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10 HEALTH DEFENSE, CALIFORNIA
11 CHAPTER, and PROTECTION OF THE
12 EDUCATIONAL RIGHTS OF KIDS
13 (P.E.R.K.)

14 **SUPERIOR COURT COUNTY OF LOS ANGELES**
15 **UNLIMITED JURISDICTION**

16 **CHILDREN'S HEALTH DEFENSE-**
17 **CALIFORNIA CHAPTER**, a California
18 501(c)(3) non-profit corporation, on its own and on
19 behalf of its members, and **PROTECTION OF**
20 **THE EDUCATIONAL RIGHTS OF KIDS**
21 **(P.E.R.K.)**, a California 501(c)(3) non-profit
22 corporation, on its own behalf and on behalf of its
23 members;

24 Petitioners,

25 **LOS ANGELES UNIFIED SCHOOL**
26 **DISTRICT**, a local educational agency and school
27 district for the County of Los Angeles; **MEGAN**
28 **REILLY**, in her official capacity as Superintendent
of Los Angeles Unified School District; **GEORGE**
MCKENNA, in his official capacity as a member of
the LAUSD Board of Education; **MONICA**
GARCIA, in her official capacity as a member of
the LAUSD Board of Education; **SCOTT**
SCHMERELSON in his official capacity as a
member of the LAUSD Board of Education; **NICK**
MELVOIN, in his official capacity as a member of
the LAUSD Board of Education; **JACKIE**
GOLDBERG, in her official capacity as a member

Case No.:

**VERIFIED PETITION FOR WRITS OF
TRADITIONAL AND ADMINISTRATIVE
MANDATE AND REQUEST FOR
IMMEDIATE STAY (Code of Civil Proc., §§
1085, 1094.5)**

1 of the LAUSD Board of Education; **KELLY**
2 **GONEZ**, in her official capacity as a member of the
3 LAUSD Board of Education; **TANYA ORTIZ**
4 **FRANKLIN**, in her official capacity as a member
of the LAUSD Board of Education; and DOES 1
through 10, inclusive, Respondents.

5 INTRODUCTION

6 1. It is well-settled that administrative agencies have only the powers conferred on them by
7 Constitution or statute. An agency may not act in excess of those powers, and any actions
8 exceeding those powers are null and void *ab initio*. For actions that exceed an agency’s lawful
9 jurisdiction or authority, mandate will lie to nullify the void acts. This case presents a clear
10 instance of a local education agency acting far in excess of its lawful jurisdiction and authority
11 under state law.

12 2. On September 9th 2021, after a month of successful in-person learning throughout Los
13 Angeles Unified School District schools, Respondent Board Members of the Los Angeles Unified
14 School District (“LAUSD”) held a special board meeting with less than forty-eight hours’ notice,
15 to adopt a highly controversial district-wide Covid-19 vaccine requirement via resolution for all
16 “eligible”¹ LAUSD students as a condition to students continuing their already commenced in-
17 person education in the district (the “Requirement”).

18 3. Respondents’ Requirement has imposed unreasonable fall compliance deadlines and illegal
19 conditions on LAUSD students that have already caused significant educational disruption and
20 social, emotional, and psychological harm to students impacted by this Requirement.

21 4. Yet, Respondents lacked and lack any and all legal jurisdiction or authority under state law
22 to enact this Requirement, because only the California Department of Public Health (CDPH) can

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24 ¹ “Eligible students” are defined as students over the age of 12 without a valid exemption.
25 According to LAUSD’s Covid FAQ website, LAUSD families are told that “state law does not
26 recognize religious or personal belief exemptions for student immunizations.” This is a
27 misstatement of the law when it comes to any new vaccines added to the childhood
28 immunization schedule that are not already on the enumerated list. *See*
<https://achieve.lausd.net/covidfaq>.

1 add a new vaccine requirement to the childhood immunization schedule as a condition for in-
2 person education in California, and it is just beginning the necessary legal and administrative
3 procedures to do so.

4 5. Respondents' actions in imposing its unlawful Requirement on LAUSD students must be
5 immediately declared null and void for the following reasons: (1) Respondent LAUSD is not the
6 proper agency with the statutory authority to mandate any new vaccine as a condition for in-
7 person education under the Health and Safety Code; (2) The proper agency authorized to add a
8 new vaccine requirement under the Health and Safety Code is CDPH, and CDPH did not
9 delegate its statutory authority to Respondents, and indeed intends to exercise its statutory
10 authority itself; (3) even if CDPH had delegated its authority to Respondents, which it has not
11 done and cannot do, Respondents failed to follow all statutory and administrative procedures
12 established by the Legislature for adding a new vaccine requirement as a condition for in-person
13 education; and (4) Respondents lack any jurisdiction or authority to add a new vaccination
14 requirement as a condition for in-person education under any other applicable Education Code
15 provisions because their actions are in direct conflict with, inconsistent with, and/or pre-empted
16 by existing state health and safety laws, administrative procedure requirements and federal
17 emergency use authorization ("EUA") law.

