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Jorge A. Aguilar, Superintendent

September 23, 2020

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Via E-Mail: dfisher@saccityta.com

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

Re: Second Demand to Cease and Desist – Importance of Following Distance Learning Plan to abide by SB 98

Dear Mr. Fisher:

I am writing in response to various emails and statements made by members and representatives of the Sacramento City Teachers Association's ("SCTA") that teachers will not follow the District's now operative distance learning plan. SCTA's position has been expressed in social media posts made by SCTA unit members and representatives, in communications from SCTA leaders to school site representatives, and from school site SCTA representatives to teachers at their sites.

These statements and subsequent actions by SCTA members in line with the statements are creating inconsistency across our District which will lead to the District not complying with SB 98 based on variation of instructional minutes and lack of student engagement certifications.

As you know, our District serves a student population that has long been underserved and has high academic and social and emotional needs. Our District has a history of high-poverty and low-performing outcomes, and we are committed to mending the inequities in our system for our students, families and community.. The District's student population encompasses a large number of English learners, low-income students, foster youth, students with exceptional needs, and students experiencing homelessness, and what's best for those students necessarily calls for a different approach than that implemented in other dissimilar districts. In our District, the importance of consistency throughout the District's distance learning plan cannot be overstated, and this is why site-by-site schedules are unacceptable for the District - we need to consistently serve *all of* our students. Such consistency helps to best ensure for equity. Inconsistency and discretion do not.

With this in mind, through the statements and communications by SCTA leaders, representatives, and members, SCTA leaders are causing the District to be in violation of the law by not providing daily live instruction to students every school day, not providing the required instructional minutes on every instructional day, and not monitoring student engagement. Indeed, the District sent a [letter to State Superintendent Thurmond](#) on September 9, 2020 in order to alert him to these serious concerns that the District is out of compliance with SB 98. In addition, and as we also explained to State Superintendent Thurmond, SCTA's actions have the effect of denying many of our

students' equal educational opportunity. In the face of the many challenges raised by this current pandemic, the District must continue providing students with their constitutional right to education. (Cal. Const., article IX, section 5.) This includes providing services to our students with disabilities consistent with students' Individualized Education Programs (IEPs), as required by the Individuals with Disabilities Education Act (IDEA), and equal access to educational programming without discrimination under section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Title VI of the Civil Rights Act of 1964 and the equal protection clauses of the United States and California Constitution protect against discriminatory treatment, and in some instances practices which result in a disparate impact, in relation to a student's race, ethnicity and socio-economic status.

SCTA's distance learning plan and schedules do not provide the quality or consistency necessary to ensure educational equity for *all* District students, including those students with rights under the laws noted here. The District's plan and schedule does.

Inconsistent School Site Schedules Offering Less Synchronous and Asynchronous Minutes than the District's Distance Learning Plan

A careful review of some of the schedules that SCTA leaders have improperly sent out to students and families demonstrate the inequity that inconsistent and discretion-based schedules have in our system. For example, several of the schedules put forth by SCTA leaders have no provision for direct live instruction on Mondays, which is directly contrary to the Senate Bill 98 requirement for direct live instruction *every day*. (See Education Code section 43500; 43503; 43509.) We have also learned of variations in schedules within the same schools and grade levels, which also do not include any specific time allocated for students to receive targeted instructional supports as required by SB 98 (Education Code section 43503(b)(3).)

As a reminder, the California Department of Education has issued responses to Frequently Asked Questions (FAQs) related to distance learning, including responses on the SB 98 requirement for daily live interaction. Response to FAQ No. 13, specifically states that:

All students are required to receive daily live interaction with both a certificated employee and their peers for the purpose of instruction, progress monitoring and school connectedness. Teachers may meet individually with students but this alone does not meet the requirements for daily live interaction. The minimum standard should be the same for all students regardless of which school or program the student participates within the LEA. Every effort should be taken to determine the amount of interaction that is needed for students to progress academically and remain engaged in learning and connected to the school community.

(See FAQ No. 13 at <https://www.cde.ca.gov/ci/cr/dl/distlearningfaqs.asp>)

We are further concerned that many of our schools are using a schedule that is not only inconsistent with the District's schedules, but inconsistent with other District schools in terms of the number of synchronous and asynchronous minutes provided to our students. As mentioned above, we are aware of some teachers who are offering synchronous instructional minutes that are more than an hour less than that of their grade level and other colleagues at the same school and those offered by teachers at other schools in the District.

