**IN THE MATTER OF A FORMAL COMPLAINT**

**(the “Complaint”)**

**BETWEEN**

**[INSERT NAME OF PARENTS]**

**(“Parents”)**

and

**[INSERT NAME OF SCHOOL]**

**(the “School”)**

**This Complaint was submitted on [INSERT DATE]**

**Please note that this document does not constitute legal advice, nor is it intended to create a solicitor-client relationship. You should consult a solicitor regarding your individual situation. While every care has been taken to ensure that the content is useful and accurate, no guarantee, undertaking or warranty is given in this regard, nor is any legal liability or responsibility accepted for the content or the accuracy of the information so provided, or, for any loss or damage caused arising directly or indirectly in connection with reliance on the use of such information.**

**TABLE OF CONTENTS**

[**1.** **Executive Summary** 2](#_Toc50974251)

[**2.** **Introduction** 3](#_Toc50974252)

[**3.** **Covid-19 Summary Events and Face Covering Legislation** 7](#_Toc50974253)

[3.11 **Stay At Home Rule** 9](#_Toc50974254)

[3.16 **WHO: Advice on the use of masks in the context of Covid-19**: 10](#_Toc50974255)

[3.27 **WHO: Advice on the use of masks in the context of Covid-19** 13](#_Toc50974256)

[3.30 **The Health and Information and Quality Authority: *“Analysis of excess all-cause mortality in Ireland during the Covid-19 epidemic”*** 15](#_Toc50974257)

[3.31 **The Public Transport Regulation** 16](#_Toc50974258)

[3.24 **The Relevant Premises Regulation**). 17](#_Toc50974259)

[3.36 **Special Committee on Covid-19 Response Debate** 18](#_Toc50974260)

[**4.** **Measures being adopted by the School are Unjust, Unnecessary and Discriminatory** 20](#_Toc50974261)

[**5.** **Conclusion** 24](#_Toc50974262)

# **Executive Summary**

* 1. This document has been prepared by the Parents for the purposes of submitting a formal complaint to the School arising from the unjust, unnecessary and discriminatory treatment of their minor child [INSERT NAME OF CHILD] (hereinafter referred to as the “**Child**”).
	2. The Child is a [INSERT YEAR] year student at the School.
	3. The Child has a medical exemption from the requirement to wear a face covering while at the School.
	4. The School is insisting that the Child, in the absence of wearing a cloth face covering at the School, wear a visor.
	5. The Parents consider this requirement to be unjust, unnecessary and discriminatory against the Child.

# **Introduction**

* 1. Prior to the commencement of the 2020/2021 school year, the School published its Covid-19 Response Plan (the “**Schools Response** **Plan**”) which includes, amongst other requirements, that all pupils wear face coverings while at school.
	2. The Schools Response Plan states the following with respect to face coverings:

[INSERT INFORMATION]

* 1. Prior to the commencement of the 2020/2021 school year, the Department of Education and Skills published its Covid-19 Response Plan for the safe and sustainable reopening of Post Primary Schools (the “**DES Response Plan”)**, which states the following with respect to the requirement to wear face coverings while at school:

|  |
| --- |
| ***“Masks/Face Coverings****Cloth face coverings act as a barrier to help prevent respiratory droplets from travelling into the air and onto other people when the person wearing the face covering coughs, sneezes, talks or raises their voice. Cloth face coverings are therefore intended to prevent transmission of the virus from the wearer (who may not know that they are infected) to those with whom they come into close contact.* *It is therefore a requirement that teachers, staff and students attending post primary schools wear a face covering when a physical distance of 2m from other staff or students cannot be maintained.* *In certain situations the use of clear visors should be considered, for example staff interacting with students with hearing difficulties or learning difficulties.* *All students on the post primary transport scheme should be asked to wear face coverings unless there is a good reason not to do so.* *Cloth face coverings should not be worn by any of the following groups:* * *Any person with difficulty breathing*
* *Any person who is unconscious or incapacitated*
* *Any person who is unable to remove the face-covering without assistance*
* *Any person who has special needs and who may feel upset or very uncomfortable wearing the face covering, for example persons with intellectual or developmental disabilities, mental health conditions, sensory concerns or tactile sensitivity.*

