



September 6, 2020

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Via E-Mail: dfisher@saccityta.com

David Fisher, President
Sacramento City Teachers Association
5300 Elvas Avenue
Sacramento, CA 95819

Re: Demand to Cease and Desist – Refusal to Follow Distance Learning Plan and Notice of Plan to Engage in Concerted Activities

Dear Mr. Fisher:

I am writing in response to Sacramento City Teachers Association's ("SCTA") recent assertion that teachers will not follow the District's now operative distance learning plan and schedules. SCTA's position has been expressed in various social media posts by SCTA unit members and representatives, in communications from SCTA leaders to school site representatives, and most recently and clearly in a resolution adopted by the SCTA Executive Board and Bargaining Team stating that SCTA members:

"Will begin, as scheduled, the education of the 40,000 students of the Sacramento City Unified School District on Tuesday, September 8, 2020 based on the needs of our students and using our professional judgment." It goes on to state that members "[w]ill work with our school principals and other school-site administrators to implement schedules of instruction that meet the needs of students...according to the provision of our collective bargaining agreement and the California Ed[ucation] Code." The resolution goes on to demonstrate SCTA's intent that its members actively defy the District's distance learning plan and schedules when it says "teachers will oppose the efforts of District administrators to impose unlawfully, a rigid, inflexible, administrator-based distance learning plan...."

SCTA's resolution would result in inconsistency across our District in terms of the schedules that will be used and the instructional minutes that our students will receive while in a distance learning model. Inconsistency in our District amounts to inequity for our students and we cannot and will not accept it.

As you know, our District serves a student population that has long been underserved and has high needs. Our District has a history of being a high-poverty, low-performing District and we are committed 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 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 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. With this in mind, through its above-noted statements and communications, SCTA leadership is directing its members to violate the law by not providing daily live instruction to students every school day.

In the face of the many challenges raised by this current pandemic, the District must continue providing students with their constitutional right to education. (Cal. Const., article IX, section 5.) This includes providing services to our students with disabilities consistent with students' Individualized Education Programs (IEPs), as required by the Individuals with Disabilities Education Act (IDEA), and equal access to educational programming without discrimination under section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Title VI of the Civil Rights Act of 1964 and the equal protection clauses of the United States and California Constitution protect against discriminatory treatment, and in some instances practices which result in a disparate impact, in relation to a student's race, ethnicity, and socio-economic status. SCTA's distance learning plan and schedules do not provide the quality or consistency necessary to ensure educational equity for *all* District students, including those students with rights under the laws noted here. The District's plan and schedule does. Our community demands nothing less of us. Our students deserve nothing less and our employees must deliver nothing less.

The District has not authorized SCTA or its members to provide distance learning to its students according to any schedule other than the plan set forth in the District's August 30 proposal to SCTA or the schedules shared with SCTA on September 4, 2020. SCTA's communication stating otherwise only serves to confuse employees, parents, students and the greater Sacramento community, and it will not be allowed.

SCTA's Unlawful Attempt to Implement its District Learning Schedules and Plan

While SCTA's September 5, 2020 resolution entitled "Resolution to Provide Equity-Based Distance Learning to 40,000 Students In the Sacramento City Unified School District (SCUSD) Based on the Professional Judgment and Best Practices of Teachers, School Nurses, Psychologists, Social Workers, Librarian and Other Professionals" may seem well-intentioned, the substance of the resolution does not provide, let alone ensure for, educational equity within the District. The District's distance learning plan is designed to meet needs of *all* of our students, including our most needy students, and improve, not exacerbate, educational equity.

With SCTA's declaration of impasse on August 31, 2020, SCTA's unilateral action in adopting its resolution regarding distance learning before the exhaustion of impasse procedures is a per se unfair labor practice. (See *Moreno Valley Unified School Dist. v. Public Employment Relations Bd.* (1983) 142 Cal.App.3d 191, 199; *El Dorado Union High School District* (1986) PERB Dec. No. 537a.) Distinct, based on the unavoidable and unforeseen circumstances resulting from the COVID-19 pandemic, the District's adoption of a distance learning plan on September 5, 2020 was lawful and necessary. (See *Lucia Mar Unified School District* (2001) PERB Dec. No. 1440; *Calexico Unified School District* (1983) PERB Dec. No. 357; *Regents of the University of California* (1998) PERB Dec. No. 1255-H.) Thus, any characterization by SCTA that the District's action in adopting a distance learning plan under the current circumstances is unlawful, is without merit.

As a reminder, the need for which is not surprising, it is the role of the Governing Board and the Superintendent, not SCTA, to establish the instructional schedule for our students.

The Governing Board shall fix the length of the school day subject to the provisions of law. (Education Code section [46100](#)) Board Policy 6112 specifically provides that the school day shall be arranged and scheduled by the administration so as to offer the greatest return educationally for the time spent, within the limitations of school facilities and requirements of contract, state law and regulations.

A careful review of some of the schedules that SCTA leaders have improperly sent out to students and families demonstrate the inequity that inconsistent and discretion-based schedules have in our system. For example, several of the schedules put forth by SCTA leaders have no provision for direct live instruction on Mondays, which is inconsistent with the Senate Bill 98 requirement for direct live instruction *every day*. (See Education Code section 43500; 43503; 43509.) In addition, several of the schedules have school starting at a start time that is not consistent with their start time in the 2019-2020 school year, which is another unlawful and unilateral change by SCTA. Finally, there is variation between the schedules that we have seen in terms of the synchronous and asynchronous instructional minutes that will be provided to our students and they do not appear to include any specific time allocated for students to receive targeted instructional supports as required by SB 98 (Education Code section 43503(b)(3).)

With our students slated to return to the regular distance learning school schedule in two days, our students and families need a clear understanding of what their upcoming school days will look like. While we will work through the statutory impasse process to resolve our difference around distance learning, until we have resolution through that process, the District demands SCTA cease and desist from its communications to staff and the community that contradict the District's August 30, 2020 distance learning proposal and the District's September 4, 2020 distance learning schedules. **Correspondingly, this letter also serves as notice that SCTA unit members are expected to follow the District's distance learning proposal and schedules.**

SCTA's Announcement that its Members are Engaging in Unlawful Concerted Activities

SCTA also claims its members will be engaging in concerted activities in opposition to the District's distance learning schedule. As a reminder, concerted refusals to perform mandatory duties are not protected under the EERA. (*Bellevue Union Elementary School District* (2003) PERB Dec. No. 1561.) Following the District's schedule is a mandatory duty. More importantly, engaging in concerted activities detracts from our shared goal of providing high quality education for *all* of our students.

The District therefore demands that:

- SCTA immediately retract any and all communication to its members and to the community stating that its members will not follow the District's distance learning plan, including the District's distance learning plan schedule, and/or any and all schedules issued to families that conflict with the District's plan or schedule;

- SCTA cease and desist from unilaterally implementing inconsistent schedules across District school sites; and
- SCTA cease and desist from directing their unit members to engage in concerted activities that are inconsistent with the law.

We all work for our students. Now, more than ever, it is time for us to come together and work to ensure that our students receive high quality distance learning and successfully transition to this new and necessary format where we will continue the work of serving *all* of our students.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jorge A. Aguilar'. The signature is stylized with a large loop and a horizontal line.

Jorge A. Aguilar
Superintendent