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5735 47th Avenue • Sacramento, CA 95824

Jorge A. Aguilar, Superintendent

September 9, 2020

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The Honorable Tony Thurmond
State Superintendent of Public Instruction
1430 N Street
Sacramento, CA 95814

Re: Sacramento City Unified School District—Reopening Schools in a Distance Learning Model Which Ensures High Quality, Equitable Education to All Students

Dear Superintendent Thurmond:

We know you are acutely aware of the challenges facing school districts across California, with the global COVID-19 pandemic, wildfires across the State, heat waves and power outages, and many of the State's school districts beginning school in a distance learning model. The Sacramento City Unified School District ("District") appreciates your leadership, particularly related to opening our schools in a distance learning model through the California Department of Education's ("CDE") publication "Stronger Together: A Guidebook for the Safe Reopening of California's Public Schools" and the CDE's issuance of Frequently Asked Questions (FAQs) related to distance learning.

It is in your role as the educational leader of our State that we reach out to you to share some pressing civil rights issues facing our District and to request your support to ensure that all of the students of Sac City Unified have the opportunity to access high quality instruction and equitable educational opportunities during this pandemic.

As you know, the District has opened our schools in a full distance learning model for the 2020-2021 school year because Sacramento County remains in Tier 4 under the Governor's new COVID-19 framework. For the past two months, the District has engaged in negotiations with the Sacramento City Teachers Association ("SCTA") around the effects of reopening our schools in a distance learning model. On June 3, 2020, the District sent a letter to all of its labor partners requesting to begin bargaining on the effects of distance learning. On June 16, 2020, SCTA sent the District a list of issues related to distance learning over which it wanted to bargain or meet and confer. On June 17, 2020, the District reached out to SCTA to confirm negotiations on June 23, 2020 related to the effects of distance learning at the District's two early start schools.

The first bargaining session between the parties on the effects of distance learning on all of the District schools was held on July 2, 2020, at which time the District presented SCTA with a proposal on health and safety. Thereafter, the District presented a proposal on the effects of distance learning on July 16, 2020. The parties met to negotiate on the

effects of distance learning on all of the District's schools for a total of ten (10) times (June 23, July 2, July 10, July 28, August 6, August 13, August 24, August 29, August 30, and August 31, respectively), in addition to negotiations on several other dates to discuss the special education transition program and child development. The parties also held two days of work group meetings with District representatives and employees representing the various grade spans and special services areas.

The District and SCTA engaged in "round the clock" negotiations on August 29 and 30 in an attempt to reach an agreement, during which the District made significant movement verbally on August 29 and then in writing on August 30, agreeing to reduce the instructional minutes under the District's distance learning model to align with the *minimum* requirements of Senate Bill 98 (Education Code section 43501), along with other changes accepting some of SCTA's proposed language. On August 31, 2020, the District and SCTA met again for what the District believed to be negotiations and an opportunity to receive SCTA's response to the District's August 30, 2020 proposal. Instead of presenting a proposal, SCTA informed the District that it was declaring impasse.

The District and SCTA were certified to impasse on September 2, 2020 and co-mediators from the State Mediation and Conciliation Services were assigned to work with the parties. The mediation was scheduled for September 4, 2020 beginning at 4:00 p.m. The parties met in mediation for over eight (8) hours and were not able to reach an agreement. The District and SCTA were certified to fact-finding on September 8, 2020.

As you know, our District serves a student population that has long been underserved and has high needs. Our District has a history of high-poverty and low-performing outcomes, and we have committed to students, families and community to mending the inequities in our system. The District's student population encompasses a large number of English learners, low-income students, foster youth, students with exceptional needs, and students experiencing homelessness, and what is best for those students necessarily calls for a different approach than that implemented in other dissimilar districts. In our District, the importance of consistency throughout the District's distance learning plan cannot be overstated, and this is why site-by-site schedules with different instructional minutes are unacceptable for the District—we need to consistently serve *all of* our students. Such consistency helps to best ensure for equity. Inconsistency and discretion do not.

While the District is going through the statutory impasse process with SCTA, the District moved forward to implement its August 30, 2020 distance learning plan in order to provide direction on the expectations and framework for distance learning in the District, and to ensure consistency within our system so that inequities do not persist. Unfortunately, SCTA leadership has advised its members that they do not have to follow the District's daily instruction schedules and, instead, may create their own instructional schedule to use at their school sites. While many school sites in the District are using the District's schedules, others are not. This is resulting in some of our students receiving inconsistent or no instructional time with their teachers on certain days and creating a situation where the District, **despite our best efforts and the express intention of the District's distance learning plan, is not able to comply the requirements of Senate Bill ("SB") 98 (Education Code section 43500 et seq.)** Examples of schedules at some

of our District school sites that are in conflict with the District's schedules and that do not comply with the law include are included in the attached documents.

