

SB277 - WHAT IT REALLY MEANS AND WHAT CAN YOU DO TO KEEP YOUR KIDS IN PUBLIC OR PRIVATE SCHOOL

SB277 takes away the Personal Belief Exemption (PBE) for Vaccination as an alternative to the vaccines required for entrance into public or private school in CA. The full bill wording can be found here:

http://www.leginfo.ca.gov/pub/15-16/bill/sen/sb_0251-0300/sb_277_bill_20150630_chaptered.pdf

SB277 was signed into on June 30th, 2015. However, it will not go into effect until July 1, 2016, in time for the 2016-17 school year.

This initial analysis of SB277 has been put together by A Voice for Choice, Inc. to further clarify the implications and possible options available to parents once this law takes effect. It should not be considered legal or medical advice, and will be updated as we learn more. (Please note: some elements continue to remain unclear. The Department of Public Health and school districts will be left to determine how those elements will be implemented). There is a process where the law is explained further in the regulations. The regulations are just as valid as the law. These will also be updated when SB277 is updated. The current version of the California Code of Regulations with respect to vaccinations can be found here:

[https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=IF09B3E60D60511DE88AEDDE29ED1DC0A&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=IF09B3E60D60511DE88AEDDE29ED1DC0A&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default))

(Note: If you find any errors in this analysis, please email them to info@avoiceforchoice.org)

The sections to this analysis include:

- 1. GRANDFATHERING IN**
- 2. CONDITIONAL ENTRANCE**
- 3. HOMESCHOOLING**
- 4. INDIVIDUALIZED EDUCATION PROGRAM (IEP)**
- 5. MEDICAL EXEMPTION**
- 6. VACCINE REQUIREMENTS**
- 7. OTHER VACCINATIONS ADDED TO THE SCHEDULE**
- 8. SCHOOL DOCUMENTATION REQUIREMENTS**



- 1. GRANDFATHERING IN** - SB277 allows children who have a PBE on record with their school on December 30 2015 to be “grandfathered in” for their age span.

Health and Safety Code Section 120335. (g) (1) A pupil who, prior to January 1, 2016, submitted a letter or affidavit on file at a private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center stating beliefs opposed to immunization shall be allowed enrollment to any private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center within the state until the pupil enrolls in the next grade span.

(2) For purposes of this subdivision, “grade span” means each of the following:

(A) Birth to preschool.

(B) Kindergarten and grades 1 to 6, inclusive, including transitional kindergarten. (C) Grades 7 to 12, inclusive.

(3) Except as provided in this subdivision, on and after July 1, 2016, the governing authority shall not unconditionally admit to any of those institutions specified in this subdivision for the first time, or admit or advance any pupil to 7th grade level, unless the pupil has been immunized for his or her age as required by this section

What does this mean?

A PBE is still the law of the state and is valid for a private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center until January 1, 2016. If you have a PBE on file with your school prior to January 1, 2016, your child will be allowed to attend until the next check point – Kindergarten or 7th Grade. If your child is entering 7th grade in 2015, then your child can use the PBE through High School.

Note: it is not clear if the signature on the back of the “blue card” which was acceptable prior to January 2014, will be accepted as a PBE. Therefore if you have not submitted a PBE since January 1, 2014, be sure to print out this form, take it to your doctor to sign and submit it to your school prior to January 1, 2016, erring on the cautious side. <http://eziz.org/iframes/CDPH-8262.html>

Note: Whether the grandfathering in clause allows for transferring from one school to another is also not clear. Usually, school records which include PBEs are transferred from one school to another and so they should just transfer the PBE over, but there is a possibility that (3) “first time” could be read as the child entering that specific institution for the first time. We would recommend arguing that it is not the first time the child is entering the institution of that type so they should fall under the grandfathering in clause.



- 2. CONDITIONAL ENTRANCE** – If a child is not up to date on their vaccinations at the beginning of the school year, the parent may show they are working on getting up to date and the child will be granted conditional entrance into school.

