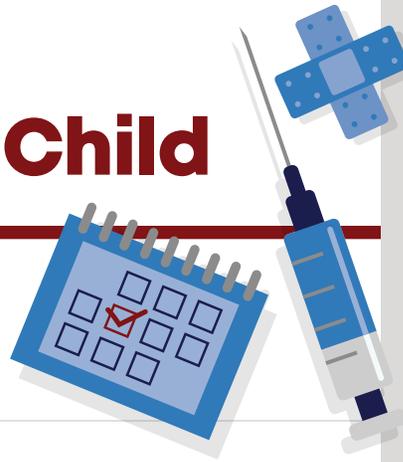


2020 SB 276 / SB 714

Implications For Your Child



For TK, K-12 private or public school, your child must be fully vaccinated or have one of the following exemptions. In July 2020, if your child is private or public school entering...

TK OR KINDERGARTEN

Child will need a medical exemption issued between January 1 and December 30, 2020 that complies with the SB277 medical exemption criteria.

1ST THROUGH 6TH GRADE with an existing medical exemption on file dated prior to January 1, 2020

Child will be grandfathered in until 7th grade, when they will need a medical exemption that complies with the SB276 criteria.

5TH OR 6TH GRADE with a grandfathered PBE on file before 2016

Child will continue to be grandfathered in until 7th grade, when they will be required to have a medical exemption that that complies with the SB276 criteria.

7TH GRADE

Child will need a medical exemption issued between January 1 and December 30, 2020 that complies with the SB277 medical exemption criteria.

8TH THROUGH 12TH GRADE with an existing medical exemption on file dated prior to January 1, 2020

Child will be grandfathered in until end of 12th grade.

12TH GRADE with a grandfathered PBE on file before 2016

Child will continue to be grandfathered in until the end of 12th grade.

HOMESCHOOLED

A pupil in a home based private school or a pupil who is enrolled in an independent study is exempt from vaccination requirements. (SB277)

PUBLIC/PRIVATE WITH IEP

A pupil with an IEP or IEP services is exempt from vaccination requirements. (SB277 and Federal law)

Your school may ask for their vaccination records to be on file if they have any, but cannot require them to be up to date or have a Medical Exemption on file for the remainder. If you have an IEP and are having issues with your school allowing your child to attend, please contact us and we will put you in touch with Educate.Advocate who successfully helps with these issues.

DAYCARE/NURSERY

For child day care center, day nursery, nursery school or family day care, the child must be fully vaccinated or have a medical exemption. From January 1 2020 to June 30 2021, if your child is entering...

FOR THE FIRST TIME

Child will need a medical exemption issued between January 1 and December 30, 2020 that complies with the SB277 medical exemption criteria, or after January 1, 2021 that complies with the SB276 criteria.

CONTINUING WITH A MEDICAL EXEMPTION DATED PRIOR TO JANUARY 1, 2020

Child will be grandfathered in until TK or Kindergarten, when they will need a medical exemption that complies with the SB276 criteria.

For more information, please contact:

Christina Hildebrand, President, A Voice for Choice Advocacy

Email: info@avoiceforchoiceadvocacy.org

These are A Voice for Choice Advocacy's interpretations based on the SB276/714 wording (which is very circuitous) and current information on Shots for Schools (the CDPH website regarding CA vaccination requirements) with regard to how SB277 has been implemented.

2021 SB 276 / SB 714

Implications For Your Child



In July 2021, if your child is private or public school entering...

FIRST TIME ENTRANCE TO SCHOOL IN ANY GRADE

Child will need a medical exemption issued after January 1, 2021 that complies with the SB276 criteria.

TK OR KINDERGARTEN

Child will need a medical exemption issued after January 1, 2021 that complies with the SB276 criteria.

1ST GRADE with an existing medical exemption on file dated prior between January 1 and December 30, 2020 that complies with the SB277 medical exemption criteria

Child will be grandfathered in until 7th grade.

2ND THROUGH 6TH GRADE with an existing medical exemption on file dated prior to January 1, 2020

Child will be grandfathered in until 7th grade, when they will need a medical exemption that complies with the SB276 criteria.

6TH GRADE with a grandfathered PBE on file before 2016

Child will continue to be grandfathered in until 7th grade, when they will be required to have a medical exemption that that complies with the SB276 criteria.