A review of the attached schedules demonstrates the very concern that the District's proposed distance learning plan attempts to address—inequities in the instructional minutes our students are receiving across the District. **Those schools provide either less than the required instructional minutes or lack the daily live instruction requirement under the law meaning that at these schools our students are receiving less direct instruction and instructional minutes than their peers at other District schools.**

In addition to the instructional schedules not being followed at some of our schools, we also have learned that SCTA has informed its members that they do not have to follow other aspects of the District's August 30, 2020 distance learning plan because there is no agreement between the District and SCTA. **We believe that SCTA's position on these issues is in direct conflict with SB 98 and the lawful directive issued by the District.** Specifically, SCTA has informed its members through the September 8, 2020 "*SCTA Messenger*" (attachment) that teachers "have a right to challenge" the District's requirement that they:

- Administer student assessments;
- Track student engagement and attendance;
- Upload logs confirming that students with disabilities have received the services required under their Individualized Education Plan (IEP); and
- Use the District-developed math and ELA scope and sequence to guide instruction.

We believe that SCTA's opposition to each of the above elements of the District's distance learning plan is contrary to the requirements of SB 98 and could set a dangerous precedent for the state. We know, for example that student assessments are critical to ensuring that our students receive the support and differentiated instruction that will allow them to master grade level standards. SB 98 recognizes the importance of assessments in the distance learning environment as a means to ensure that our students, including English language learners, receive targeted supports to meet their needs and that assessments help to identify areas of need. (Education Code section 43503(b)(5).)

Furthermore, monitoring and tracking student engagement is a critical component of SB 98. (Education Code section 43504(d)-(e).) This is particularly important in our District where we know, through parent and other feedback, that many of our students were disengaged during the crisis learning in the spring. Without timely and consistent monitoring of student engagement and attendance, the District cannot activate the critically important and legally required tiered strategies to reengage our students.

Additionally, maintaining service logs to ensure that services are provided to students with disabilities is always critical, but even more so in the distance learning environment.

Education Code section 43503(b)(4), enacted as part of SB 98, requires that distance learning ensure that "the IEP can be executed in a distance learning environment." Service logs are the evidence of such compliance.

Finally, SB 98 specifically states that distance learning must include “content aligned to grade level standards that is provided at a level of quality and intellectual challenge substantially equivalent to in-person instruction.” (Education Code section 43503(b)(2).) Refusing to use District developed math and ELA scope and sequence to guide instruction is contrary to this requirement.

We want to bring these civil rights concerns to your attention because we know as the State Superintendent of Public Instruction you share our goal of ensuring that *all* of the students of Sac City Unified receive equitable access to high quality instruction and social and emotional supports while our schools are in a distance learning model. We also believe that SCTA’s actions have the effect of causing the District to be in violation of SB 98. Our State Constitution mandates this and has placed the management and control of the public schools with the State (see *Butt v. State of California* (1992) 4 Cal.4th 668, 680-81), and the State has the obligation to intervene when on notice of actions which directly infringe upon the equal protection rights of students (see *Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 896-900). Our Constitution requires that the State is obligated to address disparities in our schools, whether within a single district or as between school districts. As stated by the California Supreme Court in *Butt v. State of California* (1992) 4 Cal.4th 668, 685:

It therefore appears well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts. The State itself bears the ultimate authority and responsibility to ensure that its district-based system of common schools provides basic equality of educational opportunity.

We remain hopeful that the District and SCTA will reach an agreement on the effects of distance learning so that we can focus on our highest priority—providing high quality, equitable instruction to *all* of our students during distance learning. Given what we have described, we felt compelled to make you aware and seek your guidance on this important matter, especially as the District may not comply with SB 98. **We appreciate your support during these challenging times and, because of the urgency of this matter, appreciate a response from you by Friday, September 11, 2020.**

Sincerely,



Jorge A. Aguilar
Superintendent

cc: The Honorable Governor Gavin Newsom
Keith Yamanaka, General Counsel, California Department of Education
Dr. Linda Darling-Hammond, President, State Board of Education
Keely Martin Bosler, Director of the California Department of Finance
The Honorable Holly Mitchell, Senator
The Honorable Phil Ting, Assemblymember