

G.F. v. LOS ANGELES UNIFIED SCHOOL DISTRICT
Case Number: 21STCP03381
Hearing Date: April 6, 2022

FILED
Superior Court of California
County of Los Angeles

JUL 05 2022

Sherri R. Carter, Executive Officer/Clerk of Court

By: F. Becerra, Jr., Deputy

ORDER GRANTING PETITION FOR WRIT OF MANDATE

Petitioner, G.F., individually and on behalf of D.F., as D.F.'s guardian *ad litem*, seeks a writ of mandate prohibiting Respondent, Los Angeles Unified School District (LAUSD), from (1) enforcing its policy requiring all students 12 years of age and older to receive the COVID-19 vaccine; (2) requiring students without the COVID-19 vaccine to enroll in independent study; and (3) barring students without the COVID-19 vaccine from participating in extracurricular activities, including sports. (Motion 4:2-6.)

LAUSD opposes the petition.

The petition is GRANTED.¹

Petitioner requests judicial notice of Exhibits A, F, G, H1, H2, I, J, K, M, N, Q, R, S and T to the Declaration of G.F. dated December 13, 2021; Exhibits U, V, W, and X to the Declaration of Arie L. Spangler dated February 25, 2021; and Exhibits Y and Z to the Supplemental Declaration of G.F. dated February 8, 2022. LAUSD objects to the court taking judicial notice of Exhibits H1 and H2 on hearsay grounds (evidentiary objections 83 and 84). LAUSD's objections are sustained. The court takes judicial notice as requested by Petitioner except as to Exhibits H1 and H2.

LAUSD requests judicial notice of Exhibits J through L and N through P. Petitioner opposes the requests. LAUSD's request is granted pursuant to Evidence Code section 452, subdivisions (a), (c) and (h). While the court takes judicial notice of the documents, the court cannot take judicial notice of the facts contained in Exhibits J, K and L.

Evidentiary Objections:

Petitioner's objections to LAUSD's evidence are all sustained. Petitioner does not challenge the wisdom of the Resolution, or whether the Resolution is supported by substantial evidence. Thus, Petitioner's relevance objections are well taken. In addition, several objections are sustained based on grounds other than relevance (objections 17, 22, 24 and 26).

LAUSD's objections to Petitioner's evidence: The following objections are sustained – 1 through 16, 19, 20, 23 through 35, 38, 65 through 84. The remaining objections are overruled.

¹ Although Petitioner's brief is styled as a motion for judgment under Code of Civil Procedure section 1094, pursuant to the stipulation of the parties, the petition is before the court for trial.

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STANDARD OF REVIEW

Code of Civil Procedure section 1085, subdivision (a) provides in relevant part:

“A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.”

“To obtain writ relief under Code of Civil Procedure section 1085, the petitioner must show there is no other plain, speedy, and adequate remedy; the respondent has a clear, present, and ministerial duty to act in a particular way; and the petitioner has a clear, present[,] and beneficial right to performance of that duty.” (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 606.) “A ministerial duty is an obligation to perform a specific act in a manner prescribed by law whenever a given state of facts exists, without regard to any personal judgment as to the propriety of the act. [Citation.]” (*People v. Picklesimer* (2010) 48 Cal.4th 330, 340.)

“An action in ordinary mandamus is proper where . . . the claim is that an agency has failed to act as required by law.” (*California Ass’n for Health Services at Home v. Department of Health Services* (2007) 148 Cal.App.4th 696, 705.)

An agency is presumed to have regularly performed its official duties. (Evid. Code § 664.)

“Unless otherwise provided by law, ‘the petitioner always bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085.’ ” (*Khan v. Los Angeles City Employees’ Retirement System* (2010) 187 Cal.App.4th 98, 106.)

ANALYSIS

On September 9, 2021, at a special meeting of the Board of Education for LAUSD, LAUSD approved and adopted the Superintendent’s Resolution Requesting the Board of Education of the Los Angeles Unified School District to Require COVID-19 Vaccination for Eligible Students (the Resolution). The Resolution requires all children who are 12 years of age and older “to provide proof of [COVID-19] vaccination . . . in order to be permitted on LAUSD school facilities, except for those students with qualified and approved exemptions and conditional admissions.” (Resp’s.’ Ex. C, [Resolution] p. 3; Malhotra Decl., ¶¶ 56.) The Resolution sets forth a child 12 years of age and older must be vaccinated against COVID-19 as “a mandatory precondition to accessing LAUSD school facilities.” (Resp’s.’ Ex. C, [Resolution] p. 3.) Any child 12 years of age or

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older who does not provide proof of vaccination against COVID-19 as of January 10, 2022 will be excluded from campus.² (Resp’s.’ Ex. C, [Resolution] p. 3.; Malhotra Decl., ¶¶ 63-66.) This action concerns LAUSD’s implementation and enforcement of the Resolution.