18 6. Via this Petition, Petitioners seek writs of traditional and administrative mandate from
19 this Court for the benefit of its numerous members residing within LAUSD with children
20 attending schools within the district, declaring that Respondents lacked all authority to enact its
21 Requirement, and immediately enjoining Respondents from enforcing it against any LAUSD
22 students.

23 **PARTIES**

24 7. Petitioner CHILDREN'S HEALTH DEFENSE-CALIFORNIA CHAPTER ("CHD-CA")
25 is a California 501(c)(3) nonprofit corporation incorporated under the laws of the State of
26 California, and headquartered in Ross, California. CHD-CA was founded in 2020 as the
27 California branch of Children's Health Defense ("CHD"), a national non-profit organization
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1 headquartered in Peachtree, Georgia. CHD-CA has over 7,000 members throughout California,
2 consisting predominately of parents whose children have been negatively affected by
3 environmental and chemical exposures, including unsafe vaccines. CHD-CA represents the
4 interests of thousands of children and families across California. Approximately 540 of CHD-
5 CA members reside within the boundaries of the LAUSD and have children attending school in
6 LAUSD schools. As described herein, Respondents' actions have or will soon deprive many of
7 these California children access to superior in-person public education and their constitutionally
8 protected right to a K-12 education within the LAUSD.

9 8. Petitioner PROTECTION OF THE EDUCATIONAL RIGHTS OF KIDS (hereinafter
10 "PERK") is a California 501(c)(3) nonprofit corporation headquartered in California, whose
11 mission is to protect children's rights to an education. PERK has over 3,500 members
12 throughout California, consisting predominately of parents of children attending school, grades
13 K through 12 in California. Approximately 930 of PERK's members reside within the
14 boundaries of the LAUSD and have children attending school in LAUSD schools.

15 9. Respondent Los Angeles Unified School District ("LAUSD") is the school district and
16 local educational agency established for the County of Los Angeles as well as an agency of the
17 state for purposes of implementing the educational requirements of state law within the
18 geographical boundaries of the County of Los Angeles. It the second largest school district in
19 the United States, enrolling more than 600,000 students from pre-kindergarten through adult
20 education.

21 10. Respondent MEGAN REILLY (hereinafter referred to as "Respondent Reilly" is the
22 Interim Superintendent of the LAUSD. As such, she is responsible for the daily operations of the
23 LAUSD, including during the time period relevant to Respondents' consideration and adoption
24 of the Requirement. Specifically, Respondent Reilly is the individual who is vested with the
25 power of enforcement of LAUSD's policies and protocols challenged herein. Respondent Reilly
26 is sued herein solely in her official capacity.

27 11. Respondents GEORGE MCKENNA, MONICA GARCIA, SCOTT SCHMERELSON,
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1 NICK MELVOIN, JACKIE GOLDBERG, KELLY GONEZ, and TANYA ORTIZ FRANKLIN,
2 respectively, are members of the LAUSD Board of Education (collectively, the “Board
3 Members”). Each of the Board Members are sued herein solely in their official capacities. Upon
4 information and belief, all of the Board Members are residents of Los Angeles County. The
5 Board Members collectively possess the legal authority and duty to adopt, amend, revise,
6 rescind, and oversee all policies and procedures of the LAUSD, in a manner consistent with state
7 law.

8 12. Petitioners do not know the true names and capacities of DOES 1 through 10, inclusive,
9 and therefore Petitioners sue said Respondents under fictitious names. Petitioners are informed
10 and believe, and thereon allege, that each of such DOE Respondents is under a legal duty to act
11 in the manner sought herein. Petitioners will amend this Petition to name these Respondents in
12 their true names and capacities if and when so ascertained.

13 **JURISDICTION AND VENUE**

14 13. This Court has jurisdiction to issue writs of mandate pursuant to California Code of Civil
15 Procedure Sections 1085 and 1094.5.

16 14. This Court has personal jurisdiction over Respondents. The Respondent Board Members
17 and Respondent Reilly are governmental actors that conduct business in and maintain operations
18 in this county on behalf of Respondent LAUSD.

