

**REFUSAL TO PERMIT IMMUNIZATION DATA RECORD-SHARING
UNDER HEALTH & SAFETY CODE 120440(E)(4)**

This is to inform _____ School and _____ School District – and all past schools our child attended in said District including _____ School and _____ School and _____ School – that on behalf of our minor child _____,

we the parents of said child **refuse to allow the aforementioned entities to engage in record-sharing of our child’s medical immunization records, including immunization exemption data**, with any County Health Department, any County Public Health Officer, the State Health Department (California Department of Public Health (“CDPH”)), or any third-party entities including newspapers or media outlets, or state boards, pursuant to California Health & Safety Code 120440.

Unless a parent objects, under Health & Safety Code Section 120440(c), schools may collect and disclose certain types of information, including immunization data specifying the name and address of child and child’s parents/guardians, date and place of birth and gender of child, date and type of immunizations received by child as well as manufacturer and lot number for dose and TB screening results and any adverse reactions from same, and other nonmedical information necessary to establish patient’s identity (hereafter, “Immunization Data”).

While the foregoing statute allows schools in some instances to share such data, said statute also expressly forbids schools from sharing Immunization Data if – under subsection (e) – **the parent “refuse[s] to permit record sharing.”**

Per section (e)(4), if “the parent” or guardian “refuse[s] to allow this information to be shared” the child’s physician will maintain access to the child’s health records “for the purposes of patient care or protecting the public health.”

Please notify the district superintendent – as well as all school principals, administrative staff, nurses and other school or district medical personnel attending to health matters and records at each of the above schools our child has attended – of our refusal under state law to permit our child’s immunization records to be shared or released.

**REFUSAL TO PERMIT IMMUNIZATION DATA RECORD-RELEASE PURSUANT TO PUBLIC
RECORDS ACT REQUESTS UNDER GOVERNMENT CODE § 6252(e), § 6254(c), and § 6254(k)**

In addition to forbidding the aforementioned parties to transmit by e-mail, facsimile, U.S. mail, physical hard-copy collection, or other electronic transmission services any Immunization Data to any County or California Department of Public Health officer – and forbidding such data to even be reviewed during an in-person audit by said entities – we also expressly forbid our child’s health and Immunization Data from being released pursuant to Public Records Act (“PRA”) requests filed by various news outlets including, but not limited to, *The LA Times*, *Voice of San Diego*, and all other media outlets. The medical and school files of schoolchildren do not constitute a public record subject to disclosure because they do not relate “to the conduct of the public’s business.” Government Code § 6252(e). California courts have clearly held that “[c]ommunications that are primarily personal containing no more than incidental mentions of agency business” do **not** “constitute public records.” City of San Jose v. Superior Court, 2 Cal. 5th, 608, 618-619 (2017). Even though such documents may be in the possession of the local agency, they are not automatically public records if the writings do not also relate to the conduct of the public’s business. Government Code § 6252(e); Regents of the University of California v. Superior Court, 222 Cal.App.4th 383, 403–405 (2018); Braun v. City of Taft, 154 Cal.App.3d 332, 340 (1984); San Gabriel Tribune v. Superior Court, 143 Cal.App.3d 762, 774 (1983).

Given that courts have held that records containing primarily personal information, such as an employee’s personal address list or grocery list, are considered outside the scope of the PRA, children’s medical files definitionally fall outside the reach of a PRA – as such medical files have **zero references** to agency business and are **exclusively personal** in nature. *Id.*

Moreover, due to the sensitive nature of private medical information, the California Constitution protects a person’s right to privacy in his or her medical records, and it is upon such basis that the PRA statutes specifically exempt from disclosure “personnel, **medical**, or similar files, the disclosure of which would constitute an unwarranted

invasion of personal privacy.” Government Code § 6254(c). In addition, the PRA exempts from disclosure “[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law,” including, but not limited to “those described in the Confidentiality of Medical Information Act, physician/patient privilege, the Health Data and Advisory Council Consolidation Act, and the Health Insurance Portability and Accountability Act.” Government Code § 6254(k) and *A Guide to the Public Records Act* (2017)

<https://www.cacities.org/Resources/Open-Government/THE-PEOPLE%E2%80%99S-BUSINESS-A-Guide-to-the-California-Pu.aspx>

