

# CLIENT NEWS BRIEF

## Court Denies Preliminary Injunction Barring Enforcement of Senate Bill 277

A federal district court in Southern California recently declined to issue a preliminary injunction barring enforcement of Senate Bill (SB) 277. As we previously reported, SB 277, which went into effect January 1, 2016, eliminated the “personal belief” exemption (PBE) from vaccine requirements for schoolchildren. ([See 2015 Client News Brief No. 36.](#))

In July of 2016, several plaintiffs filed a request for a preliminary injunction, alleging that SB 277 and its elimination of the PBE violated their rights to free exercise, equal protection, due process and education, as well as the Individuals with Disabilities in Education Act and section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. The plaintiffs in the case, *Whitlow v. California* (S.D. Cal. July 25, 2016, No. 16-cv-1715 DMS), included parents, nonprofit organizations and students, including students with Individualized Education Plans (IEPs).

While the court seemed sympathetic to the plaintiffs’ plight, noting that the PBE had been in existence for decades and that the Legislature’s decision to eliminate it raised principled and spirited religious and conscientious objections by “genuinely caring parents and concerned citizens,” the judges said that the “wisdom of the Legislature’s decision is not for this court to decide.” In its decision, the court examined each alleged basis for the preliminary injunction and determined that the likelihood of plaintiffs prevailing on the merits of any of their claims was unlikely. A showing of a likelihood of prevailing on the merits is required in order for a court to issue a preliminary injunction.

A large part of the court’s opinion focused on the state’s ability to ensure the safety of its constituents, which it may do by passing laws requiring that individuals be immunized. The court noted that such laws have been upheld by courts throughout the United States for more than 100 years, and, citing *Zucht v. King* (1922) 260 U.S. 174, 176, that it was “long ago settled that it is within the police power of a state to provide for compulsory vaccination.” The court also noted that the issues raised in the complaint were addressed with the Legislature before SB 277 was enacted, and that the Legislature decided to proceed with the law despite those objections.

Three classes of students are exempt from the requirements of SB 277: students with medical reasons to avoid vaccinations, those in home-based private schools or on an independent study program without a classroom-based component and students who have an IEP. While the court appropriately noted that students with IEPs are exempt from immunization requirements, it did not clarify the vague language found under Health and Safety Code section 120335, subdivision (h), regarding whether the “exemption” for students with IEPs requires districts to provide services, placement or both to students who have IEPs regardless of immunization status. Rather, the court simply noted that students with IEPs have a right to access special education and related services.

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Since the preliminary injunction was not issued and the plaintiffs voluntarily withdrew their complaint, school districts should continue to follow SB 277. Further, school districts should carefully examine what services and/or placement they will provide to students with IEPs who are not immunized, and who are not exempt from the requirements of SB 277. We strongly urge school districts to consult with legal counsel when dealing with these difficult situations.

For more information on the court's decision or on student vaccination requirements in general, please contact the authors of this Client News Brief or an attorney at one of our [10 offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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