



# LAW UPDATE

## SPECIAL EDUCATION

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### ***STAY PUT FOR UNVACCINATED STUDENT AND AMENDED TITLE 17 REGULATIONS REGARDING K-12 IMMUNIZATION REQUIREMENTS***

On August 14, 2018, the Office of Administrative Hearings (OAH) – which is the state administrative agency responsible for hearing and deciding special education due process cases – issued an Order granting a student’s stay put request despite the fact that the student had not met state immunization requirements. (*Parent v. Chino Valley Unified School District*, OAH Case No. 2018071218.) This decision is the first of its kind from OAH in the state and is notable as the Administrative Law Judge followed the logic of an earlier decision issued by the United States District Court located in San Diego. (*Whitlow v. California*, 203 F.Supp.3d 1079 (2016).) In the *Whitlow* case, the Court denied a request for a preliminary injunction preventing the enforcement of SB 277, which was the statute that eliminated the so-called personal belief exemption from state immunization requirements for attendance in public school. The *Whitlow* Court ruled that California law specifically created an exemption from the requirement for immunization for students who were attending school pursuant to an IEP.

In the *Chino Valley* case, a preschool-aged student had moved into the district who was unimmunized. The student in question had already been identified as a student eligible for an IEP by her previous district. *Chino Valley* held an IEP and offered a 30-day placement in home hospital if the student refused to obtain immunizations, or alternatively a 30-day placement in a public preschool comparable to the placement that had been provided at the former district should the student comply with state immunization requirements. The student rejected both of these options and sought an order determining stay put. "Stay put" is a legal phrase of art under the IDEA which describes and entitles a student to remain in the last agreed upon and implemented placement. Because student's most recently implemented IEP concerned attendance at a public preschool, OAH ruled that this constituted student's stay put despite the fact that the student was unimmunized and refused to obtain immunizations. In reaching this decision, OAH held that California law specifically creates a statutory exemption from state immunization requirements for students who have an IEP. This ruling is consistent with the District Court’s read of the law in the *Whitlow* matter.

Schools Legal Service (SLS) provided a client update on SB 277 at the time that it was first implemented and advised our clients that the law contained an exemption for special education students. Both the *Whitlow* and the *Chino Valley* cases have confirmed that the courts of the state agree with this reading of the law.

SLS continues to advise our clients that students attending school on IEPs are exempted from immunization requirements and should not be deprived of their educational services due to a failure to comply with immunization requirements. The California Department of Public Health has recently proposed revisions to Title 17 of the California Code of Regulations dealing with student immunization requirements. SLS will continue to monitor this, as well as other statutory and regulatory changes to the implementation of SB 277, and will provide further updates on the changing landscape of student immunization.

– *KYLE W. HOLMES*

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*Education Law Updates are intended to alert clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Please consult legal counsel as to how the issue presented may affect your particular circumstances.*