

---

## Legal Challenges to Student Vaccine Mandates Produce Varying Results

---

January 31, 2022

Number 5

**Written by:**

Sloan R. Simmons

Partner

Sacramento

Alyssa R. Bivins

Senior Counsel

Sacramento

Vaccine mandates enacted by and affecting local education agencies have faced various legal challenges, with differing outcomes. Divergent court rulings regarding student vaccine mandates have been issued, often within days of rulings regarding mask mandates, resulting in a changing and sometimes confusing legal landscape. This Client News Brief addresses the legal challenges to student vaccine mandates.

### **LAUSD Student Vaccine Mandate – Los Angeles Superior Court Ruling**

In September 2021, the Board of Education for the Los Angeles Unified School District (LAUSD) passed a resolution requiring students ages 12 and older to be fully vaccinated against COVID-19 by January 10, 2022. The mandate allowed for certain exemptions but did not include exemptions based on religious or personal beliefs. Two parent groups filed suit against LAUSD, asking the Los Angeles County Superior Court to issue a preliminary injunction preventing LAUSD from implementing the vaccine mandate. On December 13, 2021, the superior court denied the motion for preliminary injunction, thus permitting LAUSD to proceed with implementing the vaccine mandate as scheduled. (*Children's Health Defense v. Los Angeles Unified School Dist.* (Super. Ct. Los Angeles County, Dec. 8, 2021, No. 21STCP03429.) In ruling in favor of LAUSD's mandate, the court noted that LAUSD was not requiring the students to receive COVID-19 vaccinations. Rather, LAUSD's mandate proposed to physically exclude unvaccinated children ages 12 and older from receiving in-person instruction and participating in extra-curricular activities. Unvaccinated students, under the mandate, would be directed to independent study. They would not be excluded from instruction or disenrolled from the district. The court reasoned that because the mandate would not deny enrollment or exclude any students from receiving instruction, it did not conflict with any existing law. Therefore, the court concluded, adoption of the mandate was within LAUSD's discretion under Education Code section 35160, which states that "the governing board of any school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established."

Although the superior court permitted LAUSD's vaccine mandate to proceed, LAUSD decided to delay the implementation of the vaccine mandate until the beginning of the Fall 2022 semester to afford students and parents more time to comply.

Additionally, LAUSD cited concerns about shifting nearly 30,000 students to independent study on the earlier implementation date.

## **SDUSD Student Vaccine Mandate – Federal and San Diego Superior Court Rulings**

Shortly after LAUSD adopted its student vaccine mandate, San Diego Unified School District (SDUSD) adopted a “Vaccination Roadmap,” requiring students ages 16 and older to receive the second dose of a COVID-19 vaccine by December 20, 2021, to attend in-person instruction for the Spring 2022 semester, starting in January 2022. The mandate allowed for certain time-limited exemptions for pregnant students, students transferring into the district, and student with medical needs and disabilities. The mandate did not allow for personal belief or religious exemptions.

SDUSD’s mandate was swiftly challenged in two separate lawsuits. One lawsuit was filed in federal court by a 16-year-old student and her parents, alleging that the vaccine mandate violated the student’s religious rights under the Free Exercise Clause of the United States Constitution. The other lawsuit was filed in San Diego Superior Court by Let Them Choose, a parent group associated with the Let Them Breathe. Let Them Choose alleged that SDUSD did not have the authority under California law to impose a vaccine mandate.

The District Court ruled against the 16-year-old student challenging SDUSD’s mandate on religious grounds, thus upholding SDUSD’s vaccine mandate. (*Doe v. San Diego Unified School Dist.* (Nov. 18, 2021) No. 21-CV-1809-CAB-LL, 2021 WL 5396136.) The court reasoned that long-standing Supreme Court precedent has established that vaccination requirements for attending public schools do not violate Free Exercise rights. The court also opined that the Free Exercise Clause does not absolve individuals from complying with neutral laws of general applicability, and SDUSD’s mandate was neutral as to religion and generally applicable, with limited exceptions for certain students. The student and parent immediately appealed the ruling to the Ninth Circuit Court of Appeals.

After initially staying SDUSD’s implementation of the vaccine mandate because it allowed for deferral of vaccination during a student’s pregnancy, on December 4, 2021, after SDUSD removed the deferral for pregnant students, the Ninth Circuit removed the stay and ruled in favor of SDUSD’s implementation of the vaccine mandate, agreeing with the federal District Court’s reasoning. (*Doe v. San Diego Unified School Dist.* (9th Cir. 2021) 19 F.4th 1173.) Following the ruling, the student requested that the Ninth Circuit rehear the case *en banc* (by a larger cross-section of Ninth Circuit judges). While certain of the involved justices dissented, the majority denied the request to rehear the case, letting the ruling stand. The student has also asked the United States Supreme Court to stay the Ninth Circuit’s decision or otherwise grant review of the case. The Supreme Court has yet to take any action on the request, likely in part due to a recent state court ruling discussed below.

Two weeks after the Ninth Circuit upheld SDUSD’s mandate, a judge in the San Diego Superior Court struck down SDUSD’s vaccine mandate on state law grounds. (*Let Them Choose v. San Diego Unified School Dist.* (Super. Ct. San Diego County, Dec. 20, 2021, No. 7-2021-00043172-CU-WM-CTL.) The superior court relied on the fact that the California Legislature has already imposed a statutory and regulatory scheme for implementing school vaccine mandates. (See Health & Saf. Code, § 120325 et seq.; Cal. Code Regs., tit. 17, § 6000 et seq.) The court reasoned that a COVID-19 vaccine mandate should follow the same process used for the current ten vaccine requirements for school children, each of which was added “through *legislative*

action, after careful consideration of the public health risks of these diseases, cost to the state and health system, communicability, and rates of transmission.” The court also took issue with the school district’s decision to route unvaccinated students to independent study, finding that any student who received the ten enumerated vaccines (or obtained an exemption) cannot be “forced” into independent study because: (1) vaccination requirements do not apply to students in an independent study program; and (2) the decision to participate in independent study must be voluntary.

SDUSD has appealed the superior court’s judgment. At present, SDUSD’s vaccine requirement will not go into effect in January as intended. However, SDUSD has requested that the California Court of Appeal stay the superior court’s judgment pending appeal, which if granted would permit the vaccine requirement to take effect while the appeal is pending. So long as the vaccine requirement is not in effect, there is little reason for the United States Supreme Court to act on the appeal of the separate federal case discussed above.

## **Governor Newsom’s Student “Vaccine Mandate”**

On October 1, 2021, Governor Newsom announced that students in California will be required to be vaccinated to participate in in-person instruction *upon full FDA approval of the vaccine for their grade span*. Governor Newsom has indicated that his vaccine mandate, once imposed, will allow for religious and personal belief exemptions, which is consistent with Health and Safety Code provisions governing vaccine requirements imposed through the California Department of Public Health, as opposed to by legislation. This mandate is not expected to take effect until July 2022, at the earliest. This anticipated mandate *is not in effect* and therefore not yet subject to legal challenge.

## **Takeaways**

Courts have come to different conclusions in lawsuits challenging school district student vaccine mandates. While the rulings addressed in this article bind only the school districts involved in the litigation, the rationale of the various judges who have addressed this issue should be considered by school districts considering their own vaccination mandates. Districts considering adopting student vaccination mandates should consult with legal counsel regarding the associated litigation risks. Additionally, with the commencement of the 2022 legislative session, districts should monitor closely potential legislation that may impact vaccination requirements for school enrollment and related subjects.

If you have any questions about this case, or any issue relating to vaccines, or current masking or testing guidelines, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*