7TH GRADE

Child will need a medical exemption issued after January 1, 2021 that complies with the SB276 criteria.

8TH THROUGH 12TH GRADE with an existing medical exemption on file dated prior to January 1, 2020

Child will be grandfathered in until end of 12th grade.

12TH GRADE with a grandfathered PBE on file before 2016

Child will continue to be grandfathered in until the end of 12th grade.

HOMESCHOOLED

A pupil in a home based private school or a pupil who is enrolled in an independent study is exempt from vaccination requirements. (SB277)

PUBLIC/PRIVATE WITH IEP

A pupil with an IEP or IEP services is exempt from vaccination requirements. (SB277 and Federal law)

Your school may ask for their vaccination records to be on file if they have any, but cannot require them to be up to date or have a Medical Exemption on file for the remainder. If you have an IEP and are having issues with your school allowing your child to attend, please contact us and we will put you in touch with Educate.Advocate who successfully helps with these issues.

DAYCARE/NURSERY

For child day care center, day nursery, nursery school or family day care, the child must be fully vaccinated or have a medical exemption. From January 1 2020 to June 30 2021, if your child is entering...

FOR THE FIRST TIME

Child will need a medical exemption issued between January 1 and December 30, 2020 that complies with the SB277 medical exemption criteria, or after January 1, 2021 that complies with the SB276 criteria.

CONTINUING WITH A MEDICAL EXEMPTION DATED PRIOR TO JANUARY 1, 2020

Child will be grandfathered in until TK or Kindergarten, when they will need a medical exemption that complies with the SB276 criteria.

For more information, please contact:

Christina Hildebrand, President, A Voice for Choice Advocacy

Email: info@avoiceforchoiceadvocacy.org

These are A Voice for Choice Advocacy's interpretations based on the SB276/714 wording (which is very circuitous) and current information on Shots for Schools (the CDPH website regarding CA vaccination requirements) with regard to how SB277 has been implemented.

IMPORTANT NOTE

DO NOT submit any medical exemptions dated 2020 or before to any electronic or other database.

If you have a medical exemption on file or put one on file before January 1, 2021, file a notarized privacy notice with it (<https://www.avoiceforchoiceadvocacy.org/wp-content/uploads/2016/06/Objection-to-Disclosure-of-Student-Records.pdf>)

SB277 Medical Exemption Criteria

(per CDPH <https://www.shotsforschool.org/laws/exemptions/>)

Medical exemptions, under SB277 are at the discretion of the physician (MD or DO), and can be given if they determine the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, including, but not limited to, family medical history.

Medical exemptions filed **BEFORE JULY 1, 2019** must consist of a written statement from a licensed physician (MD or DO) which states:

- That the physical condition or medical circumstances of the child are such that the required immunization(s) is not indicated
- Which vaccines are being exempted
- Whether the medical exemption is permanent or temporary.
- The expiration date, if the exemption is temporary.

Medical exemptions filed **JULY 1, 2019 TO DECEMBER 1, 2020** must consist of a signed, written statement from a physician (MD or DO) licensed in California which states:

- The specific nature of the physical condition or medical circumstance of the child for which a licensed physician does not recommend immunization.
- Each specific required vaccine that is being exempted.
- Whether the medical exemption is permanent or temporary.
- If the exemption is temporary, an expiration date no more than 12 calendar months from the date of signing.

Note: If the medical exemption is written by a physician who has been subject to disciplinary action by the Medical Board or the Osteopathic Medical Board of California, then the exemption will be revoked. Your physician's primary status should be active and their secondary status should be N/A (<https://search.dca.ca.gov/?BD=800&TP=8002>).

SB276 Medical Exemption Criteria

(per statute http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB276)

Medical exemptions filed AFTER JANUARY 1, 2021, under SB276/SB714 must meet CDC, ACIP, or AAP criteria for appropriate medical exemptions.

Note: These do not exist. Only CDC, ACIP, or AAP vaccination guidelines (<https://www.cdc.gov/vaccines/vpd/should-not-vacc.html>) exist. Therefore either CDPH will use the guidelines or one of these organizations will create medical exemption criteria before January 1, 2021. If information other than what is included in the vaccination guidelines is used, it is at the medical discretion of the CDPH staff member whether or not they accept a medical exemption that is based on other contraindications or precautions, including consideration of family medical history, if the issuing physician and surgeon provides written documentation to support the medical exemption that is consistent with the relevant standard of care.