Petitioner seeks to bar LAUSD from implementing the Resolution on two grounds:

First, Petitioner asserts “LAUSD is not authorized to enact a COVID-19 vaccination mandate for its students.” (Opening Brief 4:7.) Such authority, Petitioner argues, is reserved for the Legislature or the California Department of Public Health (CDPH) pursuant to Health and Safety Code sections 120370 and 120335 along with implementing regulations.

Second, Petitioner claims “LAUSD cannot forcibly transfer students lacking the COVID-19 vaccine to LAUSD’s independent study program, City of Angels” (Opening Brief 4:19-20.) Petitioner argues any such “forcible transfer” violates Education Code section 51747, subdivision (f)(8) and California Code of Regulations, Title 5, section 11700. Petitioner asserts no student may be required to participate in independent study.

Petitioner’s Claim: LAUSD May Not Adopt a “Vaccine Mandate” As Such a Mandate is Preempted by State Law

California school districts have extremely broad authority under the California Constitution and the Education Code. (Cal. Const., art. IX, § 14; Ed. Code § 35160. See also *American Civil Rights Foundation v. Berkeley Unified School Dist.* (2009) 172 Cal.App.4th 207, 216. [“Legislature has granted school boards wide authority to set policies for the communities they serve.”]) “In general, a school district has all authority necessary to fulfill its purposes except as expressly limited or preempted by statute.” (*Governing Bd. of Ripon Unified School Dist. v. Commission on Professional Competence* (2009) 177 Cal.App.4th 1379, 1385.)

As such, LAUSD had the authority to approve and adopt the Resolution so long as the Resolution “is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.” (Ed. Code § 35160.)

Petitioner recognizes LAUSD’s general powers under Education Code section 35160:

“the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established.”

Notwithstanding the district’s statutory authority, Petitioner argues LAUSD’s Resolution impermissibly conflicts with, is inconsistent with, and is preempted by state law.

² There is no dispute enforcement of the Resolution has been delayed until Fall 2022 or sometime thereafter.

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Citing Health and Safety Code section 120370, Petitioner explains state law imposes on California schoolchildren immunization requirements for “continued enrollment to any public or private elementary or secondary school, child care center, day nursery, nursery school, family day care home, or developmental center within the state” (Health & Saf. Code § 120370, subd. (a)(2).)³ Pursuant to such immunization requirements, “the governing authority shall not unconditionally admit . . . to any of those institutions specified in this subdivision, or admit or advance any pupil to 7th grade level, unless the pupil has been immunized pursuant to Section 120335” (Health & Saf. Code § 120370, subd. (a)(3).) To be admitted or readmitted to school, a student must be immunized against diphtheria, haemophilus influenzae type b, measles, mumps, pertussis, poliomyelitis, rubella, tetanus, hepatitis B and varicella (collectively, the Ten Vaccines). (Health & Saf. Code § 120335, subd. (b)(1)-(10).) As noted by Petitioner, COVID-19 is not currently included as a disease for which an immunization is required for admission or continued attendance in public school.

Petitioner’s claim is based upon preemption. “ ‘If otherwise valid local legislation valid local legislation conflicts with state law, it is preempted by such law and is void.’ ” (*Sherwin-Williams Company v. City of Los Angeles* (1993) 4 Cal.4th 893, 897 (*Sherwin-Williams*) [quoting *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885].) To determine whether there is a “conflict” between local legislation such as the Resolution and state law, the court considers whether the local legislation “duplicates, contradicts, or enters into an area fully occupied by general law, either expressly or by legislative implication.” (*Ibid.* [cleaned up].)

Local legislation duplicates state law where it is “coextensive therewith.” For example, in *In re Portnoy* (1942) 21 Cal.2d 237, 240, the Supreme Court found invalid a municipal ordinance where the “entire text” of the ordinance could be found in the state law. The Supreme Court invalidated the ordinance “to the extent of such duplication.” (*Ibid.*)

Local legislation is contradictory to state law “when it is inimical thereto.”⁴ (*Sherwin-Williams, supra*, 4 Cal.4th at 897.) For example, in *Ex Parte Daniels* (1920) 183 Cal. 636, 641, the Supreme Court found a municipality’s motor vehicle speed limit ordinance setting a rate lower than state law was in “direct conflict” with state law and therefore invalid. (*Id.* at 637, 647-648.)

