



BOARD OF EDUCATION

Christina Pritchett
President
Trustee Area 3

Lisa Murawski
Vice President
Trustee Area 1

Darrel Woo
2nd Vice President
Trustee Area 6

Leticia Garcia
Trustee Area 2

Jamee Villa
Trustee Area 4

Chinua Rhodes
Trustee Area 5

Lavinia Grace Phillips
Trustee Area 7

Isa Sheikh
Student Board Member

April 7, 2021

Via E-Mail: dfisher@saccityta.com

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

Re: CDPH and SCDPH Guidance on Physical Distancing

Dear Mr. Fisher,

I am in receipt of your [email](#) from Monday, April 5, 2021, responding to the [letter I sent you dated March 31, 2021](#) requesting to *meet and confer* with the Sacramento City Teachers Association (SCTA) pursuant to Section I.A.3 of our recently negotiated MOU, on safely reopening our schools to in-person instruction/services for our students.

As you know, Section I.A.3 of the MOU states: “If any provision contained in this MOU conflicts with revised or updated guidelines, best practices, recommendation and considerations from the SCDPH of CDPH, the Parties agree to meet and confer.” As you also know and mention in your email, the federal Centers for Disease Control and Prevention (CDC) revised its guidelines on physical distancing on March 19, 2021, recommending at least 3 feet between students, reduced from the previous 6 feet parameter. On March 20, 2021, the California Department of Public Health (CDPH) followed suit and issued similar guidance and recommendations. And on March 26, 2021, the Sacramento County Department of Public Health (SCDPH) made the same change to its previous recommendations on physical distancing between students in a school setting.

Your email claims that the MOU between the District and SCTA, which, in Section VII.A addresses physical distancing of no less than 6 feet, is not in “conflict with the CDC guidelines.” You further claim that the language around 6 feet of physical distancing is “quite consistent with CDC guidelines which recommend at least three feet distancing space between students in a classroom setting: six feet distancing is ‘at least’ three feet social distancing between students in a classroom setting.” The District disagrees with your interpretation.

You further claim that the District did not honestly inform the Board or the public at the March 25, 2021 Board meeting when the MOU was approved that the issue of “six (6) feet was settled in the MOU.” Yet, the District negotiations team was very clear with SCTA during the March 19, 2021 negotiations session that it believed that the new CDC guidelines *did* conflict with the current language of the MOU regarding physical distancing and told SCTA that it would like to discuss the new guidance and the existing then-proposed terms of the MOU.

In fact, in the [District’s proposal presented to SCTA at 4:25 p.m. on March 19, 2021](#), the District proposed language (shown in blue on the District’s proposal) that read: “The parties understand that there continues to be changes to the state and local guidelines and requirements related to physical distancing, cohorts, and other areas that may impact the format of the instructional model. The parties will meet and confer as needed.” When the District shared this language with SCTA, John Borsos, SCTA’s lead negotiator, stated it would be a huge setback if the District were to talk about 3 feet of physical distancing, and indicated that SCTA would not agree to 3 feet. The District’s lead negotiator explained that the District was interested in continuing to have

discussions on physical distancing as guidance in that area changed—a concept consistent with the District’s interest in returning as many students to in-person instruction as possible so long as consistent with public health recommendations.

Mr. Borsos then indicated that the language in the first sentence of Section I.A.3 allowed the parties to meet if there were changes in the guidance and that the second sentence was unnecessary. The District eventually deleted the second sentence that was in the 4:25 p.m. proposal on March 19 because the negotiations team believed, based on the discussion with Mr. Borsos, that it was clear the District intended to revisit the issue of physical distancing based upon the new guidance by public health officials.

In your email, you also claim that the CDC and CDPH guidance revisions or updates occurred “before the agreement became effective on March 25, 2021.” While the CDC and CDPH revisions occurred before the MOU became effective, the CDPH revisions were not published when the MOU was agreed upon at the table. Moreover, the SCDPH revisions did not occur until after the MOU was agreed upon at the table, ratified by SCTA, and approved by the District’s Governing Board. Further still, and perhaps most important, Section I.A of the MOU indicates that:

The District agrees to comply with the guidelines and regulations, from the Centers for Disease Control and Prevention (CDC), the California Department of Public Health (CDPH), the California Department of Education (CDE), Cal/OSHA, and the Sacramento County Department of Public Health (SCDPH), including but not limited to:

1. CDPH “COVID-19 and Reopening In-Person Instruction Framework & Public Health Guidance for K-12 Schools in California, 2020-2021 School Year”, dated January 14, 2021.
2. The SCUSD “Return to Health: Health and Safety Plan During COVID-19” (dated March 13, 2021), except in instances where the SCUSD “Return to Health” plan conflicts with this MOU, wherein this MOU shall prevail.
3. *All revisions and updates to the above health and safety guidelines.* If any provision contained in this MOU conflicts with revised or updated guidelines, best practices, recommendation and considerations from the SCDPH of CDPH, the Parties agree to meet and confer.

The language in Section I.A, and its subparts, makes it clear that the District will comply with guidelines and regulations from the listed federal and state agencies, including “revisions and updates to the above health and safety guidelines.” The CDPH’s January 14, 2021 Framework is out-of-date and has been replaced with an updated framework and guidance. That updated framework and guidance reflects a physical distancing recommendation between students of at least 3 feet. In addition, on March 26, 2021, the California Department of Education (CDE) issued Frequently Asked Question (FAQ) guidance about the In-Person Instruction Grant available to school districts under Assembly Bill (AB) 86 (Chapter 10, Statutes 2021). The CDE’s FAQ reads, in part:

LEAs are expected to consider full-day, full-week in-person instruction *the default mode of instruction*, only resorting to distance learning if required to ensure the health and safety of staff and students. For example, an LEA that is unable to house students in its facilities while maintaining proper distancing would likely need to offer in-person instruction in a hybrid model to accommodate health and safety. However, an LEA with more than sufficient space, staffing, hygienic supplies, etc. to ensure health and safety of

all students should be offering full-day and full-week in-person instruction to all of its students.

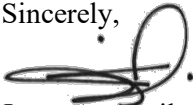
Thus, not only have the CDPH and SCDPH guidelines for physical distancing changed since the MOU was agreed to at the table, the CDE has now stated its position on the expectation of offering in-person instruction “to the greatest extent possible” as related to compliance with AB 86.

Based on the above, the District continues to maintain that Section I.A.3, as well as the other portions of Section I.A, of our March 20, 2021 MOU apply. The District remains willing to meet and confer with SCTA over the various changes to guidance discussed above. However, if SCTA is unwilling to meet and confer consistent with our MOU, the District will take appropriate next steps to ensure that the District is following the guidelines and regulations from CDC, CDPH, CDE, Cal/OSHA and SCDPH.

As you likely know, school districts across the State continue to revisit MOU terms as guidance changes and is updated based on the latest science, the rollout of vaccines, and COVID-19 case counts. Several of our neighboring school districts who were previously in a hybrid learning model have now expanded to add additional days and/or hours of in-person learning for their students based, at least in part, on the changes to the physical distancing guidance. In this regard, please review [updated information about classroom capacity](#) that follows the guidance from CDC, CDPH, SCDPH, and CDE. Such information is important to review as we look forward to having our students return to in-person learning this week.

The District remains committed to returning our students to in-person instruction to the greatest extent possible so that they can be, if their family so chooses, in the school environment with their teachers and peers and resume some of the normalcy in their lives that was disrupted when our schools physically closed in March 2020.

Sincerely,



Jorge A. Aguilar
Superintendent