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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**

8
9 Brave And Free Santa Cruz And Free Now
Foundation;

10 Plaintiffs

11 vs.

12 Tomás Aragón In His Official Capacity As
Director Of The California Department Of
13 Public Health, Tony Thurmond In His
Official Capacity As State Superintendent
14 Of Public Instruction, And Gavin Newsom
In His Official Capacity As Governor Of
15 The State Of California;

16 Defendants
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CASE NO. 2:24-cv-02312-DAD-JDP

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

Action Commenced: August 26, 2024

Date: January 21, 2025

Time: 1:30

Courtroom: 4

Judge: Hon. Dale A. Drozd

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1. INTRODUCTION AND SUMMARY OF THE ARGUMENT

3 1.1 The Object Of This Motion Is To Enforce The *Doe* Injunction For The Benefit Of
4 Children Under The Individuals With Disabilities Education Act (“IDEA”)

5 The object of this Motion For Preliminary Injunction is to apply the permanent injunction
6 entered in the case of *Doe v. Maher* in the Northern District of California in 1983 for the current
7 benefit of all California disabled schoolchildren eligible to receive services through Individualized
8 Education Programs (“IEP”) under the federal Individuals With Disabilities Education Act (“IDEA”),
9 20 U.S.C. §§ 1400 *et seq.*, even if they do not comply with California’s immunization requirements
10 under Health and Safety Code Section 120335. Under the current policies of defendant California
11 Department of Public Health (“CDPH”), the parents of those IEP students are told that their children
12 cannot attend school at all, or only for the few hours of their special education services but without
13 their regular classes, unless they comply with those immunization requirements. But the parents are
14 not given the detailed Prior Written Notice (“PWN”), with notice of rights to object, hearing, and
15 appeal, required under the IDEA nor are they told that the child’s regular classes are protected under
16 the “Least Restrictive Environment” requirements of the IDEA, enacted because Congress did not
17 want disabled children to be segregated from the general school population. The CDPH is excluding
18 these non-immunized IEP students from school in violation of the IDEA while the California
19 Department of Education (“CDE”), headed by defendant State Superintendent of Public Instruction
20 (“SSPI”) Tony Thurmond, charged under the IDEA with assuring California’s compliance with the
21 IDEA, makes no objection. But, if a parent of an affected child knows enough to file a complaint with
22 the CDE under the IDEA, then the CDE steps in to allow that IEP student back into school.

23 For example, in 2019 the Complaint Resolution Unit (“CRU”) of the CDE found the El Rancho
24 Unified School District to be out of compliance with the regulations under the IDEA in three respects:

25 **Allegation One:** The Complainant alleges the District failed to adhere to the procedural
26 requirements set forth in 34 CFR § 300.503(a), when the District modified the student's
27 placement.

28 **Findings as to Allegation One:** On September 16, 2019, the student was removed from
classes and the parent was called to take the student home pending documentation of
compliance with immunizations requirements...The evidence does not substantiate that the
parent was provided a prior written notice (PWN) for the days the student was not allowed to
attend school.

1 **Conclusion as to Allegation One:** District failed to provide a PWN as required under 34 CFR
§ 300.503(a).

2 **Allegation Two:** [That] the District failed to comply with educational placement in the least
restrictive environment (LRE) requirements set forth in 34 CFR § 300.114(a)(2)...(*Id.*, at p. 3.)

3 **Applicable law:** ...34 CFR § 300.114(a)(2) requires: Each public agency must ensure that-
4 (i) To the maximum extent appropriate, children with disabilities, including children in public
or private institutions or other care facilities, are educated with children who are nondisabled;
5 and (ii) Special classes, separate schooling, or other removal of children with disabilities from
the regular educational environment occurs only if the nature or severity of the disability is
6 such that education in regular classes with the use of supplementary aids and services cannot
be achieved satisfactorily.

7 **Findings as to Allegation Two:** On September 16, 2019, the student was removed from
classes and the parent was called to take the student home pending documentation of
compliance with immunizations requirements.

8 **Conclusion as to Allegation Two:** The school district failed to meet the requirements of 34
CFR § 300.114(a)(2).

9 **Allegation Three:** [That] the District failed to comply with IEP requirements set forth in
34 CFR § 300.323(c)(2), when the District did not implement the student's IEP.

10 **Findings as to Allegation Three:** On September 16, 2019, the student was removed from
classes and the parent was called to take the student home pending documentation of
11 compliance with immunizations requirements.

12 **Conclusion as to Allegation Three:** The District failed to meet the requirements of CFR
300.323(c)(2) to implement the student's IEP.

13 This and many other such cases already adjudicated in favor of the student by the CRU of the
14 CDE or the California Office of Administrative Hearings are discussed below in Section 3.4.

15 1.2 The *Doe* Injunction

16 The *Doe* injunction, upheld by the Ninth Circuit¹ and the U.S. Supreme Court,² enjoined State
17 Superintendent of Schools, Wilson Riles, his successor, Bill Honig, and *all successors* thusly:

18 (6) Defendants are permanently enjoined and shall require or provide proper notice to parents
or guardians of proposed changes of placement and changes in the provision of a free
19 appropriate public education including, but not limited to, a description of procedural
safeguards available to them...

20 (10) Defendants are permanently enjoined from authorizing the denial of, or otherwise
denying, plaintiffs a free and appropriate public education in the least restrictive environment
21 or otherwise violating the provisions of 20 U.S.C. Sec. 1401 et seq., as amended, 29 U.S.C.
Sec. 794, or the regulations promulgated thereunder;

22 (12)(b) Defendants are permanently enjoined to ensure that all local educational agencies
within the State are carrying out the provisions of the EAHCA³, thereby assuring that all
23 handicapped children are receiving a free appropriate education as defined by that Act and as
amplified in this injunction; to ensure local compliance the state defendants must either enact
24 a policy or set of regulations implementing this injunction that will be binding upon the local
educational agencies, or must establish a system of monitoring which is adequate to ensure that
25

26 ¹ *Doe by Gonzales v. Maher*, 793 F.2d 1470 (9th Cir. 1986)

27 ² *Honig v. Doe*, 484 U.S. 305, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988)

28 ³ The Education For All Handicapped Children Act (EAHCA) was the former name of the IDEA.
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1 all the local educational agencies are complying fully with the EAHCA and this injunction.

2 **1.3 The Obfuscation And Double Talk From The CDPH And The CDE**

3 In 2015 California enacted SB 277, eliminating the religious and personal belief exemptions
4 to the mandatory immunizations required for California school children. Non-compliant children were
5 excluded from their schools, public or private, as well as pre-school and daycare center. The stated
6 purpose of the bill was, “to provide...a means for the eventual achievement of total immunization of
7 (all children) against the following childhood diseases...” (Health and Safety Code § 120325.

8 The problem with SB 277 was that the IDEA required local school boards (“Local Education
9 Authorities”) to enroll *all* children with disabilities who qualified for Individualized Education
10 Programs under IDEA, with no authority to exclude children who lacked the required immunizations.

11 The solution to this problem was to add a subsection to SB 277 stating that:

12 Health and Safety Code § 120335(h): This section does not prohibit a pupil who qualifies for
13 an individualized education program, pursuant to federal law and § 56026 of the Education
14 Code, from accessing any special education and related services required by his or her
15 individualized education program.

16 This looks like an immunization exemption for IEP students. However, because IEP students
17 accounted for about 11% of California’s public school enrollment at that time, it would be impossible
18 to reach the goal of “total” immunization of all school children if 11% of them were exempt on
19 account of their IEP status. So, the California Department of Public Health (CDPH) chose to interpret
20 section 120335(h) narrowly, that section 120335(h) meant that IEP students who were non-compliant
21 with their required immunizations could only attend their special education services but were barred
22 from attending their regular general education classes that they took alongside nondisabled students.

23 However, the CDPH’s construction conflicts with the IDEA’s requirement that the state’s
24 education authority, here the California Department of Education (“CDE”) headed by SSPI Thurmond,
25 must, under 20 U.S.C. § 1412(a), ensure compliance by local school districts with several conditions,
26 including: (1) the availability of a Free Appropriate Public Education (“FAPE”) to *all* disabled
27 children (20 U.S.C. § 1412(a)(1)), and (2) to the maximum extent appropriate, disabled children are
28 educated alongside children who are not disabled in regular classes, the “Least Restrictive
Environment” (“LRE”) requirement, (20 U.S.C. § 1412(a)(5).)

1 The solution to this dilemma was obfuscation and double-talk; for the CDPH to publicly
2 require immunization for the IEP students and then for the CDE to privately, on a case-by-case basis,
3 allow the IEP students not in compliance with the immunization requirements back into their regular
4 school classes if their parents knew enough to file a complaint with the Complaint Resolution Unit
5 (“CRU”) of the CDE, which then found those schools that adhered to the CDPH guidance to be “out
6 of compliance” with the IDEA and ordered the students back to school.

7 This obfuscation and double-talk has resulted in many emails from many school nurses in many
8 school districts seeking clarification. The typical obfuscating CDPH response reads like this:

9 Students should receive services identified in their IEP regardless of immunization status;
10 however, immunization law does not specifically mention an exception for non-IEP services
11 (e.g., regular classroom instruction that is not part of an IEP). Schools/districts have varying
12 policies on implementing the IEP exception in immunization law as the language is not very
13 specific and IEP resources vary. For example, a school may be able to provide speech therapy
14 services onsite and then the student would return home afterward if they do not meet the
15 immunization requirements. The school may wish to reach out to their legal counsel for
16 guidance on non-IEP services and immunization status. (RFJN, exhibit 18, at p. 13.)

17 The purpose of this Motion For Preliminary Injunction is to put a stop to all this obfuscation
18 from both the CDE and the CDPH with a clear injunction from this court requiring all IEP students
19 to be educated without regard to their immunization status.

