

CHILDREN'S HEALTH DEFENSE v. LOS ANGELES UNIFIED SCHOOL DISTRICT

Case Number: 21STCP03429

Hearing Date: December 8, 2021

FILED
Superior Court of California
County of Los Angeles

DEC 13 2021

Sherri R. Carter, Executive Officer/Clerk of Court

By: F. Becerra, Jr., Deputy

ORDER DENYING REQUEST FOR PRELIMINARY INJUNCTION

Petitioners, Children's Health Defense-California Chapter and Protection of the Educational Rights of Kids, seek to enjoin Respondents, Los Angeles Unified School District (LAUSD), LAUSD Superintendent Megan Reilly and all members of the Board of Education for LAUSD,¹ from implementing and enforcing 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) during the pendency of this litigation.

Respondents oppose the motion.

The request for a preliminary injunction is DENIED.

Respondents' unopposed request for judicial notice (RJN) of Exhibits A through E is granted. Petitioners' unopposed RJN of Exhibits A and B (filed in reply) is granted.

Respondents' request for a continuance to address evidence submitted in reply by Petitioners is denied.

Respondents' Evidentiary Objections

Crane Declaration: Objections 1, 2 and 8 are overruled. The remaining objections are sustained.

Sandler Declaration: All objections are sustained except objection 12 which is overruled.

Knoll Declaration: All objections are sustained except objection 7 which is overruled.

Spinola Declaration: Objections 1, 2 and 5 as to "I believe . . . for children" are overruled. The remaining objections are sustained.

Fisher Declaration: All objections are sustained.

I.M. Declaration: All objections are sustained except objection 4 which is overruled.

¹ Included as respondents as members of the Board of Education for LAUSD are George Mckenna, Monica Garcia, Scott Schmerelson, Nick Melvoin, Jackie Goldberg, Kelly Gonez, and Tanya Ortiz Franklin.

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Banuelos Declaration: Objections 6, 7 and 9 are sustained. The remaining objections are overruled.

Pearson Declaration: Both objections are sustained.

Petitioners' Evidentiary Objections

Maholtra Declaration: Objections 1, 4, 6, 7, 13, 14, 15, 16 and 19 are overruled. The remaining objections are sustained.

(As discussed at the time of hearing, the court overruled Petitioners' objection to the entire declaration as lacking foundation because Smita Malhotra attests she is a medical doctor and the Medical Director for LAUSD. Malhotra provides leadership to the district "for Public Health Emergency Preparedness and Response, including the District's response to the COVID-19 pandemic." [Maholtra Decl., ¶ 2.] The court considered Maholtra's testimony and the objections thereto in that context—a medical doctor responsible for LAUSD's response to public health emergencies.)

Evans Declaration: All objections are overruled except objection 20 which is sustained.

Baca Declaration: All objections are overruled except objection 25 which is sustained.

Additional Evidentiary Objections

Respondents' objection to the entirety of the 574-page amended Pearson declaration is sustained. Given the circumstances of this case, the court declines to consider the late filed evidence. As noted by Petitioners, they are seeking a preliminary injunction based on a "narrow legal issue" concerning Respondents' authority to approve and adopt the Resolution. The court does not intend to expand the request for a preliminary injunction to issues not raised by Petitioners in their moving papers.

Respondents' objection to the declarations of Barke, Rose, Ledbetter, Ragland, Fleming and Rogers filed by Petitioners in reply is sustained. Given the circumstances of this case, the court declines to consider the late filed evidence.

Petitioners' objection to Respondents' late filed evidence is sustained. Given the circumstances of the case, the court declines to consider the late filed evidence.

LEGAL STANDARD

The standards governing a preliminary injunction are well known. "[A] court will deny a preliminary injunction unless there is a reasonable probability that the plaintiff will be successful on the merits, but the granting of a preliminary injunction does not amount to an adjudication of the merits." (*Beehan v. Lido Isle Community Assn.* (1977) 70 Cal.App.3d 858,

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866.) “The function of a preliminary injunction is the preservation of the status quo until a final determination of the merits.” (*Ibid.*)

As the parties recognize, “Trial courts traditionally consider and weigh two factors in determining whether to issue a preliminary injunction. They are (1) how likely it is that the moving party will prevail on the merits, and (2) the relative harm the parties will suffer in the interim due to the issuance or nonissuance of the injunction.” (*Dodge, Warren & Peters Ins. Services, Inc. v. Riley* (2003) 105 Cal.App.4th 1414, 1420.) “[T]he greater the . . . showing on one, the less must be shown on the other to support an injunction.” (*Ibid.* [quoting *Butt v. State of California*, (1992) 4 Cal.4th 668, 678].) The burden of proof is on the plaintiff as the moving party “to show all elements necessary to support issuance of a preliminary injunction.” (*O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1481.)