Health and Safety Code 120375. (b) 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, unless the pupil is exempted under Section 120370, until that pupil has been fully immunized against all of the diseases listed in Section 120335.

Code of Regulations Section 6070 (e) For pupils at kindergarten level and above transferring between school campuses within California or from a school in another state to a school in California, if the mandatory permanent pupil record or other immunization record has not been received at the time of entry to the new school, the governing authority of the school may admit the pupil for a period of up to 30 school days. If the mandatory permanent record or other immunization record has not arrived by the end of this period, the governing authority shall require the parent or guardian to present a written immunization record, as described in Section 6065, documenting that all currently due required immunizations have been received. If such a record is not presented, the pupil shall be excluded from further attendance until he or she comes into compliance with the immunization requirements, as outlined in Sections 6020, 6035, and 6065. (f) The governing authority shall see that the immunization record of each pupil admitted conditionally is reviewed every 30 days until that pupil has received all the required immunizations. Any immunizations received subsequent to conditional admission shall be entered in the pupil's immunization record.

What does this mean?

The code of regulations will be updated as SB277 goes into effect, so it is not clear what will happen to conditional entrance, but it seems that there are very strict criteria for conditional entrance and the vaccination schedule that a child on a conditional entrance is clearly outlined. This is not something that is determined between a doctor and a patient. The current conditional entrance schedule can be found here:

<http://eziz.org/assets/docs/IMM-1080Table2.pdf>

This is not a way that vaccination could be postponed beyond a few weeks/months. The conditional entrance is clearly geared towards getting a child up to date on their vaccinations, as quickly as possible.



3. HOMESCHOOLING – Vaccination is not required if students are in certain types of homeschools or independent study programs (ISP)

Health and Safety Code Section 120335. (f) This section does not apply to a pupil in a home-based private school or a pupil who is enrolled in an independent study program pursuant to Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code and does not receive classroom-based instruction.

Education Code Section 51745. (b) Not more than 10 percent of the pupils participating in an opportunity school or program, or a continuation high school, calculated as specified by the department, shall be eligible for apportionment credit for independent study pursuant to this article. A pupil who is pregnant or is a parent who is the primary caregiver for one or more of his or her children shall not be counted within the 10 percent cap.

(c) An individual with exceptional needs, as defined in Section 56026, shall not participate in independent study, unless his or her individualized education program developed pursuant to Article 3 (commencing with Section 56340) of Chapter 4 of Part 30 specifically provides for that participation.

What does this mean?

Children whose families file a Private School Affidavit or are enrolled in a Private Satellite Program will be exempt from the immunization requirements.

With respect to home-based Charter Schools and Public Independent Study Programs, the exemption may apply to some students enrolled in these programs, but homeschool families should consult with their program's administrator as guidelines and requirements may vary from program to program. The term "does not receive classroom-based instruction" has not yet been adequately defined for the purposes of this law. The following sections of the CA Education Code may provide some guidance:

Education Code Section 47612.5 (e) (1) Notwithstanding any other provision of law, and as a condition of apportionment, "classroom-based instruction" in a charter school, for the purposes of this part, occurs only when charter school pupils are engaged in educational activities required of those pupils and are under the immediate supervision and control of an employee of the charter school who possesses a valid teaching certification in accordance with subdivision (l) of Section 47605. For purposes of calculating average daily attendance for classroom-based instruction apportionments, at least 80 percent of the instructional time offered by the charter school shall be at the schoolsite, and the charter school shall require the attendance of all pupils for whom a classroom-based apportionment is claimed at the schoolsite for at least 80 percent of the minimum instructional time required to be offered pursuant to paragraph (1) of subdivision (a) of Section 47612.5."

Pursuant to EC Section 47612.5 (d)(1), "Non classroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education.

