

1-2. 24CV01964, Cannistra v. Aragon

Plaintiff Robyn Cannistra (“Plaintiff”) individually and on behalf of Jordan Cannistra (“Minor”) as his guardian in fact, filed the currently operative second amended complaint (the “SAC”) in this action against defendants Tomas Aragon (“Aragon^[1]”) in his official capacity as the Department of Public Health (the “Department”) director and as the State Public Health Officer, Petaluma City Schools (“PCS”, together with Aragon, “Defendants”), and Does 1-20, for multiple alleged causes of action arising out a controversy related to vaccination requirements under Health & Saf. Code (“HSC”) § 120335.

This matter is on calendar for the Aragon’s demurrer to causes of action one through six within the SAC pursuant to Cal. Code Civ. Proc. (“CCP”) § 430.10(e) for failure to state facts sufficient to constitute a cause of action. It is also on calendar for Aragon’s motion to strike the sixth cause of action from the SAC. The Motion to Strike is **GRANTED without leave to amend as to the Sixth cause of action**. The Demurrer is **SUSTAINED without leave to amend as to the First, Second, Fourth, and Fifth causes of action**. The Demurrer to the Third cause of action is **OVERRULED**.

PCS has filed a joinder to the demurrer which is GRANTED. Many of Plaintiff’s allegations refer to Defendants as though they are a single entity, and addressing the sufficiency of their pleading together appears appropriate as a result. See, e.g., *Barak v. The Quisenberry Law Firm* (2006) 135 Cal.App.4th 654, 661 (where result would be the same, joinder in special motion to strike motion is proper).

I. Legal Standards

A. Motions to Strike

“Following an order sustaining a demurrer or a motion for judgment on the pleadings with leave to amend, the plaintiff may amend his or her complaint only as authorized by the court’s order.” *Harris v. Wachovia Mortgage, FSB* (2010) 185 Cal.App.4th 1018, 1023 (“*Harris*”). “(S)uch granting of leave to amend must be construed as permission to the pleader to amend the cause of action which he pleaded in the pleading to which the demurrer has been sustained.” *People By and Through Dept. of Public Works v. Clausen* (1967) 248 Cal.App.2d 770, 785 (“*Clausen*”). “The plaintiff may not amend the complaint to add a new cause of action without having obtained permission to do so, unless the new cause of action is within the scope of the order granting leave to amend.” *Harris, supra*, 185 Cal.App.4th at 1023. Where an amendment exceeds the leave granted by the court, a motion to strike is the proper vehicle to remedy the issue. *Community Water Coalition v. Santa Cruz County Local Agency Formation Com.* (2011) 200 Cal.App.4th 1317, 1329. This is addressed in substance below.

B. General Demurrers

A demurrer can be used only to challenge defects that appear on the face of the pleading under attack or from matters outside the pleading that are judicially noticeable. CCP § 430.30(a). In the event a demurrer is sustained, leave to amend should be granted where the complaint's defect can be cured by amendment. *The Swahn Group, Inc. v. Segal* (2010) 183 Cal.App.4th 831, 852.

At demurrer, all facts properly pleaded are treated as admitted, but contentions, deductions and conclusions of fact or law are disregarded. *Serrano v. Priest* (1971) 5 Cal.3d 584, 591. Similarly, opinions, speculation, or allegations contrary to law or facts which are judicially noticed are also disregarded. *Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 702. Generally, the pleadings "must allege the ultimate facts necessary to the statement of an actionable claim. It is both improper and insufficient for a plaintiff to simply plead the evidence by which he hopes to prove such ultimate facts." *Careau & Co. v. Security Pac. Business Credit, Inc.* (1990) 222 Cal.App.3d 1371, 1390; *FPI Develop., Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 384. Each evidentiary fact that might eventually form part of a party's proof does not need to be alleged. *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 872. Conclusory pleadings are permissible and appropriate where supported by properly pleaded facts. *Perkins v. Superior Court* (1981) 117 Cal.App.3d 1, 6. "The distinction between conclusions of law and ultimate facts is not at all clear and involves at most a matter of degree." *Burks v. Poppy Const. Co.* (1962) 57 Cal.2d 463, 473. Leave to amend should generally be granted liberally where there is some reasonable possibility that a party may cure the defect through amendment. *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.

