



Northern California



Faith in the Valley

Transmitted via Electronic Mail

December 17, 2021

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Re: Community Concerns Regarding Stockton USD Settlement Implementation and School Board Transparency

Dear Mr. Gennaco and Mr. Caddell,

Thank you for your work to ensure the Stockton Unified School District (“District”) complies with the Stipulated Judgment (“Settlement Agreement”) it entered into with the California Attorney General. The Stockton Education Equity Coalition (“SEEC”) and other concerned parents, students, and community partners place the highest value on this work to ensure the District is educating, safeguarding, and protecting our students.

We write to express significant, continuing concerns regarding how the District—including the Board of Education (“Board”) and the District Department of Public Safety (“Department”)—has failed to implement certain key provisions of the Settlement Agreement and, more broadly, has approached student safety, student wellbeing, and community transparency. As discussed in more detail below, we are primarily troubled by 1) the District’s lack of transparency and accountability to the community (for example, the District’s failure to properly report key information to the Community Advisory Group (“CAG”), and the Board’s apparent violations of the Brown Act related to key issues presented in the Settlement Agreement); and 2) the District’s failure to keep

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students safe from harm (for example, failing to implement required de-escalation trainings, which has directly led to alarming incidents of use of force against students; and proposing a deeply problematic Use of Force Policy for Department officers).

We request that you work with us to ensure the District addresses our concerns by taking actions we propose throughout and list in detail. Principally, we demand that the District 1) properly report all incidents where physical force is used against students by Department officers, and all other contact between Department officers and students, including where Department officers are present and involved in the incident; 2) reopen the comment period for the proposed Use of Force policy, amend the proposed policy to better safeguard student safety and align with state law, and set a special CAG meeting for January to discuss the proposed policy so that our broader community has an opportunity for input; 3) send the CAG a written plan to implement staff trainings mandated by the Settlement Agreement and other required reporting documents; and 4) ensure that the Board receives comprehensive training on the legal requirements of the Brown Act, per the recommendation of the 2020-2021 San Joaquin County Grand Jury.¹

Primary Concerns

I. Policy and Practice of Use of Force on Students

We are alarmed by the Department's policies and practices regarding the use of force against students. Below, we identify a number of serious issues with the District's proposed Use of Force Policy 300 for the Department policy manual ("Use of Force Policy"). We are also deeply troubled by continuing reports of use of force against students and the District's failure to consistently report use of force incidents to the CAG, in apparent conflict with terms of the Settlement Agreement.

A. The Proposed Use of Force Policy Must Be Strengthened to Better Protect Students and Align with California Law

We are gravely concerned about the District's recently proposed Use of Force Policy for Department officers and urge the District to make a number of revisions, which are listed below. Moreover, we are distressed that the comment period available to the CAG for input on this important policy document was unduly narrowed because it was distributed immediately before the Thanksgiving Week holiday. Members of SEEC and the CAG were away for the holidays, spending time with family and friends, and did not have reasonable time to review and provide input on this lengthy document before the comment period closed. At a minimum, given the gravity of the Use of Force Policy guidelines for students, families, and community members, members of the CAG should have had the opportunity to discuss this proposed policy during one of the regularly scheduled CAG meetings, but that opportunity was not provided. **We demand that the comment period be reopened and that the proposed policy be brought back to the CAG in a**

¹ 2020 - 2021 San Joaquin Cnty. Grand Jury, *Stockton Unified School District Board of Trustees: Dissension, Dismay, and Disarray, Case #0620*, SAN JOAQUIN SUPER. CT. (July 1, 2021), available at: https://www.sjcourts.org/divisions/civil-grand-jury/api/grabReport.php?_id=324.

special meeting set in January so that our broader community has an opportunity for input as well.

Our concerns with the current proposed Use of Force policy include the following:

1. The Use of Force Policy Must Comply with California Law Regarding Deadly Force

Pursuant to Assembly Bill (AB) 392, the authority to use deadly force is strictly limited in California.² As the Legislature declared in enacting this law, “the authority to use physical force...is a serious responsibility that shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life.” Cal. Pen. Code § 835a(a)(1). Accordingly, a peace officer in California may **only** use deadly force when necessary either “to defend against an imminent threat of death or serious bodily injury” or “to apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.” Cal. Pen. Code section 835a(c). This reflects one of the strongest uses of force standards in the nation.