Medical exemptions filed AFTER JANUARY 1, 2021 must be transmitted directly to the department's California Immunization Registry (CAIR) by a physician (MD or DO) licensed in California using the electronic, standardized, statewide medical exemption certification form. The form should be printed, signed, and submitted directly to the school or institution at which the child will attend, submitted directly to the governing authority of the school or institution, or submitted to that governing authority through the CAIR where applicable. The form will include:

- The name, California medical license number, business address, and telephone number of the physician and surgeon who issued the medical exemption, and of the primary care physician of the child, if different from the physician and surgeon who issued the medical exemption.
- The name of the child for whom the exemption is sought, the name and address of the child's parent or guardian, and the name and address of the child's school or other institution.
- A statement certifying that the physician and surgeon has conducted a physical examination and evaluation of the child consistent with the relevant standard of care and complied with all applicable requirements of this section.
- Whether the physician and surgeon who issued the medical exemption is the child's primary care physician. If the issuing physician and surgeon is not the child's primary care physician, the issuing physician and surgeon shall also provide an explanation as to why the issuing physician and not the primary care physician is filling out the medical exemption form.
- How long the physician and surgeon has been treating the child.
- A description of the medical basis for which the exemption for each individual immunization is sought. Each specific immunization shall be listed separately and space on the form shall be provided to allow for the inclusion of descriptive information for each immunization.
- Whether the medical exemption is permanent or temporary, including the date upon which a temporary medical exemption will expire. A temporary exemption shall not exceed one year. All medical exemptions shall not extend beyond the grade span (i.e. will need to be renewed at TK/Kindergarten and 7th grade).
- An authorization for the department to contact the issuing physician and surgeon for purposes of this section and for the release of records related to the medical exemption to the department, the Medical Board of California, and the Osteopathic Medical Board of California.
- A certification by the issuing physician and surgeon that the statements and information contained in the form are true, accurate, and complete.



A VOICE FOR CHOICE
ADVOCACY

SB276/SB714 Implications for Your Child

Overview

SB276/SB714 modify the statute that was put in place in 2015 by SB277 with regard to vaccine medical exemptions for school. A Voice for Choice Advocacy will be sharing a section by section analysis of the technical statute changes by the end of the week, but have had so many parents ask what will happen to their specific child, that we wanted to get something together so parents know what their options are for this school year and the next. We will convert this into an easy to use flow chart shortly.

Disclaimer: These are A Voice for Choice Advocacy's interpretations based on the SB276/714 wording (which is very circuitous) and current information on Shots for Schools (the CDPH website regarding CA vaccination requirements) with regard to how SB277 has been implemented. There are some grey areas which are subject to interpretation and may change based on how CDPH implements it. There is no regulatory process for this law so we are subject to CDPH's whims. They just released this question and answer document, which is very broad and does not give all the details:

<https://www.chhs.ca.gov/blog/2019/09/09/senate-bill-276-and-senate-bill-714-vaccinations-and-medical-exemptions-questions-and-answers/>

If your child is:

Homeschooled - A pupil in a home based private school or a pupil who is enrolled in an independent study is exempt from vaccination requirements. (SB277)

In Public school with an IEP or in a Private school with public school IEP services – A pupil with an IEP or IEP services is exempt from vaccination requirements. (SB277 and Federal law)

Your school may ask for their vaccination records to be on file if they have any, but cannot require them to be up to date or have a Medical Exemption on file for the remainder. If you have an IEP and are having issues with your school allowing your child to attend, please contact us and we will put you in touch with Educate.Advocate who successfully helps with these issues.

For child day care center, day nursery, nursery school or family day care, the child must be fully vaccinated or have a medical exemption.

From January 1 2020 to June 30 2021, if your child is entering...

For the first time – Will need a medical exemption issued between January 1 and December 30, 2020 that complies with the SB277 medical exemption criteria, or after January 1, 2021 that complies with the SB276 criteria.