*All staff and students wearing face coverings should be reminded to not touch the face covering and to wash or sanitise their hands (using hand sanitiser) before putting on and after taking off the face covering Information should be provided on the proper use, removal, and washing of cloth face coverings* [*https://www.gov.ie/en/publication/aac74c-guidance-on-safe-use-of-face-coverings/*](https://www.gov.ie/en/publication/aac74c-guidance-on-safe-use-of-face-coverings/)*All teachers and staff should be aware that they should wash or sanitize hands (using a hand sanitizer) before and after helping a student put on or adjust a face covering.* *Face coverings should be stored in a space designated for each student that is separate from others when not being worn (e.g., in individually labelled containers or bags).* *Cloth face coverings should be washed after every day of use and/or before being used again, or if visibly soiled.* *Face coverings should not be worn if they are wet. A wet cloth face covering may make it difficult to breathe.* *Schools should consider having additional disposable face coverings available for students, teachers, and staff in case a back-up face covering is needed during the day.* *Whilst staff may wish to utilize their own face covering on a day-to-day basis, schools**should have available a stock of additional disposable or multi-use face coverings, or if**appropriate face visors, available for staff in case a back-up face covering is needed**throughout the day or where required on an ongoing basis.**On the use of face masks by staff, schools should consider the specific circumstances where the use of medical face masks, to EU Standard EN 14683, may be more appropriate for staff (for example where staff by necessity need to be in close and continued proximity with students with intimate care needs such as SNAs or School Bus Escorts).**Wearing a face covering or mask does not negate the need to stay at home if symptomatic.”*  |

* 1. On [INSERT DATE] the parents contacted the School to make known the fact that the Child has an exemption from the requirement to wear a face covering arising from [INSERT REASON FOR NOT BEING ABLE TO WEAR FACE COVERING] (the “**Medical Exemption**”).
	2. Following receipt of the Medical Exemption, the School asked the Parents to attend at the School for the purposes of discussing the Childs future education at the School.
	3. The Parents attended at the School on [INSERT DATE] (the “**Meeting**”).
	4. During the course of the Meeting, the School informed the Parents that in circumstances where the Child had a Medical Exemption, this only applies to cloth face coverings and the Child must wear a visor in order to continue their education at the School.
	5. During the course of the Meeting the Parents discussed how wearing a visor would:
* cause great distress and anxiety to the Child;
* single the Child out as being different, in circumstances where the Child was already being noted as different given their Medical Exemption; and
* create an environment hostile to learning.
	1. The School advised the Parents that in circumstances where the Child refused to wear any type of face covering, the Child could not be educated at the School
	2. The Parents disagree with the Schools decision as regards the Medical Exemption not applying to all types of face covering and submit the within complaint for investigation.
1. **Covid-19 Summary Events and Face Covering Legislation**

3.1 On 4 January 2020, the World Health Organisation (“**WHO**”) reported on a cluster of pneumonia cases in Wuhan, Hubei Province of the People’s Republic of China. Less than three weeks later, on 22 January 2020, the WHO issued a statement stating that there was evidence of human to human transmission in Wuhan of such pneumonia disease, and that more investigation was needed to understand the full extent of transmission.

3.2 On 30 January 2020, the WHO reconvened its Emergency Committee. This Committee reached a consensus and advised that the outbreak constituted a Public Health Emergency of International Concern. On 11 February 2020, the WHO advised that this coronavirus disease would be officially named Covid-19. With international travel it was inevitable that Covid-19 would spread well beyond the borders of China.

3.3 The first country in Europe to experience a significant outbreak of Covid-19 was Italy. Covid-19 spread to Ireland on 29 February 2020. The first death related to Covid-19 was reported on 11 March 2020, when there were 43 confirmed cases.

3.4 Covid-19 was declared a pandemic by the WHO on 11 March 2020.

3.5 On 11 March 2020, the then Taoiseach (Leo Varadkar) made the following statement:

 “*The following measures will come into effect from tomorrow until 29 March:*

* *schools, colleges and childcare facilities will close from tomorrow (Friday)*
* *indoor mass gatherings of 100 people or more and outdoor mass gatherings of more than 500 people should be cancelled*
* *all State-run cultural institutions will close*

*Where it is possible to work remotely people should do so. Public transport will continue and shops will continue to remain open.*

Mr Varadkar also advised that we needed the public and businesses to take a sensible approach.

**At this time face coverings were not recommended to be worn by healthy persons by either the Irish Government or the WHO.**

3.6 On 14 March 2020, Ireland suffered its second Covid-19 reported death when there were 129 confirmed cases. On this same day, the Government advised that all pubs should close until 29 March 2020.