14 **1.4 How The Individuals With Disabilities Education Act (IDEA) Works**

15 The federal Individuals With Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et. seq.*,
16 provides federal money to states to provide special education services, through local schools, for
17 eligible disabled children. States, such as California, participating in the IDEA must agree to provide
18 services to *all* eligible children, *even those who have been suspended or even expelled for misconduct.*
19 Section 1414 of the IDEA sets forth the eligibility criteria for services under the IDEA. (20 U.S.C. §
20 1414.) The child’s immunization status is not an allowable criterion for the denial of IDEA services.
21

22 Eligible children receive those special education services in a program tailored to the individual
23 needs of that student. That tailored program is termed an “Individualized Education Program,” or
24 “IEP.” Currently about 13% of all children (about 800,000) attending public schools in California are
25 enrolled under those IEP’s. Those students who qualify for such IEP’s are then entitled, under the
26 IDEA act, to a Free Appropriate Public Education (“FAPE”). The FAPE is comprised of special
27
28

1 education programs tailored to the needs of each child and whatever other general education classroom
2 activities are “appropriate” for that student, provided in the “least restrictive environment.” SSPI
3 Thurmond is the state official directly responsible for enforcing the requirements of IDEA on
4 California schools. California governor Gavin C. Newsom is ultimately responsible for assuring the
5 U.S. Department of Education of California’s compliance with the IDEA’s requirements.

6 **2. STATEMENT OF MATERIAL FACTS**

7 **2.1 The Threatened Expulsion Of IEP Student** [REDACTED]

8 [REDACTED], a minor, is a student attending the Gilroy Public Schools under an Individualized
9 Education Program (IEP). (Exhibit A, Declaration of [REDACTED] mother of [REDACTED] ¶ 2) On June 6, 2024 his
10 mother, [REDACTED] received this email from the Gilroy Unified School District:

11 "If you are receiving this notification, our school records show that your child has not provided
12 proof of their Tdap vaccination and does not currently meet the requirements of the California
13 School Immunization law, Health and Safety Code Sections 120325-120375 and/or County
14 Immunization Requirements for 7th grade...Your student will NOT receive their 7th grade
15 schedule until immunization requirements are met." (*Id.*, at ¶ 8.)

16 On June 15, 2024 [REDACTED]’s mother, [REDACTED] sent, via counsel, a demand letter to Anisha Munshi,
17 the Superintendent of the Gilroy Unified School District demanding that [REDACTED] be allowed to continue
18 his education in the schools of that district. (*Id.*, at ¶ 9.) [REDACTED] never received a response to the letter of
19 June 15, 2024. (*Id.*, at ¶ 10.)

20 On August 7, 2024 a school nurse at the school with the Gilroy Unified School District that
21 [REDACTED] attended last year inquired, by email, of [REDACTED] as to [REDACTED]’s current immunization status. [REDACTED] then
22 sent the school nurse a copy of the Demand Letter sent to the School District on June 15, 2024. (*Id.*,
23 at ¶ 11) [REDACTED] was then notified later that day by that school nurse that [REDACTED] would be allowed to attend
24 school when it opened for the next term. (*Id.*, at ¶ 12) In fact, [REDACTED] was allowed to attend school when
25 it opened on August 21, 2024 and continues to do so. (*Ibid.*)

26 B.P is now a subscriber to the weekly newsletter published by the Free Now Foundation and
27 the Free Now Foundation now speaks for her as the mother of a disabled child who receives services
28 under an Individualized Education Program (IEP) as set forth under the IDEA. (*Id.*, at ¶ 13.)

29 **2.2 The California Department of Public Health Tells California School Districts
30 That IEP Students Can Be Expelled From Their Regular, General Education,
31 Classes If They Don’t Comply With The Immunizations Required Under Health**

1 **and Safety Code § 120335(b)**

2 The California Department of Public Health (“CDPH”), headed by its Director, defendant
3 Tomás Aragón, has told many California school districts that IEP students can be expelled from their
4 regular (“mainstream”) classes if they don’t comply with the immunizations required under California
5 Health and Safety Code § 120335(b).

6 There are many, many examples. In one example in which a confused local school asked the
7 CDPH for guidance on this issue, the response from the CDPH was:

8 If a child has an IEP, they may access those services listed in the IEP without complying with
9 the IZ (immunization) requirements. However, the parents should provide information about
10 any vaccines that the child has received. If the parents are seeking to have their child
11 participate in other, non-IEP specified services, schools may require that the child meet the
12 immunization requirements to participate in those non-IEP activities. If this is the situation,
13 we recommend that you discuss your schools policy with your school/district legal counsel.
14 Let us know if you have additional questions.
15 Medical Exemptions Team, California Department of Public Health
16 Email: Medicalexemptions@cdph.ca.gov

17 (RFJN, Exhibit 16.)

18 Yet another example:

19 From Christiansen. Amber@CDPH
20 Tuesday, July 26, 2022 2:05:44 PM
21 Glad I can help! The IEP exception is not straightforward. Children can access the services in
22 their IEP without meeting the immunization requirements; however, the law does not specify
23 an exception for non-IEP services. Schools/districts have varying policies on implementing the
24 IEP exception in immunization law as the language is not very specific and IEP resources vary.
25 For example, some schools are able to provide certain IEP services at home, some allow
26 unimmunized students to come on campus for IEP services and return home afterward, while
27 others allow unimmunized students with IEPs on campus all day. The school may wish to
28 reach out to their legal counsel for guidance on receipt of non-IEP services and immunization
status.

(RFJN, Exhibit 17.)

Yet another example:

From Christiansen. Amber@CDPH
Friday, August 18, 2023 11:08 AM
...Students should receive services identified in their IEP regardless of immunization status;
however, immunization law does not specifically mention an exception for non-IEP services
(e.g., regular classroom instruction that is not part of an IEP). Schools/districts have varying
policies on implementing the IEP exception in immunization law as the language is not very
specific and IEP resources vary. For example, a school may be able to provide speech therapy
services onsite and then the student would return home afterward if they do not meet the
immunization requirements. The school may wish to reach out to their legal counsel for
guidance on non-IEP services and immunization status.

1 (RFJN, Exhibit 18.)

2 **3. ARGUMENT**

3 **3.1 Plaintiff's Have Standing To Enforce Their Rights Under The IDEA**

4 **3.1.1 Requirements For Standing**

5 Federal jurisdiction requires a “case or controversy” that presents three essential elements: (1)
6 an injury in fact that is actual or imminent, (2) a causal relationship between the injury and the
7 challenged conduct, and (3) a likelihood that the injury will be redressed by a favorable decision.
8 (*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992).)

9 Associations can have standing to represent the interests of their members, where such
10 organizational standing requires: (1) the members would otherwise have standing to sue in their own
11 right, (2) the interests that the organization seeks to protect are germane to the organization’s purpose,
12 and (3) neither the claim asserted nor the relief requested requires the participation of individual
13 members in the lawsuit. (*Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1096 (9th Cir.
14 2021)(holding that environmental advocacy group had standing to seek remediation of school
15 buildings claimed to have dangerous levels of polychlorinated biphenyls (PCBs)),

16 The U.S. Supreme Court has held that an organization of parents of children whose right to
17 attend school *may* be affected by a school district’s policies have standing to challenge those policies.
18 (*Parents Involved v Seattle Sch Dist No 1* 551 US 701, 702, 127 SCt 2738 168 LEd2d 508 75 (2007):

19 Seattle argues that Parents Involved lacks standing because its current members' claimed
20 injuries are not imminent and are too speculative in that, even if the district maintains its
21 current plan and reinstates the racial tiebreaker, those members will only be affected if their
22 children seek to enroll in a high school that is oversubscribed and integration positive. This
23 argument is unavailing; the group's members have children in all levels of the district's schools,
24 and the complaint sought declaratory and injunctive relief on behalf of members whose
25 elementary and middle school children may be denied admission to the high schools of their
26 choice in the future.

27 Thus, the two requirements for standing in a schools case, such as *Parents Involved*, are: (1)
28 “the group's members have children in ... the district's schools,” and (2) “the complaint sought
29 declaratory and relief on behalf of members whose ... children may be denied admission to the ...
30 schools of their choice in the future.”

31 In an earlier challenge to SB 277, the case of *Torrey-Love v. California Department of*

1 *Education*, a plaintiff organization failed to establish, in its pleadings, standing to challenge
2 California’s mandatory immunization laws for school attendance. (*Torrey-Love v. State of California*
3 *Department of Education* 2017 WL 11636240 (C.D. Cal.)) However, in its decision in that case the
4 court noted that the failure of the organization, A Voice For Choice, to allege facts sufficient for
5 standing was in the pleadings, but that the plaintiffs had attached a declaration to their Opposition to
6 the Motion To Dismiss which “appears to cure the standing defect.” (*Id.*, at fn 1.) The declaration that
7 cured the standing defect in *Torrey-Love* is attached as Exhibit 19. The contents of the declarations
8 of the plaintiffs in this case, Brave and Free Santa Cruz (exhibit B), and Free Now Foundation (exhibit
9 C), have all the same elements that were found to confer standing in *Torrey-Love*.