Continuing with a medical exemption dated prior to January 1, 2020 – Will be grandfathered in until TK or Kindergarten, when they will need a medical exemption that complies with the SB276 criteria.



A VOICE FOR CHOICE
ADVOCACY

For more information, please contact Christina Hildebrand, President, A Voice for Choice Advocacy
Email: christina@avoiceforchoice.org Phone: 408 835 9353

For TK, K-12 private or public school, your child must be fully vaccinated or have one of the following exemptions.

In July 2020, if your child is private or public school entering...

TK or Kindergarten – Will need a medical exemption issued between January 1 and December 30, 2020 that complies with the SB277 medical exemption criteria.

1st through 6th grade with an existing medical exemption on file dated prior to January 1, 2020 - Will be grandfathered in until 7th grade, when they will need a medical exemption that complies with the SB276 criteria.

5th or 6th grade with a grandfathered PBE on file before 2016 – Will continue to be grandfathered in until 7th grade, when they will be required to have a medical exemption that that complies with the SB276 criteria.

7th grade – Will need a medical exemption issued between January 1 and December 30, 2020 that complies with the SB277 medical exemption criteria.

(Note: This is the greyest area in this bill, so we will likely update it as we learn more)

8th through 12th grade with an existing medical exemption on file dated prior to January 1, 2020 - Will be grandfathered in until end of 12th grade.

12th grade with a grandfathered PBE on file before 2016 – Will continue to be grandfathered in until the end of 12th grade.

In July 2021, if your child is private or public school entering...

First time entrance to school in any grade - Will need a medical exemption issued after January 1, 2021 that complies with the SB276 criteria.

TK or Kindergarten – Will need a medical exemption issued after January 1, 2021 that complies with the SB276 criteria.

1st grade with an existing medical exemption on file dated prior between January 1 and December 30, 2020 that complies with the SB277 medical exemption criteria – Will be grandfathered in until 7th grade.

2nd through 6th grade with an existing medical exemption on file dated prior to January 1, 2020 - Will be grandfathered in until 7th grade, when they will need a medical exemption that complies with the SB276 criteria.

6th grade with a grandfathered PBE on file before 2016 – Will continue to be grandfathered in until 7th grade, when they will be required to have a medical exemption that that complies with the SB276 criteria.

7th grade – Will need a medical exemption issued after January 1, 2021 that complies with the SB276 criteria.

8th through 12th grade with an existing medical exemption on file dated prior to January 1, 2020 - Will be grandfathered in until end of 12th grade.

Medical Exemption Criteria Defined

Important Note: DO NOT submit any medical exemptions dated 2020 or before to any electronic or other database. If you have a medical exemption on file or put one on file before January 1, 2021, file a notarized privacy notice with it (<https://www.avoiceforchoiceadvocacy.org/wp-content/uploads/2016/06/Objection-to-Disclosure-of-Student-Records.pdf>)

SB277 Medical exemption criteria (per CDPH <https://www.shotsforschool.org/laws/exemptions/>)

Medical exemptions, under SB277 are at the discretion of the physician (MD or DO), and can be given if they determine the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, including, but not limited to, family medical history.

Medical exemptions filed before July 1, 2019 must consist of a written statement from a licensed physician (MD or DO) which states:

- That the physical condition or medical circumstances of the child are such that the required immunization(s) is not indicated
- Which vaccines are being exempted
- Whether the medical exemption is permanent or temporary.
- The expiration date, if the exemption is temporary.

Medical exemptions filed July 1, 2019 to December 1, 2020 must consist of a signed, written statement from a physician (MD or DO) licensed in California which states:

- The specific nature of the physical condition or medical circumstance of the child for which a licensed physician does not recommend immunization.
- Each specific required vaccine that is being exempted.
- Whether the medical exemption is permanent or temporary.
- If the exemption is temporary, an expiration date no more than 12 calendar months from the date of signing.

Note: If the medical exemption is written by a physician who has been subject to disciplinary action by the Medical Board or the Osteopathic Medical Board of California, then the exemption will be revoked. Your physician's primary status should be active and their secondary status should be N/A (<https://search.dca.ca.gov/?BD=800&TP=8002>).

