and young children with lung or cardiac disease, neuromuscular disorders and those with medications that could be associated with changes in the parameters examined).

decreased ability to think and to concentrate in some children, with potential implications for their cognitive development.⁷

7. Accordingly, personal choice in the form of an exemption from or exception to a mask mandate policy can serve to protect and further the physical, mental, and emotional health of students who may be negatively impacted by a masking requirement. Safety recommendations and choices in response to the COVID-19 global pandemic are invaluable, but mandates can place more detrimental stress or have other adverse health impacts on some students and families, unless they have the ability to opt-out as necessary. This is especially the case where the scientific evidence supporting the original public health intervention is inconclusive. With respect to the documentation necessary to support such exception or exemption from a mandatory health measure such as mandatory mask wearing, the department suggests that the type and quantum of documentation outlined in House Bill 334, with respect to exemptions from school vaccination requirements, may serve as an appropriate model.

8. For the foregoing reasons, the department adopts this emergency rule. Certain Montana schools and school districts have adopted and, with the beginning of the school year, will be enforcing mask mandates on the basis of public health, without considering the negative implications that such measures could have on the physical, mental, emotional, or psychosocial health of some students. Promulgation of this emergency rule is necessary because no other administrative act can be taken to avert this imminent peril to the public health, safety, and well-being of Montana youth, who are now returning or beginning to return to the classroom for the new school year. This rule will remain in effect no longer than 120 days after the date of adoption.

9. EMERGENCY RULE I is necessary to provide essential health, well-being, fundamental rights, and a safe and effective learning environment for Montana youth. Emergency Rule I protects Montana students returning to school who may experience adverse effects from mandatory mask wear by directing schools and school districts that they should consider, and be able to demonstrate consideration of, parental concerns when adopting a mask mandate, and should provide those students, or their parents or guardians, on their behalf, with the ability to opt-out of wearing a mask, as necessary.

10. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact Heidi Clark at the Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail dphhslegal@mt.gov.

⁷ See, e.g., Kisielinski, K. et al.; see also Guerra, D. and Guerra, D. (noting some risks of mask wearing, including that by obscuring nonverbal communication, masks interfere with social learning in children, and research that masks decrease cognitive precision).

11. The emergency rule is effective immediately, August 31, 2021.

12. The text of the emergency rule provides as follows:

EMERGENCY RULE I ABILITY TO OPT-OUT OF SCHOOL HEALTH-RELATED MANDATES (1) In order to provide for the health, well-being, rights, and educational needs of students, schools and school districts should consider, and be able to demonstrate consideration of, parental concerns when adopting a mask mandate, and should provide students and/or their parents or guardians, on their behalf, with the ability to opt-out of health-related mandates, to include wearing a mask or face covering, for reasons including:

- (a) physical health;
- (b) mental health;
- (c) emotional health;
- (d) psychosocial health;
- (e) developmental needs; or
- (f) religious belief, moral conviction, or other fundamental right the impairment of which could negatively impact the physical, mental, emotional, or psychosocial health of students.

AUTH: 2-4-303, 50-1-202, 50-1-206, MCA

IMP: 50-1-202, 50-1-206, MCA

13. The rationale for the temporary emergency rule is set forth in paragraphs 1 through 9.

14. It is presently unknown whether a standard rulemaking procedure will be undertaken prior to the expiration of this temporary emergency rule. The necessity and efficacy of this emergency rule will be continuously evaluated as the effort to combat the COVID-19 global pandemic in Montana continues and develops.

15. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices, and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in paragraph 10 or may be made by completing a request form at any rules hearing held by the department.

16. The bill sponsor contact requirements of 2-4-302, MCA, do not apply to this rulemaking. Special notice, pursuant to 2-4-303, MCA, was made to each member of the Children, Families, Health, and Human Services; and Education Interim Committees and to each member of the committees' staff, using electronic mail on August 31, 2021.

/s/ Robert Lishman
Robert Lishman
Rule Reviewer

/s/ Adam Meier
Adam Meier, Director
Public Health and Human Services

Certified to the Secretary of State August 31, 2021.

EXHIBIT U

<https://www.ktvq.com/rebound/admins-billings-students-years-behind-after-pandemic-related-school-disruptions>

Admins: Billings students years behind after pandemic-related school disruptions

Summer school starting to take shape

BILLINGS — Billings School District 2 administrators are planning to offer at least two years of summer school to help students in kindergarten through 12th grade catch up from COVID-19 pandemic-related learning loss, [trustees heard](#) at a Monday school board meeting.

"We see some significant differences in student achievement from the live platform to the remote platform [in the data](#) that we'll address and that is concerning. Absolutely it is concerning for the planning for 2021 and 2022," said Greg Upham, Billings school superintendent.

