2020-21 Math District Common Assessment Participation and Performance Results

MathResults by Grade Span

Results Summary

Overall Average PARTICIPATION RATE:	51%	**Overall Average PERCENT CORRECT:**	48%
Percentage point increase (decrease) in participation rate from prior period:	+1 percentage point	**Percentage point increase (decrease) in percent correct from prior period:**	-4 percentage points
Grade levels exceeding average participation rate:	Grades K-8	**Grade levels exceeding average percent correct:**	Grades K-2
Grade levels with highest participation rates:	Grade 4 – 70% Grade 5 – 72%	**Grade levels with highest percent correct:**	Grade K – 75% Grade 1 – 69% Grade 2 – 65%
Grade levels making greatest improvements in participation rates from prior period:	Grade K – +16 percentage points Grade 1 – +13 percentage points	**Grade levels making greatest improvements in percent correct from prior period:**	Grade 10 – +3 percentage points Grade 11 – +1 percentage point

Participation

Mathematics Participation Rates, Interim 1 2020-21		Tested on Math Interim 1		Not Tested on Math Interim 1		Total Student Count	Prior Participation Rate - Unfinished Learning Interims	Change in Participation Rate
Grade Span	Grade Level	%	Student Count	%	Student Count			
Gr K-6	K	67%	1815	33%	905	2720	N/A	N/A
	1	61%	1881	39%	1209	3090	45%	16
	2	66%	2067	34%	1072	3139	53%	13
	3	68%	2157	32%	994	3151	72%	-3
	4	70%	2249	30%	971	3220	66%	4
	5	72%	2338	28%	909	3247	64%	8
	6	68%	2163	32%	1011	3174	62%	6
Gr K-6 Total		**67%**	14670	33%	7071	21741	**60%**	7
Gr 7-8	7	56%	1649	44%	1289	2938	59%	-3
	8	53%	1646	47%	1442	3088	53%	0
Gr 7-8 Total		**55%**	3295	45%	2731	6026	**56%**	-1
Gr 9-12	9	27%	853	73%	2306	3159	33%	-7
	10	14%	405	86%	2588	2993	32%	-18
	11	6%	156	94%	2451	2607	28%	-22
	12	2%	42	98%	1670	1712	18%	-15
Gr 9-12 Total		**14%**	1456	86%	9015	10471	**29%**	-15

2020-21 Math District Common Assessment Participation and Performance Results

Performance

Average of 2021 DCA Math Interim 1 Percent Correct Max	Grade Level	2021 DCA Math Interim 1 Percent Correct	Prior Percent Correct - Unfinished Learning Interims	Change in Percent Correct
Grade Span				
Gr K-6	K	75%	N/A	N/A
	1	69%	77%	-8
	2	65%	65%	0
	3	41%	63%	-22
	4	42%	44%	-2
	5	33%	45%	-12
	6	33%	36%	-3
Gr K-6 Total		**50%**	**54%**	-4
Gr 7-8	7	39%	54%	-15
	8	44%	56%	-12
Gr 7-8 Total		**41%**	**55%**	-14
Gr 9-12	9	42%	47%	-5
	10	43%	40%	3
	11	37%	36%	1
	12	31%	34%	-3
Gr 9-12 Total		**42%**	**41%**	1

Results by Reported Race

Results Summary

Overall Average PARTICIPATION RATE:	51%	**Overall Average PERCENT CORRECT:**	48%
Percentage point increase (decrease) in participation rate from prior period:	+1 percentage point	**Percentage point increase (decrease) in percent correct from prior period:**	-4 percentage points
Student Groups exceeding average participation rate:	Asian Two or More White	**Student Groups exceeding average percent correct:**	Asian Two or More White
Student Groups with highest participation rates:	Asian – 55% Two or More – 54% White – 54%	**Student Groups with highest percent correct:**	Asian – 52% Two or More – 53% White – 58%
Student Groups making greatest improvements in participation rates from prior period:	Hispanic – +1 percentage point Native Hawaiian or Pacific Islander – +2 percentage points Two or More – +1 percentage point	**Student Groups making greatest improvements in percent correct from prior period:**	None of the groups showed a positive increase in their average percent correct.

Participation

Mathematics Participation Rates, Interim 1 2020-21	Tested on Math Interim 1		Not Tested on Math Interim 1		Total Student Count	Prior Participation Rate - Unfinished Learning Interims	Change in Participation Rate
Reported Race	%	Student Count	%	Student Count			
American Indian or Alaska Native	46%	84	54%	99	183	47%	-1
Asian	55%	4062	45%	3391	7453	55%	0
Black or African American	43%	2021	57%	2667	4688	42%	1
Hispanic	50%	7730	50%	7844	15574	48%	1
Native Hawaiian or Other Pacific Islander	48%	401	52%	432	833	46%	2
Two or More Races	54%	1594	46%	1339	2933	53%	1
White	54%	3529	46%	3045	6574	55%	-1

2020-21 Math District Common Assessment Participation and Performance Results

Performance

Average of 2021 DCA Math Interim 1 Percent Correct Max	2021 DCA Math Interim 1 Percent Correct	Prior Percent Correct - Unfinished Learning Interims	Change in Percent Correct
Reported Race			
American Indian or Alaska Native	38%	45%	-7
Asian	52%	56%	-4
Black or African American	36%	40%	-4
Hispanic	43%	47%	-4
Native Hawaiian or Other Pacific Islander	40%	41%	-1
Two or More Races	53%	58%	-6
White	58%	62%	-4

Results by English Proficiency

Results Summary

Overall Average PARTICIPATION RATE:	51%	**Overall Average PERCENT CORRECT:**	48%
Percentage point increase (decrease) in participation rate from prior period:	+1 percentage point	**Percentage point increase (decrease) in percent correct from prior period:**	-4 percentage points
Student Groups exceeding average participation rate:	English Learner English Only	**Student Groups exceeding average percent correct:**	English Only Initially Fluent English Proficient
Student Groups with highest participation rates:	English Learner – 52% English Only – 53%	**Student Groups with highest percent correct:**	English Only – 50% Initially Fluent English Proficient – 59%
Student Groups making greatest improvements in participation rates from prior period:	English Learner – +4 percentage points English Only – +2 percentage points	**Student Groups making greatest improvements in percent correct from prior period:**	None of the groups showed a positive increase in their average percent correct.

Participation

Mathematics Participation Rates, Interim 1 2020-21	Tested on Math Interim 1		Not Tested on Math Interim 1		Total Student Count	Prior Participation Rate - Unfinished Learning Interims	Change in Participation Rate
English Proficiency	%	Student Count	%	Student Count			
English Learner	52%	3619	48%	3330	6949	48%	4
English Only	53%	13893	47%	12441	26334	51%	2
Initially Fluent English Proficient (I-FEP)	48%	266	52%	288	554	51%	-3
Redesignated Fluent English Proficient	37%	1622	63%	2714	4336	48%	-11
To Be Determined	32%	21	68%	44	65	36%	-3

2020-21 Math District Common Assessment Participation and Performance Results

Performance

Average of 2021 DCA Math Interim 1 Percent Correct Max	2021 DCA Math Interim 1 Percent Correct	Prior Percent Correct - Unfinished Learning Interims	Change in Percent Correct
English Proficiency			
English Learner	40%	42%	-2
English Only	50%	54%	-4
Initially Fluent English Proficient (I-FEP)	59%	59%	1
Redesignated Fluent English Proficient	46%	51%	-6
To Be Determined	42%	53%	-11

Results by Special Education Services Received

Results Summary

Overall Average PARTICIPATION RATE:	51%	**Overall Average PERCENT CORRECT:**	48%
Percentage point increase (decrease) in participation rate from prior period:	+1 percentage point	**Percentage point increase (decrease) in percent correct from prior period:**	-4 percentage points
Student Groups exceeding average participation rate:	Not Receiving Special Ed	**Student Groups exceeding average percent correct:**	Not Receiving Special Ed
Student Groups with highest participation rates:	Not Receiving Special Ed – 52%	**Student Groups with highest percent correct:**	Not Receiving Special Ed – 49%
Student Groups making greatest improvements in participation rates from prior period:	Receiving Special Ed – 2 percentage points	**Student Groups making greatest improvements in percent correct from prior period:**	Not Receiving Special Ed – 8 percentage points

Participation

Mathematics Participation Rates, Interim 1 2020-21	Tested on Math Interim 1		Not Tested on Math Interim 1		Total Student Count	Prior Participation Rate - Unfinished Learning Interims	Change in Participation Rate
Special Education	%	Student Count	%	Student Count			
Sp Ed	41%	2024	59%	2932	4956	39%	2
Not Sp Ed	52%	17397	48%	15885	33282	52%	0

Performance

Average of 2021 DCA Math Interim 1 Percent Correct Max	2021 DCA Math Interim 1 Percent Correct	Prior Percent Correct - Unfinished Learning Interims	Change in Percent Correct
Special Education			
Sp Ed	37%	53%	-16
Not Sp Ed	49%	41%	8

Results by Socioeconomic Status

Results Summary

Overall Average PARTICIPATION RATE:	51%	**Overall Average PERCENT CORRECT:**	48%
Percentage point increase (decrease) in participation rate from prior period:	+1 percentage point	**Percentage point increase (decrease) in percent correct from prior period:**	-4 percentage points
Student Groups exceeding average participation rate:	Not Socioeconomically Disadvantaged	**Student Groups exceeding average percent correct:**	Not Socioeconomically Disadvantaged
Student Groups with highest participation rates:	Not Socioeconomically Disadvantaged – 54%	**Student Groups with highest percent correct:**	Not Socioeconomically Disadvantaged – 57%
Student Groups making greatest improvements in participation rates from prior period:	Socioeconomically Disadvantaged – 2 percentage points	**Student Groups making greatest improvements in percent correct from prior period:**	Not Socioeconomically Disadvantaged – 11 percentage points

Participation

Mathematics Participation Rates, Interim 1 2020-21	Tested on Math Interim 1		Not Tested on Math Interim 1		Total Student Count	Prior Participation Rate - Unfinished Learning Interims	Change in Participation Rate
SED	%	Student Count	%	Student Count			
Soc Econ Disadv	49%	12636	51%	13066	25702	47%	2
Not Soc Econ Disadv	54%	6785	46%	5751	12536	55%	0