Medical exemption criteria (continued)

SB276 Medical exemption criteria (per statute)

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB276

Medical exemptions filed after January 1, 2021, under SB276/SB714 must meet CDC, ACIP, or AAP criteria for appropriate medical exemptions. Note: These do not exist. Only CDC, ACIP, or AAP vaccination guidelines (<https://www.cdc.gov/vaccines/vpd/should-not-vacc.html>) exist. Therefore either CDPH will use the guidelines or one of these organizations will create medical exemption criteria before January 1, 2021. If information other than what is included in the vaccination guidelines is used, it is at the medical discretion of the CDPH staff member whether or not they accept a medical exemption that is based on other contraindications or precautions, including consideration of family medical history, if the issuing physician and surgeon provides written documentation to support the medical exemption that is consistent with the relevant standard of care.

Medical exemptions filed after January 1, 2021 must be transmitted directly to the department's California Immunization Registry (CAIR) by a physician (MD or DO) licensed in California using the electronic, standardized, statewide medical exemption certification form. The form should be printed, signed, and submitted directly to the school or institution at which the child will attend, submitted directly to the governing authority of the school or institution, or submitted to that governing authority through the CAIR where applicable. The form will include:

- The name, California medical license number, business address, and telephone number of the physician and surgeon who issued the medical exemption, and of the primary care physician of the child, if different from the physician and surgeon who issued the medical exemption.
- The name of the child for whom the exemption is sought, the name and address of the child's parent or guardian, and the name and address of the child's school or other institution.
- A statement certifying that the physician and surgeon has conducted a physical examination and evaluation of the child consistent with the relevant standard of care and complied with all applicable requirements of this section.
- Whether the physician and surgeon who issued the medical exemption is the child's primary care physician. If the issuing physician and surgeon is not the child's primary care physician, the issuing physician and surgeon shall also provide an explanation as to why the issuing physician and not the primary care physician is filling out the medical exemption form.
- How long the physician and surgeon has been treating the child.
- A description of the medical basis for which the exemption for each individual immunization is sought. Each specific immunization shall be listed separately and space on the form shall be provided to allow for the inclusion of descriptive information for each immunization.
- Whether the medical exemption is permanent or temporary, including the date upon which a temporary medical exemption will expire. A temporary exemption shall not exceed one year. All medical exemptions shall not extend beyond the grade span (i.e. will need to be renewed at TK/Kindergarten and 7th grade).
- An authorization for the department to contact the issuing physician and surgeon for purposes of this section and for the release of records related to the medical exemption to the department, the Medical Board of California, and the Osteopathic Medical Board of California.
- A certification by the issuing physician and surgeon that the statements and information contained in the form are true, accurate, and complete.



What Medical Exemption be reviewed?

There are two triggers that will cause your child's medical exemption to be reviewed, with the possible result in revocation.

School trigger: If a child care/nursery/preschool or school reports an overall vaccination rate of less than 95% or if they do not report at all, all Medical exemptions from that school will be reviewed, regardless of doctor. **You can view your schools Average Vaccination rate here:**

<https://www.shotsforschool.org/k-12/how-doing/>

Physician trigger: If a physician writes 5 or more medical exemptions in a year, all their medical exemptions will be reviewed, regardless of school.

**REFUSAL TO PERMIT IMMUNIZATION DATA RECORD-SHARING
UNDER HEALTH & SAFETY CODE 120440(E)(4)**

This is to inform _____ School and _____ School District – and all past schools our child attended in said District including _____ School and _____ School and _____ School – that on behalf of our minor child _____,

we the parents of said child **refuse to allow the aforementioned entities to engage in record-sharing of our child’s medical immunization records, including immunization exemption data**, with any County Health Department, any County Public Health Officer, the State Health Department (California Department of Public Health (“CDPH”)), or any third-party entities including newspapers or media outlets, or state boards, pursuant to California Health & Safety Code 120440.

Unless a parent objects, under Health & Safety Code Section 120440(c), schools may collect and disclose certain types of information, including immunization data specifying the name and address of child and child’s parents/guardians, date and place of birth and gender of child, date and type of immunizations received by child as well as manufacturer and lot number for dose and TB screening results and any adverse reactions from same, and other nonmedical information necessary to establish patient’s identity (hereafter, “Immunization Data”).

