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May 6, 2021

Via E-Mail: jborsos@cta.org

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

Re: Collapsing Cohorts

Dear Mr. Borsos:

In follow-up to our meeting of April 27, 2021, the District would like to confirm its plan to collapse the cohorts of all District classes at all sites where doing so can be done at 6-foot student-to-student and student-adult social distancing. We have recently provided the [information which shows every grade level at each site where this can be done based on in-person attendance](#). As the data show, there are 24 school sites where all grade level cohorts could be collapsed into single class groupings. [There are a total of 255 site grade levels that could have classes collapsed into single groups](#) and there are also a number of schools where most, but not all, of the grade levels and classes could be collapsed at 6-foot student-to-student and student-adult social distancing (for example [eight \(8\) additional schools have all but one grade level that can be collapsed at this standard.](#))

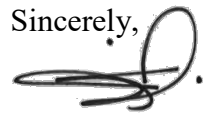
Additionally, per your request, our staff is working on providing a complete list by teacher/class as well (this is a much more lengthy process and includes secondary classes for each period a teacher teaches). We have also provided a [district map that shows how many classrooms at each elementary school can support a single group of students at 6-foot social distancing](#). While the District will provide this data to SCTA as soon as it is available (which requires District to create new records that do not currently exist), this data is not necessary to move forward with collapsing these cohorts.

The District intends to initially collapse these TK-6 classes into single groups of students to attend school in-person four days each week. Subsequently, the District would look to do the same at the secondary level for those cohorts which can be collapsed into single groups at 6-foot distancing. We plan to collapse these classes at the elementary level on and after May 18, 2021.

In our letters of [March 31, 2021](#), [April 7, 2021](#) and [April 20, 2021](#), the District requested to meet with SCTA consistent with our Reopening Schools MOU to discuss collapsing cohorts. SCTA has not agreed to meet with the District on this issue, other than the brief conversation as one of a number of other subjects discussed at the April 27th meeting. Nonetheless, in an effort to again engage in a discussion on this issue, please let me know by May 10th if SCTA would like to meet and confer on this issue.

Finally, the District again reiterates its desire to bring back all of the students who wish to return in-person this spring which could be accomplished by adjusting the student-to-student spacing to a minimum of 3-feet as recommended by CDC, CDPH and SCDPH. Attached is a recent letter received from a law firm representing a group of District parents demanding the District provide at least four full days of in person instruction to all interested students for the remainder of the 2020-21 school year by May 5, 2021 and eliminate the requirement for six foot distancing between students. The District will be providing a response to this letter by the end of this week.

We look forward to providing greater in person learning time to our students in the remaining weeks of the school year.

Sincerely,


Jorge A. Aguilar
Superintendent



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April 28, 2021

VIA EMAIL

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Re: Reopening of Sacramento City Unified School District for In-Person Instruction

Dear President Pritchett, Honorable Board Members, and Superintendent Aguilar:

My firm has been retained to represent SCUSD Students First, a diverse coalition of families with children in Sacramento City Unified School District (“SCUSD”) who are concerned with SCUSD’s failure to carry out its legal obligation to fully reopen its schools. They are deeply concerned that their children, who for more than a year have received only a nominal education through distance learning, continue to suffer immensely—academically, mentally, emotionally, and socially—due to the prolonged closure of schools within SCUSD. While my clients are grateful that the district has started to offer some in-person instruction to their children, the district can and must do much more.

Distance learning has failed our children.

After more than a year of school closures, evidence of the harm to our children is mounting.

To start with, children are losing irreplaceable academic opportunities. A McKinsey & Company report in June 2020 concluded that students who do not receive full-time, in-person instruction until 2021 will have lost an average of seven months of learning this school year, and a RAND

survey found that only 19% of teachers had covered all or nearly all of the content they would have covered by the same time the previous school year.

Disparate outcomes for poor and minority children are increasing as well. The same McKinsey & Company report estimated that white students will be set back one to three months in math, while students of color will have lost three to five months.