10 **3.1.2 The Interest Of Plaintiff Brave And Free Santa Cruz**

11 Plaintiff Brave And Free Santa Cruz is an unincorporated freedom advocacy group that was
12 organized on July 4, 2022 with its principal activities in Santa Cruz County, California where it meets
13 regularly, and maintains a website at braveandfreesantacruz.org. (Exhibit B, Declaration of Kathleen
14 Lynch, at ¶ 1.) The group meets monthly with attendance that varies between 20 and 100, depending
15 on the speaker. It has 365 people on its email list. The group has a steering committee comprised of
16 eight members that meets once a month. The group does a weekly outreach literature table at the Santa
17 Cruz Farmer’s Market. (*Id.*, at ¶ 2.) One of the primary stated purposes of Brave and Free Santa Cruz
18 is to promote medical freedom and choice, and to educate and protect the rights of individuals and
19 ensure that the general public has knowledge of and a choice in what medications are put into the
20 bodies of their children and themselves. (*Id.*, at ¶ 3.) The group’s members include current and/or
21 potential parents and grandparents of unvaccinated children who wish their children and grandchildren
22 to have the right to attend public or private schools, pre-schools, and daycare centers without regard
23 to immunization status. Those actual and potential parents and grandparents of unvaccinated children
24 are also at risk of bearing the personal and financial costs of: (1) caring for any of those children who
25 become injured as a result of any immunizations mandated for those children under California law,
26 and/or (2) bearing the personal and financial burdens of home schooling the children excluded from
27 the public and private schools under Health and Safety Code Section 120335. The group also includes
28 some members and/or attendees with family members who attend school under Individualized

1 Education Programs. These parents and grandparents, who would otherwise have the right and ability
2 to sue the Defendants in their own right in this matter should they have been named as an individual
3 Plaintiff, have elected to be jointly represented by Brave and Free Santa Cruz. (*Id.*, at ¶ 4.) The primary
4 purpose of this lawsuit, to stop any and all further mandatory immunization of IEP students by the
5 State of California, is specifically in line with and germane to the purpose for Brave and Free Santa
6 Cruz's existence. (*Id.*, at ¶ 5.)

7 Brave and Free Santa Cruz has standing under *Parents Involved* and *Torrey-Love*.

8 **3.1.3 The Interest Of Plaintiff Free Now Foundation**

9 Plaintiff Free Now Foundation was incorporated as a non-profit on April 7, 2023 and operates
10 principally in California. (Exhibit C, Declaration of Alix Mayer, at ¶ 2.) One of the primary stated
11 purposes of Free Now Foundation is to protect civil liberties and health rights for all, especially
12 children. (*Id.*, at ¶ 3.) To date, Free Now Foundation has approximately 30,000 members, with social
13 media followings in the tens of thousands. (*Id.*, at ¶ 4.) A substantial number of Free Now
14 Foundation's membership includes individuals who question the constitutionality of Health & Safety
15 Code Section 120335, and what right any governmental or legislative body has to mandate that an
16 individual forego one fundamental right for another. (*Id.*, at ¶ 5.) Moreover, the general membership
17 of Free Now Foundation is comprised, in part, of individuals who are California citizens who have
18 school aged children or grandchildren that are not fully vaccinated in accord with the requirements of
19 Section 120335, and who wish their children and grandchildren to have the right to attend public or
20 private schools and pre-schools without regard to immunization status. (*Id.*, at ¶ 6.) Significant
21 numbers of Free Now Foundation's members have minor family members who attend school under
22 Individualized Education Plans (IEPs). (*Id.*, at ¶ 7.) Those parents and grandparents of un-immunized
23 children with IEPs are at risk of bearing the personal and financial costs of: (1) caring for any of those
24 children who become injured as a result of any immunizations mandated for those children under
25 California law, and/or (2) bearing the personal and financial burdens of home schooling the children
26 excluded from public and private schools under Health and Safety Code 120335. (*Id.*, at ¶ 8.) Those
27 individual members of Free Now Foundation who, as parents and grandparents of un-immunized
28 children with IEPs, are at risk of bearing the burdens of either: (1) caring for IEP children injured by

1 immunizations mandated under Section 120335, or (2) providing home schooling for those IEP
2 children excluded from their usual schools as a result of the ongoing enforcement of Section 120335
3 who would otherwise have the right and ability to sue the Defendants in their own right in this matter
4 should they have been named as an individual Plaintiff. (*Id.*, at ¶ 9.) Because a significant number of
5 members of Free Now Foundation have the right and ability to sue in their own capacities, they have
6 elected to have their interests be represented by plaintiff Free Now Foundation in this Matter on behalf
7 of all such members. (*Id.*, at ¶ 10.) The primary purpose of this lawsuit, to stop any and all further
8 enforcement of Section 120335 by the State of California as applied to all California IEP children, is
9 specifically in line with and germane to the purpose of Free Now Foundation’s existence. (*Id.*, at ¶ 11.)

10 Free Now Foundation has standing under *Parents Involved* and *Torrey-Love*.

11 **3.2 Requirements For A Preliminary Injunction**

12 The standard four-part test to obtain preliminary injunctive relief is: 1) likelihood of success
13 on the merits; 2) irreparable injury in the absence of relief; 3) the balance of equities tips in plaintiff’s
14 favor; and 4) showing the public interest favors granting the injunction. *Winter v. Natural Res. Def.*
15 *Council, Inc.*, 555 U.S. 7, 20 (2008). When a party seeks a preliminary injunction against the
16 government, the balance of the equities and public interest factors merge. (*Drakes Bay Oyster Co. v.*
17 *Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

18 The Ninth Circuit uses a “sliding scale” approach to preliminary injunctions “such that a
19 preliminary injunction can issue ‘where the likelihood of success is such that ‘serious questions going
20 to the merits were raised and the balance of hardships tips sharply in [plaintiff’s] favor.’” (*Doe v. San*
21 *Diego Unified Sch. Dist.*, 19 F.4 th 1173, 1177 (9th Cir. 2021), citation omitted.)

22 **3.3 Success On The Merits Is Likely For The Injunction Of SSPI Thurmond Because** 23 **He Is Already Enjoined To Enforce The Requirements Of The IDEA That** **Forbid The Expulsion Of IEP Students Based On Their Immunization Status**

24 On December 2, 1983 Judge Marilyn Hall Patel, sitting in the U.S. District Court for the
25 Northern District of California, entered a permanent injunction on behalf of two IEP students accused
26 of being disruptive in class and *all others similarly situated* in the State of California and against the
27 San Francisco Unified School District, which wanted to expel the students, and the California
28

1 Superintendent of Schools, Bill Honig, which supported the school district.⁴ The parts of that
2 injunction relevant to this case as applied to the State Superintendent of Schools include:

3 6. Defendants are permanently enjoined and shall require or provide proper notice to parents
4 or guardians of proposed changes of placement and changes in the provision of a free
5 appropriate public education including, but not limited to, a description of procedural
safeguards available to them, the action proposed by the LEA (Local Educational Authority)
and the reasons therefor, the options considered, and the reason any options were rejected;

6 ...
7 10. Defendants are permanently enjoined from authorizing the denial of, or otherwise denying,
8 plaintiffs a free and appropriate public education in the least restrictive environment or
9 otherwise violating the provisions of 20 U.S.C. Sec. 1401 et seq., as amended, 29 U.S.C. Sec.
794, or the regulations promulgated thereunder;

10 ...
11 12. The court finds that there is an absence of state policy in the following areas and that the
12 failure to adopt policy is likely to result in continued violation of the right of plaintiffs and
13 other similarly situated handicapped students to a free appropriate public education as required
14 by the EAHCA and, therefore, the state defendants are permanently enjoined:

15 ...
16 (b) to ensure that all local educational agencies within the State are carrying out the provisions
17 of the EAHCA, thereby assuring that all handicapped children are receiving a free appropriate
18 education as defined by that Act and as amplified in this injunction; to ensure local compliance
19 the state defendants must either enact a policy or set of regulations implementing this
20 injunction that will be binding upon the local educational agencies, or must establish a system
21 of monitoring which is adequate to ensure that all the local educational agencies are complying
22 fully with the EAHCA and this injunction; the state defendants are therefore enjoined to submit
23 to the court for its approval, within sixty (60) days of the date of this order, either a proposed
24 binding policy, regulations, or a proposed monitoring plan; said policy, regulation or plan shall
25 include provisions for assuring compliance with paragraphs 1--11 of this Order.

26 Thus, success on the merits is likely for the injunction of SSPI Thurmond is since he is already
27 enjoined to prevent IEP students from being excluded, or threatened with exclusion, without the
28 required PWN from their Least Restrictive Environments in California schools by Local Educational
Authorities, in this case on account of their immunization status. Such a threatened exclusion was
detailed above in the case of [REDACTED] a student in the Gilroy Unified School District. Fifteen more such
cases, already adjudicated in California administrative proceedings, are set forth next to show that such
immunization-based exclusions are widespread.

3.4 Success On The Merits Is Likely For The Injunction Of CDPH Director Aragón Because The Complaint Resolution Unit Of The CDE And California's Office Of Administrative Hearings Have Held That Excluding IEP Students From Their Least Restrictive Environments Based Upon Immunization Status, As Recommended By The CDPH, Is A Violation Of Their Rights Under The IDEA

CDPH Director Aragón is also within the scope of the *Doe* injunction since the CDPH advises

⁴ *Doe by Gonzales v. Maher*, 793 F.2d 1470 (9th Cir. 1986), Appendix B.
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1 Local Educational Authorities on their obligations to educate IEP students. As shown above and in
2 RFJN exhibits 16-18, the CDPH recommends that LEAs exclude IEP students from their regular
3 classroom educations if they don't meet the CDPH's immunization requirements. Many such cases
4 have already been decided in favor of the student in administrative proceedings in either: (1) the
5 Complaint Resolution Unit (CRU) of the CDE or (2) the California Office of Administrative Hearings
6 ("OAH"), on one or more of the following grounds:

7 (1) that excluding the IEP student from attending general education classes alongside non-disabled
8 children is a violation of the requirement that IEP student be educated in the "least restrictive
9 environment," under 34 C.F.R. §§ 300.114(a)(2) and 300.116(b)(2). Those cases include the El
10 Rancho schools case (section 3.4.3 below), the Excelsior charter school case (section 3.4.6 below), the
11 Yreka schools case (section 3.4.8 below), the Corona-Norco schools CRU case (section 3.4.13 below),
12 the Corona-Norco OAH case (section 3.4.12 below) the ABC schools case (section 3.4.14 below), and
13 the Dry Creek schools case (section 3.4.15 below).

