

OBJECTION TO RELEASE OF MEDICAL AND IMMUNIZATION DATA

Dear _____ (School Principal/Superintendent),

This is to inform _____ (School or School District) on behalf of our minor child, _____, that we do not consent to the release of records regarding our child's medical information, including immunization records and/or immunization medical exemption records (herein referred to as "Medical and Immunization Data") in any format including, via e-mail or other electronic transmission services, facsimile, U.S. mail, physical hard-copy collection, and/or in person review, with any County Health Department, any County Public Health Officer, the California Department of Public Health ("CDPH"), the California Medical Board or any other state or federal entity and/or any other third-party entity or individual, including news or media outlets, pursuant to the state and federal privacy laws outlined herein.

Furthermore, in the event the School or School District receives a Public Records Act request, or an administrative or judicial subpoena requesting our child's Medical and Immunization Data, whether the requested information is in un-redacted or redacted form, and regardless of whether the Medical and Immunization Data is requested in part, in whole or in summarized format, we further require the School and/or School District to: (1) refuse to produce our child's records based on state and federal privacy grounds, unless the School and/or School District has either received written, affirmative consent by all parties signed below or have been ordered to do so by a judge and exhausted all appeals available; (2) give us at least thirty (30) business days' notice of the production date referenced in the subpoena, by the way of certified mail, signature required, delivered to our address below.

Health & Safety Code Section 120440 (e)(3-4) cites 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 and Immunization Data retained by the School and/or School District, and request a recounting of all releases of our child's Medical and Immunization Data, prior to current date, including the name of the recipient and nature of exact medical data released. The itemization of all prior releases of our child's data shall also be mailed, certified return receipt signature, within fifteen (15) business days to the address at the end of this document.

We further require the school principal, administrative staff, nurses, superintendent and any other school or district medical personnel attending to health matters and records to be made aware of our refusal under state and federal law to permit our child's Medical and Immunization Data to be shared or released.

This document constitutes notice to the School, school 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 and Immunization Data.

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

Name of Parent: _____ Name of Parent: _____

Address: _____ Address: _____

City, State, Zip: _____ City, State, Zip: _____

Signature: _____ Signature: _____

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

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STATE AND FEDERAL PRIVACY LAWS

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 Act of 1974 ("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.

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

While California Health & Safety Code Section 120440 (c) allows schools to collect and disclose certain types of Medical and Immunization Data in some instances, it expressly forbids it under Health & Safety Code Section 120440 (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."

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

Under Government Code § 6252(e), 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."

California courts held that "communications 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). 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).

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 Government Code § 6254(c) specifically exempt from PRA disclosure "personal, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." In addition, Government Code § 6254(k) and A Guide to Public Records Act (2017) exempts from PRA 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."

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PREVENTION OF INFORMATION SHARING UNDER FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT

Under the federal Family Educational Rights and Privacy Act (“FERPA”), 20 U.S.C Section 1232g (b)(1) and 34 C.F.R. Section 99.31 (a)(1)(i)(A), according to the 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), 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.” Schools may only share medical records of their students if it is necessary to meet a “legitimate educational interest.”

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, states “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.”

Federal Register, Vol. 73, No. 237, Dec. 9, 2008 (re 34 CFR Part 99) discussing “Disclosure in Non-Emergency Situations” states that “this exception does not cover routine, non-emergency disclosures of students’ Immunization Data to public health authorities.”

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

FERPA mandates penalties and violations of FERPA can cause a cessation of all federal funding to involved schools and districts. 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, up to a quarter million dollars for knowing and willful violations under certain circumstances.

Health & Safety Code 120440(d)(1-2), states that the School and District “shall maintain the confidentiality of information...in the same manner as the 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.”