19 15. This Court is the proper venue for this action because the Respondents either reside in or
20 maintain executive offices in this County, a substantial portion of the transactions and wrongs
21 complained of herein took place in this County, including Respondents’ primary participation in
22 the acts detailed herein, and Petitioners’ injuries occurred in this County. See California Code of
23 Civil Procedure § 393(b).

24 16. Petitioners have a clear, present, and beneficial right to, and clear, present and beneficial
25 interest in, the proper performance of the law by Respondents.

26 17. Petitioners have no plain, speedy, and adequate remedy at law.

27 18. Petitioners have not exhausted administrative remedies because there are no applicable
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1 remedies to exhaust. Specifically, there is no adequate administrative remedy to curtail actions
2 of Respondents that are without, or in excess of, their legal jurisdiction and authority. Even if
3 there were such a remedy, an extended delay in resolving this controversy due to utilization of
4 such administrative remedy would result in irreparable injury to Petitioners.

5 **LEGAL BASIS**

6 19. California law, as codified in the Health and Safety Code, provides an enumerated list of
7 childhood immunizations required for admittance or advancement in California public and
8 private schools.

9 20. Specifically, under Health and Safety Code section 120335(b)(1)-(10), there are only ten
10 childhood diseases for which immunizations must be obtained at certain stages of a child's
11 education as a condition to attending in-person public or private secondary or elementary school
12 in California.

13 21. Covid-19 immunizations are currently not on this enumerated list.

14 22. Any new immunization requirements other than the ten enumerated immunizations
15 currently listed in Section 120335(b)(1)-(10) may only be added by the CDPH pursuant to Health
16 and Safety Code section 120335(b)(11).

17 23. Further, under Health and Safety Code section 120338, if any new vaccine *is* added to the
18 childhood schedule by the CDPH, both medical and personal belief exemptions must be allowed.

19 24. Pursuant to the California APA, as an administrative agency of the executive branch of
20 California state government, the CDPH also must engage in rulemaking and provide public
21 notice and opportunity to comment prior to adding any new vaccine to this childhood
22 immunization schedule.

23 25. A school board is not the agency charged or endowed with any delegated statutory
24 authority to *add* a new vaccine to this schedule, but rather is merely the subordinate governing
25 authority charged with *collecting documentation* of the immunizations required by the
26 Legislature under Section 120335(b)(1)-(10).

27 26. All available Pfizer Covid-19 vaccine products, and all other Covid-19 vaccine products
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1 available to the general public in California, *including to all students of any age* within the
2 LAUSD, are still available only under the federal EUA.

3 27. Under federal law the person being offered an EUA product must: 1) provide informed
4 consent to consume the product, and 2) be allowed the right to refuse the product without
5 coercion. *See* 21 U.S.C. § 360bbb-3, see also 45 C.F.R. § 46 *et seq.*

6 28. California Education Code § 35160 permits a governing board of any school district to
7 carry on a program or act in any manner as long as it is not in conflict with or inconsistent with,
8 or pre-empted by, any law.

9 29. California Education Code § 35161 allows a governing board to execute any powers
10 delegated to it or to the district by law.

11 30. Respondents' Requirement is inconsistent with, and in direct conflict with, the existing
12 statutory requirements of the California Health & Safety Code provisions of sections 120335 and
13 120338, the California Administrative Procedure Act ("APA") provisions, the limitations
14 inherent in California Education Code § 35160 and § 35161 and the federal EUA law as
15 described herein.

16 **FACTUAL ALLEGATIONS**

17 31. California law requires children to attend school, and also guarantees them a free public
18 education as a core constitutional right.²

19 32. Pursuant to state and local law and emergency orders promulgated as a result of the
20 Covid-19 pandemic, and following protracted closures, all schools in Los Angeles County were
21 permitted to reopen on February 15, 2021. Reopening of all California schools was not
22 conditioned upon any students taking a Covid-19 vaccine.

23 33. After a two-month summer recess, all schools within the LAUSD system reopened for
24 the 2021-2022 school year at various staggered dates in August of 2021.

25 34. Although students returning to in-person education have been required to engage in

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27 ² California Constitution, Article IX, Section 5.

1 certain Covid-19 protocols, including masking and polymerase chain reaction (“PCR”) testing,
2 students within LAUSD were not subjected to any Covid-19 vaccine requirement as a condition
3 of returning to in-person education beginning in August of 2021.