14 (2) that excluding IEP students from attending general education classes in addition to their IEP
15 services is a violation of the duty to provide those students a Free Appropriate Public Education
16 (FAPE) under 34 C.F.R. § 300.101(a). Those cases include the: Excelsior charter school case (section
17 3.4.6 below), the New Pacific school case (section 3.4.9 below), San Dieguito schools case (section
18 3.4.10 below), the Kern High School case (section 3.4.11 below), and the Corona-Norco schools CRU
19 case (section 3.4.13 below).

20 (3) that excluding IEP students from attending general education classes in addition to their IEP
21 services is a violation of the duty to fully implement the student's IEP under 34 C.F.R. §
22 300.323(c)(2). That case was the El Rancho schools case (section 3.4.3 below).

23 (4) that excluding IEP students from their schools without a prior written warning that includes
24 notice as to the procedural protections required is a violation of 34 C.F.R. § 300.503(a). Those cases
25 include the: El Rancho schools case (section 3.4.3 below), and the Corona-Norco schools CRU case
26 (section 3.4.13 below).

27 (5) that, under both the IDEA and Health and Safety Code § 120335, subd. (h), IEP students are
28 exempt from the immunizations mandated under Health and Safety Code § 120335, subd. (b), citing

1 *Whitlow v. State of California*, 203 F. Supp. 3d 1079, 1083 (2016). These cases include: the Long
2 Beach case (section 3.4.1 below), the Santa Barbara case (section 3.4.4 below), the New Pacific charter
3 school case (section 3.4.9 below), the Kern High School case (section 3.4.11 below), the ABC schools
4 case (section 3.4.14 below), and the Dry Creek schools case (section 3.4.15 below).

5 **3.4.1 Long Beach Unified School District, October 9, 2017**

6 On October 9, 2017 the California Office of Administrative Hearings issued a “stay-put” order
7 to allow an IEP student not in compliance with California’s immunization requirements to continue
8 to attend school in the Long Beach Unified School District. (RFJN, Exhibit 1.) The administrative law
9 judge summarized the facts thusly:

10 Student is eligible for special education as a pupil on the autism spectrum. He has been eligible
11 for special education since 2008. Parents consented to his last IEP in May 2017, and provided
12 a copy of that IEP to the Office of Administrative Hearings when they filed their motion for
13 stay put. Pursuant to this IEP, Student is placed in a general education classroom; receives
14 specialized academic instruction for 48 minutes, five times each week; is provided with 370
15 minutes daily of behavioral intervention services in the general education classroom; and is
16 provided with 480 minutes per month of consultation, supervision and direct behavioral
17 intervention services. Student attends a Long Beach school named Marshall Academy of the
18 Arts.

15 Student filed his request for due process on September 13, 2017, when Long Beach threatened
16 to remove him from Marshall because he has not been vaccinated. In his stay put motion,
17 Student claims that he was removed from school effective September 14, 2017. Long Beach
18 has offered him home instruction. In its opposition, Long Beach argues that subdivision (h)
19 does not create an exception to the vaccination requirement. (*Id.*, at p. 2.)

18 The Administrative Law Judge then noted that, under *Whitlow v. California* (C.D. California
19 2016) 203 F.Supp. 3d 1079, 1083), the court stated (in dicta), that “if [] children are covered by the
20 IDEA [Individuals with Disabilities Education Act], they are exempt from vaccination.” The ALJ then
21 ordered that, “...Long Beach must return Student to his previous placement at Marshall, with all the
22 services called for in his IEP. (*Id.*, at p. 3.)

23 **3.4.2 Chino Valley Unified School District, August 14, 2018**

24 On August 14, 2018 the California Office of Administrative Hearings issued a “stay-put” order
25 to allow an IEP student not in compliance with California’s immunization requirements to continue
26 to attend school in the Chino Valley Unified School District. (RFJN, Exhibit 2.) The administrative
27 law judge summarized the facts thusly:

28 The family moved to Chino Valley Unified School District in January 2018. Student had not

1 been fully immunized against the complete list of diseases specified by California Health and
2 Safety Code, section 120335. Student contends that he was not permitted to enroll. Chino
3 Valley convened IEP meetings for Student on February 14, 2018, and April 24, 2018, at which
4 it offered a special day class in a public preschool. Chino Valley offered the special day class
5 placement on the condition Student was vaccinated with all generally required immunizations.
6 Alternatively, if Student was not vaccinated, Chino Valley offered a home hospital program.
7 Parent did not consent...Thus, Student's last agreed upon and implemented IEP was the
8 September 8, 2017 IEP from Bellflower. Notwithstanding Parent's refusal to immunize Student
9 with all the normally required immunizations, Student's last agreed upon and implemented IEP
10 from Bellflower required placement in a school environment, with specified services. (*Id.*, at
11 p. 2.)

12 The administrative law judge noted that:

13 Until due process hearing procedures are complete, a special education student is entitled to
14 remain in his or her current educational placement, unless the parties agree otherwise. (20
15 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) *Id.*, at p. 1.)

16 The ALJ granted the student's motion for a stay put order. (*Id.*, at p. 3.)

17 **3.4.3 El Rancho Unified School District, November 14, 2019**

18 On November 14, 2019 the Complaint Resolution Unit of the California Department of
19 Education ("CRU") issued its report on the Complaint submitted on behalf of a student against the
20 El Rancho Unified School District. (RFJN, Exhibit 3.) The Complaint made three allegations:

21 **Allegation One:** The Complainant alleges the District failed to adhere to the procedural
22 requirements set forth in 34 CFR § 300.503(a), when the District modified the student's
23 placement.

24 **Findings as to Allegation One:** On September 16, 2019, the student was removed from
25 classes and the parent was called to take the student home pending documentation of
26 compliance with immunizations requirements...The evidence does not substantiate that the
27 parent was provided a prior written notice (PWN) for the days the student was not allowed to
28 attend school.

Conclusion as to Allegation One: District failed to provide a PWN as required under 34 CFR
§ 300.503(a).

Allegation Two: [That] the District failed to comply with educational placement in the least
restrictive environment (LRE) requirements set forth in 34 CFR § 300.114(a)(2)...(*Id.*, at p. 3.)

Applicable law: ...34 CFR § 300.114(a)(2) requires: Each public agency must ensure that-
(i) To the maximum extent appropriate, children with disabilities, including children in public
or private institutions or other care facilities, are educated with children who are nondisabled;
and (ii) Special classes, separate schooling, or other removal of children with disabilities from
the regular educational environment occurs only if the nature or severity of the disability is
such that education in regular classes with the use of supplementary aids and services cannot
be achieved satisfactorily.

Findings as to Allegation Two: On September 16, 2019, the student was removed from
classes and the parent was called to take the student home pending documentation of
compliance with immunizations requirements.

Conclusion as to Allegation Two: The school district failed to meet the requirements of 34
CFR § 300.114(a)(2).

Allegation Three: [That] the District failed to comply with IEP requirements set forth in
34 CFR § 300.323(c)(2), when the District did not implement the student's IEP.

Findings as to Allegation Three: On September 16, 2019, the student was removed from

1 classes and the parent was called to take the student home pending documentation of
2 compliance with immunizations requirements.

3 **Conclusion as to Allegation Three:** The District failed to meet the requirements of CFR
4 300.323(c)(2) to implement the student's IEP.

5 **3.4.4 Santa Barbara County Office Of Education And Orcutt Union School
6 District (March 2020)**

7 On March 30, 2020 the CRU issued its report on the Complaint submitted on behalf of a
8 student against the Santa Barbara County Office of Education and the Orcutt Union School District
9 (RFJN, exhibit 4) alleging that:

10 ...the OUSD and the SBCOE failed to comply with individualized education program (IEP)
11 requirements set forth in Code of Federal Regulations, Title 34 (34 CFR), Section 300.322(a),
12 when the OUSD and the SBCOE failed to ensure the parent's participation prior to modifying
13 the student's IEP in regards to placement. (*Id.*, at pp. 1-2.)

14 The CRU report found that:

15 The student is eligible for special education services with a primary eligibility category of
16 speech or language impairment...The IEP indicates the student is to be outside the general
17 education class 3 percent of the time, and in the general education setting 97 percent of the
18 time. The student requires speech and language (S/L) services, in a small group setting, three
19 times per month...the District was declining the parent's request for the student to be enrolled
20 in the school without immunization records under the medical exemption and stating that once
21 the District was in receipt of the doctor's note that met the requirements, an IEP meeting could
22 be convened to discuss whether the failure to immunize was caused by the student's disability.
23 In the meanwhile, the District would provide the student special education and related services
24 in an alternative setting, as stated in the January 17, 2020, IEP meeting. *Id.*, at pp. 2-3.)

25 The CRU report concluded that:

26 (1) [u]nder the (IDEA) and SB 277, as interpreted by *Whitlow v. State of California*, 203
27 F.Supp. 3d 1079, 1083, 1088-1089 (S.D. Cal. 2016) and *Student v. Long Beach Unified Sch.*
28 *Dist.*, Office of Administrative Services Case No. 2017090407 ... students with IEPs are
exempt from the requirement to be vaccinated to attend school. The District and the SBCOE
are out of compliance.

(2) [t]he OUSD and the SBCOE failed to meet the requirements of 34 CFR § 300.114(a)(2).
The district did not educate the student in the LRE (least restrictive environment) when it
refused to allow the student to receive S/L services in a small group setting as required by the
December 16, 2019 IEP...The District and the SBCOE are out of compliance.

(3) [t]he OUSD and the SBCOE failed to meet the requirements of 34 CFR § 300.323(c)(2).
The District failed to provide the student with S/L services as required by the December 16,
2019 IEP...The District and the SBCOE are out of compliance.