Performance

Average of 2021 DCA Math Interim 1 Percent Correct Max	2021 DCA Math Interim 1 Percent Correct	Prior Percent Correct - Unfinished Learning Interims	Change in Percent Correct
SED			
Soc Econ Disadv	43%	59%	-16
Not Soc Econ Disadv	57%	45%	11

2020-21 Math District Common Assessment Participation and Performance Results

Results by School Site

	Total Student Count	Tested on Math Interim 1	Tested on Math Unfinished Learning (Fall)	Average of 2021 DCA Math Interim 1 Percent Correct Max	Prior Percent Correct - Unfinished Learning Interims
School Name (20-21 ABC)		%	%	Total	
A M Winn Elementary K-8 Waldorf	373	0%	0%		
Abraham Lincoln El	499	78%	78%	46	49
Albert Einstein MS	639	0%	0%		
Alice Birney Waldorf-Inspired K8	481	0%	0%		
American Legion HS	111	41%	26%	26	25
Arthur A. Benjamin Health Profes	204	0%	67%		31
Bowling Green Elementary	417	58%	0%	37	
Bowling Green-Chacon	338	61%	48%	38	42
Bret Harte Elementary	204	57%	57%	32	49
C K McClatchy HS	2048	27%	34%	40	38
Caleb Greenwood	535	94%	96%	66	69
California MS	923	67%	72%	39	55
Camellia Basic Elementary	438	92%	96%	54	60
Capital City School	138	8%	18%	30	38
Caroline Wenzel Elementary	269	66%	72%	47	50
Cesar Chavez ES	370	91%	96%	34	36
Crocker/Riverside Elementary	631	74%	63%	64	66
David Lubin Elementary	492	74%	74%	58	58
Earl Warren Elementary	430	66%	76%	48	48
Edward Kemble Elementary	526	75%	77%	57	56
Elder Creek Elementary	761	93%	88%	46	50
Ethel I Baker Elementary	620	50%	47%	34	36
Ethel Phillips Elementary	449	73%	54%	40	38
Father Keith B Kenny K-8 School	311	77%	46%	40	36
Fern Bacon MS	667	27%	32%	28	40
Genevieve Didion Elementary	584	80%	51%	66	68
George W. Carver SAS	224	0%	0%		
Golden Empire Elementary	568	22%	77%	38	51
H W Harkness Elementary	292	87%	73%	43	47
Hiram W Johnson HS	1650	0%	38%		40
Hollywood Park Elementary	304	71%	21%	38	52
Hubert H. Bancroft Elementary	403	51%	30%	54	65
Isador Cohen Elementary	264	56%	58%	43	49
James W Marshall Elementary	359	71%	69%	52	52
John Bidwell Elementary	277	83%	88%	53	50
John Cabrillo Elementary	317	70%	63%	52	46
John D Sloat Elementary	246	39%	9%	45	45
John F Kennedy HS	1943	1%	0%	43	
John H. Still K-8	838	78%	53%	42	42
John Morse Therapeutic Center	26	42%	81%	15	14
Kit Carson IB Academy	505	66%	73%	37	49
Leataata Floyd Elementary	320	61%	53%	30	34

Leonardo da Vinci K - 8 School	810	44%	46%	51	65
Luther Burbank HS	1297	0%	0%		
Mark Twain Elementary	260	81%	89%	42	51
Martin Luther King Jr Elementary	349	45%	28%	37	40
Matsuyama Elementary	522	89%	87%	61	68
New Joseph Bonnheim Charter	296	81%	68%	42	47
New Tech High	137	18%	0%	38	
Nicholas Elementary	574	60%	38%	36	41
O W Erlewine Elementary	274	82%	81%	56	56
Oak Ridge Elementary	494	48%	64%	34	41
Pacific Elementary	690	10%	0%	41	53
Parkway Elementary School	513	79%	66%	43	44
Peter Burnett Elementary	422	82%	37%	46	44
Phoebe A Hearst Elementary	660	85%	93%	68	75
Pony Express Elementary	385	81%	79%	58	61
Rosa Parks K-8 School	695	53%	67%	36	45
Rosemont HS	1292	23%	63%	45	38
Sacramento Accelerated Academy	56	0%	0%		
Sam Brannan MS	325	37%	40%	27	43
School of Engineering and Scienc	532	73%	81%	40	48
Sequoia Elementary	381	73%	74%	52	54
Success Academy K-8	N<11			N<11	
Susan B Anthony Elementary	322	96%	95%	46	43
Sutter MS	1120	81%	73%	59	71
Sutterville Elementary	456	76%	42%	60	67
Tahoe Elementary	304	79%	77%	47	53
The Met High School	201	0%	0%		
Theodore Judah Elementary	450	82%	75%	62	70
Washington Elementary	312	67%	61%	57	54
West Campus HS	779	20%	42%	49	61
Will C Wood MS	653	95%	75%	28	46
William Land Elementary	387	91%	89%	62	67
Woodbine Elementary	295	62%	59%	45	50

2020-21	*September*	*October*	*November*	*December*	*January*	*February*	*March*	*April*	*May*	*June*	NOTES:
Kinder	**Sept 10 - Oct 9** - PhonologicalAwareness Skills Screener (PASS) Sections 1-3 - Core Phonics Survey (CORE) Sections A-B	**Oct 12 - Dec 18** Math interim 1** Inspect Interim Assessment *(with modifications to match the 2020-21 Scope-and-Sequence Guide)*			**Jan 5 - Feb 5** - PhonologicalAwareness Skills Screener (PASS) Sections 4-6 - Core Phonics Survey (CORE) Sections A-E - Concept of Print - High Frequency Words (First half) **Jan 4 - Mar 26** Math interim 2** Inspect Interim Assessment *(with modifications to match the 2020-21 Scope-and-Sequence Guide)*			**April 5- 26** ELA Interim 3** (used for EL reclassification and GATE identification) **	**May 13-June 17** - PhonologicalAwareness Skills Screener (PASS) Sections 7-10 - Core Phonics Survey (CORE) Sections C-E - *Concepts of Print (if indicated) - *High Frequency Words (Second half) **May 17- June 24** - ELA interim 4		* Concepts of Print and High Frequency Words- Testing window for HFW and COP will remain open ALL year so teachers can assess and/or reassess when needed. * Oral Reading Record- If a student scores 3 reading levels above grade level in first testing window , it is recommended to assess but optional during window 2. **All MATH and ELA interim assessments include one (1) open ended item which needs to be handscored and entered into Illuminate before the close of the window.
1st	**Sept 10 - Oct 9** - PhonologicalAwareness Skills Screener (PASS) Sections not mastered in Kindergarten - Core Phonics Survey (CORE) Sections D-E **Sept 10 - Oct 9** Math: Inspect Blue/Comprehensive (from previous grade level)	**Oct 12 - Dec 18** Math interim 1** Inspect Interim Assessment *(with modifications to match the 2020-21 Scope-and-Sequence Guide)*			**Jan 5 - Feb 5** - PhonologicalAwareness Skills Screener (PASS) Sections not mastered - Core Phonics Survey (CORE) Sections F-K (unless indicated to assess other sections) - High Frequency Words (First half) ~~**Jan 11 - Feb 26**~~ Postponed: TBD - GATE Testing **Jan 4 - Mar 26** Math interim 2** Inspect Interim Assessment *(with modifications to match the 2020-21 Scope-and-Sequence Guide)*			**April 5- 26** ELA Interim 3** (used for EL reclassification and GATE identification) **	**May 13-June 17** - PhonologicalAwareness Skills Screener (PASS) Sections not mastered - Core Phonics Survey (CORE) Sections F-M (unless indicated to assess other sections) - High Frequency Words (Second half) **May 17- June 24** - ELA interim 4**		
2nd	**Sept 10 - Oct 9** - Core Phonics Survey (CORE) Sections M-L (unless indicted to assess other sections) - Oral Reading Record **Sept 10 - Oct 9** Math: Inspect Blue/Comprehensive (from previous grade level) ELA: Interim 4** (from previous grade level)	**Oct 12 - Dec 18** Math interim 1** Inspect Interim Assessment *(with modifications to match the 2020-21 Scope-and-Sequence Guide)*			**Jan 5 - Feb 5** - Core Phonics Survey (CORE) Sections M-L (unless indicated to assess other sections) - Oral Reading Record* - High Frequency Words (First half) "Jan 7 - Jan. 28 ELA Interim 2**" **Jan 7 - Jan. 28** ELA Interim 2** **Jan 4 - Mar 26** Math interim 2** Inspect Interim Assessment *(with modifications to match the 2020-21 Scope-and-Sequence Guide)*			**April 1- 26** ELA Interim 3** (used for EL reclassification and GATE identification) **	**May 13-June 17** - Core Phonics Survey (CORE) Sections M-L (unless indicated to assess other sections) - Oral Reading Record - High Frequency Words (Second half) - ELA interim 4**		
3rd - 6th	**Sept 10 - Oct 9** - Oral Reading Record - ELA: Interim 4** (from previous grade level) **Sept 10 - Oct 9** Math: Inspect Blue/Comprehensive (from previous grade level)	**Oct 5 - 23** School Climate Survey 1 **Oct 12 - Dec 18** Math interim 1** Inspect Interim Assessment *(with modifications to match the 2020-21 Scope-and-Sequence Guide)*		**Dec 17 - Jan 22** ELA Interim 2**	**Jan 5 - Feb 5** Oral Reading Record* ~~**Jan 11 - Feb 26**~~ Postponed: TBD - GATE Testing **Jan 4 - Mar 26** Math interim 2** Inspect Interim Assessment *(with modifications to match the 2020-21 Scope-and-Sequence Guide)*		**Mar 1 - 26** School Climate Survey 2	**Mar 23 - Apr 20** ELA Interim 3** (used for EL reclassification and GATE identification) ** **Apr. 19-30** 6th Gr. Math Placement via Illuminate District Math Dept. to score open tasks	**May 13-June 17** - Oral Reading Record - ELA interim 4** (optional)		**All MATH and ELA interim assessments include one (1) open ended item, which needs to be handscored and entered into Illuminate before the close of the window.
	Sept 10 - Oct 9 Mathematics Diagnostic Testing Project (MDTP) Readiness Assessments ELA: End of Year Interim**	**Oct 5 - 23** School Climate Survey 1			**Completed by January 29** ELA Middle of Year Interim Assessment (used for EL reclassification)** (Not grade 12 - ERWC)		**Mar 1 - 26** School Climate Survey 2		**Completed by June 17** ELA End of Year interim** (optional for grades 7,8,11)** (Not grade 12 - ERWC)		**All MATH and ELA interim assessments include one (1) open ended item, which needs to be handscored and