C. Constitutional Issues

Federally, "it is within the police power of a state to provide for compulsory vaccination." *Zucht v. King* (1922) 260 U.S. 174, 176. In California, however, "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district. . ." Cal. Const., art. IX, § 5. Subsequent cases have interpreted this in California as "the distinctive and priceless function of education in our society warrants, indeed compels, our treating it as a 'fundamental interest,'" subject to constitutional protections. *Serrano v. Priest* (1971) 5 Cal.3d 584, 608–609. "The right of education, fundamental as it may be, is no more sacred than any of the other fundamental rights that have readily given way to a State's interest in protecting the health and safety of its citizens, and particularly, school children," *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1146–1147; quoting *Whitlow v. California* (S.D. Cal. 2016) 203 F.Supp.3d 1079, 1091.

“A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens.” Cal. Const., art. I, § 7. “It needs no argument to show that, when it comes to preventing the spread of contagious diseases, children attending school occupy a natural class by themselves, more liable to contagion, perhaps, than any other class that we can think of. This effort ... was for the benefit and protection of all the people It in no way interferes with the right of the child to attend school, provided the child complies with its provisions.” *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1147 (“*Brown*”), quoting *French v. Davidson* (1904) 143 Cal. 658, 662.

D. Statutory Interpretation, Preemption and Conflict of Laws

Interpretation of statutes is a question of law, not one of fact. *Burden v. Snowden* (1992) 2 Cal.4th 556, 562.

In interpreting a statute, our primary goal is to determine and give effect to the underlying purpose of the law. (*People v. Valladoli* (1996) 13 Cal.4th 590, 597, 54 Cal.Rptr.2d 695, 918 P.2d 999.) “Our first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning.” (*Ibid.*) “‘If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.’” (*California Teachers, supra*, 28 Cal.3d at p. 698, 170 Cal.Rptr. 817, 621 P.2d 856.) In other words, we are not free to “give words an effect different from the plain and direct import of the terms used.” (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1995) 11 Cal.4th 342, 349, 45 Cal.Rptr.2d 279, 902 P.2d 297; see § 1858.) However, “‘the “plain meaning” rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other provisions of the statute.’” (*County of San Bernardino v. City of San Bernardino* (1997) 15 Cal.4th 909, 943, 64 Cal.Rptr.2d 814, 938 P.2d 876.) To determine the most reasonable interpretation of a statute, we look to its legislative history and background.

(*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 543, 67 Cal.Rptr.3d 330, 169 P.3d 559 (*Doe*).)

(*Goodman v. Lozano* (2010) 47 Cal.4th 1327, 1332)

“(I)t is not to be presumed that the legislature in the enactment of statutes intends to overthrow long-established principles of law unless such intention is made clearly to appear either by express declaration or by necessary implication. (Citation). Wherever possible, a statute is to be construed in a way which will render it reasonable, fair and harmonious with its manifest purpose, and which will conform with the spirit of the act.” *Los Angeles County v. Frisbie* (1942) 19 Cal.2d 634, 644. “(W)hen a suggested

construction of a statute in any given case necessarily involves a decided departure from what may be fairly said to be the plain purpose of the enactment, such construction will not be adopted to the exclusion of a possible, plausible interpretation which will promote and put in operation the legislative intent.” *People v. Merrill* (1914) 24 Cal.App. 206, 210. “(O)nce a particular legislative intent has been ascertained, it must be given effect even though it may not be consistent with the strict letter of the statute.” *Kagy v. Napa State Hospital* (1994) 28 Cal.App.4th 1, 6. “(W)here two statutes appear to be in conflict, a more specific statute controls over a more general one.” *Stahl v. Wells Fargo Bank, N.A.* (1998) 63 Cal.App.4th 396, 401.

E. Writ of Mandate

Writ proceedings of administrative bodies are governed by CCP § 1094.5. In such proceedings, the trial court's review “shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion.” CCP § 1094.5(b). An abuse of discretion can occur three different ways: (1) “the respondent has not proceeded in the manner required by law,” (2) the “decision is not supported by the findings,” or (3) “the findings are not supported by the evidence.” *Ibid*; *Martis Camp Community Association v. County of Placer* (2020) 53 Cal.App.5th 569, 593 (findings not supported by evidence must not be supported by “substantial evidence in light of the whole record”).