3.7 On 19 March 2020, Ireland suffered its third Covid-19 reported death when there were 557 confirmed cases. On this day alone, there was 191 new confirmed cases of Covid-19 in Ireland.

3.8 On 23 March 2020 the government announced a National COVID-19 Income Support Scheme to provide financial support to Irish workers and companies affected by the crisis.

3.9 On 23 March 2020 the Government updated its public health guidelines which included the following measures:

* all non-essential businesses should close
* places of worship are to restrict numbers visiting and no unnecessary travel should take place in the country or overseas, now or during the Easter break
* People should stay at home and only leave to: go to work, care for others, essential shopping

**At this time face coverings were not recommended to be worn by healthy persons by either the Irish Government or the WHO.**

3.10 By 24 March 2020, Ireland had suffered seven Covid-19 reported deaths and there were 1,329 confirmed cases of Covis-19 in Ireland.

## 3.11 **Stay At Home Rule**

On 27 March 2020 the then Taoiseach, Leo Varadkar, and the then Minister for Health, Simon Harris issued strict guidelines for people to stay at home from midnight on 27 March 2020 – confirming that “*The main rule is to****STAY AT HOME.***

*The only times you can leave your home are:*

* *to travel to or from work if you are providing an essential service.*[*A list of essential retail outlets is available here.*](https://www.gov.ie/en/publication/625292-updated-list-of-essential-retail-outlets-27th-march-2020/)*A full list of essential workers will be*[*published on Saturday*](https://www.gov.ie/en/publication/dfeb8f-list-of-essential-service-providers-under-new-public-health-guidelin/)
* *to shop for food*
* *to collect medical prescriptions and medical supplies and attend medical appointments*
* *to carry out vital services like caring (including family carers)*
* *for brief individual exercise - within 2 kilometres of your house. (You can bring children but must keep 2 metres away from others for social distancing)*
* *for farming”*

**At this time face coverings were not recommended to be worn by healthy persons by either the Irish Government or the WHO.**

3.12 By 29 March 2020, Ireland had suffered ten Covid-19 reported deaths and there were 2,615 confirmed cases of Covid-19 in Ireland.

3.13 By 2 April 2020, Ireland had suffered 98 Covid-19 reported deaths and there were 3,849 confirmed cases of Covid-19 in Ireland.

3.14 On 2 April 2020 the then Minister for Health Simon Harris made changes to the law to ensure that patients would no longer have to bring paper scripts to pharmacists to get prescriptions or repeat prescriptions filled, as well as this, prescription lengths were increased from 6 months to 9 months.

3.15 By 4 April 2020, Ireland had suffered 137 Covid-19 reported deaths and there were 4,604 confirmed cases of Covid-19 in Ireland.

## 3.16 **WHO: Advice on the use of masks in the context of Covid-19**On 6 April 2020, the WHO published “*Advice on the use of masks in the content of Covid-19[[1]](#footnote-1)”* which at paragraph eight states the following:

|  |
| --- |
| *“There is limited evidence that wearing a medical mask by healthy individuals in the households or among contacts of a sick patient, or among attendees of mass gatherings may be beneficial as a preventive measure. 14-23 However, there is currently no evidence that wearing a mask (whether medical or other types) by healthy persons in the wider community setting, including universal community masking, can prevent them from infection with respiratory viruses, including COVID-19.”* |

This report at “*Advice to decision makers on the use of masks for healthy people in community setting*” states the following:

