



Educate.Advocate.
educateadvocateca.com

IEP Exemption Guide

States across the nation are facing proposed legislation to limit, remove or severely restrict personal, philosophical, religious and medical exemptions to mandatory vaccine requirements for school attendance. Mandatory vaccine requirements generally apply to all licensed daycares and preschools, as well as private and public K-12 schools.

To locate the laws regarding vaccine exemptions in your state, please visit:

<https://www.nvic.org/Vaccine-Laws/state-vaccine-requirements.aspx>

Very few of these laws contain any provision for children who have been found eligible for special education and have a current Individualized Education Plan (IEP). As a result, many schools continue to exclude special education students and/or modify their placement to a restrictive, exclusive environment, segregating them from their general education peers or requiring a vaccine exemption for their continued attendance.

This guide was written with the intent to empower parents and advocates to educate schools on federal IDEA requirements.

For questions and additional information, please email: SB277EducationalAdvocate@gmail.com

DISCLAIMER

I am an educational advocate in California and not a licensed attorney. The information contained herein is not legal advice, nor should it be acted on as such. Before making any education related decisions or actions on behalf of your child, please consult a licensed special education attorney.

1) What is an IEP?	4
2) What is IDEA?	4
3) How are children with IEP’s excluded from immunization requirements for school?.....	4
4) What laws support IEP excluded from immunization requirements?.....	5
Federal IDEA Requirements.....	5
LRE (Least Restrictive Environment)	6
FAPE (Free and Appropriately ambitious Public Education)	6
Office of Administration Hearing Case Law Guidance	7
Student v. Long Beach Unified School District (2017)	7
Student v. Chino Unified School District (2018)	7
9th District Circuit Court Case Law Guidance	8
Whitlow v. California (2016)	8
5) My child with an IEP was denied enrollment or attendance. Now what?	8
Document, Document, Document!	8
Request Prior Written Notice (PWN).....	9
Find an Advocate	9
Find a Special Education Attorney.....	10
6) My child has a 504, are they excluded from SB277 immunization requirements?	10
7) The school is trying to change my child’s placement, now what?	11
8) The school proposed new placement in the IEP and wants me to sign it, should I?	11
9) We moved and the new school won’t let my child attend, now what?	11
10) The IEP team wants to document my child’s immunization status in their IEP, can they?	11
11) The school proposed a change in placement, provided prior written notice and now we have entered into due process, can my child still attend school?.....	12

12) I requested that my child be evaluated for special education eligibility and my school refuses to assess based on immunization status, now what? 12

13) How can I educate my school about the IEP exclusion?..... 13

DISCLAIMER

13

1) What is an IEP?

IEP stands for Individualized Education Plan. It is a legal document, written and agreed upon by the IEP team, that outlines the program of special education instruction and services for a child deemed eligible for special education. Services, accommodations and modifications are tailored to the unique needs of the child and covered by IDEA.

The IEP team *MUST* include:

- Parent(s)
- One or more special education teachers
- One or more general education teachers
- School district representative (aka as LEA - Lead Educational Agency)
- Expert to interpret assessment and evaluation results (such as a school psychologist)
- Child (16 yrs + or as appropriate)
- Translator (as appropriate or requested by parent)
- Advocates or Friends (if requested by parent)

2) What is IDEA?

IDEA is the Individuals with Disabilities Education Act, a federal law that guarantees all children with disabilities access to a free and appropriately ambitious public education (FAPE).

More on IDEA: <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/individuals-with-disabilities-education-act-idea-what-you-need-to-know>

3) How are children with IEP's excluded from immunization requirements for school?

Students' rights under IDEA supersede state law, local school board and school district policies. States cannot enact laws that provide less protection than guaranteed by federal law. When state laws fall short of the protections afforded by federal law, the highest standard prevails.

The *Supremacy Clause* within the US Constitution (U.S. Const., art. VI, cl. 2.), stipulates that federal law must be followed when there is a conflict between state and federal law, except where the state grants more rights to the individual (state vaccine mandates do not grant more rights).

While IDEA sets the “floor” (minimum) for special education student rights, a state law may provide a “ceiling”, additional rights and provisions. However, the state may not infringe on or impose more restrictive laws than what is legally required by IDEA.

More on Federal vs. State Laws: <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/special-education-federal-law-vs-state-law>

4) What laws support IEP excluded from immunization requirements?

Federal IDEA, the Office of Administrative Hearings (OAH or special education court) and the 9th District Circuit Court explicitly provide for children with IEP’s to be excluded from school immunization requirements.