So, classroom-based instruction is defined as a student receiving more than 80% of instruction in the classroom with a certified teacher employed by the Charter or ISP. Therefore, there is uncertainty as it could be interpreted to suggest that Charter/ISP students taking classes at independent resource centers or co-ops would also be exempt.

HSLDA (Home School Legal Defense Association) is a great resource for all things to do with homeschooling. <http://www.hslda.org/>. If you have questions, we recommend contacting them.



4. INDIVIDUALIZED EDUCATION PROGRAM (IEP) – Vaccination is not required for students to access special education and related services required by an IEP.

Health and Safety Code Section 120335. (h) This section does not prohibit a pupil who qualifies for an individualized education program, pursuant to federal law and Section 56026 of the Education Code, from accessing any special education and related services required by his or her individualized education program.

Education Code 56026. "Individuals with exceptional needs" means those persons who satisfy all the following: (a) Identified by an individualized education program team as a child with a disability, as that phrase is defined in Section 1401(3) (A) of Title 20 of the United States Code. (b) Their impairment, as described by subdivision (a), requires instruction and services which cannot be provided with modification of the regular school program in order to ensure that the individual is provided a free appropriate public education pursuant to Section 1401(9) of Title 20 of the United States Code.

(c) Come within one of the following age categories:

(1) Younger than three years of age and identified by the local educational agency as requiring intensive special education and services, as defined by the board.

(2) Between the ages of three to five years, inclusive, and identified by the local educational agency pursuant to Section 56441.11.

(3) Between the ages of five and 18 years, inclusive.

What does this mean?

This section leaves much to interpretation, and really depends on what a child's IEP states and how that is interpreted by the school and county. An IEP is a legally binding document that specifies which services and supports the state will provide to your child. Most IEPs are very individualized and it seems in order to be allowed to go to public or private school, it would have to state that the best environment for the child to learn would be a school setting. So if you do not have this written in your IEP (because up until now it has been assumed that that is the case) then ask for it to be added in the 2015-16 school year, so that there is no question as to the amount of time the child should spend in a school setting. Formal IEPs created under the Education Code are usually only used in public schools. Private schools may have an alternate program, but you would need to get a formal IEP for a child in private school to be eligible for school without further vaccination. IEPs are created during the first year of school where the disability is an issue, so usually in Kindergarten in a public school. However, it is possible to get an IEP when a child is at least 3 years old and it is possible for anyone to get one even if your child does not go to public school. (<http://idea.ed.gov/explore/view/p/,root,dynamic,TopicalBrief,9>). If your child is in Kindergarten or grade school, and whether your child attends a public or private school or is homeschooled, you can request an evaluation by contacting your local school district.

For a child between the ages of 3 and 5 you can do the following:

- Look, listen and list your concerns. Observe your child and keep a list of behaviors or other examples that make you wonder if there's a learning or attention issue. Your list will help you present your concerns to people who can help.
- Talk to the pediatrician and/or the preschool teacher. Share your observations and concerns with your child's doctor and teachers (if your child attends preschool or daycare). Ask if what they see is typical for children that age. They may assure you that your child's development is on track.
- Get a referral for an evaluation. If the doctor or teachers share your concerns, you can ask for a referral to your state's Child Find program. Child Find provides free screenings and evaluations for



children who show signs of a developmental delay or learning issues. You also can send a letter to the school district's special education director, requesting a (free) evaluation.

Although you cannot get an IEP under the age of 3, you can get an Individualized Family Service Plan (IFSP) for your child, which give access to early intervention services. An IFSP is a legally binding document that specifies which services and supports the state will provide to your child. If your child is found to have a disability or serious developmental delay, services such as speech therapy or occupational therapy will be provided in your home, at no cost to you. It is best to get any disability documented early, so that when you want to get an IEP there is a history on file for your child. This will not allow you gain access to child care services without vaccination.