PRA requests that do not seek a student’s name may yet still request information that constitutes personal identifying information (“PII”) or protected health information (“PHI”) under various federal statutes discussed below. Because news outlets often request the “physical condition of the child” as well as the school name and doctor’s name – and further because of the wording utilized by our child’s medical doctor in describing our minor child’s physical condition in the exemption – it would be impossible for the school to comply with these news agencies’ requests because the data requested is inextricably intertwined with PII and PHI and would potentially identify our child, notwithstanding any effort by District or School personnel to de-identify, redact or remove such PII and PHI. Further, as we recall, other family members’ medical conditions may have been referenced by our child’s physician in the medical exemption, and a release of this data could cause a breach of these family members’ rights to privacy that are protected under state statute, HIPAA, and other federal statutes. We as parents and these other family members strongly object to any release – and indeed order all Schools and the District referenced above to **NOT** release – our minor child’s Immunization Data and health information, as such release would likely cause not merely an actionable privacy breach under relevant state and federal statutes vis-à-vis the child – but it would also potentially breach parents’ or other family members’ privacy rights (whose medical information is contained in our child’s medical files, Immunization Data and exemption).

REMEDIES FOR VIOLATIONS UNDER STATE & FEDERAL LAW – AND NOTICE TO SCHOOL & DISTRICT OF INTENT TO PURSUE REMEDIES FOR BREACHES

Please be further advised that under a federal law known as the Family Educational Rights and Privacy Act, or FERPA, the United States Department of Education, at the “elementary or secondary school level,” considers “students’ immunization and other health records that are maintained by a school district or individual school,” to be “‘educational records’ subject to FERPA.” U.S. Dept. Of Education, Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) And the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records, page 6 (November 2008).¹

Under FERPA, schools may only share medical records of their students if it is necessary to meet a “legitimate educational interest.” See 20 U.S.C. Section 1232g (b)(1) and 34 C.F.R. Section 99.31 (a)(1)(i)(A).

In a case involving the Alabama Department of Education, the State Health Officer for Alabama ordered school superintendents in his state to share “information with [DPH] regarding immunizations” asserting federal law allowed for same. The federal government disagreed, clarifying that immunization records maintained by schools “are subject to FERPA” and stating further that FERPA prevented the disclosure and that “HIPAA neither authorizes nor permits the disclosure of these [school immunization] records.” Also clarified was the fact that “routine vaccination” is not an “emergency” that would allow for data-mining of students’ records under FERPA, and **that there is “no exception to FERPA’s prior consent rule that would permit a school subject to FERPA to disclose health or other immunization records to a State health agency such as DPH.”** Indeed, the only exception noted by the federal government was a “very limited” one that would allow for disclosure without prior consent only “in connection with an emergency [to] appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons” – and that such conditions were required by law to be “strictly construed”:

¹ Laws that govern confidentiality of minor school children’s medical information include but are not limited to the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. § 1232g; 34 CFR Part 99), Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §§ 1400, et seq., the California Information Practices Act (California Civil Code Section 1798 et seq.), California Education Code Section 49062 et seq., Student Online Personal Information Protection Act (SOPIPA), HIPAA, Cal. Health & Safety Code section 120440, California Education Code 49073.6, California Education Code 49073.1, Article 1, and Section 1 of the California Constitution.

[U]nder certain emergency situations it may become necessary for an educational agency or institution to release personal information to protect the health or safety of the student or other students. In the case of an outbreak or epidemic, it is unrealistic to expect an educational official to seek consent from every parent.... On the other hand, a blanket exception for “health or safety” could lead to unnecessary dissemination of personal information. Therefore, in order to assure that there are adequate safeguards on this exception, the amendments provided that the Secretary shall promulgate regulations to implement this subsection. It is expected that he will strictly limit the applicability of this exception.

Joint Statement in Explanation of Buckley/Pell Amendment, 120 Cong. Rec. S21489, Dec. 13, 1974.

The United States Department of Education further stated: “This Office has consistently interpreted this provision narrowly by limiting its application to a specific situation that presents imminent danger to students or other members of the community.” (Emphasis in original). The discussion proceeded to other realms, including a discussion of terrorist threats. And even in that rather extreme context, the government noted:

Any release must be narrowly tailored considering the immediacy, magnitude, and specificity of information concerning the emergency. As the legislative history indicates, this exception is **temporally limited** to the period of the emergency and generally **will not allow for a blanket release....**

Other cases hold similarly:

When the State Department of Health has determined that the specified disease or condition does not constitute an imminent danger or threat or that emergency reporting or other action is necessary to address the concern,” then consequently, the school **“may not disclose information from a student’s education records to meet these ‘routine’ health reporting requirements** unless it has made a specific, case-by-case determination that a health or safety emergency exists.