The United Nations Educational, Scientific and Cultural Organization (“UNESCO”) has stated, regarding the disparate impacts of school closures: “School closures carry high social and economic costs for people across communities. Their impact however is particularly severe for the most vulnerable and marginalized boys and girls and their families. The resulting disruptions exacerbate already existing disparities within the education system but also in other aspects of their lives.”

UNESCO further stated: “Schooling provides essential learning and when schools close, children and youth are deprived opportunities for growth and development. The disadvantages are disproportionate for under-privileged learners who tend to have fewer educational opportunities beyond school.”

These considerations are especially important in SCUSD, where 70% of students are low income, foster youth, homeless, and/or English language learners.

School closures have had measurable impacts on children’s health too. A national survey of school districts indicated that the mental health impact on children has increased by 74%, behavioral health referrals and counseling increased by more than 90%, and 50% of school districts reported increased absenteeism and decreased student engagement among virtual students. The CDC reported in November 2020 that mental health-related emergency department visits among children in the 5 to 11 and 12 to 17 age brackets increased approximately 24% and 31%, respectively.

On January 13, 2021, a group of thirty University of California San Francisco medical professionals published an open letter calling for schools to be reopened by February 1, 2021, noting that distance learning has led to serious mental health issues in children, especially teens. Dr. Saun-Toy Trotter, a psychotherapist at U.C. San Francisco’s Benioff Children’s Hospital in Oakland, saw “high levels of depression” in her practice and said the clinic recorded more youth suicide attempts during the first four weeks of the pandemic than it had the entire previous year.

While these statistics of themselves are sobering, we must never forget that they represent real children and families. Parents in SCUSD have children who are suffering from depression and anxiety, have suffered dramatic weight loss or gain, have had suicidal ideations, have committed acts of self-harm, have failed classes or are in danger of failing, have missed instructional time, have lost opportunities for personal interaction with teachers and peers, and have lost self-confidence, among other harms caused by the lack of in-person classroom time.

Data shows that schools can safely reopen for full-time, in-person instruction.

While SCUSD continues to stall its reopening plans and the children under its stewardship suffer, a growing body of evidence demonstrates that reopening schools for all students in all grades can be safely accomplished.

The COVID-19 School Dashboard developed by Brown University tracks over 5,000 schools, 4 million students, and 1.3 million staff, and has consistently found student and staff infection rates of 0.1% to 0.2% since it began publishing in September. Now that vaccines are widely available and many teachers and staff have been vaccinated, these numbers are expected to remain low or, most likely, fall even further.

A September report from Insights for Education examined data from 191 countries and found no link between schools being open for in-person instruction and COVID-19 infection rates, and data collected during a November 2020 surge of COVID-19 cases in the State of Illinois also found only 16 schools experienced outbreaks of between 11 and 16 cases each among over 750,000 students in full- or part-time in-person instruction.

In an article published in the medical journal *Pediatrics* January 8, 2021, researchers reported that in a study of 90,000 students across 56 school districts in North Carolina during the first 9 weeks of the school year, there were only a few dozen instances of secondary spread in schools, and no cases were found of in-school child-to-adult spread, even with community case rates of up to 29 per 100,000. Current case rates in Sacramento County are *far* lower.¹

In fall 2020, in Florida, 45% of the state's 2.8 million students received in-person instruction. Only 2% of them, however, fell ill with COVID-19. Of those, 99.5% received supportive care at home, while only 0.5% required hospitalization. None died.

In a study of 242 Massachusetts school districts, encompassing approximately 500,000 students and 100,000 staff, researchers found students and staff were protected adequately even when schools used distancing precautions of three feet, rather than six feet as had previously been thought necessary. They were also protected regardless of whether local community transmission rates were low or high.

In a study of Swedish schools from March through June 2020, published January 6, 2021, researchers similarly found that even though community spread was prevalent and schools for ages 1 through 16 remained open, only 15 out of 1.95 million children were hospitalized with COVID-19, and only 20 out of 103,596 teachers were admitted to the ICU, and no students or teachers died from COVID-19.

A study by the National Center for Research on Education Access and Choice at Tulane University, published January 4, 2021, also “found no evidence that reopening schools in-person

¹ As of the date of this letter, the adjusted case rate for Sacramento County is 8.4 per 100,000.

or in a hybrid model increased COVID hospitalizations.”