Preliminary injunctive relief requires the use of competent evidence to create a sufficient factual showing on the grounds for relief. (See e.g., *Ancora-Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146, 150.) A plaintiff seeking injunctive relief must also show the absence of adequate damages remedy at law. (Code Civ. Proc. § 526, subd. (a)(4).)

A preliminary injunction ordinarily cannot take effect unless and until the plaintiff provides an undertaking for damages which the enjoined defendant may sustain by reason of the injunction if the court finally decides that the plaintiff was not entitled to the injunction. (See Code Civ. Proc. § 529, subd. (a); *City of South San Francisco v. Cypress Lawn Cemetery Assn.* (1992) 11 Cal. App. 4th 916, 920.)

ANALYSIS

After only a single day of notice to parents and guardians, on September 9, 2021, at a special meeting of the Board of Education for LAUSD, LAUSD approved and adopted 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.’ RJN Ex. A, [Resolution] p. 3.) 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.’ RJN Ex. A, [Resolution] p. 3.) Any child 12 years of age or older who does not provide proof of vaccination against COVID-19 as of January 10, 2022 will be excluded from campus. (Resp’s.’ RJN Ex. A, [Resolution] p. 3.; Malhotra Decl., ¶ 45.)

To be clear, the Resolution does not mandate children over the age of 12 be vaccinated. Instead, the Resolution physically excludes from campus—for in-person learning and extracurricular activities—children over the age of 12 who have not been vaccinated against COVID-19. The Resolution does not permit LAUSD to refuse enrollment or require disenrollment of any child. (Malhotra Decl., ¶ 43.) Moreover, all children—regardless of vaccination status—who are foster youth, unhoused, migrants, of a military family and/or with an individualized education plan are provided access to a school campus. (Malhotra Decl., ¶ 48.)

Those children over the age of 12 who are not vaccinated against COVID-19 will “remain fully enrolled in [LAUSD] and will be offered [LAUSD’s] independent study program.” (Maholtra Decl., ¶ 49.) (See Ed. Code § 51745 [independent study].) Thus, all students admitted to the district will receive educational services without regard to COVID-19 vaccination status.

Likelihood of Success on the Merits:

Through this action, Petitioners seek an order compelling Respondents to set aside their approval and adoption of the Resolution. Petitioners challenge the authority of LAUSD to approve and adopt the Resolution. Petitioners recognize they present a “narrow legal issue” to the court. (Petitioners’ Response to Respondents’ Objections filed 12-6-21.) Petitioners argue they are entitled to such relief on the following grounds:

- LAUSD is not the proper agency to add a new disease to those for which an immunization is required for enrollment in school² under Health and Safety Code sections 120335 (Section 120335) and 120370;
- The California Department of Public Health (CDPH) did not delegate its authority to designate COVID-19 as a disease requiring immunization for school enrollment;
- Even assuming CDPH did designate its authority set forth in Section 120335, LAUSD failed to comply with applicable statutory rulemaking requirements; and
- LAUSD lacked jurisdiction “to add a new vaccine as a condition for in-person education because [its] actions are in direct conflict with, inconsistent with, and preempted by existing state and federal laws.” (Motion 2:9-16.)

By way of background, Health and Safety Code section 120370 provides a person shall not be admitted or readmitted to school unless he/she “has been immunized pursuant to Section 120335 or the parent or guardian files a medical exemption form” (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. (§ 120335, subd. (b)(1)-(10).) Presently, COVID-19 is not included as a disease for which an immunization is required for admission or readmission to school.

As a preliminary matter, Petitioners’ position LAUSD does not have the authority to designate a disease for which immunization is required for admission (or readmission) to school may be correct. It appears LAUSD cannot effectively amend Section 120335, a state statute, for application only to persons within its district. Instead, Section 120335, subdivision (b)(11) constitutes a delegation of legislative authority to CDPH to designate diseases (beyond those 10 designated by the Legislature) as requiring immunization for admission (or readmission) to school. The delegation of authority to CDPH is not unfettered as the Legislature has conditioned

² For ease of reference herein, the court’s reference to “school” is to kindergarten through 12th grades.