Section 300.4 of the proposed Use of Force policy currently states that Department officers “may use deadly force to defend themselves or others from what they reasonably believe is an imminent threat of death or serious bodily injury to the officer or another person.”³ This language erroneously suggests that the standard is based on reasonableness of the officer’s perception of an “imminent threat,” but the Penal Code is clear: deadly force is only justified “when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: to defend against an **imminent** threat of death or serious bodily injury to the officer or to another person.” 835a(c)(1)(A) (emphasis added). The use of the phrase “reasonably believes” in the Penal Code does not state the deadly force standard is “reasonable;” it simply illustrates the standard for the officer’s perspective based on the totality of circumstances, which is from the perspective of a “reasonable” officer. The proper standard for using deadly force is still one of “necessity.” **The District’s Use of Force policy must comply with Assembly Bill 392 (AB 392) verbatim to ensure community safety. The value of human life is at stake and the policy language matters.** Policies are connected to how police departments are trained and ultimately held accountable. Policies must set clear expectations about the use of force, as well as training in how to reduce and mitigate use of force, improve public safety, and strengthen community relationships without sacrificing officer safety.

2. The Use of Force Policy Must Narrow and Clarify Situations in Which Force May be Used Against Students

² AB 392, 2019-2020 Reg. Sess. (Cal. 2019), available at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB392.

³ STOCKTON UNIFIED SCH. DIST. DEPT. OF PUB. SAFETY, *Use of Force Policy 300* at 7 (on file with the American Civil Liberties Union of Northern California (“ACLU-NC”)) (last accessed Dec. 14, 2021).

The proposed Use of Force policy, as currently drafted, allows officers to use force against students in instances where it is unwarranted and harmful to students. The policy must be strengthened to better safeguard students' health and wellbeing by revising it to state that a Department officer may use force against a student **only** in emergency situations, where the student's behavior poses an imminent danger of serious bodily injury or death. For example:

- Section 300.1 of the proposed policy states that the prohibition on use of force “does not apply to fighting between students or other instances where force may be reasonably necessary to prevent the risk of bodily injury or harm to students or others.”⁴ It also states that “Officers shall not use force in an effort to effectuate detention, apprehension, or overcome resistance in response to truancy and other low-level disciplinary conduct listed in the Stockton Unified School District Discipline and Intervention Matrix[.]”⁵
 - The language of this section should instead reflect that officers may only use force when there is **imminent** danger of **serious** bodily injury or death.
- Section 300.3 of the proposed policy should be revised to clarify that Department officers “shall **never** use force to punish or retaliate against a student or other person in response to verbal confrontations.” Additionally, this section should add language to clarify that Department officers shall never unholster their firearm on school property “unless an individual’s behavior presents a clear imminent danger of serious physical injury or death to a person on school property, such as an active shooter.”
- Section 300.3.3 fails to provide proper guidance on when “pain compliance techniques” should be used. These are important guidelines on when it is “appropriate” to inflict pain on children, and should reflect that careful thought.
 - This language of this section should reflect that Department officers “may not use pain compliance techniques on a student unless the student’s behavior presents an imminent danger of serious physical injury or death to a person on school property. Even where the student’s behavior presents an imminent danger of serious physical injury or death to a person on school property, law enforcement **officers must use the least restrictive force technique necessary to end the threat.**”

3. The Use of Force Policy Must Recognize that Youth Safety is at Stake

Building on our comments immediately above, the proposed Use of Force policy fails to adequately consider that police are dealing with students, who are mostly **youth under the age of eighteen (18)** rather than adults. The policy must be much clearer that youth safety is paramount.

⁴ *Id.* at 1.

⁵ *Ibid.*

- Section 300.1.1, Section 300.2.1, Section 300.3.1, Section 300.3.2, Section 300.3.3, Section 300.5.1, Section 300.6, and Section 300.7 refer to “subjects” and some sections do not refer to students or youth at all.⁶ This is dehumanizing to youth and fails to reflect the special care that must be given to our children who are placed in the care of staff at District schools. All references to “subjects” should be replaced with “students.”
 - The policy should also reflect throughout these sections the extra steps Department officers must take before using force on students.
- Section 300.3 states that “[o]fficers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance”⁷ and, “[i]n such circumstances, the use of any improvised device or method must nonetheless be objectively reasonable, utilized only to the degree consistent with law and this policy that reasonably appears necessary to accomplish a legitimate law enforcement purpose.”⁸ This fails to acknowledge that students are youth who are uniquely vulnerable to emotional and physical trauma by law enforcement officers. Language to that effect should be added to this section.
- Section 300.3 fails to adequately address how Department officers and District staff should protect the health and wellbeing of students if force is used on a student.
 - This section should also include language clarifying that “the health and safety of the student must be closely monitored at all times during and after the use of force. Law enforcement officers are required to render prompt medical assistance to students who have been injured as a result of police actions, including where there is a visible injury or the student complains of an injury; and where deadly force has been deployed.”
- Section 300.3.2, “Factors Used to Determine Reasonableness of Force” includes factors such as age and size, but does not give any guidance about when it is clearly wrong to use force, e.g., in an obvious example, on a 5-year-old child with disabilities.⁹ Clearer guidelines should be developed throughout this section to guide Department officers on how to evaluate these factors.
 - We demand, at a minimum, that the following language be added to this section: “The level of force used by a law enforcement officer must be