4 35. With no Covid-19 vaccine requirement prior to starting school, LAUSD students have
5 not experienced severe Covid-19 cases, hospitalizations, or death.³

6 36. Given this, it is incomprehensible that a state that already has the lowest Covid-19 rates
7 in the entire country without any vaccine mandate would insist on being the first state in the
8 nation to impose a vaccine requirement on healthy teens and pre-teens as a condition to
9 continuing in-person education, or why Respondents chose to impose this onerous and
10 educationally disruptive requirement right in the middle of a school term.

11 37. Nevertheless, on September 9, 2021, after a month of successful in-person learning,
12 Respondent Board Members of the LAUSD took it upon themselves as a “local educational
13 agency and agency of the state,” to adopt via resolution the Requirement, which purports to
14 require LAUSD students 12 years of age and older, as a condition to students continuing their
15 already commenced in-person education in the LAUSD, to obtain the COVID-19 vaccine by
16 specified dates during the fall term. A true and correct copy of the Requirement is attached
17 hereto as “**Exhibit A**” and fully incorporated herein by reference.

18 38. Specifically, rather than wait until the end of the fall term, Respondent Board Members
19 introduced a resolution to impose a new Covid-19 vaccine requirement on its high school and
20 middle school students, with compliance deadlines beginning as early as October 3, 2021 and
21 ending on January 10, 2022. After that time, students would be expelled from LAUSD campuses
22 if they have not had all required shots for the applicable vaccine and also undergone a waiting
23 period of two weeks.

24
25 ³ In fact, according to the Governor’s own October 1, 2021 Directive: “California
26 continues to maintain the lowest case rate in the entire country” and “California is leading
27 national trends in preventing school closures and keeping kids in classrooms.” See Exhibit D
28 herein.

1 39. Even more appallingly, per Respondents’ resolution, the Requirement would apply to
2 children between 12 and 15 years old, despite the lack of any fully federal Food and Drug
3 Administration (“FDA”)-approved Covid-19 vaccine for students under 16 years of age.

4 40. Respondent Board Members’ resolution also indicated that any eligible student over the
5 age of 12 unwilling to submit to the Covid-19 vaccine requirement would immediately be
6 prohibited from in-person schooling and services mid-term, and placed into independent study at
7 the City of Angels, LAUSD’s independent study alternative.⁴

8 41. The September 9, 2021 special school board meeting was held remotely, and public
9 participation was severely curtailed. In fact, despite hundreds of requests from parents to speak
10 at this board meeting in opposition to the proposed imposition of a purported Covid-19 vaccine
11 requirement in the middle of a school term, only three parents were allowed to orally voice their
12 opinions. Many LAUSD family members reported having difficulties even getting through the
13 phone lines to register to speak, or to participate in the discussion once registered, on this issue
14 of critical importance to LAUSD families.

15 42. Despite the severely curtailed public participation, numerous LAUSD families
16 nevertheless submitted written objections to the Covid-19 vaccine proposal prior to
17 Respondents’ vote. In these opposition letters, Respondent Board Members were informed of
18 their lack of legal jurisdiction and authority to require a new vaccine under relevant state Health
19 and Safety Code provisions and applicable federal EUA law. A true and correct copy of a
20 representative letter sent to Respondents is attached hereto as “**Exhibit B**” and fully incorporated
21 herein by reference.

22 43. Respondent Board Members ultimately adopted the Requirement via resolution at its
23 September 9, 2021 remotely-held board meeting (the final resolution adopting the Requirement
24 is hereinafter referred to as the “Adopted Resolution”).

25 44. Although Respondents vaguely claimed they had a “constitutional mandate obligation to

26 ⁴ See <https://www.cityofangelsschool.org/>.

1 deliver the highest-quality instruction in the safest environment possible,” the Adopted
2 Resolution failed to answer the questions raised by numerous LAUSD parents regarding the
3 specific basis of Respondents’ legal jurisdiction and authority to impose a new vaccine
4 requirement, and did not cite the precise statutory basis of authority for their action.

5 45. In the Adopted Resolution setting forth Respondents’ Requirement, Respondent Board
6 Members indicated that LAUSD would now require all eligible students over the age of 12 to
7 become vaccinated against Covid-19 as a “mandatory precondition to accessing LAUSD school
8 facilities.”

9 46. Specifically, the Adopted Resolution provides that:

10 a. All students who are 12 years of age and older and part of any in-person
11 extracurricular programs must receive their first vaccine dose no later than October 3, 2021 and
12 their second dose no later than October 31, 2021⁵;

13 b. All other students who are not enrolled in any extracurricular programs and who
14 are 12 years of age or older must receive their first Covid-19 vaccine dose by no later than
15 November 21, 2021 and their second dose by no later than December 19, 2021; and

16 c. All other students who are not yet 12 years old must receive their first Covid-19
17 vaccine dose no later than 30 days after their twelfth birthday and their second dose by no later
18 than 8 weeks after their twelfth birthday.