Finally, in light of the above concerns and the requirements of SB 98, our site administrators must be provided with sufficient information from all of their teachers regarding that amount of live synchronous instruction, targeted instruction, and asynchronous instruction they are providing. We understand that many teachers are not providing their administrator access to their Google Classroom, Zoom meetings, or even providing any information concerning this critical information. We believe that the time that students are receiving direct instruction with their teachers (synchronous instruction) is incredibly valuable and must be provided to our students within the essential elements set forth in the District's distance learning proposal.

Attendance and Engagement Records

In addition, at a number of our school sites, teachers are only taking attendance through Infinite Campus and are not using the [District's engagement form](#). As you know, currently Infinite Campus only allows for recording student attendance, not student engagement in distance learning as required by SB 98. Our staff has been working with Infinite Campus to see if the system can be programmed to allow for teachers to record student engagement that would meet the requirements of Senate Bill 98. Unless and until there is a means to record student engagement in Infinite Campus, our teachers must complete the District's engagement form to ensure that the District complies with the SB 98 requirement to record student daily participation and engagement. (Education Code section 43504(d), (e).) Based on feedback received from staff, the District simplified the CDE form so that Infinite Campus may be used to satisfy the individual student portion of recording engagement, leaving only the portion of the form regarding daily minutes provided of synchronous and asynchronous instruction to be completed weekly and certified by the teacher of record.

We are aware that on September 9, 2020, State Superintendent of Public Instruction Tony Thurmond [issued a communication](#) to E. Toby Boyd, President of the California Teachers Association, indicating that the CDE engagement form is not required but is optional for school districts. State Superintendent Thurmond's letter clarifies that while the CDE engagement form is "not mandated, numerous districts have adopted it..." However, the letter does not relieve school districts of the requirement to comply with the requirements of SB 98 to "ensure that a weekly engagement record is completed for each pupil documenting synchronous or asynchronous instruction for each whole or partial day of distance learning, verifying daily participation, and tracking assignments." Indeed, the District will face significant fiscal penalties should our audit determine we are out of compliance with the requirement to record student engagement consistent with SB 98. ([See CDE FAQ on Attendance Accounting and Reporting, #6 and #7 concerning fiscal penalties.](#)) The District has [developed a form, modeled on CDE's form](#), that complies with SB 98 and allows teachers to record student engagement in an effective and efficient manner so that they can remain focused on student instruction and engagement.

The District has been direct in communications with employees that the District engagement form for the first two days of school, September 3 and 4, 2020, and the first week of school (September 8-11) were due to the site principals on September 18, 2020. We will be following up with employees who have not submitted the required forms to ensure that the District has the documentation necessary to comply with SB 98.

Refusing to Follow SB 98 Does Not Constitute Concerted Action

SCTA leaders appear to believe that not complying with the District's obligations to comply with SB 98 is somehow excused because SCTA members are engaging in "concerted activities" consistent with Articles 3.5 and 3.6 of the Collective Bargaining Agreement between the parties. Refusing to comply with the law or follow the District's distance learning proposal is not a concerted activity, it is a violation of the law and insubordination.

As a reminder, the District has moved forward to implement its August 30, 2020 distance learning plan in order to provide direction on the expectations and framework for distance learning in the District, and to ensure consistency within our system so that inequities do not persist. We bring the above issues to your attention because we believe that SCTA's actions have the effect of causing the District to be in violation of SB 98.

We remain hopeful that the District and SCTA will reach an agreement on the effects of distance learning so that we can focus on our highest priority - providing high quality, equitable instruction to *all* of our students during distance learning. In the meantime, we will make every effort to comply with SB 98 and to remind SCTA leaders that despite our differences in distance learning negotiations, SB 98 and the commitment to ensuring equity across our District require that there be a consistent plan across the District.

The District Therefore Demands That:

- SCTA cease and desist from directing or encouraging members not to complete the District's student engagement form;
- SCTA cease and desist from directing or encouraging their unit members to engage in concerted activities that are inconsistent with the law; and
- SCTA cease and desist from unilaterally implementing schedules that offer less synchronous and asynchronous minutes from those set forth in the District's distance learning plan;

As always, we are willing to sit down with SCTA leadership to discuss these matters and ensure the District is in compliance with SB 98, is able to provide robust distance learning for *all* of our students, and avoids any penalties the District might receive for failing to comply with monitoring student engagement or other key aspects of SB 98.

We all work for our students. Now, more than ever, it is time for us to come together and work to ensure that our students receive high quality distance learning and successfully transition to this new and necessary format where we will continue the work of serving *all* of our students. Our community demands nothing less of us. Our students deserve nothing less.

Sincerely,



Jorge A. Aguilar
Superintendent