⁶ *Id.* at 2, 3, 4, 5, 8, 9, 10.

⁷ *Id.* at 3.

⁸ *Ibid.*

⁹ Dave Manoucheri, *5-Year-Old Handcuffed, Charged With Battery On Officer*, KCRA3 (Feb. 9, 2012), available at:

<https://www.kcra.com/article/5-year-old-handcuffed-charged-with-battery-on-officer/6395087>.

developmentally appropriate according to the student's age, size, weight, developmental abilities, known or perceived disabilities, potential pregnancy, and other factors. Proportional force often will not require officers to use the same type or amount of force as the student. The use of physical force on a student shall immediately cease when the danger of serious physical injury is lessened. Law enforcement use of force on a student shall be closely and critically reviewed by District or school administrators. In assessing whether use of force is proportional or necessary, District and school administrators must ask:

- Does the student's behavior pose a clear imminent risk of serious physical injury or death to a person on school property?
- How would the general public view the action taken by the law enforcement officer(s)?
- Would the public think it was appropriate to the entire situation and to the severity of the threat posed by the student?
- Is this how I would want a child I love and care for to be treated?
- Does this show respect for human rights and dignity and for the sanctity of every human life?
- Is it possible that the student has a physical, mental health, developmental, or intellectual disability that affects their ability to understand or comply with commands from peace officers, which weighs against the decision to use force?
- Has the law enforcement officer used any reasonable effective alternatives to use of force on the student?"

4. The Use of Force Policy Must Clarify, Detail and Require that Department Officers Use De-escalation Techniques

The proposed Use of Force policy fails to give adequate guidance on the need for, and use of, de-escalation techniques required when Department officers interact with students. It is crucial that this section has concrete guidance to ensure that use of force is **always** a last resort. The following language should be included at the top of the section titled "Use of Force": "Law enforcement officers may use physical force and mechanical restraints only when no reasonable effective alternative appears to exist, and only then to the degree that is reasonable to effect a lawful purpose."

- Section 300.3.5 states that de-escalation tactics should be used "as time and circumstances reasonably permit" and when "officer safety would not be

compromised” and should be considered to “increase officer safety.”¹⁰ This language incorrectly places primary importance on “officer safety” rather than “student safety.” Instead, the language should be revised to state that Department officers are **required** to use de-escalation techniques first.

- Section 300.3.1, Section 300.3.3, and Section 300.3.5 fail to provide concrete suggestions for de-escalation techniques that Department officers must consider and use.
 - We demand, at a minimum, the following language be added: “Reasonable effective alternatives to use of force on a student may include separating the student and simply waiting for the student to calm down, or using other de-escalation techniques such as:
 - Remaining calm;
 - Using positive body language;
 - Taking a step back;
 - Disengaging by leaving the encounter entirely to interact with student at a later time or date;
 - Recognizing the student’s feelings;
 - Using “I” statements;
 - Suggesting talking about the issue at a later time;
 - Telling the student what you are doing at all times, preferably before you do it;
 - Conducting yourself to avoid or minimize the possibility of accidentally touching private areas;
 - Always respect the student’s history and cultural background; and
 - Remembering that the child may have an invisible disability and that you have legal obligations to provide accommodations.”
- Section 300.3 states that: “While the ultimate objective of every law enforcement encounter is to avoid or minimize injury, nothing in this policy requires an officer to retreat or be exposed to possible physical injury before applying reasonable

¹⁰ STOCKTON UNIFIED SCH. DIST. DEPT. OF PUB. SAFETY, *supra* n.3 at 6.

force.”¹¹ Department officers **should** be required to retreat as a de-escalation tactic, and this text should be revised to reflect that.

5. Policies on Firearm Readiness and Use of Firearms Must be More Protective of Public Safety

The proposed Use of Force document guidelines on displaying and using firearms are not sufficiently protective of student, staff, and community safety and must be revised to place the highest value on human life.