“A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or person.” Code Civ. Proc., § 1085. “There are two essential requirements to the issuance of a traditional writ of mandate: (1) a clear, present and usually ministerial duty on the part of the respondent, and (2) a clear, present and beneficial right on the part of the petitioner to the performance of that duty.” *California Assn. for Health Services at Home v. State Dept. of Health Services* (2007) 148 Cal.App.4th 696, 704. “A ministerial duty is an act that a public officer is obligated to perform in a prescribed manner required by law when a given state of facts exists.” *Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 495. “Section 1085 is the proper vehicle for challenging a ministerial act of an agency, such as a mandatory duty to issue regulations.” *Harris Transportation Co. v. Air Resources Board* (1995) 32 Cal.App.4th 1472, 1481. “Mandate will not issue to compel action unless it is shown the duty to do the thing asked for is plain and *unmixed with discretionary power or the exercise of judgment.*” *County of San Diego v. State of California* (2008) 164 Cal.App.4th

580, 596. “When there is no ministerial duty and review is for abuse of discretion, such limited review is grounded in the doctrine of separation of powers, acknowledges the expertise of the agency, and derives from the view that ‘[c]ourts should let administrative boards and officers work out their problems with as little judicial interference as possible...’ (Citation.) It also recognizes that a challenged administrative agency action comes before the court with a strong presumption that the agency's official duty has been regularly performed and the burden is on appellants to show the agency's action is invalid. (Citation.)” *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780.

A party may move for writ of mandate under both CCP § 1085 and CCP § 1094.5 if both are applicable to the facts. *Conlan v. Bonta* (2002) 102 Cal.App.4th 745, 751. Declaratory relief is not the proper vehicle for reviewing an administrative decision. *State v. Superior Court* (1974) 12 Cal.3d 237, 249. In contrast, declaratory relief is an appropriate remedy if the petitioner seeks a determination that a statute controlling a particular function is unconstitutional. *Beach & Bluff Conservancy v. City of Solana Beach* (2018) 28 Cal.App.5th 244, 259; *City of Carmel-By-The-Sea v. Young* (1970) 2 Cal.3d 259, 263.

“The appropriate type of mandate is determined by the nature of the administrative action or decision under review. In general, ‘quasi-judicial’ or ‘adjudicative acts,’ that is, acts that involve the actual application of a rule to a specific set of existing facts are reviewed by administrative mandamus under Code of Civil Procedure section 1094.5. [Citation.] [¶] More specifically, a petition for administrative mandamus under Code of Civil Procedure section 1094.5 is appropriate when the party seeks review of a final ‘determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency’” *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1482 (*California Water*).

Where a public entity's enactment of a rule "constitutes a [legislative or] 'quasi-legislative' act and is reviewed by ordinary [or traditional] mandate [under Code of Civil Procedure section 1085]. [Citations.] A petition for traditional mandamus is appropriate in . . . actions brought to attack, review, set aside, or void a quasi-legislative . . . or ministerial determination, or decision of a public agency. [Citations.] The trial court reviews an administrative action pursuant to Code of Civil Procedure section 1085 to determine whether the agency's action was arbitrary, capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally unfair, or whether the agency failed to follow the procedure and give the notices the law requires." *California Water, supra*, 161 Cal.App.4th at 1483 (fn. omitted). “Whether [a statute] impose[s] a ministerial duty, for which mandamus will lie, or a mere obligation to perform a

discretionary function is a question of statutory interpretation.” *Mooney v. Garcia* (2012) 207 Cal.App.4th 229, 233, quoting *AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 701.

"The determination of whether Code of Civil Procedure section 1094.5 or 1085 applies does not depend on whether the agency is required by statute to hold an evidentiary hearing in the matter, but instead turns on the nature of the challenged action." *California Water, supra*, 161 Cal.App.4th at p. 1483, fn. 19; *Southern California Cement Masons Joint Apprenticeship Committee v. California Apprenticeship Council* (2013) 213 Cal.App.4th 1531, 1541 ["[T]raditional mandamus under section 1085 applies to '[q]uasi-legislative' decisions, defined as those involving 'the formulation of a rule to be applied to all future cases,' while administrative mandamus under section 1094.5 applies to 'quasi-judicial' decisions, which involve 'the actual application of such a rule to a specific set of existing facts.'"].

Traditional mandamus under Code of Civil Procedure section 1085 "may be employed to compel the performance of a duty which is purely ministerial in character; it cannot be applied to control discretion as to a matter lawfully entrusted to [a public entity]" *State v. Superior Court* (1974) 12 Cal.3d 237, 247. "Mandamus does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in some manner." *AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health* (2011) 197 Cal.App.4th 693, 700–701.