While the foregoing statute allows schools in some instances to share such data, said statute also expressly forbids schools from sharing Immunization Data if – under subsection (e) – **the parent “refuse[s] to permit record sharing.”**

Per section (e)(4), if “the parent” or guardian “refuse[s] to allow this information to be shared” the child’s physician will maintain access to the child’s health records “for the purposes of patient care or protecting the public health.”

Please notify the district superintendent – as well as all school principals, administrative staff, nurses and other school or district medical personnel attending to health matters and records at each of the above schools our child has attended – of our refusal under state law to permit our child’s immunization records to be shared or released.

REFUSAL TO PERMIT IMMUNIZATION DATA RECORD-RELEASE PURSUANT TO PUBLIC RECORDS ACT REQUESTS UNDER GOVERNMENT CODE § 6252(e), § 6254(c), and § 6254(k)

In addition to forbidding the aforementioned parties to transmit by e-mail, facsimile, U.S. mail, physical hard-copy collection, or other electronic transmission services any Immunization Data to any County or California Department of Public Health officer – and forbidding such data to even be reviewed during an in-person audit by said entities – we also expressly forbid our child’s health and Immunization Data from being released pursuant to Public Records Act (“PRA”) requests filed by various news outlets including, but not limited to, *The LA Times*, *Voice of San Diego*, and all other media outlets. The medical and school files of schoolchildren do not constitute a public record subject to disclosure because they do not relate “to the conduct of the public’s business.” Government Code § 6252(e). California courts have clearly held that “[c]ommunications that are primarily personal containing no more than incidental mentions of agency business” do **not** “constitute public records.” City of San Jose v. Superior Court, 2 Cal. 5th, 608, 618-619 (2017). Even though such documents may be in the possession of the local agency, they are not automatically public records if the writings do not also relate to the conduct of the public’s business. Government Code § 6252(e); Regents of the University of California v. Superior Court, 222 Cal.App.4th 383, 403–405 (2018); Braun v. City of Taft, 154 Cal.App.3d 332, 340 (1984); San Gabriel Tribune v. Superior Court, 143 Cal.App.3d 762, 774 (1983).

Given that courts have held that records containing primarily personal information, such as an employee’s personal address list or grocery list, are considered outside the scope of the PRA, children’s medical files definitionally fall outside the reach of a PRA – as such medical files have **zero references** to agency business and are **exclusively personal** in nature. *Id.*

Moreover, due to the sensitive nature of private medical information, the California Constitution protects a person’s right to privacy in his or her medical records, and it is upon such basis that the PRA statutes specifically exempt from disclosure “personnel, **medical**, or similar files, the disclosure of which would constitute an unwarranted

invasion of personal privacy.” Government Code § 6254(c). In addition, the PRA exempts from disclosure “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law,” including, but not limited to “those described in the Confidentiality of Medical Information Act, physician/patient privilege, the Health Data and Advisory Council Consolidation Act, and the Health Insurance Portability and Accountability Act.” Government Code § 6254(k) and [A Guide to the Public Records Act \(2017\)](https://www.cacities.org/Resources/Open-Government/THE-PEOPLE%E2%80%99S-BUSINESS-A-Guide-to-the-California-Pu.aspx)
<https://www.cacities.org/Resources/Open-Government/THE-PEOPLE%E2%80%99S-BUSINESS-A-Guide-to-the-California-Pu.aspx>

PRA requests that do not seek a student’s name may yet still request information that constitutes personal identifying information (“PII”) or protected health information (“PHI”) under various federal statutes discussed below. Because news outlets often request the “physical condition of the child” as well as the school name and doctor’s name – and further because of the wording utilized by our child’s medical doctor in describing our minor child’s physical condition in the exemption – it would be impossible for the school to comply with these news agencies’ requests because the data requested is inextricably intertwined with PII and PHI and would potentially identify our child, notwithstanding any effort by District or School personnel to de-identify, redact or remove such PII and PHI. Further, as we recall, other family members’ medical conditions may have been referenced by our child’s physician in the medical exemption, and a release of this data could cause a breach of these family members’ rights to privacy that are protected under state statute, HIPAA, and other federal statutes. We as parents and these other family members strongly object to any release – and indeed order all Schools and the District referenced above to **NOT** release – our minor child’s Immunization Data and health information, as such release would likely cause not merely an actionable privacy breach under relevant state and federal statutes vis-à-vis the child – but it would also potentially breach parents’ or other family members’ privacy rights (whose medical information is contained in our child’s medical files, Immunization Data and exemption).