|  |
| --- |
| *“As described above, the wide use of masks by healthy people in the community setting is not supported by current evidence and carries uncertainties and critical risks. WHO offers the following advice to decision makers so they apply a risk-based approach. Decisions makers should consider the following:* *1. Purpose of mask use: the rationale and reason for mask use should be clear– whether it is to be used for source control (used by infected persons) or prevention of COVID-19 (used by healthy persons)* *2. Risk of exposure to the COVID-19 virus in the local context: ­ The population: current epidemiology about how widely the virus is circulating (e.g., clusters of cases versus community transmission), as well as local surveillance and testing capacity (e.g., contact tracing and follow up, ability to carry out testing). ­ The individual: working in close contact with public (e.g., community health worker, cashier)* *3. Vulnerability of the person/population to develop severe disease or be at higher risk of death, e.g. people with comorbidities, such as cardiovascular disease or diabetes mellitus, and older people.**4. Setting in which the population lives in terms of population density, the ability to carry out physical distancing (e.g. on a crowded bus), and risk of rapid spread (e.g. closed settings, slums, camps/camp-like settings).* *5. Feasibility: availability and costs of the mask, and tolerability by individuals* *6. Type of mask: medical mask versus nonmedical mask (see below)* *In addition to these factors, potential advantages of the use of mask by healthy people in the community setting include reducing potential exposure risk from infected person during the “pre-symptomatic” period and stigmatization of individuals wearing mask for source control.* *However, the following potential risks should be carefully taken into account in any decision-making process:* *• self-contamination that can occur by touching and reusing contaminated mask* *• depending on type of mask used, potential breathing difficulties**• false sense of security, leading to potentially less adherence to other preventive measures such as physical distancing and hand hygiene* *• diversion of mask supplies and consequent shortage of mask for health care workers • diversion of resources from effective public health measures, such as hand hygiene.* |

3.17 By 8 April 2020, Ireland had suffered 235 Covid-19 reported deaths and there were 6,074 confirmed cases of Covid-19 in Ireland.

3.18 On 8 April 2020, Statutory Instrument 121 of 2020 was introduced with an operation period of 8 April 2020 to 12 April 2020. This regulation made under section 31A of the Health Act 1947 (inserted by section 10 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 ) legislated for restriction of movement of persons from their place of residence, except where they have reasonable excuse, and for restrictions on events, for the purpose of preventing, limiting, minimising or slowing the spread of Covid-19.

3.19 15 April 2020 saw the highest number of new Covid-19 cases reported in the State. On this date the new case, daily case number stood at 1,068[[2]](#footnote-2) – meaning that this 15 April date is critical in terms of understanding when Covid-19 reached its peak

**At this time face coverings were not recommended to be worn by healthy persons by either the Irish Government of the WHO.**

3.20 From 16 April 2020 to date, the number of new daily infections has decreased.

3.21 On 15 May 2020, the Government announced that Ireland was on course to move to Phase 1 of the Roadmap for Reopening Society and Business from Monday May 18 2020.

**At this time face coverings were not recommended to be worn by healthy persons by either the Irish Government of the WHO.**

3.22 By 18 May 2020 Ireland had suffered 1,547 Covid-19 reported deaths and there were 24,200 confirmed cases of Covid-19 in Ireland. On this date also, Statutory Instrument 174 of 2020 came into operation, this regulation provided for the limited easing of some restrictions and to extend the date of operation of S.I. No. 121 of 2020 until 8 June 2020

3.23 18 May – 25 May 2020: 24,698 confirmed cases of COVID-19 in Ireland and a total of 1606 COVID-19 related deaths.

3.24 28 May 2020: Statutory Instrument 181 of 2020 came into operation and provided for the imposition of a requirement that international passengers (including Irish citizens) arriving in the State at a port or airport from a place outside the State complete a COVID19 Passenger Locator Form for the purposes of recording and verifying information regarding their contact details and place of residence for a period of up to 14 days following arrival.

3.25 25 May -1 June 2020: 25,062 confirmed cases of COVID-19 in Ireland and a total of 1650 COVID-19 related deaths.

3.26 1 June 2020: The number of new daily reported infections was 77[[3]](#footnote-3) cases – down from 1068 at the peak on 15 April 2020. It is fair to say that at this stage, the curve was effectively and undeniably flattened. By this date also, 348,416 tests had been carried out, with some 22,621 tests having been carried out the week previous resulting in a positivity rate of 1.7%[[4]](#footnote-4).

## 3.27 **WHO: Advice on the use of masks in the context of Covid-19[[5]](#footnote-5)**

On 5 June 2020, the WHO published “*Advice on the use of masks in the context of Covid-19[[6]](#footnote-6)”* which under “*Guidance on the use of masks for the general public*” states:

|  |
| --- |
| “Many countries have recommended the use of fabric masks/face coverings for the general public. At the present time, the widespread use of masks by healthy people in the community setting is not yet supported by high quality or direct scientific evidence and there are potential benefits and harms to consider.” |

