

DATE

NAME

TITLE

ADDRESS

ADDRESS

EMAIL

Dear NAME District Superintendent and Board Members:

This letter is in response to the upcoming Board Members Meeting scheduled for DATE, to discuss a resolution of mandating COVID-19 vaccines for all students 12 years and older in order to be able to participate in in- person education within the NAME District (“District”). As a parent with a child in the District, I am hereby asserting my child’s right to an in-person education guaranteed by Article IX of the California Constitution, free of any new unlawful, coercive vaccination requirements and demand that the District retract its proposed resolution and issue a statement to the community explaining the law and reasons behind its retraction, which are set forth in detail, below. If the District does not do so by DATE, it will face heavy fire in the courts of law and of public opinion before the very families on which its funding depends.

The District Does Not Have Legal Authority to Mandate COVID-19 Shots

California Health & Safety Code, Section 120335(a)(1)-(10) lists the ten (10) immunizations required for students to attend school in person in public or private schools. This list does not include any COVID-19 vaccines. See H&SC, §120335(a)(1)-(10). Under Section 120335(a)(11), the *California Department of Public Health* (“CDPH”) can add a new vaccine to the childhood immunization schedule, and the CDPH has not to do so at this time. Neither this Section – nor any other law – grants a school or district authority to unilaterally add new vaccines to this list.

Even if the CDPH decided to add COVID-19 vaccines to the mandatory K-12 shot schedule, it would be required to allow medical and personal belief exemptions. See H&SC §120338. Accordingly, any unilateral COVID-19 mandate that the District intends to impose on its students without allowance for medical and personal belief exemptions is not only prohibited under California law, but also illegal on its face.

The District Cannot Mandate an EUA Product

While neither CDPH nor our state legislature has added the COVID-19 shots to the schedule, or mandated any COVID-19 vaccine for in-person attendance, neither can do so while the vaccines are still under emergency use authorization. See 21 U.S.C. § 360-bbb-3. This section – the Emergency Use Authorization (“EUA”) statute – explicitly states that anyone to whom an EUA product is administered must be informed of the option to refuse the product, the consequences of doing so, and of alternatives to the product, including their risks and benefits, as well.

On August 23, 2021, the FDA extended the Pfizer / BioNTech vaccine EUA.¹ The FDA granted BioNTech's biologics licensing application to manufacture and sell a "legally distinct" COMIRNATY vaccine²; however, it is currently not available in the United States. Regardless, *all of the COVID-19 vaccines currently-available for children 12 to 18 years old are only **authorized***, and no entity can mandate them per the EUA. If neither CDPH nor the legislature can mandate these vaccines due to federal EUA law and pre-emption issues, neither can the District.

The District Is Facing Criminal Charges

None of the currently-available COVID-19 shots *admittedly* prevent transmission of the virus.³ As a result, any policy mandating these shots is not a public health policy, but rather an order to take *medicine* as a condition for in-person schooling. Prescribing, or even promoting, medicine constitutes the practice of medicine under California law, and practicing medicine without a valid medical license is a crime under Penal Code, Section 2052. Any schools *and their respective administrators* enforcing this unlawful mandate will face civil and **criminal liability**, including up to six (6) years in jail and fines of up to \$10,000.00.⁴

Additionally, California Penal Code, Section 273a provides that any person who, willfully causes or permits any child to suffer or actually harm, or inflicts upon the child *unjustifiable physical pain or mental suffering*, under circumstances or conditions likely to produce great bodily harm or death be found guilty of **child endangerment** punished by imprisonment in a county jail not exceeding one (1) year, or in the state prison for two (2), four (4), or six (6) years. If any of these children – or *any* member of District's community who receives a shot because of the proposed policy – dies, the District and its enforces will be charged with **involuntary manslaughter** under Penal Code, Section 192b, which is punishable by a prison sentence of three (3), six (6), or eleven (11) years plus a "strike" on your record under California's "three strikes law."

The District Is Exposed to Unfettered Civil Liability

The Federal Public Readiness and Emergency Preparedness ("PREP") Act shields COVID-19 vaccine developers, manufacturers, distributors, and administrators – "covered entities" – from liability for injuries caused by their countermeasures. However, neither the District nor any school attempting to implement its mandates is a "covered entities" and, thus, is vulnerable to suit and faces complete exposure for all liability.

