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**Via Email: [jlindsayarb@gmail.com](mailto:jlindsayarb@gmail.com)**

Joe Lindsay  
375 61st St.  
Oakland, CA 94618

Re: Scope of Issues for Fact-Finding Between Sacramento City Unified School District and the Sacramento City Teachers Association

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Dear Mr. Lindsay:

On behalf of the Sacramento City Unified School District (“District”), I want to first thank you for your work as the Chairperson in the fact-finding between the District and the Sacramento City Teachers Association (“SCTA”). As you know there has been discussion between the District and SCTA about the appropriate scope of the current impasse between the parties and the issues that are appropriate to address in the upcoming fact-finding hearing scheduled for March 7, 2022. This letter serves to memorialize the District’s position as to the issues that are involved in the impasse since there appears to be significant disagreement between the parties as to the scope of the impasse and what information may be presented at the fact-finding hearing.

As laid out fully below, the following are the pertinent facts:

1. The Parties are at impasse on Reopening Schools for 2021-2022, not the “Staffing Crisis” as argued by SCTA. The negotiations that led to the impasse addressed the impacts of the pandemic on the 2021-2022 school year only.
2. The Parties have been and currently are separately in Successor Agreement Negotiations. The Parties sunshined specific matters for the Successor Agreement in November 2018 (District) and February 2019 (SCTA). The parties have not declared impasse regarding the topics included in these successor negotiations. As a result, PERB has not made an impasse finding regarding successor contract negotiations issues and as a result the parties have not had the opportunity to address successor contract issues through mediation.
3. SCTA has conceded that the Successor Agreement negotiations “are not part of the current impasse request.”
4. SCTA is now attempting to bring aspects of the Successor Agreement negotiations (ongoing salary, class size, and other terms) that are priorities to SCTA while leaving out the Successor Agreement items that are priorities to the District (health benefits, list).

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5. SCTA's attempt to expand the Fact-Finding hearing is a blatant attempt to bypass the Successor Agreement Negotiations and to get to Fact-Finding on its issues without following the appropriate negotiations and impasse process which requires a request for impasse regarding negotiations topics, a PERB determination that an impasse between the parties exists regarding such negotiations topics and an opportunity for the parties to resolve such issues first through mediation and then if the mediator so certifies, through factfinding.

### **Background:**

As you know, on December 10, 2021, the District filed a Request for Impasse Determination/Appointment of Mediator ("Impasse Request") with the Public Employment Relations Board ("PERB"). (See Impasse Request.) Pursuant to Government Code section 3548, PERB has the authority, after receiving an Impasse Request, to determine if an impasse exists and appoint a mediator to assist the parties in resolving their differences. In the District's Impasse Request, the District described the "Type of Dispute" between the parties as "Other—Reopening Negotiations." (See Impasse Request, p. 1, sec. 7.) The District then listed the issues that remain in dispute as "Continuity of Instruction, Substitute Extra Pay, Nurses Extra Pay, Independent Study (Long Term), Health and Safety (Reopening), Training Specialists, and Vaccinations." (See Impasse Request, p. 2, sec. 10.)

In the Addendum to the District's Impasse Request the District stated that the District and SCTA are at an impasse in "negotiations regarding COVID-19 effects and In-Person instruction ("Reopening Negotiations"). The District then summarized the various proposals that were presented to SCTA and received from SCTA during these negotiations. Finally, the District outlined, with detail, the issues on which the parties have not reached agreement:

- **Continuity of Instruction:** The District has proposed a limited-term agreement regarding the provision of remote instruction or short-term independent study to maintain continuity of instruction using Google Meet or Zoom for synchronous daily instruction when students or staff are required to quarantine or when classrooms or schools are closed by public health officials. SCTA has not agreed to allow for synchronous instruction as proposed by the District.
- **Substitute Extra Pay:** As noted above, the parties reached a conceptual agreement regarding Substitute Pay and SCTA stated its agreement to the increase in substitute pay. Although the District provided a signed MOU on October 27, 2021, SCTA refused to sign it indicating that a written agreement was not needed for the change. SCTA has maintained its proposal that does not include an expiration date, provides for sick leave for substitutes for COVID purposes, proposes a permanent benefited pool of substitute employees, and increases the salary schedule for all regular teachers that all adds on-going costs (funded by one-time COVID related expenditures).
- **Nurses Extra Pay:** The parties have made some progress regarding extra pay for nurses. The remaining issue is the services for which this extra pay will be provided.
- **Independent Study (Long Term):** The District has proposed changes to the Independent Study program to comply with mandated changes in AB 130 and to ensure a robust independent study program that will meet the needs of all District students and also to allow for teachers to volunteer to take on a limited number of independent study students

and receive per diem pay. SCTA has continued to maintain its proposal to provide an independent study program that meets the minimum requirements of AB 130, without enhanced educational opportunities for students in the program. In its November 30, 2021 counter-proposal on Reopening and Independent Study, SCTA's proposal accepted some of the District's proposed language, but continues to include language that the District and SCTA are to agree on the extent and need for this short-term independent study work by teachers, which is a management prerogative.

- **Health and Safety (Reopening):** This proposal is arguably moot because the District's schools have been open since September 2, 2021 and are complying with all recommendations and requirements of state and local health officials. Notwithstanding the mootness of this proposal, SCTA's proposal continues to maintain physical distancing language and other provisions that are not acceptable to the District.
- **Training Specialists:** The District has proposed temporarily assigning training specialists to fill vacant teaching positions. SCTA has rejected the proposal without a counter.
- **Vaccinations:** The District has proposed an MOU including a requirement that staff and eligible students provide proof of full vaccination against COVID-19 or request an exemption. The MOU includes protocols for placing a staff member on unpaid leave for failure to comply with the vaccine requirement. SCTA has included testing in its reopening proposal but has not addressed the provisions regarding implementation and leave.