 This report also provides a list of “*Potential harms/disadvantages”* with respect to the use of masks by the general public, which includes the following:

|  |
| --- |
| *“The likely disadvantages of the use of mask by healthy people in the general public include:* *• potential increased risk of self-contamination due to the manipulation of a face mask and subsequently touching eyes with contaminated hands;(48, 49)* *• potential self-contamination that can occur if nonmedical masks are not changed when wet or soiled. This can create favourable conditions for microorganism to amplify;* *• potential headache and/or breathing difficulties, depending on type of mask used;* *• potential development of facial skin lesions, irritant dermatitis or worsening acne, when used frequently for long hours;(50)* *• difficulty with communicating clearly;* *• potential discomfort;(41, 51)* *• a false sense of security, leading to potentially lower adherence to other critical preventive measures such as physical distancing and hand hygiene;* *• poor compliance with mask wearing, in particular by young children;* *• waste management issues; improper mask disposal leading to increased litter in public places, risk of contamination to street cleaners and environment hazard;* *• difficulty communicating for deaf persons who rely on lip reading;* *•disadvantages for or difficulty wearing them, especially for children, developmentally challenged persons, those with mental illness, elderly persons with cognitive impairment, those with asthma or chronic respiratory or breathing problems, those who have had facial trauma or recent oral maxillofacial surgery, and those living in hot and humid environments.”* |

3.28 8 June 2020: Statutory Instrument 206 of 2020 came into operation and provided for the unwinding of certain restrictions provided for in the Health Act 1947 (Section 31A - Temporary Restrictions) (Covid-19)

Regulations 2020 (S.I. No. 121 of 2020), as amended, including the reopening of retail outlets and extending the distance that may be travelled for specified purposes. This regulation also provided for continued restrictions for some businesses or services and for offences, including in relation to events

3.29 11 June 2020: The WHO confirm:

|  |
| --- |
| *“Global research on COVID-19 continues to be conducted, including how the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) is transmitted. Current evidence suggests that most transmission occurs from symptomatic people through close contact with others. Accordingly, most recommendations by WHO on personal protective measures (such as use of masks and physical distancing) are based on controlling transmission from symptomatic patients, including patients with mild symptoms who are not easy to identify early on.**Available evidence from contact tracing reported by countries suggests that asymptomatically infected individuals are much less likely to transmit the virus than those who develop symptoms. A subset of studies and data shared by some countries on detailed cluster investigations and contact tracing activities have reported that asymptomatically-infected individuals are much less likely to transmit the virus than those who develop symptoms.[[7]](#footnote-7)”* |

## 3.30 **The Health and Information and Quality Authority: *“Analysis of excess all-cause mortality in Ireland during the Covid-19 epidemic”***

On 3 July 2020, the Health and Information and Quality Authority publish its report titled *“Analysis of excess all-cause mortality in Ireland during the Covid-19 epidemi*c[[8]](#footnote-8)”. This report confirmed that their was a gross overestimate of the number of people who actually died from Covid-19 finding that “*Excess mortality was found to be 1,072 (95% CI: 851 to 1,290) between 11 March 2020 and 16 June 2020 inclusive. The officially reported number of COVID-19 deaths for the same period was 1,709. Therefore, the estimated excess mortality is less than the officially reported COVID-19-related mortality by 637 cases*

## 3.31 **The Public Transport Regulation**

On 13 July 2020, Statutory Instrument 244 of 2020[[9]](#footnote-9) came into operation. This regulation mandates the wearing of face coverings on public transport (the **“Public Transport regulation**”). This regulation was the first law implemented in the State mandating the wearing of face coverings.

3.32 The Public Transport Regulation provides a person shall not, without reasonable excuse, travel by public transport vehicle within a relevant geographical location without wearing a face covering and a person is regarded as having a reasonable excuse if:

|  |
| --- |
| *“(a) the person cannot put on, wear or remove a face covering -**(i) because of any physical or mental illness, impairment, or disability, or**(ii) without severe distress,**(b) the person needs to communicate with a person who has difficulties communicating (in relation to speech, language or otherwise),**(c) the person removes the face covering to provide emergency assistance or to provide care or assistance to a vulnerable person,**(d) the person removes the face covering to avoid harm or injury, or the risk of harm or injury,**(e) the person removes the face covering in order to, and only for the time required to, take medication*.” |

3.33 8 August 2020: Statutory Instrument 295 of 2020 came into operation. This regulation reinstated a period of lockdown for counties Kildare, Laois and Offaly until at least 23 August 2020.

## 3.24 **The Relevant Premises Regulation**On 10 August 2020, Statutory Instrument 296 of 2020 came into operation. This regulation mandates the wearing of face coverings in shops and other relevant premises (the **“Relevant Premises Regulation**”).