Federal IDEA Requirements

IDEA mandates FAPE (Free and Appropriately ambitious Public Education) in the LRE (Least Restrictive Environment).

More about a FAPE: <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/what-is-and-isnt-covered-under-fape>

More about the LRE: <https://www.disabilityrightsca.org/system/files/file-attachments/504001Ch07.pdf>

Placement of the child in the LRE is agreed upon by the IEP team. The parent, as a member of the IEP team, is entitled to meaningful participation* in the IEP process and the school may not unilaterally make changes to placement, such as requiring that a child who was previously placed in a classroom now receive services and schooling at home, without prior parental consent.

** A parent may also request translation services and/or documents be provided in their native language to ensure effective parental participation in the IEP process*

LRE (Least Restrictive Environment)

Your home, a public location outside of the school environment and classrooms segregated from the general education population do not constitute LRE for the majority of special education students.

“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 non-disabled**... removal of children with disabilities from the regular education environment only occurs if the nature or severity of the disability is such that education in a regular class without use of supplemental aides and services cannot be achieved satisfactorily.” [34 CFR §300.114(2)(i)&(ii)]

Source: <https://sites.ed.gov/idea/regs/b/b/300.114/a>

The Third Circuit Court (New Jersey) has provided guidance for Least Restrictive Environment under the IDEA. Here, **“the least restrictive environment** is the one that, to the greatest extent possible, **satisfactorily educates disabled children together with children who are not disabled**, in the same school the disabled child would attend if the child were not disabled.” [N.R. v. Kingwood Twp. 205 F.3d 572 (3d. Cir. 2000)]

Source: <https://caselaw.findlaw.com/us-3rd-circuit/1438409.html>

The Office of Civil Rights also addresses placement not only in the classroom, but in nonacademic activities, in their letter, [Free and Appropriate Public Education for Students with Disabilities: Requirements Under Section 504 of The Rehabilitation Act of 1973 \(2010\)](#):

“Students with disabilities and students without disabilities must be placed in the same setting, to the maximum extent appropriate to the education needs of the students with disabilities. **A recipient of ED funds must place a person with a disability in the regular education environment, unless it is demonstrated by the recipient that the student’s needs cannot be met satisfactorily with the use of supplementary aids and services. Students with disabilities must participate with nondisabled students in both academic and nonacademic services, including meals, recess, and physical education**, to the maximum extent appropriate to their individual needs.”

Source: <https://www2.ed.gov/about/offices/list/ocr/docs/edlite-FAPE504.html>

FAPE (Free and Appropriately ambitious Public Education)

FAPE constitutes your child’s entire special education program which must be designed to meet their unique needs, confer educational benefit and prepare them for further education, employment and independent living.

“(4) A statement of the [special education](#) and [related services](#) and [supplementary aids and services](#), based on peer-reviewed research to the extent practicable, to be provided to the child,

or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child -

(i) To advance appropriately toward attaining the annual goals;

(ii) **To be involved in and make progress in the general education curriculum** in accordance with [paragraph \(a\)\(1\)](#) of this section, and to **participate in extracurricular and other nonacademic activities**; and

(iii) **To be educated and participate with other children with disabilities and nondisabled children** in the activities described in this section;

[20 U.S.C. Sec. 1414(d)(1)(A); 34 C.F.R. Sec. 300.320(a)(1)]

Source: <https://www.law.cornell.edu/cfr/text/34/300.320>

<https://www.law.cornell.edu/cfr/text/34/300.320>

Office of Administration Hearing Case Law Guidance

The Office of Administrative Hearing (OAH) contracts with the California Department of Education (CDE) to handle special education due process hearings and mediations between parents/students and school districts.

Student v. Long Beach Unified School District (2017)

In *Student v. Long Beach Unified School District and Marshall Academy of the Arts*, a student was excluded from attending class and the school attempted to modify this child's placement to their home. The parents filed for due process with a 'stay put' provision and OAH ruled in favor of the student.

More on OAH: <http://www.dgs.ca.gov/oah/SpecialEducation.aspx>

More on Due Process: <https://www.disabilityrightsca.org/system/files?file=file-attachments/504001Ch06.pdf>

"HSC 120335 subdivision (h) requires a school district to provide a child with special education and services pursuant to their IEP, even if they have not been vaccinated."

Source: https://www.documents.dgs.ca.gov/oah/seho_orders/2017090407%20Order%20Granting%20Stay%20Put.pdf

Student v. Chino Unified School District (2018)

"Home instruction cannot replace the placement and services in the September 8, 2017, IEP and thus is not stay put."