The United States Centers for Disease Control (“CDC”) recently published two studies concluding “there has been little evidence that schools have contributed meaningfully to increased community transmission,” “that when schools strictly adhere to layered mitigation strategies, they can minimize in-school transmission even during times of higher community incidence,” and that “with proper prevention efforts ... we can keep transmission in schools and educational settings quite low.”

It is critical to keep in mind that the above studies were based on data gathered *before* vaccines were authorized for emergency use. Now that vaccines are widely available—and all teachers who want to be vaccinated have had the opportunity—the already minimal risk of reopening schools for in-person instruction has reduced significantly.

There is now almost universal consensus that schools are a safe environment for both students and staff and that their low case rates make them the safest place to be during the COVID-19 pandemic. As the CDC wrote in its Summary of Guidance on December 4, 2020, “because of ... the disproportionate impact that school closures can have on those with the least economic means, kindergarten through grade 12 schools should be the last settings to close after all other mitigation measures have been employed and the first to reopen when they can do so safely.”

The California Department of Public Health and Sacramento County Health Department have revised their guidance to allow the full reopening of schools.

As you may be aware, my firm represented a San Diego County parent group that sued Governor Newsom and California Department of Public Health (“CDPH”) officials to invalidate certain provisions of the state’s Reopening In-Person Instruction Framework and Public Health Guidance for K-12 Schools in California, 2020-2021 School Year (“Reopening In-Person Instruction Framework”) that had been preventing school districts from fully reopening their schools for in-person instruction as required by law. The court entered an order barring the state’s enforcement of those provisions and requiring the school districts that were defendants in the lawsuit to show cause as to why a preliminary injunction should not issue ordering the school districts “to reopen their schools for in-person instruction to the greatest extent possible at the earliest practicable time.” The court’s ruling is enclosed with this letter.

On March 20, 2021, following the court’s order, CDPH revised its Reopening In-Person Instruction Framework² to amend several key provisions, including:

1. Changing the distancing between students in classrooms from a requirement of at least four feet to a *recommendation* of only three feet.

² <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19-K12-Schools-InPerson-Instruction.aspx>.

2. Allowing all schools to reopen for all grades as long as the county's case rate does not exceed 25 per 100,000 per day.³

The Sacramento County Department of Public Health (“SCDPH”) incorporated these changes into its guidance on March 26, 2021.

These changes immediately allowed for school districts to increase the number of students in each classroom and reopen all schools for all grades, where previously many schools had remained closed or in hybrid models that failed to provide students with sufficient instruction time. The importance of three feet of distancing is that it allows classrooms to fit a full class of students, eliminating the need for hybrid and part-time schedules.

The SCUSD Board of Education determined in its Resolution 3196, approved unanimously on April 22, 2021, that “the District has undertaken a review of its facilities and ability to implement safety measure including space capacity and the ability to provide a safe transition back to in-person instruction, finding that as of April 16, 2021, *100% of elementary and K-8 sites meet or exceed COVID-19 readiness facilities standards ...*, and *75% of middle and high School sites meet or exceed COVID-19 readiness facilities standards* Staff expect the *remaining 25% of middle school and high school sites to meet or exceed COVID-19 readiness facilities standards ... by April 22, 2021.*” In short, SCUSD’s facilities are ready to welcome back students. There is no longer any legitimate public health justification for SCUSD not to reopen its schools for full-time, in-person instruction.

SCUSD has a constitutional obligation to offer in-person instruction to all students.

“A person may not be ... denied equal protection of the laws.” (Cal. Const., art. I, § 7, subd. (a).) The California Constitution thus prohibits any governmental entity—including a school district—from making a law, rule, or regulation that restricts the freedom of one group while other similarly situated groups remain unrestricted unless there is a rational basis connected to a legitimate governmental interest sufficient to justify the disparate treatment. Where “the disparate treatment has a real and appreciable impact on a fundamental right or interest,” strict scrutiny applies. (*Butt v. State of California* (1992) 4 Cal.4th 668, 685–686.)