29 **3.4.5 Cajon Valley Union School District, November 2021**

30 On November 29, 2021 the California Office of Administrative Hearings considered a claim
31 that a child alleged to suffer from autism was denied an assessment for an IEP by the school district.
32 The district did not send an assessment plan to the parents because they failed to first provide certain
33 documents, including immunization records. The ALJ found that:

1 ... nothing in the IDEA required Parents to provide Student’s immunization record or birth
2 certificate to Sevvick (an assessment site) as a condition of sending an assessment plan to
Parents to begin the assessment process.” (RFJN, Exhibit 5, at p. 20.)

3 **3.4.6 Excelsior Charter School, May 5, 2022**

4 On May5, 2022 the CRU issued its report on the Complaint submitted on behalf of a student
5 against the Excelsior Charter School (RFJN, exhibit 6) alleging that the Charter:

6 ...failed to provide a free appropriate public education (FAPE) as set forth in 34 CFR Section
7 300.101(a) when the Charter implemented a practice of not enrolling students with
individualized education programs (IEPs) for in-person instruction if the students were not
8 fully vaccinated.

9 The CRU report found that:

10 The Charter distinguishes between the right of a student with an IEP to participate in in-person
special education and related services and the same students being allowed to participate in the
11 in-person general education classes. The Charter asserts that it will not allow students without
the immunizations required by California law to participate in [the] In-person general
education classes, but will provide all special education and related services to those students
12 regardless of their immunization status." (*Id.*)

13 The CRU report concluded that:

14 The Charter failed to meet the requirements of 34 CFR Section 300.101 (a). The Charter has
a policy of excluding from in-person instruction, student's with IEPs who are not vaccinated,
thereby denying those students access to a FAPE. The Charter is out of compliance. (*Id.*)

15 The CRU report ordered that:

16 [t]he Charter shall provide evidence that it has reviewed and revised all policies and procedures
related to the vaccination status of students with IEPs enrolling for in-person Charter programs
to ensure that such policies and procedures do not violate 34 CFR Section 300.101(a) by
17 excluding students from In-person education based on vaccination status. (*Id.*)

18 **3.4.7 Sierra Academy of Expeditionary Learning, January 6, 2023**

19 On January 6, 2023 the CRU issued its report on the Complaint submitted on behalf of a
20 student against the Sierra Academy of Expeditionary Learning (RFJN, exhibit 7) alleging that:

21 ...the Charter failed to comply with the educational placement in the least restrictive
environment (LRE) requirements set forth in Code of Federal Regulations, Title 34 ... Section
22 300.116, when the Charter did not allow the student with an individualized education program
(IEP) to participate in in-person general education classes on September 3, 2022. (*Id.*, at p. 1.)

23 The CRU report found that:

24 ...the Charter offered in-school special education services and virtual general education classes
25 to the (IEP) student. The Charter would not allow the student to attend in-person, on-campus
general education classes as the student had not received the vaccinations specified in
26 California Health and Safety Code section 120335...The Charter further noted that subdivision
(h) of that section authorized the Charter to limit the student’s education to virtual learning
27 because it provided the student with special education services as specified by the student’s
IEP.” (*Id.*, at pp. 4-5.)

1 The CRU report concluded that:

2 The Charter failed to meet the requirements of 34 CFR Section 300.116(b)(2). The State's
3 (including its LEAs) eligibility to receive IDEA funds is contingent upon it maintaining
policies and procedures that ensure, amongst other things, that children with disabilities are
educated with:

4 children who are not disabled, and special classes, separate schooling, or other removal
5 of children with disabilities from the regular educational environment occurs only
when the nature or severity of the disability of a child is such that education in regular
6 classes with the use of supplementary aids and services cannot be achieved
satisfactorily. (United States Code, Title 20, Section 1412(a)(5))

7 To become eligible for and maintain IDEA funding, the State codified its policy decision to
comply with the IDEA in its entirety (EC Section 56000). Without any modification to EC
8 Section 56000 et seq, which comprehensively implements the IDEA, subdivision (h) was
added to Health and Safety Code Section 120335-a provision that otherwise requires students
9 to receive specified vaccinations prior to attending school. The language employed in
subdivision (h) virtually mirrors the language utilized in EC Section 56000 ensuring the State's
10 compliance with the IDEA. (See EC Section 56000(d).) In short, subdivision (h) of Section
120335 of the Health and Safety Code clarifies the State's policy of complying with the IDEA
11 and remaining eligible for IDEA funding. The charter's refusal to allow the student to attend
regular classes at the school site violates the IDEA's requirement that students be educated in
12 the LRE. The Charter is out of compliance. (*Id.*, at p. 5.)

13 3.4.8 Yreka Union High School District, March, 2023

14 On March 29, 2023 the CRU issued its report on the Complaint submitted on behalf of a
15 student against the Yreka Union High School District (RFJN, exhibit 8), alleging that:

16 ...the District failed to comply with educational placement in the least restrictive environment
(LRE) requirements set forth in Code of Federal Regulations, Title 34 (34 CFR), Section
17 300.114(a), when the District denied students with individualized education programs (IEPs)
on-campus instruction and extracurricular activities due to the students' vaccination status. (*Id.*,
18 at p. 1.)

19 The CRU report found that:

20 The District's immunization policy states that the District shall continue to implement the
student's IEP and shall not inhibit the student from accessing special education and related
21 services required by the student's IEP regardless if the student is fully immunized. However,
the student must be fully immunized or have an appropriate medical waiver to attend
22 on-campus classes. Students that are not fully immunized and do not have a waiver would have
to be enrolled in the independent study program and obtain services separately...The parents
23 had been advised in an undated prior written notice (PWN) that the student is not exempt from
the vaccination requirements of the District on the basis of the IEP, and the student's services
24 must be provided in an alternate setting. (*Id.*, at pp. 2-3.)

25 The CRU report concluded that:

26 The District failed to meet the requirements of 34 CFR Section 300.114(a)...The District's
refusal to allow the student to attend regular classes at the school violates the IDEA's
27 requirement that students be educated in the LRE. **The District is out of compliance.** (*Id.*, at
p. 4.)(emphasis in the original.)

28 3.4.9 New Pacific School-Roseville

1 On July 31, 2023 the CRU issued its report on the Complaint submitted on behalf of a student
2 against the New Pacific School-Roseville (RFJN, exhibit 9) alleging that:

3 ...the Charter failed to provide a free appropriate public education (FAPE) as set forth in Code
4 of Federal Regulations, Title 34 (34 CFR), Section 300.101 (a), when the Charter denied the
5 student a FAPE by excluding the student with an individualized education program (IEP) based
6 on immunization status for the 2023- 24 school year. (*Id.*, at p. 1.)

7 The CRU report found that:

8 On February 28, 2023, the Charter notified the parent of its requirement of either a vaccination
9 record or a medical exemption obtained through the California Immunization Registry on the
10 California Department of Public Health’s website to complete registration...On March 29,
11 2023, the Charter reiterated the need for the parent to submit a medical exemption to proceed
12 with registration. (*Id.*, at p. 2.)

13 The CRU report concluded that:

14 The Charter failed to meet the requirements of 34 CFR Section 300.101(a). The Charter did
15 not allow the student to enroll in school due to the student’s immunization status. However,
16 under the Individuals with Disabilities Education Act and S.B. 277 (2015) as interpreted by
17 *Love v. State Dep’t of Educ.*, 29 Cal. App. 5th 980, 986 (2018), *Middleton v. Pan* (C.D. Cal.
18 2017) WL 7053936 at *2, *Whitlow v. State of California*, 203 F. Supp. 3d 1079, 1083,
19 1088-1089 (S.D. Cal. 2016), and *Student v. Long Beach Unified Sch. Dist.*, Office of
20 Administrative Hearings Case No. 2017090407 (Order granting motion for “stay put,” October
21 9, 2017), students with IEPs are exempted from the requirement to be vaccinated to attend
22 school. The Charter is out of compliance. (*Id.*, at pp. 2-3.)

23 **3.4.10 San Dieguito Union High School District, October, 2023**

24 On July 31, 2023 the CRU issued its report on the Complaint submitted on behalf of a student
25 against the San Dieguito Union High School District (RFJN, exhibit 10) alleging that:

26 ...the District failed to provide a free appropriate public education (FAPE) as set forth in Code
27 of Federal Regulations, Title 34 (34 CFR), Section 300.101(a), when the District's policy on
28 vaccination status denied FAPE to students with an individualized education program (IEP).
(*Id.*, at p. 1.)

The CRU report found that:

The District’s “Immunizations” policy, AR 5141.31, states the following: A student who
qualifies for an [IEP], unless otherwise exempt, shall be fully immunized in accordance with
Health and Safety Code 120335 and this regulation. However, the district shall continue to
implement the student's IEP and shall not prohibit the student from accessing any special
education and related services required by the student’s IEP regardless of whether the student
is fully immunized... Between August 4 and 10, 2023, the District notified the families of 14
students with IEPs that their students were noncompliant with the state of California’s
immunization requirements based on the District’s understanding of the law. Eleven of these
families (whose students had previously attended school in the District) were told that, despite
their students not being fully immunized, the District had “conditionally admitted” their
students into the District. Three of these families (whose students had not previously attended
school in the District) were told that their students would be unable to attend school in person
until the required immunizations were completed. The District provided each of the 14 families

1 a number of options, which included the following: (1) obtain a medical exemption through
2 the California Immunization Registry Medical Exemption website, (2) obtain the necessary
immunizations, and/or (3) enroll the student in private school, homeschool, or a charter school.
3 (*Id.*, at pp. 2-3.)

4 The CRU report concluded that:

5 The District failed to meet the requirements of 34 CFR Section 300.101(a). Under the
Individuals with Disabilities Education Act and S.B. 277 (2015)...students with IEPs are
6 exempted from the requirement to be vaccinated to attend school. The District's policy and AR
5112.2 as applied, which exclude students with IEPs from attending school in person if not
7 vaccinated, does not comply with the law. **The District is out of compliance.** (*Id.*, at p.
3)(emphasis in the original.)

