



September 13, 2021

**VIA EMAIL & USPS**

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BOARD OF EDUCATION OF  
THE CITY OF LOS ANGELES  
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BOARD OF EDUCATION OF  
THE CITY OF LOS ANGELES  
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General Counsel  
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**RE: Board of Education Report No. 091-21/22, Proposed Resolution Requiring COVID-19 Vaccinations for Eligible Students – Cease and Desist**

Dear Mses. Gonez, Reilly, and Navera-Reed:

This letter is to inform you that the 6-0<sup>1</sup> vote taken by the Board of Education of the City of Los Angeles (“Board”) September 9, 2021 to pass the resolution to mandate COVID-19 vaccines for all students 12 years and older so that they might participate in in-person learning in the Los Angeles Unified School District (“LAUSD”) (hereinafter “the Resolution”) is illegal, unconstitutional and must be retracted by close of business Friday of this week. The Board is not authorized to mandate new immunizations to the K-12 schedule, let alone the currently-available COVID-19 vaccines, and must issue a statement specifically informing LAUSD parents and students of their right to choose.

**COVID-19 Vaccines Are Not Listed on the Current K-12 Immunization Schedule.**

California has a list of ten (10) childhood immunizations students are required to obtain at certain stages of their education in order to attend a private or public secondary or elementary school, child care center, day nursery, nursery school, family day care home, or development center. This list does *not* include COVID-19 vaccines. See Cal. Health & Safety Code §§ 120335(a)(1)-(10). Under Subsection 120335(a)(11), *the California Department of Public Health* (“CDPH”) may add new vaccines to this list; however, CDPH has not yet chosen to do so. As a result, the only immunizations required for students 12 years and older are as follows:

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<sup>1</sup> Board Member Scott Schmerelson recused himself due to financial ties to Pfizer Inc. This is another issue with the Resolution that we are investigating and will be addressing under separate cover shortly.



- (1) Diphtheria.
- (2) Hepatitis B.
- (3) Haemophilus influenzae type b.
- (4) Measles.
- (5) Mumps.
- (6) Pertussis (whooping cough).
- (7) Poliomyelitis.
- (8) Rubella.
- (9) Tetanus.
- (10) Varicella (chickenpox).

### **LAUSD Does Not Have Authority to Add Immunizations to the K-12 Schedule.**

There is no California law that grants individual schools or school districts the authority to unilaterally require additional vaccines to the K-12 immunization schedule in order for students to enjoy an in-person education, an education guaranteed to these students under Section 5, Article IX of the California Constitution.<sup>2</sup> This is likely why the Board failed to mention *any* such authority in its Board of Education Report No. 091-21/22, its comments during the meeting, or anywhere in the instant Resolution.

### **If New Vaccines Are Added to the Schedule, Medical and Personal Beliefs Exemptions Must Be Provided.**

Even if CDPH elected to add COVID-19 vaccine to the immunization schedule Section 120338 requires that both medical and personal belief exemptions be allowed. Any unilateral COVID-19 mandate that LAUSD purports to impose on its students is illegal, unconstitutional, and invalid on its face, but particularly so without allowance for medical and personal belief exemptions as required by applicable law.

### **COVID-19 Vaccines Cannot Be Mandated by *Any* Governmental Entity.**

While neither CDPH nor our state legislature has mandated COVID-19 vaccines for K-12 school attendance, no authority can do so while these vaccines are still under emergency use authorization (“EUA”).<sup>3</sup> The Emergency Use Authorization statute, 21

<sup>2</sup> Section 5 reads as follows: “Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established.”

<sup>3</sup> The FDA has not approved any of the COVID-19 shots currently available in the United States. On August 23, the FDA granted BioNTech Manufacturing GmbH’s Biologics Licensing Application to distribute the Comirnaty vaccine in the United States once certain conditions are met; however, the Comirnaty vaccine is not currently available in the United States and will not be until the supply of the Pfizer-BioNTech vaccine is first exhausted. [See https://www.fda.gov/media/151710/download](https://www.fda.gov/media/151710/download). The



U.S.C. 360bbb-3, explicitly states that anyone to whom an EUA product is administered must be informed of (1) “the option to accept or refuse administration of the product” and (2) the risks and benefits of it. See 21 U.S.C. 360bbb-3(e)(1)(A)(ii) (III).

Please note that, regardless of any *opinions* interpreting this provision to not mean that choice is required, these opinions contradict the plain, ordinary, and unambiguous language of the statute; undermine the plain, ordinary, and reasonable meaning of the provision; subvert four decades of interpretation and application of the statute requiring choice and prohibiting mandates (*see e.g. Doe #1 v. Rumsfeld* (2003) 297 F.Supp.2d 119); conflict with other provisions of the statute (e.g. 21 U.S.C. 360bbb-3(j)(1)); and are illogical, disingenuous, dangerous, and unethical.

### **Children Cannot Be Enrolled in Clinical Trials by *Any* Governmental Entity.**

When a product is not yet licensed or approved by the FDA, it is considered “investigational.”<sup>4</sup> This “investigational” status does not change, even if an EUA is granted.<sup>5</sup> Per the FDA, an investigational drug can also be called an “experimental drug”<sup>6</sup> and when an experimental drug is administered, it is the equivalent of entering the recipient into a clinical trial. Federal laws explicitly prohibit a child from being enrolled in the clinical trial of an “investigational” or “experimental” product without the parents’ express consent, and even then, only under certain conditions. A child cannot be entered into a clinical trial without express consent from their parents, and only if there is a benefit and a minimal risk to the child. 45 CFR 46.404, 45 CFR 46.408. Further, if there is a *greater than minimal* risk to the child, there must first be a “direct benefit” to that specific child, and any risk must be “as favorable as” those presented by alternative approaches. 45 CFR 46.405. Whereas, here, children have an undisputed 99.97% chance of surviving COVID-19, face serious threats of life-altering conditions and even death *from administration of the vaccine*, and have safe, alternative treatments available to them, this legal threshold cannot be met and these children cannot be forced to enroll in these medical trials, with or without their parents’ consent.