2020-21	*September*	*October*	*November*	*December*	*January*	*February*	*March*	*April*	*May*	*June*	**NOTES:**
7th - 12th	(from previous grade level)	**Oct 12 - Dec 18** Math interim 1** Inspect Interim Assessment			**Jan 4 - Mar 26** Math interim 2** Inspect Interim Assessment *(with modifications to match the*					**June 1-17** IM1/Math 1 (and Comp. 8/1) EOCE for IM2/2+ Placement via Illuminate Tchr. score open tasks	entered into Illuminate before the close of the window.
						8th and 9th grade PSAT 8-9 Testing Window: April 13-30					
						10th grade PSAT 10 Testing Window: April 13-30					
							11th grade SAT April 13 and April 27				

CALIFORNIA DEPARTMENT OF EDUCATION
Investigation Report
Case S-0297-20/21

Public Agency Jorge Aguilar, Superintendent Sacramento City Unified School District 5735 47th Avenue Sacramento, CA 95824	**Complainant** Lauren Lystrup 2111 J Street, Suite 406 Sacramento, CA 95816
Special Education Director Becky Bryant, Director, Special Education Sacramento City Unified School District	**Parent** Various
Special Education Local Plan Area (SELPA) Becky Bryant, Director Sacramento City Unified SELPA	**Student** Various
Complaint Received November 20, 2020	**Report Mailed** January 19, 2021

INVESTIGATION PROCEDURES

The investigation and conclusions are based on the investigator's review of materials and documents provided by the Complainant and the District, as well as telephone contacts with the Complainant on December 2, 2020, and the District on December 16, 2020. Emails were exchanged with the Complainant on November 24 and December 2 and 23, 2020, and January 7, 2021, and the District on December 3, 16, 17, 22, 23, 24, and 30, 2020, and January 4 and 8, 2021.

This is a student specific complaint that also alleges district-wide issues for other similarly situated District students. The student in the case is referred to as "Student One." Other District students are referred to as "Students."

A complaint filed with the California Department of Education (CDE) shall allege a violation of the federal Individuals with Disabilities Education Act (United States Code, Title 20, sections 1400 et seq.), or a provision of this part, that occurred not more than one year before the date the complaint is received by the CDE, pursuant to California *Education Code* (*EC*) Section 56500.2 and *Code of Federal Regulations*, Title 34 (34 *CFR*), Section 300.153(c).

The investigation period associated with this complaint investigation is November 20, 2019, to November 20, 2020; however, the report includes a chronology of events outside of the one-year timeframe to provide context.

SUMMARY OF THE ALLEGATION

The Complainant alleges the District failed to comply with requirements pertaining to evaluations set forth in *EC* Section 56043(f)(1), when the District did not conduct or complete special education assessments for students within 60 days of receiving signed assessment plans since June 1, 2020.

APPLICABLE CITATIONS

EC Section 56043(f)(1) implements 34 *CFR* Section 300.303.

EC Section 56043(f)(1) requires:

> (f)(1) An individualized education program [IEP] required as a result of an assessment of a pupil shall be developed within a total time not to exceed 60 calendar days, not counting days between the pupil's regular school sessions, terms, or days of school vacation in excess of five schooldays, from the date of receipt of the parent's or guardian's written consent for assessment, unless the parent or guardian agrees in writing to an extension, pursuant to Section 56344.

FINDINGS OF FACT

Student One

1. Student One was ten years old and in the fourth grade during the timeframe of the complaint and qualified for special education under the eligibility category of emotional disturbance with a secondary category of other health impairment. The student's triennial reevaluation was due by April 17, 2020. An IEP amendment meeting was held on May 29, 2019, where the educational rights holder expressed concerns about further assessment for student; and on June 13, 2019, the District provided the educational rights holder an early assessment plan for the triennial evaluation. The District began assessing the student in September 2019. The student was not enrolled in the District from October to December 2019. On June 1, 2020, the District convened an annual and interim IEP meeting where a new assessment plan was created to include an updated psychoeducational assessment since the IEP team never reviewed the September 2019 assessment information. Evidence for this finding is based on the June 13, 2019, assessment plan; the June 1, 2020, IEP, signed by the educational rights holder in agreement but with exceptions not related to assessments on June 26, 2019; the June 1, 2020, assessment plan, and the January 4, 2021, email from the District to the CDE.

2. The last day of the 2019–20 school year was May 28, 2020. Evidence for this finding is based on the District's 2019–20 calendar.

3. The educational rights holder provided the District with the signed June 1, 2020, assessment plan on June 26, 2020. Evidence for this finding is based on the June 1, 2020, assessment plan, signed in consent on June 26, 2020.

4. From May 29 to September 2, 2020, the District was closed due to summer vacation. The first day of school was September 3, 2020, requiring the student's assessments to be completed and an IEP meeting held to discuss the assessment results, by November 2, 2020. Evidence for this finding is based on the District's 2019–20 and 2020–21 calendars.

5. On October 28, 2020, the District convened an IEP meeting for the student. The student's assessments had not been completed, and the IEP team discussed the student's pending assessments. The District stated that due to the student's needs, assessments would have to be completed in person; however, due to the Coronavirus Disease 2019 (COVID-19) pandemic, the District was not conducting in-person assessments. Evidence for this finding is based on the October 28, 2020, IEP, signed by the educational rights holder in agreement but with exceptions on November 19, 2020.

6. The District acknowledges that it has not completed the student's assessments to date. Evidence for this finding is based on the December 24, 2020, District response to the complaint.

District Wide Assessments

7. On March 16, 2020, the District closed due to COVID-19 and reopened via distance learning on April 13, 2020. Evidence for this finding is based on the District's December 24, 2020, response.

8. The District has special education policies and procedures in place for documenting and responding to initial special education evaluations, re-evaluations, and related procedural safeguards for parents and timelines as required by state and federal regulations. Evidence for this finding is based on the District special education policies and procedures, administrative regulation-6164.4, dated November 16, 1998, and April 15, 2002, and the District's 2018–19 special education handbook.

9. As of October 9, 2020, the District counted 325 initial assessments overdue and did not provide numbers for the initial assessments actually conducted, nor for the number of re-evaluations administered or overdue. Additionally, the District counted over 1,000 triennial assessments overdue and did not provide numbers for the triennial assessments actually conducted. The District acknowledges that during the period of time when schools have been closed due to the COVID-19 pandemic, when the District was only open for distance learning, it has not been able to complete assessments or hold IEP meetings to discuss those assessments, within 60 days of receiving parental consent. Evidence for this finding is based on the

March 2020 to November 2020 student lists; the December 24, 2020, District response to the complaint; and the January 8, 2021, email from the District to the CDE.

Conclusion (Student One)

The District failed to meet the requirements of *EC* Section 56043(f)(1). The District did not complete special education assessments within 60 days of receiving the educational rights holder's consent to assess the student. **The District is out of compliance.**

Conclusion (District Wide Assessment)

The District failed to meet the requirements of *EC* Section 56043(f)(1). The District did not, during the period of COVID-19 distance learning, submit evidence of either completing special education assessments as listed on signed assessment plans, or convening IEPs to discuss the results of said assessments, within 60 days of receiving parental consent. **The District is out of compliance.**

SUMMARY CONCLUSION

The District failed to meet the requirements of *EC* Section 56043(f)(1). The District did not provide evidence of administering, conducting, or completing initial and triennial special education assessments, or holding related IEP meetings within 60 days, during the period of physical school closure, from June 1 to November 20, 2020, when the District was open for distance learning. **The District is out of compliance.**

REQUIRED CORRECTIVE ACTIONS

Student One

1. For Student One, on or before February 22, 2021, the District shall provide evidence that is has completed the student's assessments, convened an IEP meeting to review them, and determined the student's services. If the IEP team determines compensatory services are needed, over and above the regular IEP services for the student, the District shall also provide the educational rights holder a plan for the provision of compensatory services, if agreed to by the educational rights holder, based on the delay in completing the assessments and timely holding and completing the IEP. Acceptable evidence should include a copy the completed assessment report(s), the completed IEP, and the compensatory service plan if applicable.

Student One and District Wide

2. On or before February 2, 2021, the District special education director or designee shall provide this report to the District's board of education. Acceptable evidence should include a copy of the meeting notes.

3. On or before February 2, 2021, the District shall provide a training to all District special education assessment administrators, school site special education case managers, and assessment service providers, regarding *EC* Section 56043(f)(1) and the findings of this case, with a directive to comply with the law. Acceptable evidence should include a copy of the training agenda and a list of recipients and training participants, including their titles and verification of attendance. Training by webinar or other electronic means is acceptable, and dividing training sessions to accommodate the scheduling needs of attendees is acceptable.

4. On or before February 2, 2021, the District shall provide the CDE a list of students who have either an overdue initial or triennial reevaluation assessment. The list shall include the name of the student, the original initial/triennial due date, the current progress on the students' assessments, and the date in which an IEP meeting will be held to review assessment data. Acceptable evidence should include a copy of the list.

5. On or before February 2, 2021, the District shall develop a plan, using the information in the list prepared in response to corrective action four above, that ensures all overdue assessments from March to November 20, 2020, will be completed by July 30, 2021. The plan must include the number of assessments that will be completed weekly and by whom, whether District staff or qualified, non-District, contracted assessors. Acceptable evidence should include a copy of the plan.

6. On or before February 19, 2021, the District shall provide evidence of written communication with the individual affected parents/guardians of the students in the lists compiled corrective action 4, that describes the District's plan for completing the individual student assessments respectively. Acceptable evidence should include copies of the letters.

7. On or before July 30, 2021, the District shall have provided the CDE with weekly spreadsheets or weekly reports, between the date of this report and July 30, 2021, showing outstanding assessments and IEP meetings to discuss assessments completed, as identified in the plan prepared in response to corrective action five above. Acceptable evidence should include a copy of the weekly spreadsheet or report.