"A proceeding in mandamus is generally subject to the general rules of pleading applicable to civil actions." *Chapman v. Superior Court* (2005) 130 Cal.App.4th 261, 271. "Therefore, it is necessary for the petition to allege specific facts showing entitlement to relief upon one of the grounds just mentioned. If such facts are not alleged, the petition is subject to general demurrer. . ." *Gong v. City of Fremont* (1967) 250 Cal.App.2d 568, 573.

F. School Health

"(T)he 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." Ed. Code, § 35160. "The Legislature finds and declares that school districts, county boards of education, and county superintendents of schools have diverse needs unique to their individual communities and programs. Moreover, in addressing their needs, common as well as unique, school districts, county boards of education, and county superintendents of schools should have the flexibility to create their own unique solutions." Ed. Code, § 35160.1 (a). A school has the obligation to provide a

safe and healthy environment for students, and actions taken in promotion of this obligation are to be balanced against the individual rights of the students. *In re William G.* (1985) 40 Cal.3d 550, 571. Furthermore, a school has other health related obligations to students, as “the governing board of a school district shall cooperate with the local health officer in measures necessary for the prevention and control of communicable diseases in schoolage children.” Ed. Code, § 49403(a).

“The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless, prior to his or her first admission to that institution, he or she has been fully immunized.” Health & Saf. Code (“HSC”) § 120335 (b). “The department may specify the immunizing agents that may be utilized and the manner in which immunizations are administered.” HSC § 120335 (e).

Parties may submit requests for exemption from immunization requirements. HSC § 120372. Each request for exemption shall include “(a) description of the medical basis for which the exemption for each individual immunization is sought. Each specific immunization shall be listed separately and space on the form shall be provided to allow for the inclusion of descriptive information for each immunization for which the exemption is sought.” HSC § 120372 (a)(2)(F). “The department shall identify those medical exemption forms that do not meet applicable CDC, ACIP, or AAP criteria for appropriate medical exemptions.” HSC, § 120372 (d)(3)(A). Thereafter, a reviewing department physician may revoke the medical exemption. HSC, § 120372 (d)(3)(C). A parent or guardian of the minor at issue may then appeal. HSC § 120372.05.

“The governing authority of each school or institution included in Section 120335 shall prohibit from further attendance any pupil admitted conditionally who failed to obtain the required immunizations within the time limits allowed in the regulations of the department until that pupil has been fully immunized against all of the diseases listed in Section 120335, unless the pupil is exempted under Section 120370 or 120372.” HSC, § 120375 (b). “The governing authority **shall** exclude any pupil who does not meet the requirements for admission or continued attendance as specified in Article 2 of this subchapter and Health and Safety Code section 120335.” Cal. Code Regs., tit. 17, § 6055.

G. Injunctive Relief

“Preventive relief is given by prohibiting a party from doing that which ought not to be done.” Civ. Code, § 3368. “(A) final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant: 1. Where pecuniary compensation would not afford adequate relief; 2. Where it would be extremely difficult to ascertain the amount of

compensation which would afford adequate relief...” Civ. Code § 3422. Injunctive relief is a remedy, not a cause of action. *City of South Pasadena v. Department of Transportation* (1994) 29 Cal.App.4th 1280, 1293.

II. Procedural and Evidentiary Issues

The Court is entitled to take permissive judicial notice which includes scientific facts not reasonably subject to dispute. See, e.g., *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1142. While Plaintiff argues that Polio Type 2 has been eradicated, the Court takes judicial notice of the somewhat more nuanced position of the eradication of *wild* Polio Type 2. Plaintiff fails to appreciate that its sources only denote the eradication of *wild* Polio Type 2. Plaintiff argument regarding the “scientific impossibility” of acquiring the disease (see Plaintiff’s Opposition to Demurrer, pg. 6:7-9) requires the Court to acknowledge the scientific facts not *reasonably* subject to dispute. Given that Defendants request no conflicting judicial notice, this determines the scope of the issue at demurrer.

III. Motion to Strike

Plaintiff attempts to avoid the motion to strike by stitching together inapposite authorities around amendment on a noticed motion and liberality in the Court allowing an opportunity to amend after demurrer. Simply put, no relevant authority applicable to leave to amend, after a demurrer is sustained, states the scope of leave is so liberally allowed. Several say just the opposite.

