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June 11, 2020

*Via Email*

Cindy Marten, Superintendent  
Sarah Ott, Executive Director  
San Diego Unified School District  
Office of the Superintendent  
4100 Normal Street, Room 2219  
San Diego, CA 92103  
Email: [cmarten@sandi.net](mailto:cmarten@sandi.net); [sott@sandi.net](mailto:sott@sandi.net)

**Re: Request for Immediate Action to Protect the Rights of Students  
with Disabilities**

Dear Superintendent Marten and Executive Director Ott:

Disability Rights California (DRC) is the protection and advocacy system for the State of California, mandated by federal and state law to protect the rights of Californians with disabilities.<sup>1</sup> We are contacting you because we have received troubling complaints alleging that the San Diego Unified School District ("District") is not providing special education and related services to students with disabilities. We believe the District is violating its legal obligations to these students under the Individuals with Disabilities Education Act (IDEA) and urge it to take immediate, remedial action.

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<sup>1</sup> See Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. § 10801 et seq., as amended, and 42 C.F.R. Part 51; the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. and 45 C.F.R. Part 1326; the Protection and Advocacy for Individual Rights Act, 29 U.S.C. § 794e; and Cal. Welf. & Inst. Code § 4900 et seq.

## Parent Complaints Regarding IEP Noncompliance

On March 17, 2020, in response to the school closures due to COVID-19, the District issued a prior written notice (PWN) announcing that it was ceasing all special education services:

During the pendency of the school closure, no students will be receiving supports or services from the District. Your student's special education supports and services will resume along with the regular program when the District re-opens.<sup>2</sup>

Since then, both the U.S. Department of Education (USDOE) and the California Department of Education (CDE) issued guidance maintaining that school districts must continue to provide a free and appropriate public education (FAPE) to students with disabilities consistent with health and safety guidelines.<sup>3</sup> In declining to recommend waivers, the USDOE further affirmed that the IDEA is still in effect during the school closures.<sup>4</sup>

It is unclear whether the District considers the March 17<sup>th</sup> PWN to still be in effect or superseded by CDE and USDOE guidance (for example, it is still prominently posted on the Special Education Division's website, *supra* note 2). Regardless, DRC continues to receive complaints from parents that the District is not implementing any students' Individualized Education Programs (IEPs). Parents report that their children did not receive related services, such as speech and language therapy, and instead of providing specialized academic instruction, the District sent links to videos and online programs for parents to access with their children.

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<sup>2</sup> San Diego Unified School Dist., Special Education Division, *Urgent COVID-19 Update* (Mar. 17, 2020), [https://www.sandiegounified.org/sites/default/files\\_link/district/files/dept/special\\_education/PWN%20Covid19%20English\(1\).pdf](https://www.sandiegounified.org/sites/default/files_link/district/files/dept/special_education/PWN%20Covid19%20English(1).pdf) (accessed June 11, 2020).

<sup>3</sup> CDE, *Special Education Guidance for COVID-19* (Apr. 9, 2020), <https://www.cde.ca.gov/ls/he/hn/specialedcovid19guidance.asp> (accessed May 30, 2020); USDOE, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities* (Mar. 21, 2020), <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf> (accessed June 11, 2020).

<sup>4</sup> USDOE, *Secretary DeVos Reiterates Learning Must Continue for All Students, Declines to Seek Congressional Waivers to FAPE, LRE Requirements of IDEA* (Apr. 27, 2020), <https://www.ed.gov/news/press-releases/secretary-devos-reiterates-learning-must-continue-all-students-declines-seek-congressional-waivers-fape-lre-requirements-idea> (accessed June 11, 2020).

Parents of medically fragile students have also complained to DRC that the District categorically refuses to provide any nursing, behavior, or other 1:1 supports in the home. The absence of these services puts great strain on families, who often cannot replace them with generic resources like In-Home Supportive Services (IHSS) because they are at their hour limit. This problem is likely to get worst with impending budget cuts.

Further, this alleged refusal would be unlawful. In its guidance of April 9, 2020, the CDE announced that districts are not precluded from providing services to students with disabilities in-person or in the home. It explained:

In some exceptional situations, LEAs may need to provide certain supports and services to individual students in-person in order to maintain students' mental/physical health and safety for the purpose of supporting the student in accessing the alternative options for learning being offered (e.g. distance learning). With that said, alternative service delivery options should seek to comply with federal, state, and local health official's guidance related to physical distancing, with the goal of keeping students, teachers and service providers safe and healthy as the primary consideration.

The CDE then provided a list of service providers considered "essential," including nurses, physical and occupational therapists and assistants, social workers, speech pathologists, and behavioral health workers.<sup>5</sup>

### **Demand for Immediate Corrective Actions**

In short, DRC believes the District is systemically denying its students with disabilities a FAPE by failing to provide the special education and related services specified in their IEPs. Without their individualized services and supports, these students will not only be deprived of the opportunity to make meaningful progress, but will likely regress. This is especially true for students who receive Extended School Year (ESY) services over the summer because of the likelihood of regression during the break.

Accordingly, we request that the District immediately address these violations by:

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<sup>5</sup> CDE, *Special Education Guidance for COVID-19*, *supra* note 3.

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1. Implementing IEPs and providing FAPE in a manner consistent with USDOE and CDE guidance.
2. Updating students' current IEPs with measurable goals and related services that can be provided during school closures.
3. Consistent with CDE guidance, make an individualized determination as to whether a student needs services or supports in-person to maintain their mental/physical health and safety for the purpose of supporting the student in accessing the alternative options for learning being offered (e.g. distance learning).
4. Conducting bi-monthly follow-up with the families, including during ESY where applicable.
5. Agree that the District will make individualized determinations as to whether and to what extent it will provide compensatory services to each student with an IEP that did not receive their IEP instruction and related services during the school closures.
6. Where appropriate, train parents of children with behavior-related disabilities to assist them in addressing behaviors or social/emotional needs their children may exhibit in the home during school closures.

Please respond within 5 days of receipt of this letter and provide a copy of the plan you will be implementing to provide students with disabilities a FAPE during this period of school closures, including ESY.

Thank you for your attention to this pressing matter. Please feel free to contact me to discuss it further.

Sincerely,



Suge Lee  
Managing Attorney