

INTERIM BCFL POLICY PENDING BOARD APPROVAL

To the Library User stating you cannot wear a face mask for medical reasons/personal freedom issues:

BCFL has an interim policy, pending Library Board approval, to address your medical and personal freedom concerns while also protecting the employees and other library users of BCFL. This interim policy has been ratified by BCFL counsel with respect to its legal conclusions. Your concern regarding your medical issue is governed by Title II of the Americans with Disabilities Act (“ADA”) and the First Amendment of the Constitution. Your concern regarding your personal freedom issues is governed only by the First Amendment of the Constitution.

Title II of the ADA

In Pennsylvania, the wearing of wearing a face masks or other nose/mouth covering¹ in indoor spaces, such as a BCFL facility, is mandatory. *Guidance for Businesses Permitted to Operate During the COVID-19 Disaster Emergency to Ensure the Safety and Health of Employees and the Public* (“Require all customers to wear masks while on the premises.”)

You are claiming a medical disability prevents you from wearing a mask. Title II of the ADA prohibits discrimination based on a person’s disability in all services provided by State and local governments to the public. 42 U.S.C.A. § 12132; 28 C.F.R. § 35.130. In a situation like this, Title II permits the library to thereafter engage in a “reasonable modification analysis” to determine if there are alternative ways you can receive the services you want from the library without gaining access. 28 C.F.R. § 35.130(b)(7)(i)

The BCFL staff person will offer and discuss reasonable modifications to allow you to receive the modification so you can safely receive the services without a direct threat to the employees and other library users of BCFL. **If after the interactive modification process no agreement has been reached between BCFL and the library user, BCFL is **not** required by Title II to grant such access and BCFL will not allow such.**

There are two applicable bases to deny such access:

- 28 C.F.R. § 35.130(h) provides: “A public entity may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities.”
- 28 C.F.R. § 35.139 provides: “[Title II of the ADA] does not require a public entity to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others.”

The requirement that to enter the library you must wear a mask is consistent with advice from the CDC and public health authorities and therefore is acting consistently with Title II ADA regulations on direct threat and legitimate safety requirements.

The EEOC has stated that employees who have contracted the virus are a direct threat to the health and safety of other employees if they are permitted to work. Likewise, any library user who has contracted the virus is a direct threat to the health and safety of BCFL’s employees and other library users if they are granted access without wearing any sort of mask. When a library user walks in, BCFL has no idea about that person’s background/situation with respect to the virus. Among other possibilities, s/he may have been exposed to someone who has tested positive or has an active case of the virus. S/he may be not feeling well but is not inclined to disclose that information to BCFL.

As of June 29, 2020, over 126,000 Americans have died from the virus. The virus remains quite active in the

¹ If a library user enters the library wearing a scarf, bandana, or “gator” type of face covering, etc., that library user is deemed to be wearing a “mask.” For ease of reading, the remaining of this document will refer only to “mask.”

United States. The US has 4% of the world's population but 25% of its coronavirus cases.² This is why, as of July 7, 2020 the EU has a travel ban against Americans entering it. In addition, anyone traveling from the US to England must quarantine for 14 days in England prior to gaining free access.

To reiterate, if after the interactive modification process no agreement has been reached between BCFL and the library user, BCFL is not required by Title II to grant such access – and BCFL will not allow such.

First Amendment to The U.S. Constitution

Individuals do not have a constitutional right to refuse to wear a mask when required by force of law. What they do have, though, is a constitutional right under the First Amendment to access and receive information from a library when that library is part of a local government. In *Board of Education v. Pico*, 102 S.Ct. 2799 (1982), the Supreme Court ruled the First Amendment encompasses a positive right of public access to information and ideas from a library.

Informing a library user that s/he cannot enter the library because of not wearing a mask is a banning of that person for one day for violation of BCFL's policy within the meaning of the First Amendment. BCFL can ban a library user for refusing to wear a mask so long as the rule being applied serves a significant governmental interest, is content neutral and restricted to time, place or manner regulations, passes a reasonableness test and leaves open ample alternative channels for services to be provided. *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242 (3rd Cir.(N.J.) Mar 23, 1992). In addition to these requirements, BCFL must apply the rule consistently and provide due process for the library user to appeal the decision to ban him/her.

BCFL takes the position that, if after no agreement has been reached between BCFL and you in terms of alternative channels to receive the Library's services, BCFL is *not* required by the First Amendment to grant such access.

Office of Commonwealth Libraries' Framework for Reopening Public Libraries and Dr. Levine's July 1 Order
BCFL is aware that the Office of Commonwealth Libraries issued a *Framework for Reopening Public Libraries* which states "Masks [are] not required for individuals who cannot wear a mask due to a medical condition (including children under the age of 2 years). Documentation of such medical condition is not required." BCFL is also aware of the July 1, 2020 Order by PA Sec. of Health Dr. Rachel Levine which effectively states the same. For the reasons stated above, BCFL takes the position that both documents express only the beginning of how a local governmental entity under Title II and the Constitution is permitted to deal with this situation. BCFL is permitted under that statute, the Constitution and other statutes to adopt its policies so long as those policies are stricter than that issued by the State.

Procedure

Library staff members will follow the above when library users seek entrance into a branch without wearing a mask. Such will be done as quietly, privately, and politely as possible, contingent upon circumstances. If after the interactive modification/alternative channels process no agreement between BCFL and the library user has been reached, BCFL will not grant access to the library user. Library staff members will call 911 without hesitation in any circumstance when the interaction with the library user raises concern to the health or safety of the employee.

The Library staff member will ask the library user for his/her address so a notice of the denial of services can be sent by certified mail to the library user. Appeal of the denial of service may be made, in writing, to the Board of Directors of the Bucks County Free Library, 150 South Pine Street, Doylestown, PA 18901. The library user will be notified by the Board of the date and time of the appeal hearing by overnight mail via

² <https://www.cnn.com/2020/06/30/health/us-coronavirus-toll-in-numbers-june-trnd/index.html>

UPS or Fed-Ex.