8. On or before July 30, 2021, based on the students' completed IEPs, if the IEP teams determine compensatory services are needed, over and above the regular IEP services for the students respectively, the District shall provide letters to the parents/guardians respectively, with a plan for the provision of compensatory services

as appropriate, if agreed to by the parent/guardian, based on the delay in completing the assessments and timely holding and completing the IEPs. Acceptable evidence should include a copy of the students' IEPs and plans for providing compensatory services over and above the regular services already included in the students' IEPs, if applicable.

RECONSIDERATION NOTICE

The findings in this investigation report are specific to this case. While general rules are cited, findings in other investigations may differ due to the facts and issues in each case.

Within 30 days of the "Report Mailed" date on this CDE report, either party may request reconsideration [*California Code of Regulations*, Title 5, Section 3204]. The request for reconsideration must state and explain the reason for the request based on one or more of the following:

1. The report lacks material findings of fact
2. The material findings of fact in the report are unsupported
3. The legal conclusion in the report is inconsistent with the law
4. The corrective actions in the report fail to provide proper remedy

Pending the Superintendent's reconsideration, the Department report, including corrective actions remains in effect and enforceable.

A request for reconsideration of the CDE's Investigation Report must be postmarked within 30 days of the "Report Mailed" date on the CDE report and sent to:

Ana Marsh, Education Administrator II
Complaint Resolution Unit
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814
916-445-4623 Phone
916-327-8878 Fax

Evidence of required corrective actions or questions regarding corrective actions shall be directed to:

Donna DeMartini, Education Administrator I
Focused Monitoring and Technical Assistance Unit Two
California Department of Education
1430 N Street, Suite 2401
Sacramento, CA 95814
916-445-4632 Phone
916-327-0326 Fax

If compliance is determined in this investigation and no corrective actions are required, consider this case closed.

Ana Marsh
Education Administrator II
Complaint Resolution Unit

Melissa Branson
Education Administrator I
Complaint Investigation Unit I

Jane Canty
Education Administrator I
Complaint Investigation Unit II

Table 1 - Grade levels Currently Assessed

Assessment	Grade Level Assessed												
	EK/K	1	2	3	4	5	6	7	8	9	10	11	12
ELPAC Initial Assessments for English Learners (As needed)*													
ELPAC Summative Assessment for English Learners*													
SBAC - Smarter Balanced Assessment ELA & Math													
CAA - California Alternate Assessment ELA & Math *													
CAST - California Science Test CAA - California Alternate Assessment*													
National Assessment of Educational Progress (NAEP)													
Physical Fitness Testing (PFT)													
Preliminary Scholastic Aptitude Test (PSAT 8/9)													
Preliminary Scholastic Aptitude Test (PSAT)													
Scholastic Aptitude Test (SAT)													
GATE Identification													
AP and IB*													

**indicates that assessments are not administered to all students in the grade level*

ELPAC Results

ELPAC (English Language Proficiency Assessments for California) Participation

Assessment	Window	# students Assessed	Total # of students to be assessed	Participation rate (%)
Initial ELPAC	Ongoing	735	735	100%
Summative ELPAC 19-20	Feb 1st 2020 - Oct 30 2020	2561	8924	29%
Summative ELPAC 20-21	Feb 1st 2021 - May 30th 2021	143 have started 0 have completed	7500	1.9% have started 0% have completed

EL Reclassification Rates

	SCUSD # Reclassified	SCUSD % Reclassified	County % Reclassified	State % Reclassified
2018-19	816	9.1	12.8	13.8
2019-20	913	10.2	10.8	13.8

2020-21 ELA District Common Assessment Participation and Performance Results

ELA Results by Grade Span

Results Summary

Overall Average PARTICIPATION RATE:	49%	**Overall Average PERCENT CORRECT:**	54%
Percentage point increase (decrease) in participation rate from prior period:	-3 percentage points	**Percentage point increase (decrease) in percent correct from prior period:**	+2 percentage points
Grade levels exceeding average participation rate:	Grades 2 – 8	**Grade levels exceeding average percent correct:**	Grades 2, 3, 8, and 10
Grade levels with highest participation rates:	Grade 2 – 52% Grade 7 – 65%	**Grade levels with highest percent correct:**	Grade 7 – 62% Grade 8 – 59% Grade 9 – 59%
Grade levels making greatest improvements in participation rates from prior period:	Grade 7 – +14 percentage points Grade 9 – +3 percentage points	**Grade levels making greatest improvements in percent correct from prior period:**	Grade 7 – +14 percentage points Grade 9 – +13 percentage points

Participation

ELA Participation Rates, Interim 1 2020-21		Tested on ELA Interim 2		Not Tested on ELA Interim 2		Total Student Count	Prior Participation Rate - Unfinished Learning Interims	Change in Participation Rate
Grade Span	Grade Level	%	Student Count	%	Student Count			
Gr 2-6	2	52%	1619	48%	1512	3131	52%	0
	3	60%	1875	40%	1240	3115	66%	-6
	4	58%	1884	42%	1343	3227	67%	-9
	5	56%	1835	44%	1413	3248	67%	-11
	6	55%	1745	45%	1427	3172	64%	-9
Gr 2-6 Total		**56%**	8958	**44%**	6935	15893	**63%**	**-7**
Gr 7-8	7	65%	1840	35%	996	2836	51%	14
	8	51%	1556	49%	1502	3058	61%	-10
Gr 7-8 Total		**58%**	3396	**42%**	2498	5894	**56%**	**2**
Gr 9-11	9	32%	936	68%	1992	2928	29%	3
	10	24%	647	76%	2047	2694	22%	2
	11	19%	367	81%	1599	1966	21%	-3
Gr 9-11 Total		**26%**	1950	**74%**	5638	7588	**25%**	**1**

2020-21 ELA District Common Assessment Participation and Performance Results

Performance

Average of 2021 ELA Interim 2 Percent Correct Max	Grade Level	2021 DCA ELA Interim 2 Percent Correct	Prior Percent Correct - Unfinished Learning Interims	Change in Percent Correct
Grade Span				
Gr 2-6	2	55%	64%	-8
	3	49%	59%	-10
	4	50%	49%	1
	5	47%	46%	1
	6	51%	51%	0
Gr 2-6 Total		**50%**	**53%**	**-3**
Gr 7-8	7	61%	47%	14
	8	59%	54%	5
Gr 7-8 Total		**60%**	**51%**	**9**
Gr 9-11	9	59%	46%	13
	10	55%	59%	-4
	11	51%	52%	-1
Gr 9-11 Total		**56%**	**51%**	**5**

Results by Reported Race

Results Summary

Overall Average PARTICIPATION RATE:	49%	**Overall Average PERCENT CORRECT:**	54%
Percentage point increase (decrease) in participation rate from prior period:	-3 percentage points	**Percentage point increase (decrease) in percent correct from prior period:**	+2 percentage points
Student Groups exceeding average participation rate:	Asian Two or More White	**Student Groups exceeding average percent correct:**	Asian Two or More White
Student Groups with highest participation rates:	Asian – 56% Two or More – 50% White – 52%	**Student Groups with highest percent correct:**	Asian – 56% Two or More – 60% White – 65%
Student Groups making greatest improvements in participation rates from prior period:	None of the groups showed a positive increase in their participation rate.	**Student Groups making greatest improvements in percent correct from prior period:**	White – +4 percentage points

Participation

ELA Participation Rates, Interim 2 2020-21	Tested on ELA Interim 2		Not Tested on ELA Interim 2		Total Student Count	Prior Participation Rate - Unfinished Learning Interims	Change in Participation Rate
Reported Race	%	Student Count	%	Student Count			
American Indian or Alaska Native	42%	66	58%	90	156	46%	-3
Asian	56%	3053	44%	2393	5446	59%	-3
Black or African American	41%	1538	59%	2243	3781	44%	-4
Hispanic	47%	5659	53%	6442	12101	50%	-4
Native Hawaiian or Other Pacific Islander	43%	275	57%	362	637	49%	-6
Two or More Races	50%	1143	50%	1125	2268	55%	-4
White	52%	2570	48%	2416	4986	54%	-2

2020-21 ELA District Common Assessment Participation and Performance Results

Performance

Average of 2021 DCA ELA Interim 2 Percent Correct Max	2021 DCA ELA Interim 2 Percent Correct	Prior Percent Correct - Unfinished Learning Interims	Change in Percent Correct
Reported Race			
American Indian or Alaska Native	48%	49%	-1
Asian	56%	54%	2
Black or African American	44%	43%	1
Hispanic	49%	48%	1
Native Hawaiian or Other Pacific Islander	45%	45%	0
Two or More Races	60%	58%	2
White	65%	61%	4

Results by English Proficiency

Results Summary

Overall Average PARTICIPATION RATE:	49%	**Overall Average PERCENT CORRECT:**	54%
Percentage point increase (decrease) in participation rate from prior period:	-3 percentage points	**Percentage point increase (decrease) in percent correct from prior period:**	+2 percentage points
Student Groups exceeding average participation rate:	Initially Fluent English Proficient	**Student Groups exceeding average percent correct:**	English Only Initially Fluent English Proficient Redesignated Fluent English Proficient
Student Groups with highest participation rates:	Initially Fluent English Proficient – 51%	**Student Groups with highest percent correct:**	Initially Fluent English Proficient – 65% Redesignated Fluent English Proficient – 61%
Student Groups making greatest improvements in participation rates from prior period:	None of the groups showed a positive increase in their participation rate.	**Student Groups making greatest improvements in percent correct from prior period:**	Initially Fluent English Proficient – +4 percentage points Redesignated Fluent English Proficient – +5 percentage points

Participation

ELA Participation Rates, Interim 2 2020-21	Tested on ELA Interim 2		Not Tested on ELA Interim 2		Total Student Count	Prior Participation Rate - Unfinished Learning Interims	Change in Participation Rate
English Proficiency	%	Student Count	%	Student Count			
English Learner	49%	2569	51%	2702	5271	50%	-1
English Only	49%	9837	51%	10263	20100	53%	-4
Initially Fluent English Proficient (I-FEP)	51%	203	49%	198	401	51%	-1
Redesignated Fluent English Proficient	47%	1690	53%	1874	3564	52%	-4
To Be Determined	13%	5	87%	34	39	32%	-19