SCTA responded to the District's Impasse Request on December 16, 2021 claiming that the District's filing "grossly misrepresents the bargaining history between the parties and cannot be accepted as an accurate description." (See attached December 16, 2021 letter from SCTA to PERB.) However, SCTA did not describe any alleged misrepresentations in the District's descriptions. SCTA's response further states that "SCUSD does accurately distinguish the issues in dispute from successor contract negotiations, *which are not part of the impasse request.*" (Emphasis added.) SCTA then described the matters in dispute for purpose of the impasse as follows:

1. The certificated staffing crisis in SCUSD, including but not limited to:
  - a. Overall certificated vacancies, including recruitment and retention of certificated staff
  - b. Substitutes
  - c. Independent study
  - d. Extra work and additional compensation for nurses and other staff
2. Health and Safety Issues Related to the Re-opening and Continued Operation of Schools to In-Person Learning, including, but limited to:
  - a. Overall health and safety concerns
  - b. Vaccinations and COVID testing
  - c. Social distancing and other mitigation measures
  - d. Air filtration and ventilation
  - e. COVID leave
  - f. Remote work opportunities
  - g. Agreement enforcement, including an indemnity clause

3. Independent Study:
  - a. The Instructional Day
  - b. Short-term Independent Study
  - c. Independent Study for Students with Disabilities
  - d. Professional Development

After listing the above issues, SCTA indicated it did not oppose the District's request for impasse determination. SCTA's response to the District's request for impasse did not attach or describe any of the proposals exchanged between the parties during the COVID/Reopening Negotiations.

Approximately one month later on January 27, 2022, while the parties were at impasse as determined by PERB, SCTA delivered a proposal to the District that was previously shared with the District on November 30, 2021 during COVID-19 and reopening negotiations. That proposal proposed, among other things, to extend the term of the 2016-2019 contract through June 30, 2023; provide an across-the-board salary increase to all certificated bargaining unit salary schedules; and resuming successor contract negotiations on or before March 15, 2022 with a shared goal of reaching an agreement by June 30, 2023. SCTA also submitted in the COVID and reopening negotiations, again, a proposal to "Address the Staffing Crisis" proposing:

- a. That the District will drop the takeaways and work with SCTA to make SCUSD a Destination District for students and staff
- b. An across-the-board wage increase and increased pay for harder to recruit positions
- c. No layoffs for 2021-22 (Revised SCTA contract extension proposal)
- d. Lower class sizes and more services for students (SCTA Proposal on Article 17, Class Size)
- e. MTSS appropriately implemented and resourced (SCTA Proposal on Whole Child and Restorative Practices)
- f. Creation of a Recruitment and Retention Committee
- g. Jointly develop proposal for State Community Schools Funding Grant (SCTA Proposal December 7, 2021)

In response to receiving the January 27, 2022 proposal and because the parties were at impasse regarding COVID and reopening negotiations, the District informed SCTA at the negotiations table that the proposals were not related to COVID and reopening negotiations, but were related to successor contract negotiations.

Following impasse mediation between the parties, and consistent with Government Code section 3548.1, the mediator declared that factfinding was appropriate to resolution of the impasse.

While the District and SCTA negotiated on school reopening and COVID-19 related issues, like school districts and labor unions across the state, the District and SCTA were also engaging in successor contract negotiations, which involved ten (10) open articles of the CBA. The District repeatedly informed SCTA that the negotiations on COVID-19 and school reopening negotiations were separate and distinct from successor contract negotiations.

In insisting that successor contract negotiations, including economic proposals, are within the scope of the present impasse, SCTA is conflating COVID/Reopening negotiations with successor contract negotiations. This effort circumvents the parties' obligations to meet in good faith to

negotiate items unrelated to the COVID/Reopening negotiations and attempts to circumvent PERB's role in determining whether an impasse exists related to compensation, benefits and other economic items. It appears that SCTA is attempting to include in this impasse factfinding process those compensation, benefits and economic articles from the Collective Bargaining Agreement ("CBA") that are part of successor contract negotiations that have not been certified by PERB to be at impasse.

In addition, SCTA is attempting to include in this impasse topics that are not mandatory subjects of bargaining—certificated employee layoffs, District staffing, indemnification, and joint development of a proposal on State Community Schools Funding, among others. There are three foundational cases providing that a party may not insist to impasse on non-mandatory subjects of bargaining "in the face of a clear and express refusal by the [other party] to bargain" over them. (See *Lake Elsinore School District* (1986) PERB Decision No. 603; *Chula Vista School District* (1990) PERB Decision No. 834; *San Mateo Community College District* (1993) PERB Decision No. 1030. While in the COVID negotiations process, the District has repeatedly and clearly refused to discuss those proposals from SCTA that relate to successor contract negotiations.

**Conclusion:**

The current COVID and Reopening Negotiations and PERB Impasse Determination have never involved compensation, benefits, and other general economic items like "staffing" in the District. The COVID and Reopening Negotiations relate only to the 2021-2022 school year and issues related to the pandemic specific to this school year. It would be an overreach and inconsistent with PERB's authority and the Education Employment Relations Act to determine that the impasse request filed by the District in December 2021 was around any aspects of successor contract negotiations.

The District respectfully requests that you limit the scope of the fact-finding to those issues related to the PERB Impasse Determination related to COVID-19 and reopening schools for the 2021-2022 school year.

Sincerely,

LOZANO SMITH



Dulcinea A. Grantham

DAG/cd