The only way a plaintiff is entitled to add causes of action after a demurrer is sustained is if “the new cause of action directly responds to the court’s reason for sustaining the earlier demurrer.” *Patrick v. Alacer Corp.* (2008) 167 Cal.App.4th 995, 1015. The instant case is emblematic of the principle. Plaintiff’s first amended complaint contained causes of action related to argued statutory violations, but the Court found those statutes non-actionable on their own. Accordingly, the Court analyzed whether the statutory violations argued were sufficient to plead a cause of action for writ of mandate (under either CCP § 1085 and 1094.5). While the demurrer was sustained, Plaintiff has reasserted the same argued statutory violations, instead labeling the causes of action as the two types of writs. Defendants make no argument that the writ causes of action are improper, because they are responsive to the Court’s ruling on demurrer. They relate to the identified defect. The same cannot be said for the substantive due process cause of action.

Therefore, the addition of the Sixth cause of action exceeds the scope of the leave to amend granted at demurrer. The motion to strike is **GRANTED without leave to amend**.

IV. Demurrer

“On a demurrer a court’s function is limited to testing the legal sufficiency of the complaint. [Citation.] ‘A demurrer is simply not the appropriate procedure for determining the truth of disputed facts.’ [Citation.] The hearing on demurrer may not be turned into a contested evidentiary hearing through the guise of having the court take judicial notice of documents whose truthfulness or proper interpretation are disputable. [Citation.]”). *Bounds v. Sup. Ct.* (2014) 229 Cal.App.4th 468, 477-478. Plaintiff’s complaint is entitled to liberal factual construal. Where facts are open to different interpretations, Plaintiff receives the benefit of the most beneficial interpretation of those facts. However, Plaintiff is not entitled to any form of legal liberality. Plaintiff still must plead adequate facts to meet viable legal theories. Where Plaintiff’s legal theories are flawed, causes of action may be fatally deficient.

This is the second demurrer analyzed by this Court, and the third complaint. Plaintiff argues the liberal grant of leave to amend as a shield to the Court’s potential sustaining of the demurrer, but proffers no logic by which they may amend to state a cognizable cause of action that they have not already been given two opportunities to present. The Court will not presume their capacity to plead viable causes of action as a result. Where the Court sustains this demurrer, it is without leave to amend.

A. “Immunization”

Plaintiff reiterates their previous argument in the SAC regarding the supposedly erroneous conflation of the Defendants between vaccination and immunization. SAC ¶ 80. The Court has already ruled on this issue as follows:

Plaintiff’s arguments are largely predicated on Plaintiff attempts to draw a distinction between immunizations as required by HSC § 120335 and vaccinations. Given that the Department and PCS sit at different levels of the administrative process, Plaintiff’s arguments must be weighed in two stages. However, Plaintiff’s own citation to HSC § 120335 and CCR, tit. 17, § 6025 are self-defeating. HSC § 120335 clearly delegates substantial authority to the Department in creating the requirements within the regulations. The language thereon cannot be construed as foreclosing vaccinations as the method of immunization under the statute. Indeed, the language clearly contemplates the opposite. “The department may specify the immunizing agents that may be utilized and the manner in which immunizations are administered.” HSC § 120335 (e). The statute delegates substantial power to the Department in promulgating the regulation defining what “immunizing agents” are appropriate. Plaintiff cannot display, as a matter of statutory interpretation that the Department is not entitled to promulgate a regulation determining

that the only appropriate immunizing agents are vaccinations. As to the Department, Plaintiff can display no error if the regulations were to come to such a conclusion.

The regulations do just that, providing “Table B” which contains “the required immunizations and number of doses for admission to and attendance at a school. . .” Cal. Code Regs., tit. 17, § 6025 (c). Given the use of “doses” of immunization, and that the regulation repeatedly interchanges the use of “vaccine” (see Table B, fn. 4), § 6025 clearly supports an interpretation that four polio vaccinations are required to display the required four doses of “immunization” required by the regulation. There is no support for Plaintiff’s contention that PCS has misapplied Cal. Code Regs., tit. 17, § 6025 by requiring proof of vaccination to meet the unconditional admission requirements. This represents the clearest possible meaning of the regulation. Plaintiff has not displayed an error of law in this interpretation.

Indeed, every case on the subject promulgates the same supposedly erroneous conflation. See *Let Them Choose v. San Diego Unified School Dist.* (2022) 85 Cal.App.5th 693, 703 (HSC § 120335 creates “a comprehensive state procedure to determine the compulsory vaccinations for school attendance...”); *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1139 (“Senate Bill No. 277 eliminated the personal beliefs exemption from the requirement that children receive vaccines for specified infectious diseases before being admitted to any public or private elementary...”). For the purposes of HSC § 120335, there does not appear to be a distinction between “immunizing agents” and “vaccines”, therefore there can be no error in the Department’s subsequent reinforcement of that through regulation. Neither the Department nor PCS committed error in their construal of the statute.