Local legislation enters into an area fully occupied by state law when the Legislature has expressly or implicitly manifested its intent to fully occupy the area. “Where the Legislature

³ Petitioner has taken the phrase out of context. The statute refers to the ongoing validity of medical exemptions for required vaccinations.

⁴ Conflict does not merely refer to a conflict in language. It can refer to a conflict of jurisdiction where the Legislature has adopted a general scheme for the regulation of a particular subject. (*American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1252-1253.) The conflict of jurisdiction is similar to finding the Legislature implicitly intended to fully occupy the subject area.

has manifested an intention, expressly or by implication, wholly to occupy the field . . . municipal power [to regulate in that area] is lost.” (*O’Connell v. City of Stockton* (2007) 41 Cal.4th 1061, 1068 [quoting 8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 986, p. 551].)

The Legislature expressly manifests its intent to fully occupy the area with a clear declaration. For example, in 1981, the Legislature made clear its intent to regulate the sale of spray paint: “It is the intent of the Legislature in enacting this act to preempt all local government regulations relating to sales and possession of aerosol containers of paint” (*Sherwin-Williams, supra*, 4 Cal.4th at 900 [citation omitted].)

The Legislature impliedly expresses its intent to fully occupy the area in light of the

“following indicia of intent: (1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the locality.” (*Id.* at 898 [internal quotation marks and citation omitted].)

The purpose of the state law governing immunizations for schoolchildren is to provide “[a] means for the eventual achievement of total immunization of appropriate age groups against” ten diseases as well as any other diseases deemed appropriate by CDPH. (Health and Saf. Code § 120325, subd. (a).) The Legislature intended to protect children from disease. As noted in *Love v. State Dept. of Education* (2018) 29 Cal.App.5th 980, 987, when considering Health and Safety Code section 120325 and related statutes, the Assembly Committee on Health’s report noted:

“ ‘Each of these 10 diseases was added to California code through legislative action, after careful consideration of the public health risks of these diseases, costs to the state and health system, communicability, and rates of transmission . . . [¶] . . . [¶] All of the diseases for which California requires school vaccinations are very serious conditions that pose very real health risks to children.’ ” (*Ibid.* [internal quotation omitted].)

Recognizing other diseases may require vaccination by schoolchildren in the future, the Legislature specifically made provision for them. The Legislature adopted Health and Safety Code section 120335, subdivision (11) allowing CDPH to add required vaccines to the Ten Vaccines after “taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.” (Health and Saf. Code § 120335, subd. (b)(11).) Where the CDPH adds a vaccine to the Ten Vaccines

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required for school enrollment, the additional vaccine required by CDPH is subject to a personal beliefs exemption. (*Id.* at § 120338.) There is no personal beliefs exemption for the Ten Vaccines mandated by the Legislature.

Previously, the court has consistently viewed the Resolution as other than a “vaccine mandate.” (See Yeomans Decl., Ex. P.) The court’s tentative decision distributed prior to argument (as well as an order on a preliminary injunction in another action [Yeomans Decl., Ex. P]) reflected as much.⁵ The court had been persuaded the Resolution merely addressed the method of instruction and affected who might physically be present on a particular campus; children unvaccinated for COVID-19 would receive online instruction parallel to that received by students attending school in person. That is, those who could not be on campus would receive their instruction remotely through an independent study program. (See Ed. Code § 51746.)⁶ At the time, the court then noted the Resolution did not dictate who might be enrolled in the district as well as its schools.⁷

Petitioner’s evidence, however, proves otherwise. For example, if D.F. elects not to take the COVID-19 vaccine, he will be enrolled in a different school within the district—the City of Angels. D.F. will no longer be attending the Science Academy STEM magnet school; he will have to seek “enrollment in the District’s independent study program.” (Malhotra Decl., ¶ 66 (emphasis added). See also Baca Decl., ¶ 19.) According to district documentation, the City of Angels is an entirely different school. (G.F. Decl., Exs. R [“School Name” “City of Angels” with its own address] and S [school identification City of Angeles].) LAUSD’s informational guidance about City of Angels specifies City of Angels “will become [the student’s] new school.” (G.F.