3.35 The Relevant Premises Regulation provides a person shall not, without reasonable excuse, enter or remain in a relevant premises without wearing a face covering and a person is regarded as having a reasonable excuse if:

|  |
| --- |
| *“(a) the person cannot put on, wear or remove a face covering -**(i) because of any physical or mental illness, impairment, or disability, or**(ii) without severe distress,**(b) the person needs to communicate with a person who has difficulties communicating (in relation to speech, language or otherwise),**(c) the person removes the face covering to provide emergency assistance or to provide care or assistance to a vulnerable person,**(d) the person removes the face covering to avoid harm or injury, or the risk of harm or injury,**(e) the person removes the face covering in order to, and only for the time required to, take medication*.” |

## 3.36 **Special Committee on Covid-19 Response Debate**

On 13 August 2020, during the Special Committee on Covid-19 Response Debate the Chairman, Michael McNamara asked the following question regarding the use of face masks[[10]](#footnote-10):

|  |
| --- |
| *“There is only one issue remaining. As we evolved through this, I remember sitting on the committee and hearing from a few members of National Public Health Emergency Team, NPHET. NPHET is our equivalent of the Scientific Advisory Group for Emergencies, SAGE. It was asked about face masks and the committee was told there was no evidence that face masks were beneficial.**At that time, the World Health Organization, WHO, had not recommended wearing face masks. Now there seems to be near universal acceptance that face masks are an essential component in the fight against Covid-19 in Ireland. They have been made compulsory in all indoor retail outlets.****The WHO has still not changed its guidance, which is to recommend the use of face masks by medics and in enclosed settings where 2 m cannot be achieved, but it does not recommend the use of face masks among the general population.*** (emphasis added)*I will do a quick tour de table, starting with Professor Heneghan because I know he has to leave. Does he think the case for face masks has been proved and that there are benefits to the general population in wearing them?”* |

3.37 To this Professor Carl Heneghan responded:

|  |
| --- |
| *“Again, this is about the evidence. In 2010, at the height of the last pandemic, there were six published trials of about 4,000 people. Since then, we have not addressed the lack of evidence and closed that graph. In the intervening ten years, there have been about another six trials. If one looks at the 12 trials together, what they show in healthcare professionals is that masks, gloves and a combination of PPE reduces the risk of infection.**When one goes into the wider population, there is a small bit of evidence that shows that if one has influenza in one’s household - a child, for example - and if one wears a mask for one week in the house, one can reduce one’s risk of influenza or likely illness by about 10%. However, one has to completely adhere to mask wearing for the whole week. If one stops adhering to it, as 50% of people did, one loses all the effect. That is one of the problems.**The second issue is that the evidence comparing cloth masks to surgical masks or the N95s shows clearly that cloth masks are worse and may actually increase the risk of infection. Therefore, that is why they are not recommended in hospitals or in health professional settings.**What happens in these situations of uncertainty is that the opinion divides. Someone thinks mask are a good idea while someone else does not think they are and that people should not wear them. That is why we end up with people proposing them more and more. They say people should put them on in schools, pubs and shops. However, there is no clear evidence. They use observational data to inform their decision. If one looks at what has happened in the UK, for instance, it put masks in on 24 July. They were supposed to reduce the risk of infection by 40% over the next two weeks. In fact, infections detected have gone up. In effect, people are not looking at the evidence.**When Norway looked at this, it said that at low circulation, the public health consequences were so minimal that it was not clear they worked and, even if they did work, it reckoned about 200,000 people would have to wear a mask fully for a week to prevent one infection. That is how one has to think about the uncertainty. If one is going to put a policy in place, that is fine. What one cannot do, however, is say it is evidence-based because when people talk about the evidence, they have again cherry-picked low-quality, observational evidence to suit the argument. However, they have not picked further observational evidence. For instance, if one puts masks in, what is one expecting to happen to the case definitions and the reductions in the next two to four weeks to show it was a worthwhile policy to enact?”* |

1. **Measures being adopted by the School are Unjust, Unnecessary and Discriminatory**

4.1 The DES Response Plan provides that “*all students should be* ***asked*** *to wear face coverings unless there is a good reason not to do so”*. The DES Response Plan further provides a non-exhaustive list of circumstances under which face coverings should not be worn and includes:

* Any person with difficulty breathing
* Any person who is unconscious or incapacitated
* Any person who is unable to remove the face-covering without assistance
* Any person who has special needs and who may feel upset or very uncomfortable wearing the face covering, for example persons with intellectual or developmental disabilities, mental health conditions, sensory concerns or tactile sensitivity

4.2 The first consideration is whether the requirement for students to wear face coverings in Schools is mandated in law. We find that it is not given that the only laws which have been enacted in the State in connection with the mandatory use of face coverings are (i) the Public Transport Regulations – which only applies to Public Transport Vehicles; and (ii) the Relevant Premises Regulations – which only applies to “*indoor premises, or part of such a premises, to which the public has access – (a) where goods are sold directly to the public, (b) that is specified in Part A of the Schedule, or (c) in which a service specified in Part B of the Schedule is provided or a business specified in Part B of the Schedule is carried on.”*

4.3 The second consideration is whether the requirement for students to wear face coverings is mandatory given the use of the word “*ask*”. We find that it is not.

4.4 The third consideration is whether a student can be *asked* to wear a visor in circumstances where the DES Response Plan states that face coverings (which under the Public Transport and Relevant Premises Regulations means “*a covering of any type which when worn by the person covers the person’s nose and mouth*” – which therefore includes visors) should not be worn by those experiencing any of the conditions set out under 4.1 above. We find that it cannot.

4.5 The fourth consideration is whether there is a requirement, at law, to permit a further exemption, such as in the case of severe distress – in order to ensure students are not discriminated against on the basis of disability, which within the meaning of Equal Status Acts means:

|  |
| --- |
| *“(a) the total or partial absence of a person’s bodily or mental functions, including the absence of a part of a person’s body,**(b) the presence in the body of organisms causing, or likely to cause, chronic disease or illness,**(c) the malfunction, malformation or disfigurement of a part of a person’s body,**(d) a condition or malfunction which results in a person learning differently from a person without the condition or malfunction, or**(e) a condition, illness or disease which affects a person’s thought processes, perception of reality, emotions or judgement or which results in disturbed behaviour.”* |

 In circumstances where both the Public Transport and Relevant Premises Regulations include a requirement at law to accept severe distress as a reasonable excuse and in circumstances where not accepting severe distress as a reasonable excuse amounts to discrimination under the Equal Status Acts, we find that the School must accept severe distress as being an exemption from the requirement to wear a face covering while at the School, in order to comply with the law.

4.6 The fifth consideration is whether the medical and scientific data supports widespread use of face coverings. We find that it does not and in this regard refer you to section 3 of the Complaint which confirms that neither the Irish Government or the WHO recommended use of face coverings at the height of the pandemic. We further direct you to the testimony of Professor Karl Heneghan’s (Director of CEBM & Programs in EBHC; Editor in Chief, BMJ EBM; NHS Urgent Care GP; NIHR Senior Investigator[[11]](#footnote-11)) at the Special Committee on Covid-19[[12]](#footnote-12) wherein Professor Heneghan confirmed that there is a lack of evidence to support use of face coverings outside of healthcare settings.

4.6 We therefore conclude that:

 i) The requirement to wear face coverings is not grounded in evidence-based data and instead relies on low quality observational data – meaning the requirement for face coverings in schools should be removed;

 ii) In circumstances where the School decides the evidence supports use of face coverings, we say that face coverings at the School is not mandatory;

 iii) In circumstances where it is found that face coverings are required to be worn by all students at the School, we say that the DES Response Plan provides for a list of exemptions into which our Child falls;

 iv) In circumstances where it is found that our Child does not meet any of the exemptions set out under the DES Response Plan, we say that the list of exemptions under this plan is not exhaustive and that in order for this plan to be lawful a further exemption in the case of severe distress must be available;

 v) In circumstances where the School accepts the Medical Exemption but confirms that the Child must wear a visor instead of a cloth mask, we say that the exemptions under the Public Transport and Relevant Premises Regulations apply to all types of face covering (which includes visors) and that the Medical Exemption too applies to all types of face coverings, unless a Medical Exemption specifically states otherwise;

 vi) In circumstances where the School accepts that the Medical Exemption applies to both cloth masks and visors but confirms that in circumstances where the Child shall not wear a face covering while at School, the Child must be educated in isolation of other children – we say that this is not an acceptable reasonable accommodation under the Equal Status Acts.