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the authority in part.³ Moreover, it appears nothing in the delegation of authority suggests the delegation extends to school districts like LAUSD.⁴ The court, however, need not decide (and does not decide) the issue today.⁵

Nonetheless and despite Petitioners’ claims to the contrary, the Resolution does not designate COVID-19 as a disease for which immunization is required before a person may be admitted or readmitted to school. Instead, the Resolution is a campus community health and safety measure that addresses LAUSD’s methods of instruction and student participation. Nothing in

³ For example, any immunization rule CDPH makes pursuant to Section 120335, subdivision (b)(11) must provide an exemption for “medical reasons and personal beliefs.” (Health & Saf. Code § 120338.) CDPH’s rulemaking must also consider “the recommendations of the Advisory Committee on Immunization Practices [ACIP] of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.” (Section 120335, subd. (b)(11). That CDPH’s rulemaking pursuant to this legislative delegation would be robust is reflected in the legislative history of Section 120335. The ACIP, for example,

“consists of 15 experts who are voting members and are responsible for making vaccine recommendations. The Secretary of the U.S. Department of Health and Human Services selects these members after an application, interview, and nomination process. Fourteen of the members have expertise in vaccinology, immunology, pediatrics, internal medicine, nursing, family medicine, virology, public health, infectious diseases, and/or preventive medicine; one member is a consumer representative who provides perspectives on the social and community aspects of vaccination. ACIP develops written recommendations for the routine administration of vaccines to pediatric and adult populations, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines and is the only entity within the federal government which makes such recommendations. The overall goals of ACIP are to provide advice to assist in reducing the incidence of vaccine-preventable diseases and to increase the safe usage of vaccines and related biological products.” (Cal. Committee Report, 2015 CA S.B. 277 [June 26, 2015].)

⁴ If mere legislative silence suggests LAUSD is free to designate a disease for which an immunization is required, arguably the same silence would suggest LAUSD is not bound by the legislative conditions attached to CDPH’s delegation of authority. Such a scenario appears unlikely.

⁵ During argument, LAUSD made clear it is not relying on Section 120335 as authority for the Resolution. LAUSD explains its does not need such authority because its Resolution does not require a COVID-19 vaccination for admission and enrollment in the district. Instead, whether a student is vaccinated dictates where the student’s learning will occur. Those who are vaccinated will receive in-person learning on campus. Those who are not vaccinated will receive their education through the district’s independent study program.

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the Resolution authorizes LAUSD to deny admission to the district (or discontinue enrollment in school) because the student has not been vaccinated against COVID-19.

As noted by Respondents, LAUSD's legislative authority extends to approval and adoption of the Resolution: 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.)

Education Code section 35160 states:⁶

"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."⁷

⁶ Article IX, section 14 of the California Constitution authorized the broad grant of authority. The California Constitution provides:

"The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established."

⁷ Education Code section 35160.1 also specifies:

"(a) The Legislature finds and declares that school districts, county boards of education, and county superintendents of schools have diverse needs unique to their individual communities and programs. Moreover, in addressing their needs, common as well as unique, school districts, county boards of education, and county superintendents of schools should have the flexibility to create their own unique solutions.

(b) In enacting Section 35160, it is the intent of the Legislature to give school districts, county boards of education, and county superintendents of schools broad authority to carry on activities and programs, including the expenditure of funds for programs and activities which, in the determination of the governing board of the school district, the county board of education, or the county superintendent of schools are necessary or desirable in meeting their needs and are not inconsistent with the purposes for which the funds were appropriated. It is the intent of the Legislature that Section 35160 be liberally construed to effect this objective."

Thus, 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.) The court finds the Resolution is neither preempted by state law nor in conflict with the purposes for which the Legislature established school districts.

It is well-settled that local legislation that conflicts with state law is preempted by such law and is void. (*Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897.) “A conflict exists if the local legislation duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.” (*Ibid.*) “Absent a clear showing that the Legislature intended to preempt the field, we will not find that general laws preempt local ordinances.” (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1149.)⁸

Health and Safety Code sections 120370, subdivision (a)(3) and 120335 instruct school districts on who may be admitted and readmitted to school based on immunization status. The sections require a person be immunized against 10 different diseases prior to the school district admitting (or readmitting) the person as a student. Thus, the statutes concern whether a person may be admitted in a school district for compulsory education.⁹ The statutes do not address a method of instruction such as “in-person learning” or who may be physically present on a school campus.

