



CENTER FOR ADVOCACY & POLICY

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April 2, 2015

The Honorable Richard Pan  
California State Capitol, Room 5108  
Sacramento, California 95814

**Re: Concerns regarding SB 277, as  
introduced**

The Honorable Benjamin Allen  
Sacramento, California 95814  
California State Capitol, Room 4061

Dear Senators Pan and Allen:

The ACLU of California regrets to inform you of our concerns re SB 277. As introduced, this bill would require every pupil of any public or private elementary or secondary school, child care center, day nursery, nursery school, family day care home or development center to be immunized against various diseases, including tetanus, hepatitis B, measles, mumps and pertussis, subject to specified age criteria, unless the student is exempted for medical reasons.

We understand the legitimate concerns that underlie the bill, and the potential harms of highly contagious diseases that present serious public health risks if “herd-immunity” levels are not reached or sustained. While we appreciate that vaccination against childhood diseases is a prudent step that should be promoted for the general welfare, we do not believe there has been a sufficient showing of need at present to warrant conditioning access to education on mandatory vaccination for each of the diseases covered by this bill for every school district in the state.

Unlike other states, public education is a fundamental right under the California Constitution. (*Serrano v. Priest*, 5 Cal.3d 584 (1971); *Serrano v. Priest*, 18 Cal.3d 728 (1976).) Equal access to education must therefore not be limited or denied unless the State demonstrates that its actions are “necessary to achieve a compelling state interest.” *Serrano*, 18 Cal. 3d at 768.

The State has not previously claimed to have a compelling interest in restricting exercise of the right to education on the basis of the mandated vaccinations. SB 277 does not declare what this interest might be, nor does it explain why denying students access to education is necessary to advance that interest. If there is, in fact, a compelling governmental interest in mandating that all students in every school be vaccinated against each of the enumerated diseases except for medical reasons, the bill should be amended to explain specifically what that interest is, where it exists, and under what conditions and circumstances it arises.

Assuming that a compelling governmental interest can be shown, equal access to education may nevertheless not be denied unless the selected method is narrowly tailored, or necessary, to

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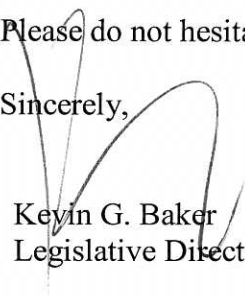
accomplish that interest. Accordingly, the Legislature is required to consider whether any less-restrictive alternative methods are available to achieve that interest. If it is believed that denying access to education unless a student proves that he or she has been vaccinated for the enumerated diseases is narrowly tailored to the governmental interest, and that there are no less severe alternatives, we think the bill should be amended to set forth why the policy proposed by the bill meets that test and is neither overly broad nor unduly restrictive. In particular we note that the reforms enacted by AB 2109 (Pan) have been in effect for only about 12 months before this bill was announced. We believe those reforms should be allowed an opportunity to work before they are stricken and replaced by an approach that restricts the fundamental right to education, as SB 277 proposes to do.

If AB 2109 is thought not to be working, its effects should be analyzed and any deficiencies should be corrected. If for example herd-immunity levels have not been achieved for certain diseases in geographic areas where school districts may not be fully complying with the law, those districts should be provided with additional resources and/or compliance incentives. In some cases it appears the deficiencies may reflect a need for better data-keeping and reporting, rather than the actual rate of vaccinations. It has been reported for example that in just one week the Los Angeles Unified School District increased its vaccination rates significantly after the recent measles outbreak by temporarily hiring additional staff to replace nursing and clerical staff that had been laid off. Other media reports indicate that some districts may not be complying with existing law because there is no penalty and no mechanism for enforcement. In any event, we note that herd immunity is a concept that applies to the entire population in a geographic area, not simply to public school students.

If you believe that AB 2109 cannot be made to work and there are no less restrictive measures that can be taken to achieve satisfactory population-wide immunization levels for each of the covered diseases in the relevant geographic areas, SB 277 should be amended to include findings to establish those contentions. Any proposal that seeks to restrict the fundamental right to education should, at a minimum, be supported by findings that recognize the constitutional significance of the issue and the searching review that such policies, appropriately, warrant. Moreover, any deficiencies should be remedied with precision to ensure that the proposed solutions are focused on the cause of the problem, in those areas and for those time periods where it exists, rather than a blanket approach that is simple, convenient, or inexpensive, but sweeps too broadly. Depriving children of their right to education should be a last resort.

Please do not hesitate to contact us should you have any questions or concerns.

Sincerely,



Keyin G. Baker  
Legislative Director

cc: Members and Committee Staff, Senate Health, Education and Judiciary committees