Plaintiff raises no new issue related to this argument or the prior ruling thereon in their opposition. The distinction remains relevant at the instant demurrer for assessing whether the Department has erred in their ministerial duty under CCP § 1085, further analyzed below. The Court adopts the above text of its prior ruling as a result.

B. Writ of Mandate and Declaratory Relief

While the Court finds the bare allegation that Polio Type 2 has been eradicated as potentially dubious, that is a matter liberally construed at demurrer. The requirement in finding administrative mandamus is that Defendants have abused their discretion by: (1) “the respondent has not proceeded in the manner required by law,” (2) the “decision is not supported by the findings,” or (3) “the findings are not supported by the evidence.” CCP § 1094.5(b).

If Defendants are truly denying Minor’s exemption predicated on an entirely eradicated disease for which there is no applicable titer test, those appear to be facts sufficient to

plead an abuse of discretion. Excluding Minor from school for failure to show immunity to a disease which poses neither risk to the Minor, nor the population at large is not a finding supported by the evidence. Accordingly, Plaintiff has pled sufficient facts to state a cause of action for administrative mandamus.

The demurrer to the Third cause of action is OVERRULED.

Plaintiff argues that traditional mandamus may issue to proscribe against abuses of discretion, but this is true only as to abuses of discretion *in performance of a quasi-legislative duty*. *Southern California Cement Masons Joint Apprenticeship Committee v. California Apprenticeship Council* (2013) 213 Cal.App.4th 1531, 1541 It does not mean that traditional mandamus may be applied to any action by governmental body, so long as that action was an abuse of discretion.

Plaintiff attacks Cal. Code Regs., tit. 17, § 6025 (c). This is only the process for “unconditional admission”. Plaintiff essentially contends that the unconditional admission standards must account for individuals with Plaintiff’s specific factual circumstance. Plaintiff argues that Defendants have a “ministerial duty to process medical exemptions (such as Jordan’s Medical Exemption) in a way that gives effect to California’s interest in public health and to schoolchildren’s fundamental interest in education.” SAC ¶ 97. In their oppositions however, Plaintiff argues that instead this is a case of abuse of discretion under the statutes. Again, Plaintiff misapprehends the distinction between administrative writs of mandate and those under CCP § 1085. “(A)cts that involve the actual application of a rule to a specific set of existing facts are reviewed by administrative mandamus under Code of Civil Procedure section 1094.5.” *California Water, supra*, 161 Cal.App.4th at 1482.

Plaintiff requests relief in the form of a requirement that Defendants “design, implement, maintain and enforce updates to the medical exemption system such that it does not preclude immunized schoolchildren from securing such exemptions in violation of California law, including without limitation the right to education.” SAC ¶ 101. Plaintiff appears to argue that Defendants have a ministerial duty under HSC § 120335 (e) to define immunizing agents in a way which accounts for immunities as displayed by titer tests. As the Court has previously analyzed, no prior authority has construed the term “immunizations” in any manner other than as vaccinations. The duty of the Department as assigned by the Legislature under HSC § 120335 (e) is to specify the immunizing agents that may be utilized and the manner in which immunizations are administered. HSC, § 120335 (e). Polio remains a *mandatory immunization*, the discretion of the Department under HSC § 120335 (e) is in specification on those immunizations administered, *not* alternative processes therein. The Health and Safety Code does not provide the Department processes for case specific exceptions in this section. That is

addressed by the exemption process. The exemption process is properly the subject of administrative mandamus, not traditional mandamus CCP § 1085.

Further examination of the requirements of Cal. Code Regs., tit. 17, § 6025 (c) reveal further defect with Plaintiff's argument. Cal. Code Regs., tit. 17, § 6025 (c) does not detail the types of Polio which must be vaccinated against. The Legislature only requires that the Department make regulations regarding the administration of Polio vaccines, they do not prescribe the types of Polio which must be vaccinated against. HSC § 120335 (b)(6). The Department, in the same vein, does not state the types of Polio vaccinations to be administered, only their number and timing. Plaintiff cannot plead a ministerial duty for the Department to withdraw a requirement it does not state in the regulation.