2020-21 ELA District Common Assessment Participation and Performance Results

Performance

Average of 2021 DCA ELA Interim 2 Percent Correct Max	2021 DCA ELA Interim 2 Percent Correct	Prior Percent Correct - Unfinished Learning Interims	Change in Percent Correct
English Proficiency			
English Learner	40%	40%	0
English Only	56%	54%	2
Initially Fluent English Proficient (I-FEP)	65%	61%	4
Redesignated Fluent English Proficient	61%	56%	5
To Be Determined	N < 11		

Results by Special Education Services Received

Results Summary

Overall Average PARTICIPATION RATE:	49%	**Overall Average PERCENT CORRECT:**	54%
Percentage point increase (decrease) in participation rate from prior period:	-3 percentage points	**Percentage point increase (decrease) in percent correct from prior period:**	+2 percentage points
Student Groups exceeding average participation rate:	Not Receiving Special Ed	**Student Groups exceeding average percent correct:**	Not Receiving Special Ed
Student Groups with highest participation rates:	Not Receiving Special Ed – 50%	**Student Groups with highest percent correct:**	Not Receiving Special Ed – 55%
Student Groups making greatest improvements in participation rates from prior period:	None of the groups showed a positive increase in their participation rate.	**Student Groups making greatest improvements in percent correct from prior period:**	Not Receiving Special Ed – +14 percentage points

Participation

ELA Participation Rates, Interim 2 2020-21	Tested on ELA Interim 2		Not Tested on ELA Interim 2		Total Student Count	Prior Participation Rate - Unfinished Learning Interims	Change in Participation Rate
Special Education	%	Student Count	%	Student Count			
Receiving Special Ed	40%	1629	60%	2430	4059	44%	-4
Not Receiving Special Ed	50%	12675	50%	12641	25316	53%	-3

Performance

Average of 2021 DCA ELA Interim 2 Percent Correct Max	2021 DCA ELA Interim 2 Percent Correct	Prior Percent Correct - Unfinished Learning Interims	Change in Percent Correct
Special Education			
Receiving Special Ed	41%	53%	-12
Not Receiving Special Ed	55%	41%	14

Results by Socioeconomic Status

Results Summary

Overall Average PARTICIPATION RATE:	49%	**Overall Average PERCENT CORRECT:**	54%
Percentage point increase (decrease) in participation rate from prior period:	-3 percentage points	**Percentage point increase (decrease) in percent correct from prior period:**	+2 percentage points
Student Groups exceeding average participation rate:	Not Socioeconomically Disadvantaged	**Student Groups exceeding average percent correct:**	Not Socioeconomically Disadvantaged
Student Groups with highest participation rates:	Not Socioeconomically Disadvantaged – 55%	**Student Groups with highest percent correct:**	Not Socioeconomically Disadvantaged – 65%
Student Groups making greatest improvements in participation rates from prior period:	None of the groups showed a positive increase in their participation rate.	**Student Groups making greatest improvements in percent correct from prior period:**	Not Socioeconomically Disadvantaged – +19 percentage points

Participation

ELA Participation Rates, Interim 2 2020-21	Tested on ELA Interim 2		Not Tested on ELA Interim 2		Total Student Count	Prior Participation Rate - Unfinished Learning Interims	Change in Participation Rate
SED	%	Student Count	%	Student Count			
Socioeconomically Disadvantaged	46%	9838	54%	11345	21183	48%	-2
Not Socioeconomically Disadvantaged	55%	4466	45%	3726	8192	57%	-2

Performance

Average of 2021 DCA ELA Interim 2 Percent Correct Max	2021 DCA ELA Interim 2 Percent Correct	Prior Percent Correct - Unfinished Learning Interims	Change in Percent Correct
SED			
Socioeconomically Disadvantaged	48%	58%	-10
Not Socioeconomically Disadvantaged	65%	46%	19

Results by School Site

	Total Student Count	Tested on ELA Interim 2	Tested on Unfinished Learning (Fall)	Average of 2021 DCA ELA Interim 2 Percent Correct Max	Prior Percent Correct - Unfinished Learning Interims
School Name (20-21 ABC)					
A M Winn Elementary K-8 Waldorf	287	0%	0%	0%	0%
Abraham Lincoln El	371	66%	80%	48%	48%
Albert Einstein MS	633	38%	0%	57%	0%
Alice Birney Waldorf-Inspired K8	387	0%	0%	0%	0%
American Legion HS	61	15%	42%	45%	44%
Arthur A. Benjamin Health Profes	144	0%	75%	0%	45%
Bowling Green Elementary	321	56%	0%	39%	0%
Bowling Green-Chacon	245	56%	79%	41%	44%
Bret Harte Elementary	162	52%	62%	45%	48%
C K McClatchy HS	1699	56%	32%	57%	46%
Caleb Greenwood	391	82%	94%	71%	71%
California MS	909	72%	64%	62%	44%
Camellia Basic Elementary	308	80%	98%	55%	62%
Capital City School	94	13%	16%	50%	42%
Caroline Wenzel Elementary	205	16%	42%	49%	51%
Cesar Chavez ES	367	91%	96%	46%	47%
Crocker/Riverside Elementary	440	86%	74%	65%	67%
David Lubin Elementary	338	69%	72%	60%	60%
Earl Warren Elementary	318	81%	65%	46%	47%
Edward Kemble Elementary	273	53%	77%	45%	55%
Elder Creek Elementary	555	91%	85%	45%	48%
Ethel I Baker Elementary	454	41%	64%	36%	39%
Ethel Phillips Elementary	317	60%	60%	40%	41%
Father Keith B Kenny K-8 School	255	73%	75%	48%	48%
Fern Bacon MS	617	0%	0%	0%	0%
Genevieve Didion Elementary	443	80%	77%	66%	66%
George W. Carver SAS	182	0%	0%	0%	0%
Golden Empire Elementary	411	15%	90%	54%	57%
H W Harkness Elementary	225	86%	54%	45%	45%
Hiram W Johnson HS	1096	38%	30%	51%	43%
Hollywood Park Elementary	228	61%	26%	35%	45%
Hubert H. Bancroft Elementary	286	28%	19%	51%	59%
Isador Cohen Elementary	207	48%	55%	45%	44%
James W Marshall Elementary	264	70%	73%	52%	55%
John Bidwell Elementary	193	78%	56%	47%	45%
John Cabrillo Elementary	235	60%	78%	46%	52%
John D Sloat Elementary	182	32%	25%	44%	46%
John F Kennedy HS	1284	0%	0%	70%	0%
John H. Still K-8	707	65%	59%	45%	42%
John Morse Therapeutic Center	24	29%	85%	28%	23%
Kit Carson IB Academy	465	47%	50%	42%	48%
Leataata Floyd Elementary	248	63%	61%	39%	42%

Leonardo da Vinci K - 8 School	616	11%	55%		60%	60%
Luther Burbank HS	1031	0%	0%		0%	38%
Mark Twain Elementary	202	81%	91%		44%	50%
Martin Luther King Jr Elementary	261	37%	29%		39%	37%
Matsuyama Elementary	392	74%	85%		61%	65%
New Joseph Bonnheim Charter	212	53%	65%		37%	41%
New Tech High	128	0%	0%		0%	0%
Nicholas Elementary	443	41%	49%		38%	41%
O W Erlewine Elementary	200	61%	82%		53%	56%
Oak Ridge Elementary	352	36%	53%		35%	35%
Pacific Elementary	496	11%	0%		33%	0%
Parkway Elementary School	379	64%	55%		43%	41%
Peter Burnett Elementary	315	72%	57%		42%	42%
Phoebe A Hearst Elementary	468	55%	95%		70%	72%
Pony Express Elementary	303	82%	72%		59%	55%
Rosa Parks K-8 School	592	37%	57%		44%	38%
Rosemont HS	859	0%	0%		37%	0%
Sacramento Accelerated Academy	N<11					
Sam Brannan MS	319	67%	74%		51%	37%
School of Engineering and Scienc	484	81%	90%		61%	49%
Sequoia Elementary	273	39%	83%		49%	53%
Success Academy K-8	N<11					
Susan B Anthony Elementary	231	97%	87%		40%	43%
Sutter MS	1118	90%	72%		69%	50%
Sutterville Elementary	328	41%	50%		60%	61%
Tahoe Elementary	203	79%	75%		45%	51%
The Met High School	185	1%	0%		36%	0%
Theodore Judah Elementary	335	80%	81%		65%	65%
Washington Elementary	194	31%	65%		52%	52%
West Campus HS	505	56%	93%		71%	64%
Will C Wood MS	626	82%	77%		54%	46%
William Land Elementary	280	81%	94%		67%	66%
Woodbine Elementary	212	21%	50%		40%	44%

GRIEVANCE ARBITRATION PURSUANT

TO THE PARTIES COLLECTIVE BARGAINING AGREEMENT

In the Matter of a Controversy Between

SACRAMENTO CITY TEACHERS ASSOCIATION, CTA/NEA,
Grievant

and

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,
Employer

Testing MOU; AAA Case No. 01-20-0000-2531

Arbitrator

Carol A. Vendrillo, Esq.

January 11, 2021

Appearances:

For the Association:

John Borsos
Sacramento City Teachers Association
5300 Elvas Avenue
Sacramento, CA 95819

For the District:

Steve Ngo
Courtney de Groof
Lozano Smith
2001 North Main Street, Suite 500
Walnut Creek, CA 94596

INTRODUCTION

The Sacramento City Teachers Association filed a grievance on September 16, 2019, alleging that the Sacramento City Unified School District violated a testing memorandum of understanding signed by the parties on November 30, 2016, when it unilaterally implemented a schedule of District-wide student assessments and rejected the Association's offer to use the expedited dispute resolution process outlined in the testing MOU.

An evidentiary hearing was conducted by the undersigned Arbitrator on July 30, July 31, August 10, September 4, October 6, October 7, and October 8, 2020. The parties introduced documentary evidence; witnesses were called to provide sworn testimony during both direct and cross-examination. Verbatim transcripts of the hearings were prepared by a court reporter. On December 14, 2020, the parties filed closing briefs and the matter was deemed submitted.

