

Megan K Reilly, Superintendent
Kelly Gonez, Board President
Member of the LAUSD Board
Los Angeles Unified School District
333 South Beaudry Avenue
Los Angeles, CA 90017

RE: LAUSD's Lack of Authority to Mandate New Vaccine Requirements for School Attendance and violations of state, federal, and Constitutional law

Dear Superintendent Reilly, President Gonez, and Members of the LAUSD Board:

As a parent with a child in the Los Angeles Unified School District (LAUSD), I am hereby asserting my child's right to an in-person education as guaranteed by our California Constitution, free of any unlawful and coercive new vaccination requirements. LAUSD lacks legal authority to add any new vaccine requirement in order for my child to attend in-person school.

Specifically, despite your September 9, 2021 resolution and vote -- over the strenuous objection of thousands of LAUSD families -- under existing California law, the Board of LAUSD is not the proper authority to add a new vaccine to the childhood immunization schedule.

California Health & Safety Code Requirements for Adding New Vaccines

There is a list of ten childhood immunizations required in order for students to gain admittance to public schools in California at certain stages of their education, and this list does not include any COVID-19 vaccines. See Cal. Health & Safety Code § 120335(a)(1)-(10). Under California Health & Safety Code § 120335(a)(11), only the California Department of Public Health (the "Dept" or "CDPH") can add a new vaccine to this childhood immunization schedule, and at this time, the CDPH has not done so. No matter how eagerly the Board of LAUSD would like to impose a new vaccine on unwilling students, California law simply does not allow individual public schools or school districts like LAUSD to unilaterally decide which additional vaccines its students must take prior to being allowed to enjoy an in-person public education, an education guaranteed by our California Constitution, Article IX. Even the CDPH is expressly bound by statutory limitations on its authority to take measures to protect the spread of diseases as it can do so only when *necessary* and only if the measures actually work. See Cal. Health & Safety Code § 120140.

Moreover, even if the CDPH itself elected to mandate a COVID-19 vaccine under Section 120335(a)(11) for all relevant California public schools, California law also requires that both medical and personal belief exemptions be allowed. See Cal. Health

& Safety Code § 120338. Accordingly, any unilateral COVID-19 mandate that LAUSD purports to impose on its students, and particularly without allowance for medical and personal belief exemptions, is illegal under California law and is also unconstitutional on its face.

Federal Emergency Use Authorization Law Requires a Right to Refuse EUA Products and Experimental Medical Trials involving Children Require Parental Consent

In addition, while neither CDPH nor our state legislature has mandated any COVID-19 vaccine for public or private school attendance, neither authority can do so while the vaccines are still under emergency use authorization without express informed consent. 21 U.S.C. § 360-bbb-3 (the “EUA statute”). This EUA statute explicitly states that anyone to whom an EUA product is administered must be informed of the option to refuse the product, as well as the risks and benefits of receiving it. Although the FDA has purportedly approved one of the mRNA vaccines, in reality, the approved vaccine, the Pfizer Comirnaty vaccine, is not available or in widespread circulation in the United States. Instead, the only COVID-19 vaccines being offered to members of the public in California, including students 12 years of age or older, are still under emergency use authorization, including the Pfizer Biontech COVID-19 vaccine product. There is consequently no full FDA approval of *any* COVID-19 vaccine that is available for students of any age in California. In addition, all COVID-19 vaccines, including the Pfizer Comirnaty vaccine, remain authorized only under emergency use for ages 12-15, and thus no public entity can mandate such an experimental vaccine for students in that age range. If neither CDPH nor our state legislature can currently mandate these vaccines due to federal EUA law and federal pre-emption issues, clearly the Board of LAUSD cannot unilaterally mandate an experimental use COVID-19 vaccine for its students either.