¹ <https://www.fda.gov/media/150386/download>

² <https://www.fda.gov/media/151710/download>

³ <https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html>

⁴ Violation of P.C. § 2052 is a "wobbler" offense that can be tried as a felony or misdemeanor. When tried as a misdemeanor, penalties are up to one (1) year in county jail and/or a fine of up to one thousand dollars (\$1,000), and when tried a felony, one and a half (1.5), two (2) or three (3) years in jail, and/or a fine of up to ten thousand dollars (\$10,000). All that is in addition to any professional disciplinary action you may face if you are a licensed health care professional and are alleged to have violated the terms of your license

The Shots Do Not Prevent Transmission of SARS-CoV-2

As clearly stated in all COVID-19 vaccine manufacturers' materials, the endpoint of the clinical trials was to *reduce hospitalization and death by reducing the symptoms*. Along those lines, the CDC has admitted in recent weeks that vaccinated persons can contract and transmit COVID-19, *and might even possess **higher** viral loads than the unvaccinated.*⁵ As a result, *none of the vaccines actually or theoretically protect the community from contracting SARS-CoV-2 and **create a greater threat of undetected harm to our community***. Indeed, the resolution that should be up for consideration is one *prohibiting vaccination* without proper testing or quarantine procedures to avoid exposing vulnerable individuals to unwitting infection by vaccinated individuals with little-to-no symptoms and notice of infection due to their vaccination status. We believe the District is aware of this threat given that, prior to the start of the 2021-2022 school year, it decided to continue its regular surveillance and testing and require masking indoors for all individuals, *regardless* of vaccination status.

Any policies that exclude the unvaccinated as an alleged “threat” or “risk” to the campus community are disingenuous, not based in the medicine or science, and overtly discriminatory, harassing, retaliatory, and illegal, and the decision whether or not to get a vaccine should continue to be a personal choice.

The Shots Expose Our Community to Greater Risks

It is unrefuted that the COVID-19 shots – *especially*, the Pfizer-BioNTech shot, *which is the only shot authorized for children 12 to 18 years old* – cause myocarditis, pericarditis, and other life-threatening conditions that would otherwise not affect the children specifically targeted by the mandate.⁶ Regardless of how “rare” this might be (which *is* in dispute), there is *zero* justification for exposing otherwise healthy children who have a *statistical zero* chance of dying from the virus to *any* risk, especially where the individuals they would presumably be protecting are able to protect themselves.

In the United States anyone who wants to get a vaccine can easily get one and for free.⁷ Accordingly, requiring students 12 years to 18 years of age, who are uniquely susceptible to some of the greatest, life-altering risks of all with *little-to-no benefit*, to get a COVID-19 shot is not the answer. Rather, it is an unethical and unscientific way to use children as a shield to protect segments of the adult population – who already have the option to be vaccinated.

⁵ <https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html>

⁶ *SARS-CoV-2 mRNA Vaccination-Associated Myocarditis in Children Ages 12-17: A Stratified National Database Analysis*, September 8, 2021, <https://www.medrxiv.org/content/10.1101/2021.08.30.21262866v1>; *Boys more at risk from Pfizer jab side-effect than Covid, suggests study*, September 10, 2021 [<https://www.theguardian.com/world/2021/sep/10/boys-more-at-risk-from-pfizer-jab-side-effect-than-covid-suggests-study>]; VAERS, <https://vaers.hhs.gov> [all as of September 13, 2021]

⁷ <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/05/12/remarks-by-president-biden-on-the-covid-19-response-and-the-vaccination-program-2/>

There are less than ten other districts *in the country* contemplating this kind of unconstitutional, illegal, and immoral mandate against children and their parents. We cannot conceive of a reason why our District would want to expose itself in this way and put the children in its district in harm's way. ***Is it money?*** It cannot be the "health and safety" of our community given all of the data we currently have, to date, including but not limited to testimony and data presented at the September 17, 2021 FDA Advisory Committee Hearing wherein the Committee "overwhelmingly rejected" the White House's plan to give Pfizer shots to most Americans, citing "lack of safety data" and "doubting the value" of mass boosters, especially for children 16 years and up.⁸ To that end, **if you decide to pass this resolution and we initiate legal action against you as a result, we will conduct rigorous discovery to identify the reason you decided to implement this illegal policy that has no basis in science, medicine, or the facts [ONLY SAY THIS IF YOU INTEND TO FOLLOW THROUGH WITH LEGAL ACTION].**

Demand for Retraction and Permanent Ban on COVID-19 Vaccine Mandates

The District lacks any authority to bypass existing California and federal law and impose an experimental vaccine upon children entrusted in its care to enroll a clinical trial as a condition to attending school. Therefore, *please **retract and issue a decision permanently banning any such mandates in the future.*** If the District chooses to move forward with and vote on the Resolution, it must integrate these comments into the hearing minutes, as required by law. ***Please confirm receipt of this letter and that these comments and concerns will be integrated into your discussion on the Resolution and your decision making.***

Sincerely,

Name (if you want to provide)

⁸ <https://www.youtube.com/watch?v=WFph7-6t34M&feature=youtu.be>