19 47. Respondents’ Requirement further indicates that eligible students must provide proof of
20 Covid-19 vaccination by uploading documentation to LAUSD’s Daily Pass program before
21 January 10, 2022 in order to be permitted to access any LAUSD school facilities.

22 48. On September 9, 2021, the same day the Requirement was approved, Respondent Reilly
23 sent a form letter via email to all LAUSD families informing them of the new policy. A true and
24 correct copy of Respondent Reilly’s letter is attached hereto as “**Exhibit C**” and fully
25 incorporated herein by reference (“Respondent Reilly’s Letter”).

26 _____
27 ⁵ Respondents’ Adopted Resolution does not appear to contemplate students taking the single
28 dose Covid-19 vaccine product by Johnson & Johnson.

1 49. After receiving Respondent Reilly’s Letter and notice of the new Requirement, many
2 LAUSD families have been left scrambling to determine whether and when to get their child
3 vaccinated, obtain an exemption, remove them from school, transfer them to another school
4 district, enroll in private school, commence home schooling, and myriad other considerations
5 and options.

6 50. Moreover, some of the potential alternative options are either not feasible on their face or
7 not feasible for certain families, particularly lower income families. Students are already over a
8 month into the fall term, and those LAUSD students who wanted to take a Covid-19 vaccine
9 product have generally already done so.

10 51. For LAUSD families and students who are unable to take or are opposed to taking a
11 Covid-19 vaccine product, whether due to medical or religious reasons or personal beliefs,
12 Respondents’ Requirement has already caused significant educational, social, emotional and
13 psychological disruption.

14 52. Students who are unable to or do not wish to submit to the new and unlawful
15 Requirement have been, or soon will be, denied access to school campuses altogether, along with
16 the services that they provide, including school lunches, extracurricular programs, extended
17 learning programs, campus computer and science labs, sports facilities, and so much more.

18 53. The impact of this new Requirement will naturally have an even more devastating impact
19 on lower-income LAUSD families who are unable or do not wish to have their children taking
20 any Covid-19 vaccine product. These families may have less resources to find or utilize
21 alternative private school or homeschooling options, particularly after being blindsided during
22 the middle of the fall semester under rushed conditions and unreasonable deadlines.

23 54. In addition, due to Respondents’ Requirement that students over the age of 12 enrolled in
24 any extracurricular programs must have taken their first dose of a Covid-19 vaccine by October
25 3rd, 2021, students enrolled in sports and/or other extracurricular activities are already frantic to
26 stay on their teams and in their chosen activity, or have already suffered negative, disruptive, and
27 humiliating consequences for not complying with the “first dose” requirement.

1 55. The unreasonable timing of the Requirement means that many of these students who have
2 already paid for their uniforms and/or necessary materials or equipment, will soon be or have
3 already been forced off their teams, off the fields, out of their school theatres, or out of their
4 school swimming pools, or else forced or coerced to submit to an unwanted, and for students
5 under 16, federally unapproved and unlicensed, Covid-19 vaccine product.

6 56. In the midst of this current disruption and chaos caused by Respondents' new Requirement,
7 on Friday, October 1, 2021, Governor Newsom announced via press conference that he had just
8 "directed the [CDPH] to follow the procedures established by the Legislature to add the Covid-19
9 vaccine to other vaccinations required for in-person school attendance – such as measles, mumps,
10 and rubella—pursuant to the Health & Safety Code." (hereinafter the "Governor's Directive"). A
11 true and correct copy of the Governor's Directive is attached hereto as "**Exhibit D**" and fully
12 incorporated herein by reference.

13 57. Under the Governor's Directive, the Governor announced that CDPH will now begin the
14 process of adding the Covid-19 vaccine to the childhood immunization schedule following all of
15 the procedures established by the Legislature to add a vaccine to the schedule, including
16 applicable procedures under the California Health & Safety Code and California APA.

17 58. The Governor's Directive also indicated that certain terms and conditions will apply to
18 the eventual CDPH state-wide Covid-19 vaccine mandate (hereinafter the "State-Wide
19 Mandate").

20 59. The terms and conditions of Respondents' Requirement directly conflict with and/or are
21 inconsistent with the requirements set out in the Governor's Directive for the State-Wide
22 Mandate.