ISSUE

The central issue in dispute is as follows:

Did the District violate the testing memorandum of understanding in September 2019 when it unilaterally announced a schedule of student assessments? If so, what is the appropriate remedy?

FACTUAL SUMMARY[1]

In October 2016, the parties began negotiations for a successor collective bargaining agreement. Among the Association's opening bargaining proposals was one that sought to reduce or eliminate what it believed to be unnecessary testing. At a bargaining session on November 14, 2016, the District's chief negotiator, Scott

[1] A more detailed recitation of the facts appears below in the Discussion section of this decision.

Holbrook, resisted efforts by Association Executive Director John Borsos to discuss the testing proposal as part of the successor talks. Mr. Borsos insisted it was a proper subject to be discussed at the bargaining table. By all accounts, the terms of the testing were negotiated by Mr. Borsos and Ted Appel, then Assistant Superintendent of Labor Relations. The two exchanged numerous proposals. On November 30, 2016, agreement on the testing MOU was reached and was signed by then-Superintendent Jose Banda and Association officers David Fisher and Nikki Milevsky.

As the parties continued to bargain over a successor agreement, the Association prepared negotiation status reports. These indicated that the parties had tentatively agreed to the testing MOU.

The parties reached agreement on a successor agreement. It was ratified by the Board of Education on December 7, 2017. The parties dispute what terms were made part of the agreement ratified by the Board. Specifically, they disagree whether the testing MOU was adopted by the Board. The document shared with and ratified by Association members included the testing MOU.

Under the terms of the testing MOU, the parties convened an assessment committee. It began meeting in January 2017. Committee members continued to meet and agreed to the administration of certain student assessments.

In November 2018, Superintendent Jorge Aguilar announced his intention to administer a schedule of assessments for the 2018-2019 school year. Again in August 2019, Superintendent Aguilar announced testing for the 2019-2020 school year. The Association objected to the scheduled assessments. On September 3, 2019,

Superintendent Aguilar said the testing MOU was no longer in effect. The Association filed a grievance on September 16, 2019. This arbitration ensued.

The testing MOU between the District and the Association concerns the monitoring of student progress. The terms of the agreement are as follows:

1. The District and the Association agree that testing should be meaningful and useful.
2. The parties mutually agree those state and/or federal specifically mandated assessments (i.e., [the specific test will be inserted here]), will be administered in accordance with state and federal regulations.
3. The parties further agree that where a district initiated/district-wide specific test, assessment or process for monitoring student progress is not specifically and unambiguously directed by state or federal or programmatic (e.g. International Baccalaureate) mandate, the parties will jointly develop and mutually agree to the development of a process for monitoring student progress that will meet state and/or federal guidelines, if applicable. The parties will make a good faith and timely effort to mutually develop and mutually agree to the specific test or assessment described in the preceding sentence. If the parties are unable to reach agreement, the parties agree to the expedited dispute resolution process below:
    a. An expedited three (3) person fact-finding panel will be convened consisting of one representative selected by the Association, one representative selected by the District, and the neutral, who shall be selected by both parties.

b. The fact-finding panel will engage in an informal mediation process to resolve the issue. There will not be formal presentations or briefs, unless mutually agreed upon. The mediation process shall last no longer than forty-eight (48) hours, unless there is agreement to extend the time period. If, at the expiration of the mediation process, no agreement is reached, the Association and the District will each submit its final position. The neutral fact-finder will decide between the two positions, which shall be final and binding.

4. Opt out information for parents will be posted on the district web site. Alternative learning opportunities and resources will be provided for those students who opt out. No teacher shall be required both to administer the required test and to provide the alternative learning opportunities for students who opt out of standardized testing.
5. The District and the Association also mutually agree that monitoring student progress in individual classrooms, across grade levels or subject, at site and district levels may be valuable instruments to monitor student progress and may provide information useful to teacher reflection and planning as well as for student feedback.
6. The District agrees to limit the current District-developed Benchmark to the period from November 7th to December 6th only. Any future District-wide assessment and/or other process for monitoring student progress will be jointly developed and mutually agreed according to the provisions of this agreement.

7. Teachers who grade the benchmark that require additional work beyond their regular workday will be compensated for the additional time spent grading the benchmark. Thursday collaborative time will not be used to grade or otherwise administer benchmarks unless agreed to by the teachers at the work site.
8. To design a comprehensive and balanced system for monitoring student progress, the District and the Association will form a committee, consisting of representatives designated by the Association and representatives designated by the District to develop processes for monitoring student progress and to advise sites and teachers regarding additional local assessment strategies. Decision shall be by consensus between the two parties, except for those areas covered by Paragraphs 2 and 3 of this agreement, which shall apply.
9. The Committee will commence no later than the week of January 9th. Once the committee determines the content, structure and nature of the best processes for monitoring student progress, mutually agreed upon dates may be determined for implementation of any state or federal assessment described in Paragraph 3 above that apply for the 2016-2017 school year.

PARTIES POSITIONS

The Association's position. The testing MOU did not expire after the 2016-2017 school year. It remains in full force and effect. The parties have entered into several other MOUs that have been enforced using the contractual grievance procedure.

The testing MOU was formally incorporated into the collective bargaining agreement and is enforceable through the contractual grievance procedure. The grievance was timely filed within 30 days after Superintendent Aguilar abrogated the MOU.

The MOU does not violate state or federal law.

The District had recourse to the MOU's expedited dispute resolution process but instead chose to repudiate the agreement.

The Association satisfied its obligations to operate under the testing MOU in good faith. The assessment committee consistently met before the District abrogated the MOU.

The District's position. The testing MOU did not extend beyond the 2016-2017 school year. The testing MOU was not part of the agreement approved by the Board of Education and is not enforceable through the contractual grievance procedure.

Even if subject to the contract grievance procedure, the grievance was untimely filed.

The arbitrator lacks the authority to add the testing MOU to the parties' contract.

Having failed to satisfy its obligations under the MOU, the Association cannot force the District to comply with its terms.

DISCUSSION

Testing MOU not limited to 2016-2017 school year. For several reasons, the record does not support the District's claim that the testing MOU was operational only for the 2016-2017 school year. There is no language in the text of the MOU indicating it would expire at the conclusion of the 2016-2017 school year. To the contrary, the language of the MOU expressly states that any *future* District-wide assessments and/or

other processes for monitoring student progress will be jointly developed and mutually agreed to according to the provisions of the MOU.

Other MOUs executed by the parties have included expiration dates (See, for example, Union Exhibit VVVVV [long-distance learning MOU]). The parties could have added similar language to the testing MOU if their intention was for it to only cover the 2016-2017 school year. They did not.

Mr. Appel, who was closely involved in negotiating the testing MOU, said there was no expectation it would expire at the end of the 2016-2017 school year (RT 259 [Appel]). Association leaders were never informed that the testing MOU would expire after the 2016-2017 school year (RT 351 [Milevsky]). As noted, the MOU refers to any future assessments and was not limited to assessments administered in the 2016-2017 school year (RT 936; 953 [Fisher]). Mr. Appel never told Mr. Borsos, his counterpart in the testing MOU talks, that the agreement would expire after the 2016-2017 school year (RT 1067 [Borsos]).

It is also telling that on five separate occasions, the District sought to amend the testing MOU by adding an expiration date (Union Exhibits UUU, VVV, and BBBB). Those efforts were rebuffed by the Association (RT 292 [Milevsky]; RT 808, 827 [McArn]; RT 1067 [Borsos]). In fact, in the District's package of proposals for a successor collective bargaining agreement, it sought to "amend" the testing MOU to allow students to take the SAT during the school day in April 2018 (Union Exhibit XXX). The District's repeated efforts to amend the testing MOU adds weight to the Association's claim that neither party viewed it as expiring after the 2016-2017 school year.

The record also references numerous instances after the 2016-2017 school year when the District acted contrary to an understanding that the testing MOU had expired. For example, Matt Turkie, Assistant Superintendent of Curriculum and Instruction, said that in 2019, the District wanted a "yes" or "no" answer from the Association about an assessment it wanted to administer so the District could use the "fast-tracked" dispute resolution process of the MOU (RT 1508-1509 [Turkie]). In January 2019, Dr. Iris Taylor, Chief Academic Officer, offered dates for the assessment committee to meet (Union Exhibit BBBBB). In fact, the assessment committee met on January 15, 2019 (Union Exhibit IIII, p. 770). Two days later, on January 17, 2019, Dr. Taylor and Mr. Turkie made a power point presentation to the Board of Education that included a discussion of the testing MOU (Union Exhibits QQQQ and RRRR).

In no written correspondence sent by Superintendent Aguilar prior to September 3, 2019, did he suggest that the testing MOU had expired (Union Exhibit BBBBB). His communication with Mr. Fisher on November 13, 2018, repeatedly refers to the testing MOU and, at the time he wrote the memo to Mr. Fisher, he believed there to be an "existing" MOU (RT 93-95 [Aguilar]; Union Exhibit LLLL).

Finally, Superintendent Aguilar testified he changed his mind and began to view the testing MOU as expired toward the end of the 2018-2019 school year (RT 94-96; 157-158 [Aguilar]). However, neither the Level I response to the grievance nor the Level II response to the grievance drafted by Cancy McArn, Chief Human Resources Officer, made any assertion that the testing MOU had expired (Union Exhibits LLLLL and NNNNN).

Taken together, the evidence does not support the District's assertion that the testing MOU expired at the end of the 2016-2017 school year.

Board did not approve the testing MOU as part of the collective bargaining agreement. In anticipation of successor negotiations, the Association drafted and widely circulated a brochure that set out a blueprint for revitalizing the Sacramento City Unified School District (Union Exhibit C). One of its goals was to eliminate what it perceived to be unnecessary testing as the primary indicator of student achievement (Union Exhibit C, p. 20). It was apparent that the Association intended to bring this issue to the bargaining table (RT 226-228 [Appel]; RT 783-784 [McArn]; RT 877 [Fisher]).