While Plaintiff attempts to argue that CCP § 1085 may apply to the facts at bar, a writ of mandate under § 1085 does not appear to apply to the decision denying the requested exemption. If there is any articulable ministerial duty here, as previously discussed, it is that the Department is required to issue appropriate regulations in conformance with the duties prescribed to them under statute. However, Cal. Code Regs., tit. 17, § 6025 (c) also does not contain any requirement that the applicable vaccinations contain Polio Type 2. The regulation is in obvious conformance with the statute.

In short, Plaintiff's issue is with the statute, and that statute does not provide the Department with discretion under HSC § 120335 (e). Plaintiffs have not pled any facts sufficient to show that the Department abused its specifically vested discretion in determining what is properly included in the regulations under HSC § 120335 (e), as that provision does not obligate the Department "to perform in a **prescribed manner** required by law when a given state of facts exists." *Schmid v. City and County of San Francisco* (2021) 60 Cal.App.5th 470, 495. Accordingly, no ministerial duty is pled. Nor has Plaintiff pled an abuse of discretion in the Department's of regulations. Plaintiff pleads no ministerial duty beyond that.

The demurrer to the Second cause of action is SUSTAINED without leave to amend.

C. Constitutional Claims

Plaintiff's constitutional claims have not been remedied from the prior demurrer. Plaintiff does not make allegations related to a protected class, and fails to articulate constitutional violations. While Plaintiff attempts to argue that this case is distinguishable from *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1143 because it relates to an individual exemption request, as opposed to a facial challenge to the statutes and regulations, no facts are alleged which then create a coherent constitutional claim. *Brown's* logic remains

controlling for the constitutional claims, as expressed in the Court's prior order on demurrer. To quote the Court's prior order:

First, to Plaintiff's claims of a right to education under the California Constitution, Plaintiff overstates the bounds of the constitutional right at issue. As our state's Supreme Court stated over a hundred years ago, "effort to prevent the spread of contagion in a direction where it might do the most good (is) for the benefit and protection of all the people, and there is in it no element of class legislation. It in no way interferes with the right of the child to attend school, provided the child complies with its provisions." *French v. Davidson* (1904) 143 Cal. 658, 662. Each subsequent case has found it within the power of the legislature to mandate vaccination. HSC § 120335, and its associated regulations, implicate no "suspect classification". *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1146. Therefore, there does not appear to be a rationalization provided for why strict scrutiny applies, as opposed to rational basis. Despite this, the cases are clear that Defendants *can* meet strict scrutiny were it necessary. "The right of education, fundamental as it may be, is no more sacred than any of the other fundamental rights that have readily given way to a State's interest in protecting the health and safety of its citizens, and particularly, school children,' and 'removal of the [personal beliefs exemption] is necessary or narrowly drawn to serve the compelling objective of SB 277.'" *Brown*, *supra*, 24 Cal.App.5th at 1146–1147, quoting *Whitlow*, *supra*, 203 F.Supp.3d at 1091. Plaintiff displays no excess in how the statute and regulations are tailored given the substantial interest of the state in public health. As is fully addressed above, no action by PCS appears implicated, as PCS has only effectuated HSC § 120335 and the Department's regulations thereon. Plaintiff has pled no constitutional violation to the right to education, as the case law weighs in favor of the state's interest.

Plaintiff avers that the disparate treatment attributable to other categories of children is a violation of equal protection under Cal. Const., art. I, § 7. Plaintiff particularly raises exceptions for production of records applicable to homeless children, children in foster care, and children of military families. While *Brown* does not directly address the categories of exceptions raised by Plaintiff, the logic expressed therein on equal protection statutes remains applicable. "The statutory classifications and exemptions plaintiffs dispute do not involve similarly situated children, or are otherwise entirely rational classifications. For a discussion delineating, and rejecting, equal protection claims based on these categories, see *Whitlow*, *supra*, 203 F.Supp.3d at pages 1087-1088." *Brown v. Smith* (2018) 24 Cal.App.5th 1135, 1147. The categories of students at issue do not implicate students dealing with the same struggles or disadvantages. The distinction created by the exception for homeless children, children in foster care, and children of military families is rational. The exception fulfills a compelling state interest in ensuring

education for disadvantaged groups, an analysis thoroughly covered in the applicable legislative histories.

Plaintiff also argues that this implicates distinguishing classes between vaccinated and unvaccinated school children. FAC ¶ 109. As is addressed thoroughly above, cases *have* addressed this distinction, and found that constitutional rights are not infringed by this justified classification. Plaintiff has pled no cause of action predicated on equal protection.