23 60. Specifically, the State-Wide Mandate will not go into effect until after January 1, 2022,
24 and according to the Governor's Directive, is more likely to go into effect after July 1, 2022 for
25 most grade-spans due to the need for full FDA licensing of the Covid-19 vaccine product.

26 61. In contrast, Respondents' Requirement has already imposed fall term compliance
27 deadlines on LAUSD students, with compliance deadlines as early as October 3, 2021 for any
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1 eligible LAUSD engaged in in-person extracurricular activities such as sports, dance, or theatre.

2 62. The State-Wide Mandate also contemplates that Covid-19 vaccine requirements for in-
3 person education will be imposed on applicable grade-spans only once there is a fully FDA
4 approved Covid-19 vaccine product available for that grade-span.

5 63. In contrast, Respondents' Requirement is already forcing or coercing students under the
6 age of 16 to submit to experimental and unapproved Covid-19 vaccine products that are still in
7 clinical trials and authorized for use only under a federal EUA.

8 64. Under federal law, the person being offered an EUA drug product must be provided with
9 informed consent to consume the product, and be allowed the right to refuse the product. *See* 21
10 U.S.C. § 360bbb-3.

11 65. Although the Governor's Directive does not, in fact, add any new Covid-19 vaccine to
12 the childhood immunization schedule during this fall term, it illustrates the following:

13 a. Governor Newsom recognizes that the CDPH is the only proper agency authorized by
14 law to add a new vaccine to the childhood immunization schedule as a condition for in-person
15 education in California.

16 b. Adding a new vaccine to the childhood schedule must be done following the statutory
17 procedural safeguards established by the Legislature and the significant public participation
18 requirements guaranteed by the California APA for state agency rulemaking; and

19 c. Respondents are neither the proper agency to add a new vaccine requirement as a
20 condition to in-person education, nor did Respondents follow the proper procedures and
21 necessary safeguards for doing so.

22 66. Respondents in this case have acted wholly without legal authority and in excess of their
23 jurisdiction as a "governing authority" under the applicable Health & Safety Code and
24 Educational Code provisions, as well as the governing board of a school district and "local
25 educational agency."

26 67. Respondents' Requirement is also in direct conflict with, inconsistent with, and/or pre-
27 empted by both state and federal law.
28

1 **FIRST CAUSE OF ACTION**

2 **Writ of Mandate (Code of Civ. Proc., §§ 1085, 1094.5) — Violation of Mandatory**
3 **Duty, Proceeding Without or in Excess of Jurisdiction and Authority, Abuse of**
4 **Discretion for Failure to Proceed in the Manner Required by Law:**
5 **Violation of Health & Safety Code Sections 120335 and 120338**

6 68. Petitioners hereby incorporate by reference all preceding paragraphs as though set forth
7 in full herein.

8 69. A writ of traditional and/or administrative mandate is necessary in this case to bring
9 Respondents' actions into conformance with the law.

10 70. Respondents have acted in violation of their mandatory, ministerial statutory duties and
11 wholly without, outside the scope of, and in excess of their lawful jurisdiction and authority, and
12 have abused their discretion by failing to proceed in the manner required by law.

13 71. Specifically, California law, as codified in the Health and Safety Code, provides an
14 enumerated list of childhood immunizations required for admittance or advancement in
15 California public and private schools.

16 72. Covid-19 immunizations are currently not on this enumerated list.

17 73. Any new immunization requirements other than the ten enumerated immunizations
18 currently listed in Section 120335(b)(1)-(10) may only be added by the CDPH pursuant to Health
19 and Safety Code section 120335(b)(11).

20 74. Further, under Health and Safety Code section 120338, if any new vaccine is added to the
21 childhood schedule by the CDPH, both medical and personal belief exemptions must be allowed.

22 75. Pursuant to the California APA, as an administrative agency of the executive branch of
23 California state government, the CDPH also must engage in rulemaking and provide public
24 notice and opportunity to comment prior to adding any new vaccine to this childhood
25 immunization schedule.

26 76. As a school district, or the governing board of a school district, Respondents are merely a
27 "governing authority" as defined under California Health & Safety Code Section 120335(a).

28 77. As a "governing authority," Respondents' statutory authority with respect to the

1 childhood immunizations required as conditions to in-person education in California is to collect
2 the *documentation* necessary to establish that the relevant students have taken the immunizations
3 required by California Health & Safety Code Section 120335(b)(1)-(10) or, once properly added
4 by the CDPH, 120335(b)(11), with related ministerial duties under section 120375.