In August and September 2016, Mr. Turkie notified Mr. Fisher that the District wanted to implement a series of benchmarks. Mr. Fisher told Mr. Turkie the Association was going to bring the testing issue to the bargaining table (Union Exhibit B; RT 877-878 [Fisher]). On October 17, 2016, the Association "sunshined" a proposal calling for the reduction in standardized testing (Union Exhibit E; RT 302-303 [Milevsky]). The topic was discussed at the bargaining table on October 17, 2016 (Union Exhibit F; RT 303 [Milevsky]; RT 601 [Appel]; RT 780 [McArn]; RT 1047-1049 [Borsos]). The issue of benchmarks was discussed at a bargaining session on November 9, 2016 (Union Exhibits G, H, and I).

The record also includes a flurry of emails between Mr. Appel and Mr. Borsos on November 10, 2016. The subject of these emails was referred to as the "assessment proposal" or the "testing proposal." Mr. Borsos and Mr. Appel exchanged drafts that would form the basis for the assessment agreement (Union Exhibits K, L, M, N, O, P,

and R). Mr. Appel testified that during these exchanges with Mr. Borsos, they did not discuss whether the testing MOU would be part of the contract (RT 682 [Appel]).

At the bargaining table on November 14, 2016, Mr. Borsos asked Mr. Holbrook where the parties stood with regard to the drafts he and Mr. Appel had been exchanging. Mr. Holbrook said that the benchmark proposal was separate from the successor agreement talks (Union Exhibit W). In his testimony, Mr. Holbrook said the assessment issue was unrelated to the contract and the District was not open to discussing it at the table (RT 1135-36 [Holbrook]).

Mr. Appel also testified that the testing MOU was separate from the successor negotiations. He said it was a "stand alone" agreement that was not part of the contract (RT 677; 1098 [Appel]). Mr. Appel said the testing MOU came out of a separate process (RT 681 [Appel]). Mr. Appel said that he and Mr. Borsos never had a conversation about whether the testing MOU was part of the contract (RT 1098 [Appel]).

Mr. Borsos, on the other hand, testified that he did not consider Mr. Holbrook's remarks at the November 14, 2016, to be controlling. Mr. Borsos said Mr. Holbrook objected to a number of matters that were raised at the bargaining table that ended up becoming part of the contract going forward (RT 1061-1062, 1073 [Borsos]).

Away from the table and prior to a bargaining session later that day, the parties signed off on the testing MOU on November 30, 2016 (Joint Exhibit 1). It was signed by Ms. Milevsky and Mr. Fisher for the Association and by Mr. Appel and then-Superintendent Banda for the District.

Based on events up to that point, the testing MOU was not part of the ongoing successor negotiations at the bargaining table. In fact, after the November 14, 2016,

bargaining session, the issue of testing was not discussed at the table by the bargaining teams. The terms had been hammered out by Mr. Borsos for the Association and Mr. Appel for the District. The MOU became effective immediately because both sides wanted to utilize the process right away and did not want to wait until agreement was reached on all outstanding issues raised in the successor talks. In that regard, it was intended to become operational independent of the collective bargaining agreement.

On December 8, 2016, soon after the testing MOU was signed, Ms. Milevsky appeared before the Board of Education. She did not identify the MOU as part of the collective bargaining agreement (Union Exhibits RR and SS; RT 292, 532-534 [Milevsky]). Similarly, when then-Superintendent Banda announced the testing MOU had been signed, he did not indicate it was folded into the collective bargaining agreement (Union Exhibit PP). In the Association's newsletter on December 1, 2016, when it informed its members the testing MOU had been signed, it was not included as part of the "bargaining update," but was separately listed under the heading of "The Benchmark Agreement." (Union Exhibits OO.) The Association's newsletter in December 2017 seeking teachers' input on a benchmark survey did not refer to the testing MOU as part of the contract (Union Exhibit GGGG).

These facts further support the conclusion that the testing MOU was thought of by the parties as distinct from their collective bargaining agreement.

In asserting the testing MOU is part of the successor contract, the Association points to the negotiation status reports that repeatedly indicated the testing MOU had been tentatively agreed to (Union Exhibits RRR, WWW, YYY). It is true, as the Association asserts, that the District never challenged this characterization of the testing

MOU (RT 659-660 [Appel]; RT 804 [McArn]; 1074 [Borsos]). However, these status reports were drafted and circulated by the Association. They were not written jointly by the parties. As Mr. Holbrook said, the District was not bound to or acceding to the Association's characterization of the testing MOU by not voicing an objection to the status reports (RT 1148-1149 [Holbrook]).

Other factors undermine the Association's assertion that the testing MOU was tentatively agreed to as part of the successor agreement negotiations. As noted above, contrary to typical negotiation practice, the testing MOU was not put aside to be incorporated into the contract after all outstanding issues got resolved. Indeed, the testing MOU was not tentatively agreed to at the bargaining table (RT 1149 [Holbrook]). It was agreed to separately by Mr. Borsos and Mr. Appel, away from the table, with then-Superintendent Banda signing for the District and Mr. Fisher and Ms. Milevsky signing for the Association. There is no language in the testing MOU the parties signed that identifies it as part of the collective bargaining agreement

The Association also notes that the District's package settlement offer made on September 15, 2017, included a proposal to amend the testing MOU to schedule an SAT in April 2018. Likewise, the District's response to the Association's post fact-finding brief in the successor talks references the parties' testing MOU and commented that the Association had been unwilling to consider an amendment (Union Exhibit ZZZ[a]). These bargaining positions advanced by the District – while further evidence that the testing MOU survived beyond the 2016-2017 school year – do not show that the testing MOU was ever made part of the parties' collective bargaining agreement. What they do show is the District's on-going desire to get out from under the testing MOU.

Furthermore, the evidence surrounding the Board of Education's action on December 7, 2017, is consistent with the parties' actions leading up to Board approval. Witnesses called by the District all testified that the testing MOU was not part of what the Board approved (RT 849-850, 866 [McArn]; RT 1095 [Appel]; 1421-1425, 1456 [Nguyen]). The executive summary of the successor agreement prepared by District staff did not refer to the testing MOU (RT 1425 [Nguyen]). It is true, as the Association urges, that no District staff member voiced concern about the testing MOU being part of the contract (RT 805, 829 [McArn]). However, the testing MOU was not discussed at the Board meeting. Indeed, there is no evidence that Association officials demanded that the testing MOU be included in the collective bargaining agreement presented to the Board for its approval. Nor did they even raise the issue of including the testing MOU in the contract at the night of the Board meeting (RT 1425 [Nguyen]). If, as the Association claims, the issue of student assessments was a major part of its bargaining goal, it is more reasonable to expect that Association leaders would have taken proactive measures to ensure the testing MOU was among the tentative agreements presented to the Board than to expect District spokespeople to come forward to announce it was not.

Testimony about what material was made available at the Board meeting does not support the Association's case. Ms. Milevsky recalled objecting to public distribution of the Theodore Judah agreement (RT 574 [Milevsky]; RT 738-739 [McArn]; RT 1431 [Nguyen]). However, she did not object to the absence of the testing MOU being made available (RT 1425 [Nguyen]). Mr. Fisher could not recall if the District made a copy of the document presented for Board approval available to the Association or the public (RT 1026-1028 [Fisher]). Mr. Borsos testified he did not review the material presented to the

Board and did not ask for a copy of the document voted on (RT 1083-1084 [Borsos]). None of this establishes that the document approved by the Board included the testing MOU. And again, one would expect Association leadership to have examined the tentative agreements gathered by Ms. Nguyen to be presented to the Board to ensure the testing MOU was among them.

After the Board vote, Ms. McArn sent an email to District principals and did not mention the Board's approval of the testing MOU (RT 1099-1102 [Appel]). It was not discussed by Superintendent Aguilar when he met with District principals. Mr. Appel's summary made no mention of the testing MOU (District Exhibit 12; RT 1099-1102 [Appel]). These documents generated after the Board's action continued to treat the testing MOU as outside the purview of the successor agreement.

Finally, the Association notes that in two other arbitrations the District agreed to an exhibit that included the testing MOU as part of the successor agreement (Union Exhibits OOOOO, PPPPP, QQQQQ, RRRRR). Indeed, Association witnesses testified that the first time it heard the assertion that the Board had not approved the testing MOU as part of the contract was in this case (RT 1032-1033 [Fisher]; RT 1082-1083 [Borsos]).

Nonetheless, testimony from District witnesses that is part of the record in this case calls into question what the Board approved on December 7, 2017 (RT 853-866 [McArn]; RT 1122-1123 [Appel]; RT 1431-1434 [Nguyen]; RT 1621-1623 [Aguilar]). Evidence that District representatives may have agreed to in other matters cannot be elevated or bootstrapped to conclusively establish as a factual matter what the Board adopted as part of the parties' collective bargaining agreement.

Testing MOU is legally enforceable. As explained above, the testing MOU was not negotiated as part of the successor contract talks. It was a stand-alone agreement reached away from the bargaining table. Nor was the testing MOU included in the packet of documents voted on by the Board. However, it is an enforceable agreement between the parties.

The District claims the testing MOU is unenforceable because it violates the equal protection clause of the California Constitution and points to the agreement with the Office of Civil Rights that documents disparities in minority students' admissions into the GATE program, some of which occurred after the testing MOU was signed.

Resolution of this argument is beyond the scope of the arbitrator's authority. The dispute raised by this grievance is whether the District unlawfully abrogated the testing MOU in September 2019 when Superintendent Aguilar declared it was no longer in effect. For an arbitrator to invalidate a memorandum of understanding agreed to by the parties based on constitutional infirmities flouts a fundamental tenet of labor arbitration – that an arbitrator's award draw its essence from the contract.

Moreover, there is nothing in the terms of the testing MOU that mandates an assessment regimen that is at odds with notions of equal protection. To the contrary, the MOU allows administration of state and federally mandated assessments in accordance with applicable regulations. The MOU calls for formulation of a committee to aid the parties in developing a process for monitoring student progress that will meet state and federal guidelines. And it establishes an expedited dispute resolution process to adjudicate disagreements on administration of a specific test or assessment. Given this

language, adherence to the terms of the testing MOU does not facially affront constitutional strictures.

The District also claims the testing MOU divests the Board of its policy making authority. This is a specious argument. The testing MOU was signed by then-Superintendent Banda for the District and as Ms. McArn testified, the superintendent is authorized to sign an MOU on behalf of the District (RT 771, 800 [McArn]).

