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Via E-mail ONLY

May 1, 2020

Doc Ervin, Superintendent
Bakersfield City School District
1300 Baker Street
Bakersfield, CA 93305
ervind@bcsd.com

Shirley Nicholas, SELPA Director
Bakersfield City School District SELPA
714 Williams Street
Bakersfield, CA 93306
nicholass@bcsd.com

Dear Mr. Ervin and Ms. Nicholas:

Disability Rights California is the protection and advocacy system for the State of California, with the responsibility of protecting the rights and safety of individuals in California who have disabilities, pursuant to federal and state law.¹ We are contacting you because we have received troubling complaints regarding Bakersfield City School District ("BCSD") and believe BCSD is violating its legal obligations to its students with disabilities.

As the California Department of Education ("CDE") and the U.S. Department of Education ("USDOE") have made clear, the Individuals with Disabilities Education Act ("IDEA") is still in effect during this time of school

¹ 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.

closures due to the COVID-19 pandemic.² Both agencies emphasize that school districts must continue to provide a Free and Appropriate Public Education (“FAPE”) to students with disabilities and implement Individualized Education Plans (“IEP”) consistent with the need to protect the health and safety of students and service providers.

Accordingly, BCSD still has a legal obligation to provide FAPE and implement students’ IEPs. However, we have received troubling complaints that ***BCSD is not implementing students’ IEPs and is failing to provide related services that students with special needs require. This is a wide-scale violation of the IDEA, and BCSD must immediately act to provide special education services.***

According to complaints, BCSD’s “distance learning” amounts only to packets of learning material and online resources for parents. Students with IEPs are provided with learning packets marked as “special education,” but they are not at all tailored to individual students’ needs. For example, according to BCSD’s own learning resource website, one special education packet for a kindergartener consisted of work for 1st through 3rd grades.³ Incredibly, ***some students have not received any learning packets or any meaningful communication from BCSD*** regarding their distance learning programs.

Additionally, students are not receiving ***any*** direct specialized instruction or ***any*** related services, such as speech therapy or behavior intervention services.

² California Department of Education, *Special Education Guidance for COVID-19*, dated April 9, 2020, at: <https://www.cde.ca.gov/ls/he/hn/specialeducovid19guidance.asp> (accessed April 20, 2020); U.S. Department of Education, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, dated March 21, 2020, at: <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf> (accessed April 20, 2020).

³ BSCD Distance Learning for BCSD Students Grade K, <https://sites.google.com/bcsd.com/distance-learning/students/kindergarten> (accessed April 30, 2020); Special Education ISP Work Packets, https://drive.google.com/file/d/1B9xOvpNQp-VMExVQdd786M70_N4aC-g3/view (accessed April 20, 2020).

BCSD has shockingly even acknowledged this complete absence of services in a general Prior Written Notice it issued to parents of special education students:

During the pendency of the school closure, no direct instructional services will be provided to any students. Once the District's closure status changes, the District will further inform you regarding how your student's special education supports and services will resume.⁴

The USDOE has emphatically stated that ensuring compliance with the IDEA should not prevent school districts from offering educational programs through distance instruction; and that school districts must still provide FAPE, which may include, special education and related services provided virtually, online, or telephonically.⁵

On April 27, 2020, U.S. Secretary of Education Betsy DeVos reaffirmed this position and declined to recommend that Congress waive the FAPE requirements of the IDEA, concluding that "individualized education must take place for all students, including students with disabilities."⁶ She further "determined there is no reason that a student's access to FAPE cannot continue online, through distance education or other alternative strategies."⁷

BCSD's actions – or inaction – clearly contravenes USDOE's guidance and the IDEA itself.

⁴ BCSD Prior Written Notice Letter to Parents of Special Education Students, dated April 1, 2020.

⁵ U.S. Department of Education, *Supplemental Fact Sheet Addressing the Risk of COVID-19 in Preschool, Elementary and Secondary Schools While Serving Children with Disabilities*, dated March 21, 2020, at: <https://www2.ed.gov/about/offices/list/ocr/frontpage/faq/rr/policyguidance/Supple%20Fact%20Sheet%203.21.20%20FINAL.pdf> (accessed April 20, 2020).

⁶ U.S. Department of Education, *Secretary DeVos Reiterates Learning Must Continue for All Students, Declines to Seek Congressional Waivers to FAPE, LRE Requirements of IDEA*, dated April 27, 2020, at <https://www.ed.gov/news/press-releases/secretary-devos-reiterates-learning-must-continue-all-students-declines-seek-congressional-waivers-fape-lre-requirements-idea> (accessed April 28, 2020).

⁷ *Id.*

This is a difficult time for all school districts and students, but districts throughout the state have mobilized to provide direct special education instruction and services. On information and belief, the Panama Buena-Vista Union School District – also located in Bakersfield – quickly distributed laptops to all students and is providing direct instruction and related services via distance learning. Other school districts are providing information to families regarding compensatory education once schools open up.

Without special education services, students with disabilities will not only be deprived of the opportunity to make meaningful progress, but they will likely **regress**. BCSD must do what it can to prevent this possibility and carry out its core responsibility – to educate its students. BCSD must fulfill its obligations under the IDEA and **start providing special education services immediately**. BCSD must also engage in ongoing communication with parents and guardians regarding the delivery of special education instruction and services and allow them to meaningfully participate in their children's education.

We are writing to request that you immediately roll out a comprehensive program for students with IEPs that includes:

1. Individual meetings and follow-up with all special education families to discuss individual IEPs;
2. Updating students' current IEPs with measurable goals and related services that can be provided during school closures;
3. Bi-monthly follow-up with the families;
4. An agreement 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; and
5. Training for 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

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Please respond within 5 days of receipt of this letter and provide a copy of the plan you will be implementing to provide special education students a FAPE during this period of school closures. Thank you for your attention to this pressing matter. Please feel free to contact me to discuss further.

Sincerely,

A handwritten signature in blue ink, appearing to read "Candis Bowles", written over a thin horizontal line.

Candis Bowles
Senior Managing Attorney