5. MEDICAL EXEMPTION - SB277 allows children who have a medical exemption to attend public or private school for the duration of the medical exemption.

Health and Safety Code Section 120325. (c) Exemptions from immunization for medical reasons

Health and Safety Code 120370. (a) If the parent or guardian files with the governing authority a written statement by a licensed physician to the effect that the physical condition of the child is such, or medical circumstances relating to the child are such, that immunization is not considered safe, indicating the specific nature and probable duration of the medical condition or circumstances, including, but not limited to, family medical history, for which the physician does not recommend immunization, that child shall be exempt from the requirements of Chapter 1 (commencing with Section 120325, but excluding Section 120380) and Sections 120400, 120405, 120410, and 120415 to the extent indicated by the physician's statement.

Health and Safety Code 120380. It is the intent of the Legislature that the administration of immunizing agents by registered nurses in school immunization programs under the direction of a supervising physician and surgeon as provided in Sections 49403 and 49426 of the Education Code shall be in accordance with accepted medical procedure. To implement this intent, the department may adopt written regulations specifying the procedures and circumstances under which a registered nurse, acting under the direction of a supervising physician and surgeon, may administer an immunizing agent pursuant to Sections 49403 and 49426 of the Education Code. However, nothing in this section shall be construed to prevent any registered nurse from administering an immunizing agent in accordance with Sections 49403 and 49426 of the Education Code in the absence of written regulations as the department is authorized to adopt under this section.

Education Code 49403 (b) (1) The following health care practitioners, acting under the direction of a supervising physician and surgeon, may administer an immunizing agent within the course of a school immunization program:

(A) A physician assistant.

(B) A nurse practitioner.

(C) A registered nurse.

(D) A licensed vocational nurse.

(E) A nursing student who is acting under the supervision of a registered nurse, in accordance with applicable provisions of law.

(2) A health care practitioner's authority to administer an immunizing agent pursuant to this subdivision is subject to the following conditions:



(A) The administration of an immunizing agent is upon the standing orders of a supervising physician and surgeon and in accordance with any written regulations that the State Department of Public Health may adopt.

(B) The school nurse is notified and he or she maintains control, as necessary, as supervisor of health in accordance with Sections 44871, 44877, 49422, and subdivision (a) of Section 49426.

(C) The health care practitioner may only administer immunizations for the prevention and control of any of the following:

(i) Annual seasonal influenza.

(ii) Influenza pandemic episodes.

(iii) Other diseases that represent a current or potential outbreak as declared by a federal, state, or local public health officer.

(c) As used in this section, "supervising physician and surgeon" means the physician and surgeon of the local health department or school district that is directing the school immunization program.

(d) While nothing in this section shall be construed to require the physical presence of the supervising physician and surgeon, the supervising physician and surgeon shall require a health care practitioner under his or her direction to do both of the following:

(1) Satisfactorily demonstrate competence in the administration of the immunizing agent, including knowledge of all indications and contraindications for the administration of the agent, and the recognition and treatment of emergency reactions to the agent that constitute a danger to the health or life of the person receiving the immunization.

(2) Possess the medications and equipment that are required, in the medical judgment of the supervising physician and surgeon, to treat any emergency conditions and reactions caused by the immunizing agents that constitute a danger to the health or life of the person receiving the immunization, and to demonstrate the ability to administer the medications and use the equipment as necessary.

(e) It is the intent of the Legislature to encourage school-based immunization programs, when feasible, to use the California Immunization Registry to assist providers to track patient records, reduce missed opportunities, and to help fully immunize all children in California.

Education Code 49426. School nurses may perform, if authorized by the local governing board, the following services:

(a) Conduct immunization programs pursuant to Section 49403 and assure that every pupil's immunization status is in compliance with the law, including parental or guardian consent, and good health practice.

What does this mean?