In contrast to the applicable statutes, the Resolution’s focus is different and distinct. The Resolution does not speak to admission or readmission to school. Unlike Health and Safety Code sections 120370, subdivision (a)(3) and 120335, the Resolution is silent about who may be admitted to the district. The Resolution does not purport to dictate who may be enrolled within the district. Additionally, LAUSD has not interpreted the Resolution as a direction on district admission. (Maholtra Decl., ¶ 43.)

Section 120335, subdivision (f) does not change the statutory conflict analysis. Section 120335, subdivision (f) provides that immunizations required for *admission* to a district are not required for “a pupil in a home-based private school or a pupil who is enrolled in an independent study program . . . and does not receive classroom-based instruction.” (§ 120335, subd. (f).) The subdivision governs admission to the district without proof of any required immunizations.

⁸ Our Supreme Court has “been particularly ‘reluctant to infer legislative intent to preempt a field covered by municipal regulation when there is a significant local interest to be served that may differ from one locality to another.’ [Citations.] ‘The common thread of the cases is that if there is a significant local interest to be served which may differ from one locality to another than the presumption favors the validity of the local ordinance against an attack of state preemption.’ [Citations.]” (*Ibid.*)

⁹ In California, “[e]ach person between the ages of 6 and 19 years . . . is subject to full-time compulsory education.” (Ed. Code § 48200.) The state is required to provide “free” schools for that compulsory education. (See Cal. Const., art. 9, § 5.)

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Admission to the district is required before a child may receive any services from that district. LAUSD's Resolution does not address admission to the district; it concerns whether an admitted student may access an LAUSD campus. Section 120335, subdivision (f) does not address a student's physical presence on a campus.

According to Respondents, the Resolution operates as a campus community health and safety measure. The Resolution provides protection for "its educational ecosystem." (Opposition 15:27.) It addresses the district's obligation to provide a safe school environment for its students.

The Board of Education for LAUSD made extensive findings to support the Resolution.¹⁰ (Resp's.' RJN Ex. A, [Resolution] pp. 1-2.) The findings include the country and state's recognition of a "life-threatening pandemic caused by the COVID-19 virus," "increasing rates of COVID-19 cases among school age children," a disproportionately rising rate of hospitalization for children, the possibility of long-term symptoms from COVID-19, "a material threat to the health and safety of all students within the LAUSD community" from COVID-19, the "further threat to the successful return to continuous in-person instruction" from COVID-19, the effectiveness and safety of COVID-19 vaccines and the need for "multi-layered safety measures . . . to mitigate the spread of COVID-19 in the school community." (Resp's.' RJN Ex. A, [Resolution] pp. 1-2.)

The grant of authority to LAUSD through Education Code section 35160—which the Legislature instructs to interpret broadly—permits LAUSD to adopt measures about the delivery of educational services such as the method of instruction and student program participation. LAUSD has a constitutional mandate to provide a safe and peaceful campus for its students and staff. (See Cal. Const., art. 1, § 28, subds. (a)(7) and (f)(1).) LAUSD is therefore permitted to take action to protect the health and safety of all of its students and staff.

Importantly, on the issue of statutory conflict, the Resolution does not exclude any person from admission to the district. Instead, the Resolution instructs on the method of instruction for certain students—how educational services are delivered—and who may be physically present on a LAUSD campus. Notwithstanding the Resolution, each LAUSD student will receive legally required instruction. The Resolution does not deny a public education or educational services to any student who is not vaccinated against COVID-19. Instead, unvaccinated students will be limited to participating in off-campus independent study.¹¹ (Ed. Code § 51745, subd. (a).)

¹⁰ As noted by Petitioners, the issue of whether LAUSD's approval and adoption of the Resolution was an abuse of discretion is raised by the petition but not this motion. (Petitioners' Response to Respondents Objections filed 12-6-21.)