8 **3.4.11 Kern High School District, November, 2023**

9 On July 31, 2023 the CRU issued its report on the Complaint submitted on behalf of a student
10 against the Kern High School District (RFJN, exhibit 11) alleging that:

11 ...the District failed to provide a free appropriate public education (FAPE) as set forth in Code
of Federal Regulations, Title 34 (34 CFR), Section 300.101 (a), when the District removed the
12 student from the general education (GE) classroom due to the student's immunization status
from August 16, 2023. (*Id.*, at p. 1.)

13 The CRU report found that:

14 The student's February 2, 2023, IEP (from the student's prior school district) requires the
15 student receive resource specialist program (RSP) services, described in the IEP as specialized
academic instruction (SAi), for 460 minutes weekly in a separate classroom...The District's
16 offer of RSP services in another location was based on the student's immunization status, as
the District would not permit the student to attend in-person instruction...On September 14,
17 2023, the District convened the student's annual IEP meeting. The District's offer of FAPE
included RSP services for 285 minutes weekly, provided virtually or on home instruction. The
18 District's offer was based on the student's immunization status, as the student would be
permitted to attend school in-person if immunization records were provided. (*Id.*, at pp. 2-3.)

19 The CRU report concluded that:

20 The District failed to meet the requirements of 34 CFR Section 300.101 (a). Under the
Individuals with Disabilities Education Act (IDEA) and S.B. 277 (2015) as interpreted by *Love*
21 *v. State Dep't of Educ.*, 29 Cal. App. 5th 980, 986 (2018); *Middleton v. Pan*, 2017 WL
7053936 at *2 (C.D. Cal. 2017); *Whitlow v. State of California*, 203 F. Supp. 3d 1079, 1083,
22 1088-1089 (S.D. Cal. 2016); and *Student v. Long Beach Unified Sch. Dist.*, Office of
Administrative Hearings (OAH) Case No. 2017090407 (Order granting motion for "stay put,"
23 October 9, 2017), students with IEPs are exempted from the requirement to be vaccinated to
attend school. The District failed to provide the student with a FAPE by removing the student
24 from the GE classroom due to the student's immunization status. **The District is out of**
25 **compliance.** (*Id.*, at p. 3)(emphasis in the original.)

26 **3.4.12 Corona-Norco Stay Put Case, February, 2024**

27 On February 27, 2024 the California Office of Administrative Hearings issued a "stay-put"
28 order to allow an IEP student not in compliance with California's immunization requirements to

1 continue to attend school in the Corona-Norco Unified School District. (RFJN, Exhibit 12.) The
2 administrative law judge summarized the facts thusly:

3 Corona-Norco contends that, because Student is not properly immunized and does not hold a
4 medical exemption from being immunized, he cannot attend his general education classroom.
5 Corona-Norco further contends that Student should be provided his special education related
6 services, consisting of speech and remotely, through videoconferencing for health and safety
7 reasons...Corona-Norco argues that Health and Safety Code sections, along with an
8 administrative regulation from the district's board of directors, mandates that children not
properly immunized must be excluded from school campuses, including children with
IEPs...Corona-Norco interprets Health and Safety Code, section 120335, subdivision (h) to
apply only to explicit special education and related services in a student's IEP. Corona-Norco
does not believe the exception applies to the entirety of an IEP, particularly, here, Student's
general education placement. (*Id.*, at pp. 2-3.)

9 The administrative law judge found that:

10 Student's IEP highlights a guiding principle of the IDEA, that children with special needs be
11 educated in the least restrictive environment appropriate to meet their needs. Student's general
12 education placement is an inextricable component of his IEP. The IEP itself provides for
13 consultative services to facilitate acquisition and generalization of Student's skills across
14 settings. That means that Student will be aided in using skills developed in speech and
15 language services in his general education setting, while also being exposed to typically
16 developing peer language models...The IDEA expresses a clear policy preference for inclusion
17 to the maximum extent appropriate as an aspiration for all children with special needs. (See
18 20 U.S.C. § 1412(a)(S)(A); 34 C.F.R. §§ 300.114 & 300.116; Ed. Code, § 56031.) School
19 districts are required to provide each special education student with a program in the least
20 restrictive environment, with removal from the regular education environment occurring only
when the nature or severity of the student's disabilities is such that education in regular classes
with the use of supplementary aids and services could not be achieved satisfactorily. (20
U.S.C. § 1412(a)(S)(A); Ed. Code, § 56031.)...Student has a federally guaranteed right, while
this dispute is pending before OAH, to remain in his current educational placement, unless the
parties agree otherwise. (20 U.S.C. § 1415); 34 C.F.R. § 300.518(a); Ed. Code, § 56505, subd.
(d.) As a student who attended a public school, Student here has a right to "be placed in the
public school program until all such proceedings have been completed." (20 U.S.C. § 1415(j));
34 C.F.R. § 300.518(a); Ed. Code, § 56505, subd. (d).) Accordingly, Student's motion for stay
put is granted. (*Id.*, at pp. 3-4.)

21 **3.4.13 Corona-Norco CRU Case, March, 2024**

22 On March 27, 2024 the CRU issued its report on the Complaint submitted on behalf of a
23 student against the Corona-Norco Unified School District (RFJN, exhibit 13) alleging that:

24 ...the District failed to comply with educational placement in the least restrictive environment
25 (LRE) requirements set forth in Code of Federal Regulations, Title 34 (34 CFR), Section
300.114(a)(2), when it has a policy that is inconsistent with the law. (*Id.*, at p. 1.)

26 The CRU report found that:

27 The District's Administrative Regulation (AR) 5141.31 states: "A student who qualifies for
28 an [IEP], unless otherwise exempt, shall be fully immunized in accordance with Health and
Safety Code 120335 and this regulation; however, the District shall continue to implement the
student's IEP and shall not prohibit the student from accessing any special education and

1 related services required by the student's IEP regardless of whether the student is
2 vaccinated....The District clarified...[that if] a parent chooses not to become current [on their
3 child's immunizations] and their student has an IEP, we will work to provide the services on
4 the IEP, but they would be excluded from the general education setting.

The CRU report concluded that:

5 The District failed to meet the requirements of 34 CFR Section 300.114(a)(2). The State's,
6 including its LEAs, eligibility to receive Individuals with Disabilities Education Act (IDEA)
7 funds is contingent upon it maintaining policies and procedures that ensure, amongst other
8 things, that children with disabilities are educated with:

9 . . . children who are not disabled, and special classes, separate schooling, or other
10 removal of children with disabilities from the regular educational environment occurs
11 only when the nature or severity of the disability of a child is such that education in
12 regular classes with the use of supplementary aids and services cannot be achieved
13 satisfactorily. (United States Code, Title 20, Section 1412(a)(5))

14 To become eligible for and maintain IDEA funding, the State codified its policy decision
15 to comply with the IDEA in its entirety (California Education Code (EC) Section 56000).
16 Without any modification to EC Section 56000 et seq, which comprehensively
17 implements the IDEA, subdivision (h) was added to Health and Safety Code Section
18 120335—a provision that otherwise requires students to receive specified vaccinations
19 prior to attending school. The language employed in subdivision (h) virtually mirrors the
20 language utilized in EC Section 56000 ensuring the State's compliance with the IDEA.
21 (See EC Section 56000(d)). In short, subdivision (h) of Section 120335 of the Health
22 and Safety Code clarifies the State's policy of complying with the IDEA and remaining
23 eligible for IDEA funding. The State accepted these funds and is therefore bound to the
24 LRE provisions set forth in 20 United States Code Section 1412(a)(5). The District's
25 refusal to allow students to attend regular classes at the school violates the IDEA's
26 requirement that students be educated in the LRE. **The District is out of compliance.** (*Id.*, at
27 pp. 5-6)(emphasis in the original.)

3.4.14 ABC Unified School District, March, 2024

17 On March 29, 2024 the CRU issued its report on the Complaint submitted on behalf of a
18 student against the ABC Unified School District (RFJN, exhibit 14) making two allegation. First:

19 ...that the District failed to provide free appropriate public education (FAPE) as set forth in
20 Code of Federal Regulations, Title 34 (34 CFR), Section 300.101(a), when the District refused
21 to enroll the student or provide comparable services due to the student's immunization status,
22 on January 22, 2024. (*Id.*, at p. 1.)

The CRU report found, regarding this first allegation, that:

23 The District's policy on immunizations requires unconditionally that students who have not
24 been fully immunized, including students with IEPs, will not be admitted unless the student
25 with an IEP is otherwise exempt. (*Id.*, at p. 2.)

The CRU report concluded, regarding this first allegation, that:

26 The District failed to meet the requirements of 34 CFR Section 300.101(a). Under the
27 Individuals with Disabilities Education Act (IDEA) and S.B. 277 (2015) as interpreted by *Love*
28 *v. State Dep't of Educ.*, 29 Cal. App. 5th 980, 986 (2018), *Middleton v. Pan*, 2017 WL
7053936 at *2 (C.D. Cal. 2017), *Whitlow v. State of California*, 203 F. Supp. 3d 1079, 1083,
1088-1089 (S.D. Cal. 2016), and *Student v. Long Beach Unified Sch. Dist.*, Office of

1 Administrative Hearings (OAH) Case No. 2017090407 (Order granting motion for “stay put,”
2 October 9, 2017), students with IEPs are exempted from the requirement to be vaccinated to
3 attend school. The District failed to provide the student with a FAPE when it required that the
4 student be immunized, or that the parent provide an exemption prior to enrollment.
5 Additionally, the District’s policy does not allow enrollment of students without
6 immunizations or a doctor’s note. **The District is out of compliance.** (*Id.*, at p 3.)

7 The second allegation was that:

8 the District failed to adhere to the procedural requirements set forth in 34 CFR Section
9 300.503(a), when the District did not provide prior written notice (PWN) of its decision to
10 deny the student’s enrollment based on immunization status in January 2024. (*Id.*, at p. 3.)