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Pfizer-BioNTech vaccine is currently available only under an EUA, which the FDA extended also on August 23, 2021. See <https://www.fda.gov/media/150386/download>.

<sup>4</sup> *COVID-19 Vaccine: Questions and Answers*, <https://www.niaid.nih.gov/diseases-conditions/covid-19-vaccine-faq> (“A vaccine available under emergency use authorization is still considered investigational.”) [as of September 13, 2021]

<sup>5</sup> *Ibid.* (“A vaccine available under emergency use authorization is still considered investigational.”)

<sup>6</sup> *Understanding the Regulatory Terminology of Potential Preventions and Treatment of COVID-19*, <https://www.fda.gov/consumers/consumer-updates/understanding-regulatory-terminology-potential-preventions-and-treatments-covid-19> [as of September 13, 2021]



**COVID-19 Vaccines Do Not Provide the “Strongest Protection to the Health and Safety of All Students and Staff in the LAUSD School Communities” and Actually Expose Community Members to Significant Risks of Injury and Even Death.**

The currently-available COVID-19 vaccines do not provide the “strongest protection” to the health and safety of the LAUSD community and actually expose its community – especially children 12 years and older – to serious risks:

1. They do not prevent transmission of SARS-CoV-2.
  - a. All the COVID-19 vaccine manufacturers’ materials state that the vaccine clinical trials’ endpoints were to *reduce hospitalization and death* by reducing symptoms. None of these vaccine products were analyzed for transmission or prevention of SARS-COV-2 infection.
  - b. The CDC has admitted that vaccinated persons can contract and transmit the currently predominant variant, Delta, at even higher viral loads than those who are not vaccinated, particularly those who have already naturally recovered from COVID-19.<sup>7</sup>
  - c. Since these shots do not prevent contraction or transmission, they are not traditional “vaccines” and are more akin to “medicine” used to reduce symptomology. LAUSD has never before taken it upon itself to mandate *medicine* for its community that exposes children in its care to serious risks of harm (see No. 3, below), let alone medicine that has not been approved by the FDA and is still in clinical trials. This is because doing so is not within its legal authority and would violate its community members’ federal and California constitutional rights to direct their health and medical care, and also, specifically in California, even to die.
2. They create an undetectable risk of indiscriminate transmission of SARS-CoV-2 since vaccinated individuals can transmit the virus with the same viral loads as unvaccinated individuals *without exhibiting symptoms*. We believe LAUSD already understands this, as it decided to test all LAUSD students and to follow the Los Angeles Public Health Department’s mandate that everyone mask indoors, regardless of vaccination status.
3. They cause life-threatening conditions in the children targeted by the mandate. It is unrefuted that the COVID-19 shots – *especially*, the Pfizer-BioNTech shot – cause myocarditis, pericarditis, and other life-threatening conditions that would otherwise not affect children of this age.<sup>8</sup>

<sup>7</sup> <https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html>

<sup>8</sup> *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*



- a. 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. (See No, 4, below).
4. Those who need to protect themselves against severe COVID or death can and have received the vaccine, mask themselves, and distance. Requiring a COVID-19 vaccine, especially to students in middle and high school who are at a higher risk of particular harms, is an unethical and unscientific way to use children as a shield to protect segments of the population who are able to protect themselves by masking, distancing, and vaccinating themselves.

#### **LAUSD Will Be Liable for Any Harms Suffered as a Result of Its Mandate.**

The Federal Public Readiness and Emergency Preparedness Act shields certain “covered entities” from liability caused by a “countermeasure” developed in response to a public health emergency.<sup>9</sup> “Covered entities” includes the developers, manufacturers, distributors, and administrators of the countermeasures; it does *not* include a school or school district. As a result, LAUSD and any school complying with the Resolution and mandating the experimental vaccines, *or even FDA-approved ones*, will be exposed to lawsuits and liability arising from any harms resulting therefrom.

We suggest that LAUSD discuss – and recommend that every school within its District contemplating adhering to the Resolution / mandate also discuss – the potential for exposure and liability with its general liability, workers compensation, and other applicable insurance policy providers.

#### **DEMAND FOR IMMEDIATE CEASE AND DESIST**

LAUSD lacks any authority to bypass existing California and federal laws and impose an experimental vaccine upon, and/or compel the children entrusted in its care to enroll a clinical trial as a condition to attending school. Therefore, **we hereby demand that by close of business (5:00 p.m. PST) Friday, September 17, 2021 LAUSD reverse its decision and make a public announcement, not only to its Community, but to the general public, providing the foregoing as the grounds for reversal.**

*risk from Pfizer jab side-effect than Covid, suggests study*, September 10, 2021  
[\[https://www.theguardian.com/world/2021/sep/10/boys-more-at-risk-from-pfizer-jab-side-effect-than-covid-suggests-study\]](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]

<sup>9</sup> <https://www.phe.gov/Preparedness/legal/prepact/Pages/default.aspx>



To the extent LAUSD fails or refuses to do so by that time, it will be met with swift legal action and face heavy fire in the court of law, courts of public opinion, and with the very individuals upon which its institution, funding, and salaries depend. We look forward to receiving your retraction promptly.

Very truly yours,

Nicole C. Pearson

Attorney for Children's Health Defense, CA Chapter

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