5 78. Respondents have no legal authority whatsoever to add a new vaccine requirement as a
6 condition for in-person education within the LAUSD, nor were they delegated that authority by
7 the CDPH.

8 79. Even if the CDPH could delegate any of its statutory authority to Respondents, which it
9 did not and could not, Respondents could not assert more or greater authority than the CDPH has
10 under existing law to add a vaccine requirement to the childhood immunization schedule as a
11 condition for in-person education and under existing law. Under Health and Safety Code section
12 120338, the CDPH would be required to allow both medical and personal belief exemptions to
13 any new vaccine requirement.

14 80. Respondents, by their actions in enacting and enforcing the Requirement against LAUSD
15 students, have exceeded their lawful authority as a subordinate “governing authority,” as defined
16 under California Health & Safety Code Section 120335(a), by acting contrary to, and in violation
17 of, their mandatory, ministerial duties and without, or in excess of, their statutory jurisdiction and
18 authority.

19 81. Respondents have acted in violation of their mandatory, ministerial statutory duties and
20 wholly without, outside the scope of, and in excess of their lawful jurisdiction and authority, and
21 have abused their discretion by failing to proceed in the manner required by law under Health &
22 Safety Code section 120335 *et. seq.* by unlawfully purporting to require a new vaccine (the
23 Covid-19 vaccine) as a condition for in-person education for “eligible” students over the age of
24 12 within LAUSD.

25 82. Respondents have also acted in violation of Health & Safety Code section 120338, which
26 requires that personal belief exemptions be allowed for any new vaccine requirements added to
27 the student immunization schedule.

1 83. Respondents' adoption and imposition of the Requirement upon LAUSD students
2 constitute acts in violation of Respondents' mandatory, ministerial statutory duties; acts without,
3 outside the scope of, or in excess of, Respondents' statutory jurisdiction and authority, and an
4 abuse of discretion for failure to proceed in the manner required by law, and therefore such
5 unlawful actions must be immediately declared to be null and void *ab initio*.

6 84. Petitioners' and their members have been, are being, and will continue to be harmed by
7 Respondents' actions by, *inter alia*, being denied or actively threatened with the imminent denial
8 of their ongoing in-person education, participation in extracurricular activities, and exclusion
9 from many other benefits and services attached to in-person education within LAUSD.

10 85. Petitioners and their members will be irreparably harmed if this writ of mandamus and
11 accompanying stay of implementation of the Adopted Resolution and Requirement in order to
12 preserve the status quo is not issued, pending resolution of this dispute, and a peremptory writ is
13 not issued at the conclusion of this litigation requiring Respondents to vacate and rescind the
14 Adopted Resolution and Requirement *in toto*.

15 **SECOND CAUSE OF ACTION**

16 **Writ of Mandate (Code of Civ. Proc., §§ 1085, 1094.5) 21 U.S.C. § 360bbb-3,**
17 **Violation of Mandatory Duty, Proceeding Without or in Excess of Jurisdiction**
18 **and Authority, Abuse of Discretion for Failure to Proceed in the Manner**
19 **Required by Law:**
20 **Violation of Education Code Sections 35160 and 35161**
21 **(Conflict with General Law)**

22 86. Petitioners hereby incorporate by reference all preceding paragraphs as though set forth
23 in full herein.

24 87. A writ of traditional and/or administrative mandate is necessary in this case to bring
25 Respondents' actions into conformance with the law.

26 88. There is no other Health & Safety Code or Educational Code provision that allows
27 Respondents to bypass the legislatively prescribed state agency processes for adding a new
28 vaccine to the childhood immunization schedule as a condition for in-person education in
California.

1 89. Although California Education Code section 35160 allows governing boards of a school
2 district “to initiate and carry on any program, activity, or otherwise act in any manner,” it may
3 only do so as long as such actions are “not in conflict with or inconsistent with, or pre-empted
4 by, any state law.”

5 90. Similarly, California Education Code section 35161 allows a governing board to execute
6 any powers delegated to it or to the district by law. In this case, CDPH did not and cannot
7 delegate to LAUSD or any other school district in California its exclusive authority to add a new
8 vaccine requirement to the childhood immunization schedule.

9 91. Respondents have acted in violation of their qualified authority and duties and outside the
10 scope of or in excess of their jurisdiction, and have abused their discretion under Education Code
11 sections 35160 and 35161 by enacting the Adopted Resolution and Requirement that
12 Respondents did not have any statutory or regulatory authority to enact.