⁵ The issues raised in the other action and argued in connection with the request for a preliminary injunction expressly did not focus on the sufficiency or the quality of LAUSD’s independent study program. The court then noted students without COVID-19 vaccinations would be entitled to “the same access to all existing services and resources in the school in which the pupil is enrolled . . . as is available to all other pupils in the school.” (Ed. Code § 51746.) The statute does not reference a school for independent study separate and distinct from the school the child is attending prior to receiving independent study. (See Yeomans Decl., Ex. P fn. 11.)

⁶ Department of Education regulations provide that “pupils . . . who choose to engage in independent study are to have the same access to existing services and resources as the other pupils . . . of the school in which the independent study pupil . . . is enrolled.” (Cal. Code Regs., tit. 5, § 11701.5, subd. (b).)

⁷ There is a distinction between the district and schools within the district. LAUSD focuses on a child remaining in the district while Petitioner focuses on D.F.’s ability to continue attending the school he has been attending. To be sure, students unvaccinated for COVID-19 will remain in the district. It is clear from the evidence, however, the students will not remain in their schools. While the district contends students have no right to choose the particular school they attend in the district, once a child has been enrolled in a particular school it appears the student has a right to continue his or her attendance at that school. (See Cal. Code Regs., tit. 17, § 6025, subd. (a).)

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Decl., Ex. Q.) The guidance distinguishes between the child’s “current school” or “current school of attendance” with “their new school.” (G.F. Decl., Ex. Q.)

Thus, while the Resolution is a campus community health and safety measure, it also dictates who may be enrolled and continue to attend particular schools within the district. Under the Resolution, if D.F. remains unvaccinated, he will be required to leave his current school with its curriculum and programs to be enrolled in a new school within the district, City of Angels, where it appears his curriculum would be very different than that at his current school. Thus, the Resolution is not merely about how education is delivered, or who may be physically present on campus as the court previously viewed it. Instead, the Resolution dictates which school D.F. may attend, and the curriculum he may continue to receive. For current students of the district, the Resolution thus regulates who may continue to attend a particular school within the district.

Do state law and the Resolution conflict?

Petitioner contends the Resolution is contradictory to Health and Safety Code sections 120335, subdivision (b) and 120370, subdivision (a)(3).⁸ Those provisions specify a school may not admit a student who has not been vaccinated with the Ten Vaccines or who has not provided a valid medical exemption. The statutes do not address the vaccine for COVID-19; the statutes are silent about COVID-19. The statutes dictate nothing more than the Ten Vaccines are required for admission to a school. The statutes indicate a student may not be admitted to a school unless the student has taken the Ten Vaccines; the Resolution makes no change to the state law—it actually augments it. The Resolution does not undermine Health and Safety Code sections 120335, subdivision (b) and 120370, subdivision (a)(3) and makes no change to the Ten Vaccines a student must receive to be enrolled in a school—the Resolution is not contradictory to the statutes relied upon by Petitioner.⁹

⁸ Petitioner does not contend the Resolution is duplicative of state law as no state law addresses the COVID-19 vaccine and schoolchildren.

⁹ That said, to the extent the Resolution requires proof of an immunization after being admitted to a school or after a student has advanced to the seventh grade, it is inconsistent and conflicts with applicable statutes. The law provides a district shall not admit any student to any school unless the student shows he or she has received the Ten Vaccines. The proof is required upon *admittance* to a school. Admission is defined in applicable regulations as “a pupil’s first attendance in a given public . . . school” (Cal. Code Regs., tit 17, § 6000.) After admitted to a school, the district cannot allow a student to advance to the seventh grade without proof of immunization. (Health & Saf. Code § 120370, subd. (a)(3).) Once a student has demonstrated on those two occasions (admittance and advancing to seventh grade) he or she has the required immunizations, there appears to be no authority that would allow the district require additional proof of immunization such that a student could be precluded by the district from “continued attendance” at his or her school. (Cal. Code Regs., tit. 17, § 6025, subd. (a).) In fact, Health and Safety Code section 120338 specifies CDPH may add a vaccine required “before a pupil’s first admission” to a school. The court notes D.F. has already advance beyond the seventh grade

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The Legislature has determined, however, for *other than* the Ten Vaccines—the vaccines specifically considered and adopted by the Legislature and not subject to personal belief exemptions—there must be personal belief exemption. The Legislature has declared the only vaccines not subject to a personal belief exemption are the Ten Vaccines. (See Health and Saf. Code § 120338 [additional immunizations beyond Ten Vaccines permitted “only if exemptions are allowed for both medical reasons and personal beliefs”].) Thus, the Resolution’s failure to allow personal belief exemptions is inimical to Health and Safety Code sections 120335, subdivision (b) and 120338. The Legislature determined the only vaccines for which no personal belief exemption is applicable are the Ten Vaccines.