Source: https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Services/-/media/Divisions/OAH/Special-Education/SEHO_Orders/2018/8/2018071218-ORDER-GRANTING-MOTION-FOR-STAY-PUT.ashx

9th District Circuit Court Case Law Guidance

Whitlow v. California (2016)

Judge Dana Sabraw of the US District Court for the Southern District of California (9th Circuit), clarified the intent of SB277 with his ruling on *Whitlow v. California*, 203 F.Supp. 4d 1079 (C.D. California 2016), as it cites:

“If []children are covered by the IDEA, they are exempt from vaccination...

...SB277 provides three exemptions to the vaccination requirements at issue: One for medical reasons, Cal. Health & Safety Code 12030(a), one for children in a ‘home-based private school or... an independent study program[,]’ Cal. Health & Safety Code 120335(f), and one for students who qualify for an individualized education program, or IEP. Cal Health & Safety Code 120335(h).”
Source: <https://www.leagle.com/decision/inadvfdco170615000096>

5) My child with an IEP was denied enrollment or attendance. Now what?

Document, Document, Document!

*Always include your child’s name in any communication to ensure it becomes part of their educational record.

Ask the school to document their refusal in writing. Include:

- Name and title of all school employees
- Date(s) of interactions
- Action being refused (enrollment, admittance, etc.)
- Reason for refusal
- Laws supporting refusal

Forgot to document it? Send a summery email to your special education director and principal that details the refusal.

Sample:

To Whom It May Concern,

On January 1, 2017, I spoke with Ms. Smith, Registrar at Inland Middle School, regarding my son, James Jones, enrollment in 7th grade. Ms. Smith informed me that my son cannot be enrolled without up to date immunizations and refused to acknowledge that students with IEP's cannot be excluded, as they are afforded protections via the federal IDEA.

Regards,

Jane Jones

Request Prior Written Notice (PWN)

IDEA requires that a school provide Prior Written Notice (PWN), a reasonable time before proposing to change placement or provision of FAPE for a student.

PWN *must* include:

- Service or placement refused or changed by the district
- Explanation for the refusal or change
- Description of the procedure, assessment, record or report used by the school district to make their decision
- Information on your right to challenge the school district's decision

More on PWN: <https://www.parentcenterhub.org/notice-prior/>

Find an Advocate

An educational advocate can help navigate and guide you through the IEP process and communication between the parent and school and/or district when a disagreement arises.

The advocate may outline the above laws and case law to your school to clarify the IEP exemption from immunization requirements. Mandatory vaccine laws which remove exemptions are increasingly common across the nation, many attorneys and advocates are just beginning to navigate this matter and may be unaware of the laws outlined above. Parents must take initiative to educate schools, other families and professional resources on their child's rights.

If finances are an issue, there are free parent training centers who can offer assistance:

<https://www.parentcenterhub.org/find-your-center/#>

Educate.Advocate., is a non-profit located in California, providing referrals to advocates and attorneys, as well additional information for parents:

<https://www.educateadvocateca.com/sb277-iep/>

Find a Special Education Attorney

A special education attorney can provide services similar to an advocate, but can also represent you when you are considering due process against a school. They may also be able to help you file a 'stay put' motion.

IDEA states that a child is entitled to remain in their last agreed upon and implemented placement during the tendency of an administrative due process hearing and subsequent legal proceedings. Stay put may be useful if your school is attempting to modify your child's placement based on their immunization status.

More on 'Stay Put': <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/stay-put-rights-what-they-are-and-how-they-work>

More on advocates and attorneys: <https://www.understood.org/en/school-learning/your-childs-rights/dispute-resolution/the-difference-between-special-education-advocates-and-attorneys>

*Be sure to ask about the advocate or attorney's knowledge of the immunization law, while most advocates and attorneys have specialized knowledge of IDEA, not all are well versed on mandatory vaccine laws.

6) My child has a 504, are they excluded from SB277 immunization requirements?

Unfortunately, no. 504 plans are not covered by IDEA and are therefore not exempt.

If you feel your child's needs are not met with their 504 plan, I recommend requesting that the school assess your child in all suspected areas of disability to determine special education eligibility.

More on Initial Assessments: <https://www.disabilityrightsca.org/system/files/file-attachments/504001Ch02.pdf>

More on 504 vs. IEP's: <https://www.understood.org/en/school-learning/special-services/504-plan/the-difference-between-ieps-and-504-plans>

7) The school is trying to change my child's placement, now what?