REMEDIES FOR VIOLATIONS UNDER STATE & FEDERAL LAW – AND NOTICE TO SCHOOL & DISTRICT OF INTENT TO PURSUE REMEDIES FOR BREACHES

Please be further advised that under a federal law known as the Family Educational Rights and Privacy Act, or FERPA, the United States Department of Education, at the “elementary or secondary school level,” considers “students’ immunization and other health records that are maintained by a school district or individual school,” to be “educational records’ subject to FERPA.” U.S. Dept. Of Education, Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) And the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records, page 6 (November 2008).¹

Under FERPA, schools may only share medical records of their students if it is necessary to meet a “legitimate educational interest.” See 20 U.S.C. Section 1232g (b)(1) and 34 C.F.R. Section 99.31 (a)(1)(i)(A).

In a case involving the Alabama Department of Education, the State Health Officer for Alabama ordered school superintendents in his state to share “information with [DPH] regarding immunizations” asserting federal law allowed for same. The federal government disagreed, clarifying that immunization records maintained by schools “are subject to FERPA” and stating further that FERPA prevented the disclosure and that “HIPAA neither authorizes nor permits the disclosure of these [school immunization] records.” Also clarified was the fact that “routine vaccination” is not an “emergency” that would allow for data-mining of students’ records under FERPA, and **that there is “no exception to FERPA’s prior consent rule that would permit a school subject to FERPA to disclose health or other immunization records to a State health agency such as DPH.”** Indeed, the only exception noted by the federal government was a “very limited” one that would allow for disclosure without prior consent only “in connection with an emergency [to] appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons” – and that such conditions were required by law to be “strictly construed”:

¹ Laws that govern confidentiality of minor school children’s medical information include but are not limited to the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. § 1232g; 34 CFR Part 99), Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400, et seq., the California Information Practices Act (California Civil Code Section 1798 et seq.), California Education Code Section 49062 et seq., Student Online Personal Information Protection Act (SOPIPA), HIPAA, Cal. Health & Safety Code section 120440, California Education Code 49073.6, California Education Code 49073.1, Article 1, and Section 1 of the California Constitution.

[U]nder certain emergency situations it may become necessary for an educational agency or institution to release personal information to protect the health or safety of the student or other students. In the case of an outbreak or epidemic, it is unrealistic to expect an educational official to seek consent from every parent.... On the other hand, a blanket exception for “health or safety” could lead to unnecessary dissemination of personal information. Therefore, in order to assure that there are adequate safeguards on this exception, the amendments provided that the Secretary shall promulgate regulations to implement this subsection. It is expected that he will strictly limit the applicability of this exception.

Joint Statement in Explanation of Buckley/Pell Amendment, 120 Cong. Rec. S21489, Dec. 13, 1974.

The United States Department of Education further stated: “This Office has consistently interpreted this provision narrowly by limiting its application to a specific situation that presents imminent danger to students or other members of the community.” (Emphasis in original). The discussion proceeded to other realms, including a discussion of terrorist threats. And even in that rather extreme context, the government noted:

Any release must be narrowly tailored considering the immediacy, magnitude, and specificity of information concerning the emergency. As the legislative history indicates, this exception is **temporally limited** to the period of the emergency and generally **will not allow for a blanket release....**

Other cases hold similarly:

When the State Department of Health has determined that the specified disease or condition does not constitute an imminent danger or threat or that emergency reporting or other action is necessary to address the concern,” then consequently, the school “**may not disclose information from a student’s education records to meet these ‘routine’ health reporting requirements** unless it has made a specific, case-by-case determination that a health or safety emergency exists.

U.S. Department of Education, Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements, Nov. 29, 2004. See also Federal Register, Vol. 73, No. 237, Dec. 9, 2008 (re 34 CFR Part 99) discussing “Disclosure in Non-Emergency Situations” and noting that “this exception does not cover routine, non-emergency disclosures of students’ Immunization Data to public health authorities.”