EUA products are defined by federal law as experimental which means the administration of them is akin to entering one into a medical trial. It is important to point out that there are legal and regulatory requirements that must be adhered to prior to entering a minor into a medical trial. *Pointedly, a child cannot by law be entered into a medical trial unless there is a benefit.* Even if there is only a minimal risk to children, the regulations require that the parents expressly assent to the entry of their child into a medical trial. 45 CFR 46.404, 45 CFR 46.408. If there is a greater than minimal risk, which here there is the greatest risk of death, there must be a direct benefit and the risk must be as favorable as alternative approaches. 45 CFR 46.405. With an undisputed 99.97% recovery rate for children and existing alternative treatments available, this legal threshold cannot be met.

Unnecessary Liability for LAUSD for an Unnecessary Product

Finally, it should be noted that under the Federal Public Readiness and Emergency Preparedness (PREP) Act, all COVID-19 vaccine makers are provided immunity from liability for their products. However, LAUSD and any schools attempting to mandate an experimental use vaccine or even an FDA approved vaccine that such school lacks authority to mandate under our Health & Safety code will certainly open themselves up for lawsuits if a student is injured by an unlawfully mandated COVID-19 vaccine.

It is also unclear why LAUSD believes that mandating a COVID-19 vaccine will do anything to prevent the spread of COVID-19 on school grounds. While your misleading post-vote September 9 email to LAUSD families insists that “*the science is clear – vaccinations are an essential part of protection against COVID-19,*” the science is not clear at all. Instead, COVID-19 vaccines appear to be failing in significant measures around the globe. Highly vaccinated countries such as Israel and the United Kingdom are showing their own cases rising dramatically, with hospitals filling up with patients who are already fully vaccinated. Even the CDC is warning that boosters may soon be needed for U.S. consumers of these products, as more so-called “breakthrough cases” are discovered. It is unclear how LAUSD can be so blindly insistent of the benefits of a vaccine product at the same time numerous health authorities and media outlets around the globe are revealing these products to be unable to stop either transmission, infection, or even hospitalization or death. There is also the possibility that the vaccine products themselves are causing the variants, as numerous scientists have previously warned. As these COVID-19 vaccine products are still in their clinical trial stages, there is still much unknown about their benefits or potential long-term health risks.

Moreover, the delta variant is now alleged to be the dominant variant in California. The CDC has made it clear in recent weeks that vaccinated persons can transmit the delta variant and might even possess higher viral loads than those who were not vaccinated, particularly those who have already naturally recovered from COVID-19. Since none of the vaccine products were ever tested for or intended to prevent infection or transmission, and are not preventing either, choosing to get a COVID-19 vaccine must remain an individual and personal health choice, with individualized risk-benefit assessments.

There is no legitimate public health reason to mandate that healthy children take a product that is still in its experimental clinical trials and that could cause more harm than benefit to this age cohort. LAUSD has no place attempting to mandate a product that does not even satisfy a rational basis, let alone a compelling governmental interest, for intruding upon significant Constitutional protections and rights to privacy, due process of law, and equal protection under the law.

At this point, those who are vaccinated have presumably protected themselves against severe COVID or death. As numerous studies indicate, and public health authorities acknowledge, children are at little risk of developing severe COVID-19. Accordingly, requiring any COVID-19 vaccine, especially among student populations in middle and

high school, for a product that does not even prevent transmission to others, is not the answer, and it appears to be an unethical and unscientific way to use children as a shield to protect segments of the adult population who do not actually understand the limitations of these vaccine products, and who have their own option to be vaccinated in any case.

In conclusion, LAUSD lacks any legal authority to bypass our existing state and federal laws and impose a new experimental vaccine as a condition to attending school. Accordingly, my child will not be taking an experimental COVID-19 vaccine product in order to be allowed to attend in-person education within LAUSD, as he/she already has a Constitutional right to attend without such unlawful and coercive vaccination conditions attached.

Any attempts to prevent my child from exercising his/her basic Constitutional rights to an in-person public education in California will be met with prompt legal action.

Sincerely,