Petitioner argues the Legislature has expressly manifested its intent to fully occupy the area of vaccines required for enrollment in school through Health and Safety Code section 49405. Petitioner’s argument, however, is unpersuasive because he relies on only part of the statute and takes that part out of context. Health and Safety Code section 49405 concerns smallpox vaccines only. It provides: “The control of smallpox is under the direction of the State Department of Health Services, and no rule or regulation on the subject of vaccination shall be adopted by school or local health authorities.” The court finds the prohibition on rules relating to vaccination are specific as to smallpox given the context.

Petitioner also contends the Legislature impliedly manifested its intent to fully occupy the area of vaccines required for enrollment and continued attendance in school. Petitioner argues “the statutory scheme demonstrates the Legislature’s intent to occupy the area. As is clear from the discussion herein, ‘the subject matter has become so fully and completely covered by general law’—right down to the exemption forms that must be used and the establishment of a state vaccination database—‘as to clearly indicate that it has become exclusively a matter of state concern.’ (*Sherwin-Williams, supra*, 4 Cal.4th at 898.)” The court agrees.

The court finds the vaccines required of schoolchildren for enrollment and continued attendance in school in this state has been so covered by statutes within the Health and Safety Code that the field has become exclusively a matter of state concern—the Legislature has created a comprehensive scheme concerning schoolchildren and immunizations. To the extent the Legislature has not fully covered the area, the extent of coverage indicates “a paramount state concern” for which local legislation cannot be tolerated. (*Sherwin-Williams, supra*, 4 Cal.4th at 905.)

Health and Safety Code section 120335, subdivision (b) governs the vaccines required by a student to be admitted to school.¹⁰ The Legislature did not limit the vaccines that could be required to attend school. The Legislature made provision to allow additional vaccines to be

seemingly beyond the time state law would allow D.F. to be precluded from continuing to attend his school based on a lack of immunization.

¹⁰ Title 17 of the California Code of Regulations at section 6025 specifies the vaccines are required for school admission or “continued attendance.”

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required for enrollment in school. The Legislature specified CDPH—a state agency—has the authority to require additional vaccines after considering the views of certain experts. (Health & Saf. Code § 120335, subd. (b)(11).) The Legislature impliedly did not intend to leave the issue open to local legislation—the Legislature specifically delegated authority to add additional vaccines to CDPH. Thus, the legislative provisions concerning required vaccinations for schoolchildren “are so extensive in their scope that they clearly show an intention by the Legislature to adopt a general scheme for the regulation of” them. (*In re Lane* (1962) 58 Cal.2d 99, 103.) The Legislature’s delegation to CDPH to add additional required vaccines indicates the Legislature’s intent that vaccines required for school attendance are exclusively a state concern.

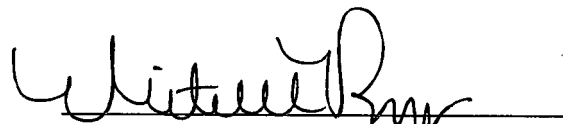
The Board’s authority is great but not unlimited. The Board’s authority to regulate does not extend to matters “in conflict with or inconsistent with, or preempted by, any law . . .” (Ed. Code § 35160.) The Legislature has declared vaccines required of schoolchildren other than the Ten Vaccines must be subject to exemption based on personal beliefs. That LAUSD’s resolution does not exempt the COVID-19 vaccine for personal beliefs is in direct conflict with Health and Safety Code section 120338. Additionally, the court finds based on the Legislature’s comprehensive scheme regulating required vaccines for schoolchildren and its delegation of authority to add required vaccines to a state agency, the Legislature has impliedly intended to preclude local legislation on a matter of state concern. Accordingly, the court finds there is a conflict between the Resolution and state law such that the Resolution is preempted and void. (See *O’Connell v. City of Stockton, supra*, 41 Cal.4th at 1065 [preemption voids local legislation].)

CONCLUSION

Based on the foregoing, the petition is granted.¹¹ While LAUSD argues the court’s ruling should apply to D.F. only, the court finds no justification for such a limitation given the Board’s lack of authority to adopt the Resolution.

IT IS SO ORDERED.

July 5, 2022


Hon. Mitchell Beckloff
Judge of the Superior Court

¹¹ Given the court’s conclusion the Resolution is preempted by state law, the court need not consider Petitioner’s other claim that LAUSD may not force D.F. into an independent study program.