Your child can go to a private or public elementary or secondary school, child day care center, day nursery, nursery school, family day care home, or development center without being up to date on vaccinations if they have a medical exemption from a licensed physician (MD or DO). There is no form for the medical exemption, so it would need to be a letter from the licensed physician. It does currently require the reason for the medical exemption and the duration. However, there are HIPPA issues with having this information on the medical exemption, so someone will need to challenge this or the law will need to be amended.



These are some of the situations in which a medical exemption MAY be warranted:

- Prior vaccine reaction
- Siblings of a child who had a severe reaction
- Children of a parent who had a severe reaction
- Current severe medical conditions or chronic conditions
- History of seizures
- Family history of autoimmune diseases
- Family history of neurodevelopmental or psychiatric conditions
- Child has an autoimmune disease
- Genetic testing that indicates that there is evidence that this child will suffer a vaccine reaction or autoimmune disease post vaccination.
- Allergy to one or more of the components in the vaccine
- Titer testing or proof of having the disease for that specific disease
- Temporary exemption because the child needs more vaccines than can be safely given in one visit.

Licensed Physicians cannot give a medical exemption because a parent believes vaccines are generally unsafe and might harm their child.

Titer tests for most diseases on the list can be ordered here:

<http://www.accesslabs.com/titers?gclid=Cj0KEQjwrJ2tBRD13N7T5u7k9I8BEiQA5APAALqXuRzcGU7PTq3FV7ISPS4rSD9vIlzhSwavB IddpUaAn7B8P8HAQ>

A Voice for Choice, Inc. has done extensive research on genetic screening and its impact on vaccine reactions and is working with several doctors to create a vaccine risk screening protocol for doctors to use to determine the potential risks of vaccines for their patients. This give doctors information to back up a medical exemption with scientific testing. We will be posting this as part on our website once it is finalized. We will also create a directory of doctors who have been briefed on this protocol.

It is concerning that the section regarding the school nurses authority is excluded from the medical exemption. This is not completely clear, but this seems to read that the school nurse can override a medical exemption if the vaccination is deemed necessary. This becomes more concerning when we know that bills are being passed to increase the number of school nurses and in-school health centers, as well as the fact that any child over 12 can give consent to a vaccine in school without the consent of their parent.



6. VACCINE REQUIREMENTS - For new entrants after January 1, 2016 or if a child is going into Kindergarten or 7th grade SB277 requires the child to be up to date on vaccinations for 10 diseases:

Health and Safety Code Section 120335. (b) 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. The following are the diseases for which immunizations shall be documented:

(1) Diphtheria.

(2) Haemophilus influenzae type b.

(3) Measles.

(4) Mumps.

(5) Pertussis (whooping cough).

(6) Poliomyelitis.

(7) Rubella.

(8) Tetanus.

(9) Hepatitis B.

(10) Varicella (chickenpox).

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

(c) Notwithstanding subdivision (b), full immunization against hepatitis B shall not be a condition by which the governing authority shall admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school.

(d) The governing authority shall not unconditionally admit or advance any pupil to the 7th grade level of any private or public elementary or secondary school unless the pupil has been fully immunized against pertussis, including all pertussis boosters appropriate for the pupil's age.

Health and Safety Code Section 120325. (b) That the persons required to be immunized be allowed to obtain immunizations from whatever medical source they so desire, subject only to the condition that the immunization be performed in accordance with the regulations of the department and that a record of the immunization is made in accordance with the regulations.

What does this mean?

If a parent cannot get a medical exemption, cannot homeschool/ISP, and/or cannot get an IEP which states their child should be in a school setting for their child, then the following vaccines would be required for entrance into Kindergarten, given according to the CDC schedule:

- DTaP - (diphtheria, tetanus and pertussis/whooping cough)
- Hemophilus influenzae b
- Measles, mumps, rubella
- Polio
- Varicella (chicken pox)
- Hepatitis B



The later vaccines are administered in life the fewer doses are required. For example, only 3 polio vaccines and 4 DTaPs are needed if the last one is given on or after the 4th birthday. Only one Hemophilus influenzae B (Hib) vaccine is needed if given on or after 15 months and no Hib vaccine is needed if your child is over 5 years old. Only 2 Hepatitis B vaccines are needed if they are given after the age of 11.