13 92. Further, the Adopted Resolution and Requirement are inconsistent with, in direct conflict
14 with, and expressly and impliedly pre-empted by the requirements of Health and Safety Code
15 sections 120335 and 120338, the California APA and 21 U.S.C. § 360bbb-3.

16 93. The Adopted Resolution and Requirement also are inconsistent with, and in direct
17 conflict with, the articulated terms and conditions of the Governor’s Directive and the announced
18 State-Wide Mandate.

19 94. Finally, the Adopted Resolution and resultant Requirement are inconsistent with and in
20 conflict with right to informed consent and option to refuse under 21 U.S.C. § 360bbb-3 and
21 related federal regulations, 45 C.F.R. § 46 *et seq.*

22 95. In addition, even if the CDPH could delegate its authority to add a new vaccine to the
23 childhood immunization schedule, it could not delegate more power to a subordinate agency than
24 it could lawfully exercise itself.

25 96. Even if Respondents had been delegated authority by the CDPH or some other body, the
26 Adopted Resolution and resultant Requirement bypasses all of the aforementioned statutory and
27 administrative state and federal law requirements, and therefore is inconsistent with, and in direct
28

1 conflict with, existing law.

2 97. Despite these clear inconsistencies and direct conflicts with existing state and federal
3 laws, as of the date of the filing of this Petition, and despite having no legal authority or
4 jurisdiction to act, Respondent LAUSD still has not vacated or rescinded its Requirement.

5 98. Consequently, Respondents' actions have already caused and will continue to cause
6 irreparable harm to Petitioners and their individual members within LAUSD in that the unlawful
7 Requirement has unreasonable compliance deadlines within the ongoing fall term, and coerces
8 unapproved and experimental products on its students between the ages of 12-15 through a
9 mandate that forces them to either accept the experimental product or lose all in-person school
10 privileges.

11 99. Petitioners and their members are already suffering under Respondents' Requirement as
12 they scramble to ensure their children's continuing educational, sociological and emotional needs
13 while navigating these sudden, oppressive, and unlawful requirements.

14 100. Petitioners and their members will be irreparably harmed if a stay of
15 implementation of the Requirement, in order to preserve the status quo, is not ordered pending
16 resolution of this dispute and a peremptory writ is not issued at the conclusion of this litigation
17 requiring Respondents to vacate and rescind the Adopted Resolution and Requirement *in toto*.

18
19 **PRAAYER FOR RELIEF**

20 WHEREFORE, Petitioners, on behalf of themselves and their members and others similarly
21 situated, pray for the following relief:

- 22 1. For issuance of a peremptory writ directing that Respondents be commanded by this
23 Court to: vacate and set aside the unlawful Adopted Resolution and Requirement and
24 inform all LAUSD families that the unlawful Requirement is null and void and of no
25 legal effect, and issue a return to this Court verifying that they have taken these actions.
- 26 2. For immediate issuance of an alternative writ, order to show cause, and temporary stay
27 preventing implementation and enforcement of the Requirement pending issuance of a
28 peremptory writ prayed for in paragraph 1 above.

3. For the issuance of temporary restraining order enjoining any enforcement thereof until the conclusion of this petition and a permanent injunction enjoining any enforcement of the Requirement.
4. For the issuance of an order declaring the Requirement null and void *ab initio*.
5. For an award of costs and attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and any other applicable provisions, as allowed by law; and
6. For such other relief as the Court deems just and proper.

Respectfully submitted,

Dated: October 12, 2021

LAW OFFICE OF NICOLE C. PEARSON

Nicole C. Pearson
Attorney for Petitioners

Jessica R. Barsotti
Attorney for Petitioners

Rita Barnett-Rose
Attorney for Petitioners

VERIFICATION

I, Denise Young, am the Executive Director of Petitioner Children’s Health Defense, California Chapter and I am a resident of the County of Los Angeles, State of California. I have read the foregoing Verified Petition for Writ of Traditional and Administrative Mandate and Request for Immediate Stay, I have personal knowledge of the facts alleged herein, and I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ___ day of October 2021, in _____, California.

Denise Young, Executive Director,
California Chapter, Petitioner

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VERIFICATION

I, Amy Bohn, am the Executive Director of Petitioner Protecting Educational Rights of Kids, Inc. (“PERK”) and I am a resident of the County of Los Angeles, State of California. I have read the foregoing Verified Petition for Writ of Traditional and Administrative Mandate and Request for Immediate Stay, I have personal knowledge of the facts alleged herein, and I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ___ day of October 2021, in _____, California.

Amy Bohn, Executive Director of Protecting Educational Rights of Kids, Inc, Petitioner