U.S. Department of Education, Letter to University of New Mexico re: Applicability of FERPA to Health and Other State Reporting Requirements, Nov. 29, 2004. See also Federal Register, Vol. 73, No. 237, Dec. 9, 2008 (re 34 CFR Part 99) discussing “Disclosure in Non-Emergency Situations” and noting that “this exception does not cover routine, non-emergency disclosures of students’ Immunization Data to public health authorities.”

In addition to FERPA, the California Confidentiality of Medical Information Act states that any “person or entity that wishes to obtain medical information” must “obtain a valid authorization for the release of this information.” While – as with the federal statutes – there are a number of emergency exceptions to the requirement that a release from the parent be obtained before disclosure of the child’s private medical data, none of the exceptions apply to allow for blanket releases of Immunization Data.

Violations of FERPA can cause a cessation of all federal funding to involved schools and districts (typically just under 10% of a California public schools funding derives from federal sources). Sanctions under state statutes (CMIA) range from prosecution, to private rights of action, to monetary sanctions: \$2,500 for first breach/violation, \$10,000 for second violation, and \$25,000 for third and subsequent violations – capping out at a quarter million dollars for knowing and willful violations under certain circumstances. HIPAA, which protects the health information of adults – which information may be in possession of the school through a medical exemption that discusses family health history – provides similarly.

Moreover, Health & Safety Code 120440(d)(1-2), states that the School and District “shall maintain the confidentiality of information... in the same manner as other client, patient and pupil information they possess” and schools are **“subject to civil action and criminal penalties for the wrongful disclosure of the information listed.”**

This document constitutes notice to the School and District and individual nursing or medical personnel and other administrative staff of our intent to pursue all civil remedies available for any breaches of law with respect to our child’s medical Immunization Data.

Finally, we order the District and Schools to **NOT MAKE IMMUNIZATION DATA AVAILABLE** to the County or State, even during an in-person audit, by way of large 20-point font notice attached to the front of our minor child's file. California Health & Safety Code 120440 (e)(4).

**REQUEST FOR IMMEDIATE EXAMINATION OF OUR CHILD'S IMMUNIZATION DATA
– AND REQUEST THAT SCHOOL & DISTRICT ITEMIZE ALL PRIOR RELEASES OF SAME**

Health & Safety Code Section 120440 (e)(3-4) provides that a parent "has the right to examine any immunization-related information... shared." We hereby request an immediate, in-person examination of our student's medical files and Immunization Data retained by the Schools and/or District, as well as a recounting of all releases of the above data prior to now by date, recipient, and nature of exact data released. The itemization of all prior releases of our child's data shall be mailed, certified return receipt signature mandated, within fifteen (15) business days to the address at the bottom of this page.

**REVOCATION OF ANY PRIOR BOILERPLATE AUTHORIZATIONS
TO RELEASE CHILD'S MEDICAL OR IMMUNIZATION DATA**

This document further serves as a revocation of any earlier documents that were signed which would have permitted disclosure of Immunization Data by the School or District.

**OBJECTION TO RELEASE OF RECORDS PURSUANT TO SUBPOENA –
AND ORDER TO SCHOOL & DISTRICT TO OBJECT TO PRODUCTION ON OUR CHILD'S BEHALF
– AND SERVE SIGNATURE-REQUIRED CERTIFIED MAIL NOTICE TO US OF SAME**

We further put the School and District on notice that we object to the release or sharing of **all** Immunization Data pertaining to our child, in the event the School or District receives an administrative subpoena or judicial subpoena including, but not limited to, a subpoena from the Medical Board, whether such subpoena requests Immunization Data in un-redacted or redacted form, whether it requests data with or without child's name given, whether it requests reason for exemption, whether it requests doctors' name and address, or other details, in part or in whole or in summarized formats. We **OBJECT TO ANY AND ALL RELEASES** of our child's Immunization Data pursuant to subpoena.

Should the School or District receive a subpoena calling for production of our child's Immunization Data or medical files, we further order the School and District to: (1) object on our child's behalf to such production; (2) refuse to produce our child's records based on state and federal privacy grounds; (3) give us at least thirty (30) business days' notice of the production date referenced in the subpoena, by way of certified mail, **signature required, return receipt requested, delivered to our address below**; and (4) continue to refuse to produce all such Immunization Data and records of our child until the School or District has either received written, clear, affirmative consent to same by all parties whose signatures are below or alternatively, been ordered to so produce by a judge and exhausted appeals of such ruling.

Name of Parent: _____

Name of Parent: _____

Address 1: _____

Address 1: _____

Address 2: _____

Address 2: _____

City, State, Zip: _____

City, State, Zip: _____

Signature: _____
Print Parent Name: _____

Signature: _____
Print Parent Name: _____

Executed this ____ day of _____, 20____ in _____, California.