For 7th grade entrance, it seems that the child would need only the pertussis vaccine and boosters, so 4 DTaPs. It is not clear if the other immunizations required for Kindergarten would be needed for those who have been grandfathered in through 6th grade, but the law does not specify that this is the case.

7. OTHER VACCINATIONS ADDED TO THE SCHEDULE - Any other disease deemed appropriate can be added to the schedule with a PBE.

Health and Safety Code 120338. Notwithstanding Sections 120325 and 120335, any immunizations deemed appropriate by the department pursuant to paragraph (11) of subdivision (a) of Section 120325 or paragraph (11) of subdivision (b) of Section 120335, may be mandated before a pupil's first admission to any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, only if exemptions are allowed for both medical reasons and personal beliefs.

Health and Safety Code Section 120335. (b) 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. The following are the diseases for which immunizations shall be documented:

(11) Any other disease deemed appropriate by the department, taking into consideration the recommendations of the Advisory Committee on Immunization Practices of the United States Department of Health and Human Services, the American Academy of Pediatrics, and the American Academy of Family Physicians.

What does this mean?

Any other disease may be added if deemed appropriate by the California Department of Public Health. If another disease is added to the requirements a PBE will be accepted. However, it is likely that if another disease is added that this section will get a special override in the future, so don't count on a PBE being available.



8. SCHOOL DOCUMENTATION REQUIREMENTS – Schools must keep full records of immunization status for each child.

Health and Safety Code Section 120325. (d) For the keeping of adequate records of immunization so that health departments, schools, and other institutions, parents or guardians, and the persons immunized will be able to ascertain that a child is fully or only partially immunized, and so that appropriate public agencies will be able to ascertain the immunization needs of groups of children in schools or other institutions.

Health and Safety Code 120375. (a) The governing authority of each school or institution included in Section 120335 shall require documentary proof of each entrant's immunization status. The governing authority shall record the immunizations of each new entrant in the entrant's permanent enrollment and scholarship record on a form provided by the department. The immunization record of each new entrant admitted conditionally shall be reviewed periodically by the governing authority to ensure that within the time periods designated by regulation of the department he or she has been fully immunized against all of the diseases listed in Section 120335, and immunizations received subsequent to entry shall be added to the pupil's immunization record. (b) 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, unless the pupil is exempted under Section 120370, until that pupil has been fully immunized against all of the diseases listed in Section 120335.

(c) The governing authority shall file a written report on the immunization status of new entrants to the school or institution under their jurisdiction with the department and the local health department at times and on forms prescribed by the department. As provided in paragraph (4) of subdivision (a) of Section 49076 of the Education Code, the local health department shall have access to the complete health information as it relates to immunization of each student in the schools or other institutions listed in Section 120335 in order to determine immunization deficiencies.

(d) The governing authority shall cooperate with the county health officer in carrying out programs for the immunization of persons applying for admission to any school or institution under its jurisdiction. The governing board of any school district may use funds, property, and personnel of the district for that purpose. The governing authority of any school or other institution may permit any licensed physician or any qualified registered nurse as provided in Section 2727.3 of the Business and Professions Code to administer immunizing agents to any person seeking admission to any school or institution under its jurisdiction.

What does this mean?

Schools must keep and update vaccination records of all students and submit them to the California Department of Public Health. If the child is not up to date with their vaccinations, the school or child care center is responsible for following up with parents and ensuring that parents comply with the vaccinations requirements. This needs to be done every 30 days. It is not clear how often child care centers will have to update their records given children under 5 are getting vaccines regularly, but the law seems to imply that they will have to constantly check and update at each vaccine age requirement.

