



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
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LEGAL UPDATE

May 26, 2016

To: Superintendents, Member School Districts (K-12)
**From: Jennifer E. Nix ^{JEN}
Assistant General Counsel**
**Subject: SB 277 and Immunization of Special Education Students
Memo No. 17-2016**

On June 30, 2015, Governor Jerry Brown signed Senate Bill (SB) 277 into law. SB 277 eliminated the personal belief exemption that allowed parents or guardians to opt out of immunizations for certain infectious diseases before admission to any private or public elementary or secondary school or daycare center.

SB 277 amended Section 120335(h) of the Health and Safety Code to read:

This section does not prohibit a pupil who qualifies for an individualized education program, pursuant to federal law and Section 56026 of the Education Code, from accessing any special education and related services required by his or her individualized education program.

The California Department of Public Health, Immunization Branch, on its “Shots for School” website (www.shotsforschool.org), stated the following:

Students who have an individualized education program (IEP) should continue to receive all necessary services identified in their IEP regardless of their vaccination status.

However, parents or guardians must continue to provide immunization records for these students to their schools, and schools must continue to maintain and report records of immunizations that have been received for these students.

The California Department of Education has stated that it will not be giving guidance on how to interpret this provision.

If a school district allows a special education student to attend school and receive special education and general education services in accordance with the student’s



IEP, our office is recommending that school districts not require students receiving special education and related services to comply with the required immunizations in order to access their special education and related services to which they are legally entitled, including instruction in general education classrooms.

However, because these students are not exempt from the law, our office recommends sending out two letters to the parents of non-immunized special education students who are required to comply with the immunization requirements¹: (1) one letter at the beginning of the school year informing parents that special education students are not exempt from the immunization requirements; and (2) monthly letters thereafter reminding parents of this fact. Sample language for both letters is provided as attachments to this Legal Update.

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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¹ Any student with a personal-belief exemption filed by December 31, 2015, is permitted to rely on that exemption until he or she enters the next grade span (kindergarten to 6th grade; 7th grade to 12th grade).

Initial Letter

Dear Parent/s:

Pursuant to Senate Bill 277, all students entering kindergarten (including transitional kindergarten) in the District or advancing from sixth to seventh grade in the District are required to comply with the immunization requirements of Health and Safety Code Section 120335(b). Additionally, all students newly enrolling in the District without a copy of a personal-belief exemption on file with another school in California prior to December 31, 2015, are required to comply with the immunization requirements of Section 120335(b). The only exemption to this requirement is if the student provides the District with a valid exemption from a licensed physician.

Our records indicate that you have not provided information showing that your student has met the immunization requirements in Section 120335(b). Please contact us if this is in error. However, our records also indicate that your student is a student entitled to special education and related services under the Individuals with Disabilities Education Act. Section 120335(h) of the Health and Safety Code and the California Department of Public Health have indicated that special education students should continue to receive all necessary services identified in their IEP regardless of vaccination status. Accordingly, the District will permit your student to continue to attend school despite not being in compliance with the immunization law.

However, the law requires parents and guardians to continue to provide immunization records for special education students to their schools, and schools are required to maintain and report records of immunizations that have been received for special education students. Special education students are not exempt from the immunization requirements of Section 120335(b).

Furthermore, because your student has not been fully immunized in accordance with the law, he or she may be unilaterally excluded from school if we believe that he or she has been exposed to one of the following diseases: (1) Diphtheria; (2) Haemophilus influenza type b; (3) Measles; (4) Mumps; (5) Pertussis (whooping cough); (6) Poliomyelitis; (7) Rubella; (8) Tetanus; (9) Hepatitis B; (10) Varicella (chickenpox); and (11) Any other disease deemed appropriate by the Department of Health and Human Services. If such an event were to occur, your student would not be permitted to return to school until the local health officer determined that the student was no longer at risk for transmitting the disease. In addition, the local health officer may order that your student be excluded for a period of time if there is a local outbreak of a contagious disease.

Please provide us with the immunization records for your student as soon as practicable, and please contact the District if you have any questions about this letter.

Monthly Letter

Dear Parent/s:

As you were previously informed, your student is required to comply with the immunization requirements of Health and Safety Code Section 120335(b). Our records indicate that you have not provided information showing that your student has met the immunization requirements in Section 120335(b). Please contact us if this is in error. However, our records also indicate that your student is a student entitled to special education and related services under the Individuals with Disabilities Education Act. Section 120335(h) of the Health and Safety Code and the California Department of Public Health have indicated that special education students should continue to receive all necessary services identified in their IEP regardless of vaccination status. Accordingly, the District will permit your student to continue to attend school despite not being in compliance with the immunization law.

However, the law requires parents and guardians to continue to provide immunization records for special education students to their schools, and schools are required to maintain and report records of immunizations that have been received for special education students. Special education students are not exempt from the immunization requirements of Section 120335(b).

Furthermore, because your student has not been fully immunized in accordance with the law, he or she may be unilaterally excluded from school if we believe that he or she has been exposed to one of the following diseases: (1) Diphtheria; (2) Haemophilus influenza type b; (3) Measles; (4) Mumps; (5) Pertussis (whooping cough); (6) Poliomyelitis; (7) Rubella; (8) Tetanus; (9) Hepatitis B; (10) Varicella (chickenpox); and (11) Any other disease deemed appropriate by the Department of Health and Human Services. If such an event were to occur, your student would not be permitted to return to school until the local health officer determined that the student was no longer at risk for transmitting the disease. In addition, the local health officer may order that your student be excluded for a period of time if there is a local outbreak of a contagious disease.

Please provide us with the immunization records for your student as soon as practicable, and please contact the District if you have any questions about this letter.