11 The CRU report found, regarding this second allegation, that:

12 On January 29, 2024, the District contacted the parent via email regarding the student’s
13 enrollment status. The District requested the student’s immunization records or an exemption,
14 to enroll the student into the District, citing the District’s immunization policy. The District
15 did not provide a PWN noting its refusal to enroll the student based on the student’s
16 immunization status. (*Id.*, at p. 4.)

17 The CRU report concluded, regarding this second allegation, that:

18 The District failed to meet the requirements of 34 CFR Section 300.503(a). The District did
19 not provide a PWN to the parent of a student with an IEP, stating the District’s decision to
20 deny the student’s enrollment due to the student’s immunization status. The District is out of
21 compliance. (*Id.*, at p. 4.)

22 **3.4.15 Dry Creek Unified School District Stay Put Case, August 2024**

23 On August 22, 2024 the California Office of Administrative Hearings issued a “stay-put” order
24 to allow an IEP student not in compliance with California’s immunization requirements to continue
25 to attend school in the Dry Creek Joint Elementary School District. (RFJN, Exhibit 15.) The
26 administrative law judge summarized the facts thusly:

27 Student contends Dry Creek prevented Student from attending school and accessing his special
28 education and related services pursuant to his October 3, 2023 IEP beginning August 8, 2024,
because he did not receive immunization against certain infectious diseases as required by
California Health and Safety Code section 120335...Student further argues he is entitled to the
procedural safeguard of stay put under the Individuals with Disabilities Education Act, called
IDEA, during the pendency of the due process proceeding. Student seeks an order of stay put
implementing his October 3, 2023 IEP...Dry Creek argues students with IEPs who do not
receive mandatory immunizations should continue to receive all necessary services in their
IEPs, but not access the general education environment unless the student has complied with
state vaccination requirements. Dry Creek argues it will provide Student’s special education
and related services, but Student will be required to access general education through an
independent study program.

The administrative law judge found that:

...Dry Creek’s argument that the Health and Safety Code only requires a school district to
provide special education and related services undercuts a central principal under the IDEA:

1 the right of children with special needs to be educated in the least restrictive environment
2 appropriate to meet their needs and the clear policy preference for inclusion to the maximum
3 extent appropriate. (20 U.S.C § 1412(a)(5)(A); 34 C.F.R. §§ 300.114 & 300.116; Ed. Code,
4 § 56031.)...Student has the right to remain in his current educational placement while this
5 dispute is pending before OAH. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); Ed. Code, §
6 56505, subd. (d).) Student’s motion for stay put is granted.

7 **3.5 Plaintiffs Can Raise Serious Questions Going To The Merits Because The IDEA
8 Requires That IEP Students Must Be Educated In The “Least Restrictive
9 Environment,” Which Is In Regular Classrooms, Not In Isolation As The
10 California Department Of Public Health Requires**

11 The requirement that IEP students be educated in the “least restrictive environment” was
12 affirmed by the Ninth Circuit. (*D. R. by and through R. R. v. Redondo Beach Unified Sch. Dist.*, 56
13 F.4th 636, 641 (9th Cir. 2022)(holding that, where the parents’ position was that their autistic son
14 “...should spend most of the school day being educated in a regular classroom with his nondisabled
15 peers... [then, given] the IDEA's strong preference for educating children with disabilities alongside
16 their non-disabled peers, we conclude that the law supports the parents' position”). The LRE
17 requirement arose from Congress’s concern that “...children were excluded entirely from the public
18 school system and from being educated with their peers” (citing 20 U.S.C. § 1400(c)(2)(B)) ... [thus,
19 to] “alleviate that, disabled children were to have ‘access to the general education curriculum in the
20 regular classroom, to the maximum extent possible,’” (citing 20 U.S.C. § 1400(c)(5)(A)). (*N.D. ex rel.*
21 *Guard. Ad Litem v. Hi Dep't of Educ.*, 600 F.3d 1104, 1115 (9th Cir. 2010).)

22 Nor can un-immunized IEP students be excluded from the general school population because
23 they pose a danger to other students. As the Supreme Court held in *Honig v. Doe*:

24 Conspicuously absent from § 1415(e)(3), however, is any emergency exception for dangerous
25 students. This absence is all the more telling in light of the injunctive decree issued in *PARC*,⁵
26 which permitted school officials unilaterally to remove students in " 'extraordinary
27 circumstances.' " 343 F.Supp., at 301. Given the lack of any similar exception in *Mills*,⁶ and
28 the close attention Congress devoted to these "landmark" decisions, see S.Rep., at 6, U.S. Code
Cong. & Admin. News p. 1430, we can only conclude that the omission was intentional; we
are therefore not at liberty to engraft onto the statute an exception Congress chose not to create.

Honig v. Doe, 484 U.S. 305, 325, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988)

For the same reason, neither the California Legislature nor the courts are “at liberty to engraft

⁵ *Pennsylvania Assn. for Retarded Children v. Pennsylvania*, 334 F.Supp. 1257 (ED Pa.1971),
and 343 F.Supp. 279 (1972) (*PARC*).

⁶ *Mills v. Board of Education of District of Columbia*, 348 F.Supp. 866 (DC 1972);

1 onto the statute an exception Congress chose not to create” for non-immunized IEP students.

2 **3.6 The Balance Of Hardships Tips Sharply In Plaintiffs’ Favor Because They Will**
3 **Be Denied Essential Special Education Services To Which They Are Entitled**
4 **Under The IDEA Or Run The Risk Of The “Unavoidable Adverse Effects” Of**
5 **The Mandated Immunizations**

6 The balance of hardships tips sharply in Plaintiff’s favor because, under the policy of the
7 California Department of Public Health and the schools under its jurisdiction, Plaintiffs and all
8 disabled California children who do not comply with California’s immunization requirements under
9 Health and Safety Code § 120335(b) will be denied the IEP services to which they are entitled, denied
10 indefinitely, likely for all time, and without any of the required procedural protections.

11 The only other option that the IEP students have is to comply with California’s mandated
12 immunizations. But, in 1986 Congress determined that those childhood vaccines have “unavoidable”
13 “adverse effects” when it enacted the National Childhood Vaccine Injury Act (NCVIA), now codified
14 as 42 U.S.C. §§ 300aa-1 to 300aa-34. (*Bruesewitz v. Wyeth LLC*, 131 S. Ct. 1068, 179 L.Ed.2d 1, 562
15 U.S. 223 (2011)(the NCVIA “expressly eliminates liability for a vaccine's unavoidable, adverse side
16 effects.”). Since many IEP students, such as █████ developed their disabilities immediately after
17 immunizations, they likely are more susceptible, perhaps on a genetic basis, than other children not
18 so affected, to developing further disability from any more immunizations required to attend school.

19 Furthermore, the likely vaccine-injured children and their parents who are forced by California
20 to get even more vaccines with “unavoidable adverse effects” then have only very limited recourse to
21 recover compensation from any injuries, likely outsized, that they suffer due to the statutory
22 immunities provided under the NCVIA. Thus, under the present policy of the CDPH requiring IEP
23 students to comply with the Department’s immunization requirements or be barred from their schools,
24 those disabled IEP students must suffer the irreparable injury of losing their IEP services and their
25 FAPE without any due process protections, or run the risk of further irreparable injury, without just
26 compensation, due to the “unavoidable adverse side effects” of those vaccines.

27 **3.7 The Balance Of The Equities And The Public Interest Favor Granting The**
28 **Injunction**

In the Supreme Court’s first decision in an EAHCA (now the IDEA) case in 1982, the Court
took note of the legislative history of the act and its concern that “millions of handicapped children

1 'were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the
2 time when they were old enough to 'drop out.'" (*Board of Education of Hendrick Hudson Central*
3 *School District Bd of Ed Westchester County v. Rowley*, 458 U.S. 176, 191, 102 S.Ct. 3034, 73
4 L.Ed.2d 690 (1982)("Rowley"). Thus, "the intent of the Act...was to open the door of public education
5 to handicapped children..." (*Id.*, at 192.)

6 Despite the strong legislative and judicial history affirming the public policy of opening the
7 doors of public education to disabled children and providing procedural protections for those rights,
8 California has, for many years, closed the schools to those most in need of their special services, the
9 vulnerable IEP students, if their parents wouldn't submit to the coercive immunization policies of the
10 CDPH that threaten to further injure their children.

11 Furthermore, despite the fervor with which the California Department of Public Health
12 promotes and mandates those immunizations, the CDPH has no data to show that immunized children
13 are, overall, healthier than those that are not so immunized, such as days of school missed due to
14 illness. If those mandated vaccines were completely safe, there would be no need for the National
15 Childhood Vaccine Safety Act. Conversely, if those mandated vaccines were actually effective, there
16 would be no need to mandate them for all since those who wish to be protected would be so protected.

17 Here, the public interest, as expressed under both the IDEA and the relevant state law, strongly
18 favors the un-immunized, disabled children.

19 **4. REQUEST THAT NO BOND BE REQUIRED**

20 This case seeks to protect the rights of the plaintiff children and their families to their benefits
21 under the IDEA. The Defendants will suffer no monetary harm if the temporary relief is granted. See
22 *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 1997). Plaintiffs have a strong likelihood of
23 success on the merits, see *Scherr v. Volpe*, 466 F.2d 1027, 1035 (7th Cir. 1972), and the "equities of
24 potential hardships to the parties" weigh in favor of plaintiffs. See *Temple Univ. v. White*, 941 F.2d
25 201, 220 (3rd Cir. 1991). Therefore, Plaintiffs request that no bond be required.

26 **CONCLUSION**

27 For the foregoing reasons, Plaintiffs respectfully request that the Motion for Preliminary
28 Injunction, with the requested relief, be granted.