¹¹ As presently styled, the petition does not challenge the *sufficiency* of LAUSD's independent study program. (Counsel conceded as much during the hearing.) Accordingly, that issue is not before the court. Nonetheless, it became clear during argument Petitioners take issue with the quality of LAUSD's independent study program. ("It is why we're here today, because these types of remote learning programs [are] so detrimental to these children.") Petitioners argue

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Petitioners note “when the state Legislature has spoken on a particular issue, local governments are not at liberty to take a conflicting course of action.” (Motion 11:15-17 [quoting *Costa Mesa City Employees Assn. v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 310].) Petitioners have failed to identify a state law that conflicts with the Resolution which merely exercises LAUSD’s broad powers of management of its campus and the manner of its instruction. Health and Safety Codes sections 120325 through 120480 do not address a school district’s manner of instruction or student participation. The Legislature instructs that school districts “should have the flexibility to create their own unique solutions.” (Ed. Code § 35160.1.) The Resolution is Respondents’ health and safety policy decision tailored to the entire LAUSD community.

Finally, in a series of largely undeveloped arguments that are unaddressed in reply, Petitioners assert the Resolution conflicts with other various laws. Petitioners argue the Resolution conflicts with numerous Health and Safety Code provisions, the Food and Drug Act’s emergency use authorization (EUA), federal and state educational laws, California’s law against human experimentation without informed consent, and an “announcement” by Governor Newsome.

The court finds Respondents’ arguments opposing the various claims persuasive. The court nonetheless addresses them for completeness.

LAUSD’s independent study has less opportunity for students compared to in-person learning. Petitioners argue LAUSD’s independent study program has no provision for advanced placement classes, dual language classes and does not provide any extra-curricular activities such as music, theater and sports. Petitioners also argue LAUSD’s independent study program limits actual teacher instruction to one hour per week, is understaffed and incapable of absorbing a significant influx of students in January 2022 who have elected not to obtain a COVID-19 vaccination. While the allegations are concerning in the context of the Resolution, the comparative educational quality of LAUSD’s in-person learning and its independent study program is not before the court in this action. That the court has no evidence (only counsels’ argument) about LAUSD’s independent study program demonstrates the particular issue is not before the court. During argument, LAUSD disputed Petitioners’ characterization of its independent study program. To be sure, the law is clear, students participating in an independent study program are 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.) Finally, while not raised in their moving papers, Petitioners argued Education Code section 51747, subdivision (c)(7) provides no student may be *compelled* to participate in an independent study program—they must consent. The court notes, however, Education Code section 51747 speaks to *funding* for the district. The statute provides the district “shall not be eligible to receive apportionments for independent study by pupils” unless the district’s policies make participation in an independent study voluntary. Thus, to the extent a student does not volunteer to participate in an independent study program, it appears the state may not be required to fund that student’s education.

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As the Resolution does not compel vaccination (Malhotra Decl., ¶ 39), issues raised by the Food and Drug Act's EUA, the Protection of Human Subjects in Medical Experimentation Act (Health & Safety Code sections 24170 *et. seq.*) as well as the Department of Human Services' Protection of Human Subjects – Additional Protections for Children Involved as Subjects in Research (45 C.F.R. § 46.404 *et seq.*) are not implicated. Moreover, the Food and Drug Act claim exceeds the scope of the petition and therefore is not properly before the court. Petitioners have also not demonstrated any private right of action based on the Food and Drug Act. (See *Pacific Trading Co. v. Wilson & Co., Inc.* (7th Cir. 1976) 547 F.2d 367, 370.)

Petitioners' claims related to the Individuals with Disabilities Act and the provision for services to those students with individualized educational plans (§ 120335, subd. (h)), are not within the scope of their petition. Moreover, the generalized complaint—without a specific context for a dispute—does not demonstrate a conflict or inconsistency with the Resolution.

To the extent Petitioners rely on Governor Newsome's "announcement" about possible future actions by the CDPH, speculation about some intended future action by CDPH does not inform on the validity of the Resolution. It certainly does not establish inconsistency or conflict.

Based on the foregoing, the court finds Petitioners have not demonstrated a likelihood of success on the merits of their claims. That LAUSD did not add a disease for which an immunization is required for admission or readmission to school in the district eliminates Petitioners' claims based on a lack of authority and/or a failure to comply with the statutory requirements for rulemaking. Additionally, Petitioner has also failed to identify any state statute conflicting with the Resolution adopted under Education Code section 35160.

Balancing the Harms:

The second part of the preliminary injunction analysis requires the court to evaluate the harm Petitioners are likely to sustain if the preliminary injunction is denied compared to the harm the Respondents are likely to suffer if the injunction is issued. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70.) "However, '[a] trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the [Petitioners] would ultimately prevail on the merits of the claim.'" (*Law School Admission Council, Inc. v. State of California* (2014) 222 Cal.App.4th 1265, 1280 [quoting *Butt v. State of California* (1992) 4 Cal.4th at 678].)