In addition to FERPA, the California Confidentiality of Medical Information Act states that any “person or entity that wishes to obtain medical information” must “obtain a valid authorization for the release of this information.” While – as with the federal statutes – there are a number of emergency exceptions to the requirement that a release from the parent be obtained before disclosure of the child’s private medical data, none of the exceptions apply to allow for blanket releases of Immunization Data.

Violations of FERPA can cause a cessation of all federal funding to involved schools and districts (typically just under 10% of a California public schools funding derives from federal sources). Sanctions under state statutes (CMIA) range from prosecution, to private rights of action, to monetary sanctions: \$2,500 for first breach/violation, \$10,000 for second violation, and \$25,000 for third and subsequent violations – capping out at a quarter million dollars for knowing and willful violations under certain circumstances. HIPAA, which protects the health information of adults – which information may be in possession of the school through a medical exemption that discusses family health history – provides similarly.

Moreover, Health & Safety Code 120440(d)(1-2), states that the School and District “shall maintain the confidentiality of information... in the same manner as other client, patient and pupil information they possess” and schools are “**subject to civil action and criminal penalties for the wrongful disclosure of the information listed.**”

This document constitutes notice to the School and District and individual nursing or medical personnel and other administrative staff of our intent to pursue all civil remedies available for any breaches of law with respect to our child’s medical Immunization Data.

Finally, we order the District and Schools to **NOT MAKE IMMUNIZATION DATA AVAILABLE** to the County or State, even during an in-person audit, by way of large 20-point font notice attached to the front of our minor child's file. California Health & Safety Code 120440 (e)(4).

**REQUEST FOR IMMEDIATE EXAMINATION OF OUR CHILD'S IMMUNIZATION DATA
– AND REQUEST THAT SCHOOL & DISTRICT ITEMIZE ALL PRIOR RELEASES OF SAME**

Health & Safety Code Section 120440 (e)(3-4) provides that a parent "has the right to examine any immunization-related information... shared." We hereby request an immediate, in-person examination of our student's medical files and Immunization Data retained by the Schools and/or District, as well as a recounting of all releases of the above data prior to now by date, recipient, and nature of exact data released. The itemization of all prior releases of our child's data shall be mailed, certified return receipt signature mandated, within fifteen (15) business days to the address at the bottom of this page.

**REVOCAION OF ANY PRIOR BOILERPLATE AUTHORIZATIONS
TO RELEASE CHILD'S MEDICAL OR IMMUNIZATION DATA**

This document further serves as a revocation of any earlier documents that were signed which would have permitted disclosure of Immunization Data by the School or District.

**OBJECTION TO RELEASE OF RECORDS PURSUANT TO SUBPOENA –
AND ORDER TO SCHOOL & DISTRICT TO OBJECT TO PRODUCTION ON OUR CHILD'S BEHALF
– AND SERVE SIGNATURE-REQUIRED CERTIFIED MAIL NOTICE TO US OF SAME**

We further put the School and District on notice that we object to the release or sharing of **all** Immunization Data pertaining to our child, in the event the School or District receives an administrative subpoena or judicial subpoena including, but not limited to, a subpoena from the Medical Board, whether such subpoena requests Immunization Data in un-redacted or redacted form, whether it requests data with or without child's name given, whether it requests reason for exemption, whether it requests doctors' name and address, or other details, in part or in whole or in summarized formats. We **OBJECT TO ANY AND ALL RELEASES** of our child's Immunization Data pursuant to subpoena.

Should the School or District receive a subpoena calling for production of our child's Immunization Data or medical files, we further order the School and District to: (1) object on our child's behalf to such production; (2) refuse to produce our child's records based on state and federal privacy grounds; (3) give us at least thirty (30) business days' notice of the production date referenced in the subpoena, by way of certified mail, **signature required, return receipt requested, delivered to our address below**; and (4) continue to refuse to produce all such Immunization Data and records of our child until the School or District has either received written, clear, affirmative consent to same by all parties whose signatures are below or alternatively, been ordered to so produce by a judge and exhausted appeals of such ruling.

Name of Parent: _____

Name of Parent: _____

Address 1: _____

Address 1: _____

Address 2: _____

Address 2: _____

City, State, Zip: _____

City, State, Zip: _____

Signature: _____
Print Parent Name: _____

Signature: _____
Print Parent Name: _____

Executed this ____ day of _____, 20__ in _____, California.