4.7 Section 7 (Educational Establishments) of the Equal Status Acts[[13]](#footnote-13) provides the following:

|  |
| --- |
| *“(2) An educational establishment shall not discriminate in relation to—**(a) the admission or the terms or conditions of admission of a person as a student to the establishment,**(b) the access of a student to any course, facility or benefit provided by the establishment,**(c) any other term or condition of participation in the establishment by a student, or**(d) the expulsion of a student from the establishment or any other sanction against the student.”* |

 And section 4 (Discrimination on the grounds of disability) of the Equal Status Acts[[14]](#footnote-14) provides the following:

|  |
| --- |
| ***“4.****—(1) For the purposes of this Act discrimination includes a refusal or failure by the provider of a service to do all that is reasonable to accommodate the needs of a person with a disability by providing special treatment or facilities, if without such special treatment or facilities it would be impossible or unduly difficult for the person to avail himself or herself of the service.”* |

4.8 We say that isolated education is not an acceptable reasonable accommodation for the following reasons:

i) Our Child will not be educated by a teacher of the School in the normal sense, in that our Child will be given work and expected to complete this work alone without any teaching resource;

ii) Isolated education will create an environment where the Child will be treated as an outcast (in circumstances where the child is already noted as being disabled);

iii) Isolated Education will create a hostile learning environment;

iv) The Child will be denied access to her peers;

v) The Child may be treated, by default, as a person who already has Covid-19 and suffer alienation for this reason.

4.9 We therefore ask the School to consider this Complaint and accept that our Child is exempt from the requirement to wear any type of face covering while at School and in circumstances where this is accepted but the School finds that isolated education is the only option available to the Child, we ask the School to propose alternative reasonable accommodations, other than isolated education.

1. **Conclusion**

5.1 We ask the School to consider this Complaint with due regard to:

* + the Constitutional rights of our Child to education;
	+ the legal requirement upon the School to provide reasonable accommodation to those suffering disabilities under the Equal Status Acts; and
	+ with consideration of the function of teachers to assist students in education by imparting knowledge in an environment conducive to learning.
1. https://apps.who.int/iris/bitstream/handle/10665/331693/WHO-2019-nCov-IPC\_Masks-2020.3-eng.pdf?sequence=1&isAllowed=y [↑](#footnote-ref-1)
2. https://www.hse.ie/eng/services/news/newsfeatures/covid19-updates/covid-19-daily-operations-update-20-00-28-april-2020.pdf [↑](#footnote-ref-2)
3. https://www.hse.ie/eng/services/news/newsfeatures/covid19-updates/covid-19-daily-operations-update-2000-1-june-2020.pdf [↑](#footnote-ref-3)
4. https://www.gov.ie/en/publication/72d92-updates-on-covid-19-coronavirus-from-april-june-2020/#june [↑](#footnote-ref-4)
5. https://apps.who.int/iris/bitstream/handle/10665/332293/WHO-2019-nCov-IPC\_Masks-2020.4-eng.pdf?sequence=1&isAllowed=y [↑](#footnote-ref-5)
6. https://apps.who.int/iris/bitstream/handle/10665/332293/WHO-2019-nCov-IPC\_Masks-2020.4-eng.pdf?sequence=1&isAllowed=y [↑](#footnote-ref-6)
7. http://www.emro.who.int/health-topics/corona-virus/transmission-of-covid-19-by-asymptomatic-cases.html [↑](#footnote-ref-7)
8. https://www.hiqa.ie/reports-and-publications/health-technology-assessment/analysis-excess-all-cause-mortality-ireland [↑](#footnote-ref-8)
9. http://www.irishstatutebook.ie/eli/2020/si/244/made/en/print [↑](#footnote-ref-9)
10. https://www.oireachtas.ie/en/debates/debate/special\_committee\_on\_covid-19\_response/2020-08-13/4/ [↑](#footnote-ref-10)
11. https://www.phc.ox.ac.uk/team/carl-heneghan [↑](#footnote-ref-11)
12. https://www.oireachtas.ie/en/debates/debate/special\_committee\_on\_covid-19\_response/2020-08-13/4/ [↑](#footnote-ref-12)
13. http://revisedacts.lawreform.ie/eli/2000/act/8/revised/en/html#SEC7 [↑](#footnote-ref-13)
14. http://revisedacts.lawreform.ie/eli/2000/act/8/revised/en/html#SEC4 [↑](#footnote-ref-14)