A child’s right to public education is one such fundamental right or interest: “In view of the importance of education to society and to the individual child, the opportunity to receive the schooling furnished by the state must be made available to all on an equal basis.” (*Jackson v. Pasadena City School Dist.* (1963) 59 Cal.2d 876, 880.) It is “well settled that the California Constitution makes public education uniquely a fundamental concern of the State and prohibits maintenance and operation of the common public school system in a way which denies basic educational equality to the students of particular districts.” (*Butt, supra*, 4 Cal.4th at 685; see also

³ We also note that the CDPH guidance regarding “stable groups” was modified in February 2021 and is also now only a recommendation. (<https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Schools-FAQ.aspx#Cohort%20and%20Stable%20Groups>.)

Cal. Const., art. IX, § 5.)

The reality some SCUSD children are facing is that they “must go to a private school or [effectively] none at all.” (*Griffin v. County School Board* (1964) 377 U.S.218, 230.) SCUSD’s effective closure of some of its public schools while other public schools are open violates the guarantee of equal protection. (*Serrano v. Priest* (1971) 5 Cal.3d 584, 612 [“[Absent] a reasonable basis for so classifying, a state cannot close the public schools in one area while, at the same time, it maintains schools elsewhere with public funds.”].)

Under the strict scrutiny standard, “the governmental entity ‘bears the burden of establishing not only that it has a compelling interest which justifies the law but that the distinctions drawn by the law are necessary to further its purpose.’” (*Hartzell v. Connell* (1984) 35 Cal.3d 899, 921, quoting *Westbrook v. Mihaly* (1970) 2 Cal.3d 765, 785.) The law also “must ‘be narrowly tailored (that is, the least restrictive means)’ to promote the compelling interest.” (*Snatchko v. Westfield LLC* (2010) 187 Cal.App.4th 469, 491–492, quoting *Kasky v. Nike, Inc.* (2002) 27 Cal.4th 939, 952.)

Slowing the spread of COVID-19 is undoubtedly a compelling interest. Nevertheless, SCUSD cannot meet the burden of strict scrutiny because, as already explained, schools can safely reopen for in-person instruction even when the virus is prevalent and, as set forth in detail below, it is more than possible for SCUSD to expand its offering of in-person instruction.

School districts are required to “offer in-person instruction to the greatest extent possible.”

SCUSD has statutory obligations as well as constitutional ones. As you are no doubt aware, Senate Bill 98 (“SB 98”), signed into law by Governor Newsom on June 29, 2020, allocated funding to local educational agencies (“LEAs”) including SCUSD and amended the California Education Code to provide the base parameters for instructional models during the 2020–21 school year. Specifically, SB 98 added the following:

“For purposes of calculating apportionments for the 2020–21 fiscal year, a local educational agency *shall* offer in-person instruction, and *may* offer distance learning, pursuant to the requirements of this part.” (Educ. Code, § 43502, subd. (a) [emphasis added].)

“A local educational agency *shall* offer in-person instruction *to the greatest extent possible*.” (Educ. Code, § 43504, subd. (b) [emphasis added].)

Additionally, the Legislature recently enacted AB 86, which resulted in the adoption of Education Code section 43520, providing in relevant portion: “[I]t is the intent of the Legislature that local educational agencies *offer in-person instruction to the greatest extent possible during the 2020–21 school year*”

As should be clear from the plain meaning of the word “shall,” these statutes require school

districts to offer in-person instruction, while distance learning is only optional. Furthermore, school districts are required to offer in-person instruction *to the greatest extent possible during the 2020–21 school year*. At the very least, this means that a school district should not create restrictions or enter into agreements that prevent it from carrying out its statutory mandate.

For example, a school district cannot require spacing of six feet between student chairs, without any basis in science or health guidance, because with limited classroom space this prevents students from receiving full-time, in-person instruction. It is inexplicable that SCUSD has failed to adapt to the updated guidance by the CDC, CDPH, and SCDPH.

SCUSD’s current instructional model does not “offer in-person instruction to the greatest extent possible.”