If the school is requiring anything other than what is specified in the IEP, this may be a denial of FAPE in the LRE. This includes requiring your child's services be delivered solely at home, that your child can only receive services at school and then must leave campus, that your child cannot attend any extracurricular or other classes aside from their required services, etc. Please see question #5.

8) The school proposed new placement in the IEP and wants me to sign it, should I?

You do not have to sign the IEP at the IEP meeting. You may also consent to portions of the IEP, revoke consent (at any time) or consent to the content of the IEP, but not the placement.

If you choose to sign the IEP, even partially, but disagree with any component or placement, please be sure to note this by attaching your written dissent to make your position clear.

More on IEP Consent (see Q36): <https://www.disabilityrightsca.org/system/files/file-attachments/504001Ch04.pdf>

9) We moved and the new school won't let my child attend, now what?

If you've moved to a new school and your child has a current IEP, it follows the child. The new school must provide comparable services and supports in the existing IEP for 30 days or until they make a comparable offer of FAPE via an IEP meeting an new IEP. If the school continues to refuse to implement the existing IEP, enroll or allow your child to attend, please see question #5.

More on IEP Transfers: <https://www.understood.org/en/school-learning/choosing-starting-school/finding-right-school/what-happens-to-your-childs-iep-if-you-switch-schools>

10) The IEP team wants to document my child's immunization status in their IEP, can they?

Some states, such as the California Department of Education provides an IEP assessment tool ([www.cde.state.co.us/.../IEP%20Initial%20\(%26%20RTI\)%20Assessment%20Tool.doc](http://www.cde.state.co.us/.../IEP%20Initial%20(%26%20RTI)%20Assessment%20Tool.doc)) for nurses, which does have a section for immunization status. However, there is no such section for immunization statutes or laws on the IEP.

Information contained within an IEP should be relevant to the educational process, implementation of the IEP and impact of the disability on the child's participation in age appropriate activities.

Immunization status is already documented in the child's health record on file at the school, inclusion of this information in their IEP is unnecessary, irrelevant and redundant.

11) The school proposed a change in placement, provided prior written notice and now we have entered into due process, can my child still attend school?

If your school has excluded your child due to immunization status, effectively modifying their placement, provided you with prior written notice and you have entered into due process proceedings, 20 U.S.C. §1415 (j) requires that your child remain in the previously agreed upon placement until the proceedings are complete.

“(j) Maintenance of current educational placement

Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the [State](#) or [local educational agency](#) and the [parents](#) otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public [school](#), shall, with the consent of the [parents](#), be placed in the public [school](#) program until all such proceedings have been completed.”

Source: <https://sites.ed.gov/idea/statute-chapter-33/subchapter-II/1415/j>

12) I requested that my child be evaluated for special education eligibility and my school refuses to assess based on immunization status, now what?

The IDEA mandates that each state create and implement policies and procedures to locate and identify children suspected of being a child with a disability and assess them for special education eligibility. This provision is known “child find”. Your school cannot usurp the federal child find mandate in favor mandatory immunization laws. See question #3.

“§ 300.111 Child find.

(a)General.

(1) The [State](#) must have in effect policies and procedures to ensure that -

- (i) **All children with disabilities residing in the State**, including children with disabilities who are homeless children or are wards of the [State](#), and children with disabilities attending private schools, regardless of the severity of their disability, **and who are in need of special education and related services, are identified, located, and evaluated**; and
- (ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services...
- (c) Other children in child find. Child find also must [include](#) -
 - (1) Children who are suspected of being a child with a disability under [§ 300.8](#) and in need of special education, even though they are advancing from grade to grade; and
 - (2) Highly mobile children, including migrant children.”Source: <https://www.law.cornell.edu/cfr/text/34/300.111>

13) How can I educate my school about the IEP exclusion?

Please email SB277EducationalAdvocate@gmail.com for a customizable letter that outlines the federal and state laws, as well as case law guidance, that you can provide to your school.

I recommend emailing the special education director (or equivalent), school principal and staff (nurse, registrar, etc.) at the first sign of any push back. If the school continues to insist your child with an IEP may not attend or enroll, please email me at the above address and I will be glad to discuss options.

DISCLAIMER

I am an educational advocate in California and not a licensed attorney. The information contained herein is not legal advice, nor should it be acted on as such. Before making any education related decisions or actions on behalf of your child, please consult a licensed special education attorney.