Nothing within the regulations implicates classes of individuals not affected by the statute. Given that the statute is constitutionally firm, there does not appear to be any basis to attack the constitutionality of the regulation. Issues of statutory interpretation are properly determined at demurrer, and here Plaintiff has pled no facts sufficient to distinguish themselves from *Brown*, as they have pled no suspect classifications which would trigger constitutional scrutiny sufficient to come to a different conclusion than that court. See also, *Love v. State Dept. of Education* (2018) 29 Cal.App.5th 980, 986. Accordingly, this case comes to the same result.

The demurrer to Plaintiff's Fourth and Fifth causes of action are SUSTAINED without leave to amend.

D. Declaratory and Injunctive Relief

Plaintiff pleads a combined cause of action for declaratory and injunctive relief.

Plaintiff may not obtain declaratory relief for an administrative action. *State v. Superior Court* (1974) 12 Cal.3d 237, 249. Plaintiff has not pled a cause of action sufficient to find statute or regulation unconstitutional, nor unconstitutional conduct sufficient to issue a writ under § 1085. Therefore, no cause of action for declaratory relief has been pled.

Plaintiff's arguments regarding declaratory relief are repackaged allegations from the first amended complaint regarding preemption of laws. Plaintiff's arguments are that there is a conflict within the statutory scheme by placing issues of public health ahead of educational rights. As this Court previously opined:

Plaintiff's argument regarding Cal. Code Regs., tit. 5, § 11700 is simply incorrect. As was noted above, Plaintiff's construal of HSC § 120335 was inconsistent with the very language of the statute. The exclusion of children who are not immunized from traditional on campus instruction is statutory. HSC, § 120375 (b). Plaintiff may not override the Legislature's statute through citation to regulation. The demurrer to the second cause of action is SUSTAINED. . .

As to the conflict between the Health and Safety Code and the Education Code, it is clear that the interest of public health regularly overrides educational principles. *Brown*, *supra*, 24 Cal.App.5th at 1146–1147. The exclusion of children from educational institutions who are not immunized in accordance with state law has been repeatedly upheld. The reasonable, non-antagonistic interpretation of this interplay of laws is that Minor is not “required” to participate in independent study. Minor is required, like almost every school age child not subject to an exemption, to be fully immunized. It is the failure of Plaintiff to comply with the requirements of the statute which foreclose the opportunity to attend public school. As discussed above, Plaintiff identifies no “local” mandate, but rather an intersection of state laws and regulations, which must be read to avoid absurd results while effectuating the legislative intent. HSC § 120335 is the more specific statute. It therefore controls. *Stahl v. Wells Fargo Bank, N.A.* (1998) 63 Cal.App.4th 396, 401. Minor is required to display immunization in accordance with regulations in order to attend campus. Minor is not required to participate in independent study.

Plaintiff also argues that Minor cannot be accorded the requirements of independent study, as the school cannot provide him the same resources as other students as required under Education Code § 51746 due to his exclusion. If anything, this is an argument for why Minor is ineligible for independent study through PCS, not an argument for why he is allowed to attend campus while non-complaint with HSC § 120335. Given that Minor’s actual enrollment in independent study is not before the Court, it makes no determination as to the propriety thereon. The demurrer to the third cause of action is SUSTAINED. . .

Once Plaintiff’s exemption is adversely determined, it seems that exclusion is mandatory. Cal. Code Regs., tit. 17, § 6055 (children not meeting the requirements of HSC § 120335 “shall” be excluded). Plaintiffs may not obtain their requested relief absent a showing that there has been a legal error on the part of Defendants. No such error has been shown.

Given that Plaintiff’s argument is still predicated on the erroneous contention that Minor is being “forced” to participate in independent study, as opposed to electing to seek exemption from the requirements for unconditional school attendance, the declaratory relief cause of action remains inadequately pled.

Plaintiff also combines this with a cause of action for injunctive relief. Given that Plaintiff has requested injunctive relief in the prayer, and injunctive relief is not itself a cause of action, this also fails to state a cause of action.

The demurrer to the first cause of action is SUSTAINED without leave to amend.

V. Conclusion

Based on the foregoing, the Motion to Strike is **GRANTED without leave to amend as to the Sixth cause of action.**

The Demurrer is **SUSTAINED without leave to amend as to the First, Second, Fourth, and Fifth causes of action.** The Demurrer to the **Third cause of action is OVERRULED.**

Aragon's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

[1] Aragon has been replaced as director of Public Health by Dr. Erica Pan, but the complaint remains directed at the director of the Department.