Given the above referenced revisions to the Reopening In-Person Instruction Framework allowing a return to full-time, in-person instruction, SCUSD is not offering in-person instruction to the greatest extent possible.

The in-person instruction SCUSD currently offers its students is limited to three hours per day, two days per week. That totals only six hours per week of in-person learning. A normal school week is approximately thirty hours, meaning that students are receiving only *one-fifth* of their normal instructional hours in person. Worse, more than a third of purported instructional hours comprise asynchronous work, which is no different than homework. These students, who already spent more than a year in subpar distance learning, are being severely shortchanged.

While we are encouraged that SCUSD has committed to return to full-time, in-person instruction for the 2021–22 school year, the district needs to follow through and share fall plans and schedules with parents. And the district must begin expanding in-person learning *now* to prepare for a full reopening in the fall.

An expansion of in-person instruction is possible now.

Of those SCUSD students who responded to the district’s survey, 53% opted into in-person instruction.⁴ SCUSD could *easily* accommodate all these students and more while maintaining at least three feet of spacing between students. With classroom capacity restrictions having been effectively removed, there is no legitimate legal or public health reason to deprive children of their right to receive an adequate public education through in-person instruction.

SCUSD agreed in its March 20, 2021 Memorandum of Understanding with Sacramento City Teachers Association (“SCTA”) to maintain six feet of distancing through the end of this school year.⁵ To the extent this agreement imposes an artificial limit on the expansion of in-person instruction, it must give way to the district’s overriding obligation to “offer in-person instruction to the greatest extent possible.” (Educ. Code, § 43504, subd. (b); see *Levinson v. Boas* (1907)

⁴ https://learn.scusd.edu/sites/main/files/file-attachments/learning_options_form_document_for_website_-8.pdf.

⁵ https://returntogether.scusd.edu/sites/main/files/file-attachments/mou_-_scta_reopening_schools_.pdf.

150 Cal. 185, 193 [“[E]very case from every court recognizes that when a statute has been made for the protection of the public, a contract in violation of its provisions is void.”].)

If the district believes (wrongly) that it is bound by its agreement with SCTA, then it has an obligation to renegotiate the agreement and exercise all remedies, including mediation, to resolve any impasse. SCTA cannot dictate the district’s mode of instruction.

Given the well-documented harms of distance learning to students academically, mentally, emotionally, and socially, the district should be doing all it can to expand in-person instruction. Again, the expansion of in-person instruction *now* is important so that students and teachers are prepared for a full reopening in the fall.

Demand to SCUSD.

Numerous school districts throughout the State of California have been implementing and expanding in-person learning options in just the few weeks since the Reopening In-Person Instruction Framework was revised. Nothing is preventing SCUSD from expanding in-person instruction, and SCUSD is legally obligated to do so under the legislative mandate of SB 98 and the equal protection clause of the California Constitution.

My clients have exhausted all other efforts at attempting to communicate their concerns with SCUSD and are therefore prepared to take further legal action if SCUSD does not immediately approve a plan to offer in-person instruction at least four full days per week for the remainder of the 2020–21 school year.

On behalf of SCUSD Students First, we respectfully demand that SCUSD (1) set a special meeting of the Board of Education on the soonest possible date to vote on a plan to offer at least four full days of in-person instruction⁶ to all interested students for the remainder of the 2020–21 school year, beginning no later than May 5, 2021; (2) eliminate the requirement for six-foot distancing between students; and (3) approve a specific plan by May 12, 2021, for a full return to in-person instruction at pre-pandemic levels at the start of the 2021–22 school year.

If SCUSD is not willing to meet these demands, my clients would appreciate a substantive response to this correspondence from SCUSD or its counsel no later than May 3, 2021.

Very truly yours,

AANNESTAD ANDELIN & CORN LLP



Lee M. Andelin

⁶ “In-person instruction” means “instruction under the immediate physical supervision and control of a certificated employee of the local educational agency while engaged in educational activities” (Educ. Code, § 43500, subd. (b).)

Sacramento City Unified School District Board of Education
April 28, 2021
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cc: Arie Spangler
Scott Davison

Enclosure