Additionally, "public policy considerations also come into play" where the defendant is a public agency and the plaintiff "seeks to restrain [it] in the performance of [its] duties." (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1471.) "There is a general rule against enjoining public officers or agencies from performing their duties. . . . This rule would not preclude a court from enjoining unconstitutional or void acts, but to support a request for such relief the plaintiff must make a significant showing of irreparable injury." (*Ibid.*)

Petitioners seek a prohibitory injunction. They seek to enjoin Respondents from excluding any student from a LAUSD campus based upon COVID-19 vaccination status.

Petitioners contend without a preliminary injunction “students will have either been coerced to receive a vaccine against their free will, been deprived of superior in-person learning, and otherwise lost access to critical in-person services, opportunities, and benefits.” (Motion 2:25-28.) Petitioners assert the Resolution “has already caused significant academic, emotional, psychological, and physical harm to LAUSD students who do not wish to submit to the [Resolution], including but not limited to suicidal thoughts, attempts, threats, and deaths; self-harm; eating disorders; anxiety, depression, fear, sadness, despair; learning loss; and lost academic and athletic opportunities, including scholarships and internships.” (Motion 15:11-15.) In large part, Petitioners’ claims of harm rely on generalized inadmissible evidence that has been excluded by the court.

Petitioners also claim unvaccinated students “have been excluded from important academic affiliations and athletics; denied medical treatment, counseling, tutoring, and others therapies; left unattended and endangered; and even denied critical, guaranteed IEP services.” (Motion 15:16-23 [citing J.K. Decl., ¶¶ 19-22; M.C., Decl., ¶¶ 9, 18, 21; I.M. Decl., ¶¶ 13-16, 22-30; Banuelos Decl., ¶¶ 4-40; Landivar Decl., ¶¶ 8-36; Knoll Decl. ¶¶ 8-27].) The cited evidence, however, does not actually support such claims. Similarly, Petitioners’ claims about the health risks associated with the COVID-19 vaccine are not supported by admissible evidence; nor are claims based on the vaccine’s creation.

Petitioner argues the injunction will harm the families of certain students by forcing parents to either have their children submit to the COVID-19 vaccine which they believe poses a health risk to children or to deprive children of in-person learning.¹² Of course, there can be no dispute parents of some students will be forced to make a difficult choice for a child because of the Resolution.

Respondents submit evidence that enjoining LAUSD’s implementation of the Resolution would threaten severe educational disruption to LAUSD’s schools and its staff and students in the form of missed school due to sickness and/or quarantine and, in more severe cases, classroom or school closures. (Malhotra Decl., ¶ 27; Baca Decl., ¶¶ 7-11.) Further, this educational interruption burden is borne by LAUSD, who is responsible for ensuring quarantined students are continuing to receive educational instruction remotely during quarantine and sickness. According to the evidence, quarantines have a serious impact on the health of students and the educational process. (Malhotra Decl., ¶¶ 27; Baca Decl., ¶¶ 9-11.) Moreover, the potential disruptions interfere with the stability of LAUSD’s educational program for nearly 50,000 students and reduce funding available to district schools which is based on student attendance. (Baca Decl., ¶¶ 11-12.)

¹² Petitioners suggest other options for parents are limited to instituting a homeschooling program or moving to a state without a vaccine requirement for in-person learning. (Motion 5:22-26.)

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Respondents also provide some evidence of ongoing COVID-19 infections in the 2021-2022 school year. From August 2, 2021 through August 15, 2021, 3,255 students and 399 staff tested positive for COVID-19. (Maholtra Decl., ¶ 26.) Positive test results cause quarantine for those students testing positive as well as those students who have been in close contact for up to 10 days.¹³ (Maholtra Decl., ¶ 27.)

For the first time in reply, Petitioners improperly submit extensive new evidence purporting to compare COVID-19 vaccine safety with the risk of harm to children from COVID-19. The evidence is not properly before the court as reply evidence, and the submission deprived Respondents of any ability to meaningfully respond. The court has sustained Respondents' objection to the evidence and has excluded it.¹⁴

Nonetheless, the court notes Petitioners' reply evidence labels LAUSD's independent study program "subpar." (Pearson Decl., ¶10, Ex. G; Ragland Decl., ¶¶ 3-47, Exs. A, B.) As noted earlier and discussed during the hearing, whether and to what extent, if at all, LAUSD's independent study program in practice complies with state law is not before the court and has not been raised by the petition. Moreover, based on Respondents' objection, the court has excluded the late-filed evidence.

