

 UPDATE

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CC: SUPERINTENDENTS AND SECRETARY-TREASURERS

**Notice of Liability Letters:
Vaccination Clinics in Schools and Requiring Students to Wear Masks**

BCSTA has consulted with Harris & Co. in providing this update regarding the recent notice of liability letters many school districts and boards of education have received.

There is very little risk that school districts would be generally liable for having vaccination clinics in schools or for requiring students to wear masks.

The “legal threats” in the notice of liability Letters take two forms:

1. It is unlawful for the district to “practice medicine” by having vaccine clinics at schools and requiring students to get vaccinated (even though no school districts are requiring students to get vaccinated and the obligation under the ministerial order to provide space in schools for public health to do their work).
2. It is unlawful to require students to wear masks in school.

To back up these legal threats, the notice of liability letters quotes various laws, studies, or international declarations/orders. While we cannot comment on the validity of any study quoted, we can advise that the laws and international declarations/orders quoted are either not applicable to the jurisdiction of British Columbia or represent an inaccurate legal summary of the laws cited.

Any liability a school district might face is more likely to arise in the form of a human rights complaint (most likely an individual complaint, but possibly a group complaint) alleging that a student was discriminated against for having to wear a mask and follow COVID-19 protocols (such as physical distancing) in school. The Human Rights Tribunal has been closely scrutinizing these types of complaints at the screening level and it is our understanding they are generally not accepting frivolous complaints for filing.

However, school districts should still ensure they are complying with their human rights obligations to students to mitigate against the risk of a human rights complaint. These obligations include considering accommodation options for students who cannot wear a mask due to a protected characteristic, such as a valid medical reason or sincerely held religious belief.

This is a very general and brief description of school districts' human rights obligations and obligations to provide an educational program. It is assumed that most school districts are already aware of and engaging with these issues at a school level, but your school district legal counsel can provide additional information if needed.

Apart from human rights complaints, school districts also have an obligation not to deny a student an educational program for not wearing a mask, so school districts should consider what alternative protocols or methods they can have in place to ensure all students are getting access to an educational program, even if some of these students are refusing to wear masks.

It is also important to note that under the School Act, section 94, trustees, employees and officers of a board are statutorily immunized from claims against them personally. A review of this section of the School Act may assist boards and district staff in addressing concerns from school staff regarding notices of liability.

School districts should reach out to their own legal counsel should they desire detailed and/or specific consultation on notices given to their school district.

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