By: Mitch Lagge

Posted at 11:13 PM, Feb 22, 2021

and last updated 11:13 PM, Feb 22, 2021

BILLINGS — Billings School District 2 administrators are planning to offer at least two years of summer school to help students in kindergarten through 12th grade catch up from COVID-19 pandemic-related learning loss, trustees heard at a Monday school board meeting.

“We see some significant differences in student achievement from the live platform to the remote platform in the data that we’ll address and that is concerning. Absolutely it is concerning for the planning for 2021 and 2022,” said Greg Upham, Billings school superintendent.

This summer would be the first time Billings has had a school district-wide summer school program for K-8th grade. There have been efforts in the past to offer small summer learning programs at targeted schools, but nothing on a district-wide scale has been done in Billings.

Brenda Koch, executive director of school leadership support, was tasked with organizing the elementary K-5th grade summer school program. She said a steering committee made up of 14 teachers and administrators, along with a sub committee of 19 kindergarten to 5th grade teachers, are helping to craft the program.

Koch said some students that have been learning remotely for the school year have come back to in-person class for limited times in the day for what's been dubbed a "community classroom." One of the teachers working with the community classroom students said the gaps in learning are tremendous, Koch said.

“I had one of our academic coaches come and visit with me the other day and she said, ‘Brenda, these aren’t just gaps, these are canyons and I have never seen anything like it,’” Koch said.

Details are still very much in progress, but Koch said the plan is to offer kindergarten to 5th grade district-wide summer school for six weeks between June 14 through July 22. Students would go to school for four hours per day from 8 a.m. to 12 p.m. to learn reading and math. Students would have some recess time worked in and be served breakfast and a lunch to take home.

The goal is to offer summer school at every Billings elementary and middle school, but staffing and funding will determine how wide-spread the program will be. Teachers and administrators are still working on metrics for deciding which students are eligible, but hope to be sending letters to families at the start of March to begin enrollment.

Middle school summer classes are similarly uncharted waters for Billings School District 2. Randy Russell, another executive director of school leadership, was tasked with organizing the middle school summer classes. He said he's working with a steering committee made up of 13 middle school teachers and administrators to craft the program.

Russell said the goal is to have the middle school program work in tandem with the elementary summer school to accommodate families with students in multiple grades.

The preliminary plan is to have middle school summer classes focus on English, math, and science daily with small class sizes of 15. Students could come to class for only one subject per day if needed.

Russell said middle school summer school is planned to run June 14 to Jul 22 and educate students Monday through Thursday from 8 a.m. to 11:30 a.m. Students would also be served breakfast and a lunch to take home. Metrics haven't yet been developed for who to invite to the classes, but administrators hope to be making calls and mailing letters to prospective students by the first of April. The goal again is to have the program offered at all Billings middle schools, but availability depends on staffing and funding.

Upham said high school summer school through the credit recovery program will be expanded this year, based on an increased number of students failing classes. In the past, only core classes have been offered

in the summer. In addition, this year, district staff are hoping to offer elective classes over the summer at the Lincoln Center.

A lot of the summer school program depends on how much second-round COVID federal relief money makes its way to Billings School District 2 via the state government. The district expects to receive about \$12.8 million, but the total could fluctuate depending on what happens with enrollment counts at the Office of Public Instruction in Helena.

Education officials at the state level are still deciding how to allocate money across the state's public schools for next year, when many of the larger districts saw losses in enrollment, said Craig Van Nice, chief financial officer for the school district. A majority of a Montana school district's money comes from the state based on enrollment numbers.

Upham said Billings was not alone among AA districts in losing students. The 2021 budget was created based on an enrollment of 17,006 students in the district. It turned out 674 fewer students than expected were enrolled this year, meaning the district could lose \$2 million next year, Van Nice said.

With whatever coronavirus relief money the district gets, Upham said it will go toward summer school opportunities for the next two years, more resources and support in the classroom and possible remote learning platform.

"Tutorial support, intervention support, extended opportunities for high school students to get credits that they need, additional interventionists in elementary and middle school. Anything that we can do in the school day in the traditional format to increase student support for students to catch up," Upham said.

At the top of the board meeting, trustees unanimously extended the superintendent's contract into 2024 after giving him a glowing performance review. One change in the contract this time is that a salary freeze requested by Upham in the 2020-21 school year has not carried over. He won't be repaid the wages lost when he chose to forgo his salary increase in 2020.

Upham's salary will rise to \$178,000 annually at the end of June. He is the third-highest paid superintendent in Montana, and Billings is the largest school district.