As noted earlier, "[a] trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the [Petitioners] would ultimately prevail on the merits of the claim." (*Law School Admission Council, Inc. v. State of California*, *supra*, 222 Cal.App.4th at 1280.) Moreover, as Petitioners seek to enjoin a public entity from performing a duty, Petitioners must make a "significant showing of irreparable injury." (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.*, *supra*, 23 Cal.App.4th at 1471.)

¹³ Respondents report a study by the City of Los Angeles from July 2021 "found that unvaccinated individuals have 5 times more COVID-19 infections than fully vaccinated individuals and 29 times more COVID-19 related hospitalizations." (Maholtra Decl., ¶ 28.) The court sustained Petitioners' evidentiary objection to the statement. Additionally, the court sustained an evidentiary objection to Maholtra's attestations concerning the infection rates of children. (Maholtra Decl., ¶ 29.)

¹⁴ As to the new evidence submitted by Petitioners in reply, even though the court has excluded it from consideration, the court questions the foundation for the experts' broad conclusions. While the experts' conclusions appear to be based on review of certain data, the evidence lacks a fulsome discussion about how and why Petitioners' experts have reached different conclusions than those of experts in the field. The evidence also does not identify the documents and materials relied upon by Petitioners' experts. (Compare Ledbetter Decl. with www.fda.gov/media/153447/download.) That the data relied upon by Petitioners' experts appears to be taken out of context undermines the overall credibility of the opinions rendered. (The court's reference to the declarants as experts is not intended to be a finding the declarants are, in fact, experts. The court makes no ruling on the issue.)

Petitioners have generally shown harms that will be suffered by unvaccinated students and their parents if LAUSD is not enjoined from enforcing its Resolution. Petitioners' members' children may be required to engage in remote off-campus learning while this matter is pending.¹⁵ The choice may involve emotional consequences for the students learning off campus. There is also no question—as set forth in the recitals to the Resolution—students learn best when in the classroom. (Resp's.' RJN Ex. A, [Resolution] p. 1.)

Respondent has demonstrated LAUSD's community will be more susceptible to outbreaks of COVID-19 disease with unvaccinated students on campus. Outbreaks lead to disruption for the entirety of the LAUSD community—more than 600,000 students attending 1,200 schools throughout Los Angeles. (Resp's.' RJN Ex. A, [Resolution] p. 1.) COVID-19 threatens the successful return to continuous in-person instruction for LAUSD. (Resp's.' RJN Ex. A, [Resolution] p. 2.)

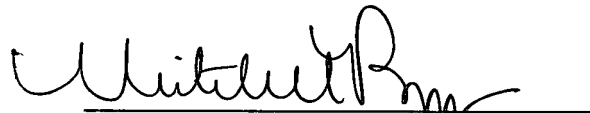
On the evidence presented and admitted, the court cannot find the balance of interim harms tips in Petitioners' favor. While remote off-campus learning may not be the optimal learning experience for students, it presents an alternative for education while minimizing the threat of infection from COVID-19 disease to everyone (including those who are unvaccinated) in the LAUSD community. The Resolution presents an effort "to combat the threat of COVID-19 through a combination of layered mitigation measures . . ." (Baca Decl., ¶ 5.) LAUSD adopted the Resolution to protect the health of all "students, staff and the community at large as well as to the continued delivery of [safer] in-person instruction" to the maximum number of students. (Baca Decl., ¶ 5.)

CONCLUSION

Petitioners' showing of the likelihood of success on the merits of the claim raised before the court is minimal. That showing alone significantly negates the opportunity for a preliminary injunction. In addition, Petitioners have not demonstrated through their admissible evidence the balance of harms tips in their favor. Accordingly, Petitioners have not shown their entitlement to a preliminary injunction. The motion is therefore denied.

IT IS SO ORDERED.

December 13, 2021



Hon. Mitchell Beckloff
Judge of the Superior Court

¹⁵ Petitioners' counsel indicated (as the court understood it) her belief a rule from CDPH about the COVID-19 vaccine in the context of Section 120335, subdivision (b)(11) would be forthcoming in three to four weeks.