1 Dated: December 3, 2024

Respectfully submitted,

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LOCAL RULE 231(D)(3) STATEMENT

1. Plaintiffs do not seek an evidentiary hearing.



Richard B. Fox, J.D., M.D.

Counsel to Plaintiffs

Exhibits

EXHIBIT A

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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**

8
9 Brave And Free Santa Cruz and Free Now
Foundation;

10 Plaintiffs

11 vs.

12 Tomás Aragón In His Official Capacity As
Director Of The California Department Of
13 Public Health, Tony Thurmond In His
Official Capacity As State Superintendent
14 Of Public Instruction, and Gavin Newsom,
In His Official Capacity As Governor Of
15 The State Of California;

16 Defendants
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CASE NO. 2:24-cv-02312-DAD-JDP

Declaration Of [REDACTED]

Date: January 21, 2025

Time: 1:30 p.m.

Courtroom: 4

Judge: Hon: Dale A. Drozd

Action Commenced: August 26, 2024

1 I, Brittani Parsons, declare as follows:

2 1. I am the mother of [REDACTED].

3 2. My son, [REDACTED], is now thirteen years old. He attends the public schools
4 operated by the Gilroy Unified School District in Santa Clara County, California, where he resides.

5 3. At age two and one half, my son was growing and developing normally and had a
6 vocabulary appropriate for his age, *i.e.*, some intelligible words strung together in short sentences.

7 4. My son did not have the usual infant and child vaccines by age two years and three
8 months, at which time he started a series of immunizations designed to bring him up to date.

9 5. Within a few hours of receiving the second of that series of immunizations, at age
10 two and one-half years, my son began to run a fever and the injected arm became quite red and
11 swollen. Within a day or two of that immunization he lost all intelligible speech and spoke only in
12 gibberish.

13 6. My son then regressed in his development to the point that he had no intelligible
14 speech for the next two years.

15 7. Since either kindergarten or first grade, my son has been attending classes within
16 the Gilroy Unified School District under an Individualized Education Program (IEP) devised for
17 him by that school district.

18 8. On June 6, 2024 I was informed by defendant Gilroy Unified School District in the
19 email below that my son would not be allowed to enroll in the district's schools for the 2024-2025
20 school year unless he presented evidence that he complied with all of the immunization
21 requirements under Health and Safety Code Section 120335. The text of that email shown below:

22 "If you are receiving this notification, our school records show that your child has not
23 provided proof of their Tdap vaccination and does not currently meet the requirements of
24 the California School Immunization law, Health and Safety Code Sections 120325-120375
and/or County Immunization Requirements for 7th grade...Your student will NOT receive
their 7th grade schedule until immunization requirements are met."

25 9. After consulting with counsel, I gave permission to counsel to send a letter, on June
26 15, 2024, to the school superintendent pointing out that my son was legally exempt from those
27 immunization requirements as a student with an IEP and demanding that my son be allowed to
28 enroll for the upcoming school year without any further immunizations

10. I never received a response to that letter of June 15, 2024.

1 11. On August 7, 2024 the school nurse at the school within the Gilroy Unified School
2 District that my son attended last year and would like to attend this coming year inquired, by email,
3 of me as to my son's current immunization status. I then sent the school nurse a copy of the
4 Demand Letter sent to the School District on June 15, 2024.

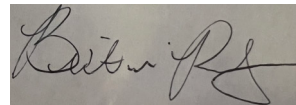
5 12. I was notified later that day by that school nurse that my son would be allowed to
6 attend school when it opened for the next term. In fact, he did start school on August 21, 2024
7 without further incident.

8 13. I am a subscriber to the weekly newsletter published by the Free Now Foundation
9 and the Free Now Foundation now speaks for me as the mother of a disabled child who receives
10 services under an Individualized Education Program (IEP) as set forth under the IDEA.

11 14. I have personal knowledge of all matters and facts set forth herein and could and
12 would competently testify thereto if called upon to do so.

13
14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct.

16
17 Executed at Gilroy, California, on November 26, 2024

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20 Brittani Parsons

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EXHIBIT B

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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
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9 Brave And Free Santa Cruz and Free Now
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11 vs.

12 Tomás Aragón In His Official Capacity As
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13 Public Health, Tony Thurmond In His
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14 Of Public Instruction, and Gavin Newsom
In His Official Capacity As Governor Of
15 The State Of California;

16 Defendants
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CASE NO.

Declaration Of Kathleen Lynch

Date: January 21, 2025

Time: 1:30 p.m.

Courtroom: 4

Judge: Hon: Dale A. Drozd

Action Commenced: August 26, 2024

1 I, Kathleen Lynch, declare as follows:

2 1. Plaintiff Brave And Free Santa Cruz is an unincorporated freedom advocacy group
3 that was organized on July 4, 2022 with its principal activities in Santa Cruz County, California. It
4 meets regularly in Santa Cruz County. It maintains a website at braveandfreesantacruz.org/. I am
5 the Co-Coordinator for the group.

6 2. The group meets monthly with attendance that varies between 20 and 100,
7 depending on the speaker. It has 365 people on its email list. The group has a steering committee
8 comprised of eight members that meets once a month. The group does a weekly outreach literature
9 table at the Santa Cruz Farmer's Market.

10 3. One of the primary stated purposes of Brave and Free Santa Cruz is to promote
11 medical freedom and choice, and to educate and protect the rights of individuals and ensure that
12 the general public has knowledge of and a choice in what medications are put into the bodies of
13 their children and themselves.

14 4. The group's members include current and/or potential parents and grandparents of
15 unvaccinated children who wish their children and grandchildren to have the right to attend public
16 or private schools, pre-schools, and daycare centers without regard to immunization status. Those
17 actual and potential parents and grandparents of unvaccinated children are also at risk of bearing
18 the personal and financial costs of: (1) caring for any of those children who become injured as a
19 result of any immunizations mandated for those children under California law, and/or (2) bearing
20 the personal and financial burdens of home schooling the children excluded from the public and
21 private schools under Health and Safety Code Section 120335. The group also includes some
22 members and/or attendees with family members who attend school under Individualized Education
23 Programs. These parents and grandparents, who would otherwise have the right and ability to sue
24 the Defendants in their own right in this matter should they have been named as an individual
25 Plaintiff, have elected to be jointly represented by Brave and Free Santa Cruz.

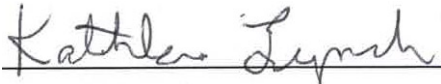
26 5. The primary purpose of this lawsuit, to stop any and all further mandatory
27 immunization of IEP students by the State of California is specifically in line with and germane to
28 the purpose for Brave and Free Santa Cruz's existence.

6. I have personal knowledge of all matters and facts set forth herein and could and
would competently testify thereto if called upon to do so.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Aptos, California, on November 26, 2024



Kathleen Lynch

EXHIBIT C

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Attorney for Plaintiffs

Brave And Free Santa Cruz, Free Now
Foundation, [REDACTED] a minor, [REDACTED] and
mother of [REDACTED]

Plaintiffs

vs.

Tomás Aragón In His Official Capacity As
Director Of The California Department Of
Public Health, Tony Thurmond In His
Official Capacity As State Superintendent
Of Public Instruction, Gilroy Unified
School District, and Anisha Munshi,
Superintendent Of The Gilroy Unified
School District;

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

CASE NO. 2:24-cv-02312-DAD-JDP

DECLARATION OF ALIX MAYER

I, Alix Mayer, declare:

1. I am the Co-Founder and Chairman of Free Now Foundation, one of the leading medical freedom law non-profits in California, and a current Plaintiff in the above entitled matter. I have personal knowledge of all matters and facts set forth herein and could and would competently testify thereto if called upon to do so.

2. Free Now Foundation was incorporated as a non-profit on April 7, 2023 and operates principally in California.

3. One of the primary stated purposes of Free Now Foundation is to protect civil liberties and health rights for all, especially children.

4. To date, Free Now Foundation has approximately 30,000 members, with social media followings in the tens of thousands.

5. A substantial number of Free Now Foundation's membership includes individuals who question the constitutionality of CA Health & Safety Code Section 120335, and what right any governmental or legislative body has to mandate that an individual forego one fundamental right for another.

6. Moreover, the general membership of Free Now Foundation is comprised, in part, of individuals who are California citizens who have school aged children or grandchildren that are not fully vaccinated in accord with the requirements of Section 120335, and who wish their children and grandchildren to have the right to attend public or private schools, pre-schools, and daycare centers without regard to immunization status.

7. Significant numbers of Free Now Foundation's members have minor

family members who attend school under Individualized Education Plans (IEPs).

8. Those parents and grandparents of un-immunized children with IEPs are at risk of bearing the personal and financial costs of: (1) caring for any of those children who become injured as a result of any immunizations mandated for those children under California law, and/or (2) bearing the personal and financial burdens of home schooling the children excluded from public and private schools under Health and Safety Code 120335.

9. Those individual members of Free Now Foundation who, as parents and grandparents of un-immunized children with IEPs, are at risk of bearing the burdens of either: (1) caring for IEP children injured by immunizations mandated under Section 120335, or (2) providing home schooling for those IEP children excluded from their usual schools, as a result of the ongoing enforcement of Section 120335 would otherwise have the right and ability to sue the Defendants in their own right in this matter should they have been named as an individual Plaintiff.

10. Because a significant number of members of Free Now Foundation have the right and ability to sue in their own capacities, they have elected to have their interests be represented by plaintiff Free Now Foundation in this Matter on behalf of all such members.

11. The primary purpose of this lawsuit, to stop any and all further enforcement of Section 120335 by the State of California as applied to all California IEP children, is specifically in line with and germane to the purpose of Free Now Foundation's existence.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Redwood City, California, on October 30, 2024.

A handwritten signature in black ink that reads "Alix Mayer". The signature is written in a cursive style and is positioned above a solid horizontal line.

Alix Mayer, Chairman, Free Now Foundation