The District argues that the testing MOU is unenforceable because it is contrary to Education Code Section 17604. This argument too is unavailing. That section provides that when the power to enter into a contract is invested to the governing board, that power may be delegated to the district superintendent. Here, the testing MOU was signed by then-Superintendent Banda with the Board's awareness.

Additionally, the record does not establish the testing MOU required Board approval. No hard and fast rule as to when Board approval is necessary emerges from the record in this case. There have been MOUs that have received Board approval (Union Exhibits BBBBBB [School Attendance Calendars] and YYYYY [Program Specialist Grievance]). And the record includes evidence of agreements signed by Superintendent Aguilar for the District that did not get Board approval (Union Exhibit ZZZZZ [Hippo MD]; RT 769-770 [McArn]). Neither Ms. McArn nor Superintendent Aguilar could articulate a policy describing when the Board must approve an MOU (RT 197-201 [Aguilar]; RT 769-771 [McArn]).

Moreover, the Board was well aware of the testing MOU. Ms. Milevsky briefed the Board on the testing MOU (Union Exhibits RR and SS). Then-Superintendent Banda lauded the agreement (Union Exhibit PP). Despite the Board's awareness of the testing

MOU, no one from the District told the Association the testing MOU had to be approved by the Board (RT 801 [McArn]).

In sum, the evidence does not support the District's claim that the testing MOU is not a legally enforceable document because it did not get formal Board approval.

Similarly, the evidence does not support the District's claim that the testing MOU is unenforceable through the contractual grievance procedure. First, the fact that the testing MOU has its own dispute resolution procedure is beside the point. The purpose of the expedited fact-finding process in the MOU is to quickly resolve disagreements between the parties over whether a particular assessment should be administered. The mechanism for resolving that type of dispute does not foreclose reliance on the contractual grievance procedure to resolve other disputes, like the repudiation of an MOU.

Article 4 of the parties' contract governs the grievance procedure. It defines a grievance as an alleged violation, misinterpretation, or misapplication of a specific provision of the agreement. It lists five types of disputes that are not subject to the contractual grievance procedure. A violation of the parties' memoranda of understanding is not among the five excluded disputes. Article 4 directs that a written grievance "should" – not "shall" – include a listing of the specific article of the agreement alleged to have been violated.

Taken together, the language of Article 4 does not clearly or unambiguously preclude the parties from enforcing an MOU using the contractual grievance process. Accordingly, under clear principles of contract construction, it is appropriate to look to established past practice to interpret the terms of the agreement.

There is a past practice of using the collective bargaining agreement to enforce terms of the parties' memoranda of understanding (RT 371-372 [Milevsky]; RT 869-872 [Fisher]; RT 1063-1064 [Borsos]). The District has never denied a grievance filed by the Association based on a claim that it was founded on the terms of an MOU (RT 744-745 [Ms. McArn]; RT 1440-1442 [Nguyen]). The evidence includes examples of grievances filed by the Association based on provisions of MOUs (Union Exhibits GGGGG [Theodore Judah], WWWWW [Karen Harris], ZZZZZ [Hippo MD]). The contractual grievance procedure was used to enforce and/or resolve disputes concerning these MOUs (RT 218-219 [Aguilar]; RT 740-742, 767 [McArn]; RT 1431-1435 [Nguyen]). Ms. Nguyen could not recall one instance when an alleged MOU violation was not processed as a grievance (RT 1440-1447 [Nguyen]). Given this testimony, the record supports a finding that the parties have allowed grievances to be filed and arbitrations pursued based on alleged violations of MOUs.

The District also contends that the testing MOU is unenforceable because it was terminated as a past practice by operation of Article 3.1. While it is true that the testing MOU was signed on November 30, 2016, and the successor agreement was approved by the Board and ratified by Association members in December 2017, the Board and the Association made the agreement retroactive to July 1, 2016. Therefore, the testing MOU was brought under the umbrella of the successor agreement since it was signed after July 1, 2016.

In sum, the District's argument that the alleged repudiation of the testing MOU is not grievable or arbitrable under the collective bargaining agreement is unpersuasive. To find there is no remedy for the repudiation of an executed memorandum of understanding

requires the untenable conclusion that the parties engaged in a deliberate effort to craft the terms of an agreement that neither could enforce.

Grievance was timely filed. On April 24, 2019, Superintendent Aguilar announced plans to implement certain tests (Union Exhibit BBBBB). When those tests were implemented, the Association did not file a grievance because it had agreed to the administration of those assessments in the past (RT 928-929; 973-978 [Fisher]; Union Exhibit WWWW). On August 5, 2019, Superintendent Aguilar said the District was moving ahead with assessments. He did not announce the testing MOU was no longer in effect and the Association did not file a grievance. Only after Superintendent Aguilar announced on September 3, 2019, that the MOU was no longer in effect did the Association file a grievance. That complies with the 30-day time limit set out in Article 4.2.4 of the contract.

Association did not breach the testing MOU. It is clear that Superintendent Aguilar felt constrained by the testing MOU that was signed by his predecessor. And is it fair to say he felt frustrated at what he perceived to be the Association's recalcitrance to agree to testing. However, the evidence does not support a finding that the Association walked away from the testing MOU thereby releasing the District from its obligation to perform under its terms.

The assessment committee that was formed as part of the testing MOU met for the first time in January 2017 and multiple times thereafter through the spring of 2017. In April 2017, the parties agreed to English Language Arts and math assessments that were used for GATE qualification and English Language Learner Reclassification (Union Exhibit EEE). Superintendent Aguilar was unaware of this agreement (RT 76 [Aguilar]).

In May 2017, the parties reached agreement on a Math I placement exam (Union Exhibit MMM). Again, Superintendent Aguilar was not aware of this agreement (RT 76 [Aguilar]).

In November 2017, the parties agreed to conduct a survey to solicit teachers' input on District-wide student assessments concerning GATE, English Language Learner Reclassification, English Language Arts and math tests (Union Exhibit HHHH). In February 2018, the parties agreed to additional student assessments that would be used to inform English Language Learner Redesignation and GATE identification (Union Exhibit IIII). This evidence shows a buy-in by both parties to work on garnering agreements over student assessments.

The record reflects that from August until the middle of November 2018, the District did not seek to discuss student assessments with the Association (RT 1531-1532 [Turkie]). In a letter dated November 13, 2018, Superintendent Aguilar said he was continuing to learn about the testing MOU (Union Exhibits LLLL). Mr. Fisher responded to Superintendent Aguilar's letter on November 14, 2018; he informed the superintendent the Association was ready to resume committee meetings upon request (Union Exhibit MMMM).

In fact, the committee reconvened on January 15, 2019. The parties discussed issues raised by the letter from the Office of Civil Rights related to GATE identification. They also addressed a PSAT test for eighth graders, an SAT for high school students, and the schedule of student assessments the District proposed for the 2018-2019 school year. The Association asked for copies of the assessments and additional data concerning the OCR letter (Union Exhibits TTTT and VVVV).

Following that meeting, Mr. Borsos spoke directly with OCR staff and had conversations with Dr. Taylor and Ms. Kari Hanson-Smith about OCR compliance (RT 1632-1633 [Borsos]). Mr. Turkie testified he was unaware of any request from the District to reconvene the assessment committee between February 27, 2019, and September 3, 2019 (RT 1494-1495 [Turkie]).

On April 24, 2019, Superintendent Aguilar, without seeking to reconvene the committee, notified the Association that the District would be moving forward with math placement tests and GATE identification assessments. On May 14, 2019, Mr. Fisher confirmed with Dr. Taylor that these assessments had been given for the past three years (RT 928-929 [Fisher]). Learning that, the Association voiced no objection to the administration of these tests.

The parties did not communicate between May 2019 and August 2019. In a letter dated August 5, 2019, Superintendent Aguilar announced the District's intention to administer student formative and interim assessments during the 2019-2020 school year; attached to the letter was a list of those assessments (Union Exhibit XXXX). Superintendent Aguilar made no request to reconvene the committee prior to announcing the planned assessments. On August 8, 2019, Mr. Fisher reminded Superintendent Aguilar of the testing MOU and demanded that the District follow the process outlined in that agreement (Union Exhibit YYYY).

On August 27, 2019, the Association learned the District was moving forward with the student assessments outlined in Superintendent Aguilar's letter. On August 28, 2019, the Association made the new Chief Academic Officer Christine Beata aware of the testing MOU (Union Exhibit AAAAA).

On September 3, 2019, Superintendent Aguilar declared the testing MOU was no longer in effect (Union Exhibit BBBBB). In response, the Association on September 9, 2019, invoked the dispute resolution procedure laid out in the testing MOU (Union Exhibit DDDDD). Because a scheduled arbitration had settled, a third-party neutral, Paul Roose, was available and ready to serve as the mediator/arbitrator under the testing MOU on September 17, 2019 (Union Exhibit FFFFF). On September 12, 2019, Superintendent Aguilar rejected the Association's demand to engage Mr. Roose (Union Exhibit GGGGG).

Based on the foregoing, Superintendent Aguilar's statements that the Association "consistently refused to meet with the District" is inaccurate. The parties' representatives on the assessment committee did meet and came to agreement on certain tests. And the Association stood ready and willing to meet with the District team and operate under the terms of the testing MOU.

Based on the record in this case, the testing MOU did not expire after the 2016-2017 school year. The agreement on testing was reached outside the collective bargaining process and was not formally approved by the Board. It is not clear that the testing MOU required Board approval. Nonetheless, the testing MOU is a binding and enforceable agreement. The District cannot unilaterally repudiate an agreement entered into on its behalf by the superintendent. There is no showing that the Association failed to live up to its side of the bargain.

Therefore, going forward, both parties are obligated by the testing MOU to mutually agree on those assessments that are mandated by the State of California or by federal laws, to mutually agree to administer district initiated and/or district-wide tests or

assessments to monitor student progress, and to utilize the expedited dispute resolution procedure outlined in the MOU should agreement prove unattainable despite good faith and timely efforts by both sides.

CONCLUSION

For the reasons expressed above, the grievance filed by the Sacramento City Teachers Association is GRANTED.

Dated: January 11, 2021

/s/ _____
CAROL A. VENDRILLO, ESQ.
Arbitrator