- Section 300.4.2 states that Department officers should keep weapons “at the low-ready” if a “potential” for a threat exists.¹² This section fails to acknowledge the very real danger presented by loaded firearms in a school setting and sets a vague standard that apparently would allow any Department officer to keep firearms at “low-ready” whenever any “potential” threat exists. The language in this section should be strengthened to state that Department officers “shall not unholster a firearm on school property unless an individual’s behavior presents a clear imminent danger of serious physical injury or death to a person on school property, such as an active shooter.”
- Section 300.4.1 states that, when “feasible, officers should take reasonable steps to move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.”¹³ Given that a student was recently killed by a school police officer in Long Beach who shot her as she was in a vehicle driving away from him in a parking lot, where the student posed no apparent threat to the officer, the language in this section should be much more explicit to avoid a similar situation and should state that Department officers **must** take all available alternative actions before using deadly force with a gun on a student or anyone else.¹⁴

6. All Use of Force Incidents Must Be Completely Reported As Soon As Possible

Section 300.5 of the proposed Use of Force policy describes how and when Department officers’ use of force must be reported and to whom. This section must be strengthened to ensure that all

¹¹ *Id.* at 4.

¹² *Id.* at 7.

¹³ *Ibid.*

¹⁴ James Queally, ET AL., *Ex-Long Beach School Safety Officer Charged with Murder in Fatal Shooting of Mona Rodriguez*, L.A. TIMES (Oct. 24, 2021), available at: <https://www.latimes.com/california/story/2021-10-27/long-beach-school-safety-officer-charged-with-murder-in-fatal-shooting-of-mona-rodriguez>.

reports are made to the officer's supervisor and to the student's parent or guardian and within 24 hours, which is plenty of time given the severity of using physical force on students.

- Section 300.5.1 should clarify that “use of force on a minor shall be reported to the parents or guardians of the minor immediately **and no later than 24 hours after the use of force.**” This section should also state that **any** use of force by a Department officer should be reported to a supervisor.
- Similarly, Section 300.6 should clarify that “any injury to a minor as a result of police activity shall be reported to the parents or guardians of the minor immediately **and no later than 24 hours after the use of force.**”

B. Force Used Against Students at Edison High School and Stagg High School Was Excessive, and Use of Force Incidents Were Improperly Excluded from Required Reports to the CAG

1. Excessive Force Used Against a Student at Edison High School

We are aware of an incident that took place on August 10, 2021 at Edison High School where a Department officer brandished either a taser or pepper spray at students while attempting to break up a mutual fight on the school campus.¹⁵ During this same incident, according to video taken at the time, Assistant Principal Christina Fugazi appeared to use excessive force by back-handing one of the students in the face.¹⁶

First, it seems clear from this incident that District staff and Department officers have not yet been adequately trained on de-escalation tactics. The settlement agreement requires that District staff, including Department officers, receive regular training on de-escalation techniques.¹⁷ Yet, the behavior of the Department officer and Assistant Principal Fugazi demonstrate that this training has not been implemented, notwithstanding the requirements of the Settlement Agreement. Our broader concerns about the District's failure to complete trainings required by the Settlement Agreement are outlined further below.

Second, this incident was not included in the “School Requests for Assistance” log for the period between July 1, 2021 and September 30, 2021. There was a Department officer in close proximity to the incident at the time it occurred, who apparently brandished a taser or pepper spray at students, which should have been noted in the log. We are **very** concerned that the CAG is not

¹⁵ Cassie Dickman, *Christina Fugazi Acted Appropriately in Edison Student Fight, District Police Say*, RECORDNET.COM (Aug. 13, 2021), available at:

<https://www.recordnet.com/story/news/education/2021/08/13/christina-fugazi-cleared-of-any-wrongdoing-by-stockton-unified-police-in-edison-high-student-fight/8127202002/>.

¹⁶ *Id.*

¹⁷ Final J., *People of the State of Cal. v. Stockton Unified Sch. Dist.*, Case No. 24-2019-00248766 § III. D., § V. A. (2019), available at: <https://oag.ca.gov/system/files/attachments/press-docs/91079411.pdf>.

receiving these and similar reports of police interactions with students. The Settlement Agreement requires the Department to provide full quarterly reports on the Department's contacts with students and staff to the CAG.¹⁸ This includes **any** incidents involving Department officers, including where officers were already on the scene as opposed to being specifically "called" for service by school staff.

2. Excessive Force Used Against Students at Stagg High School

We are also aware of an incident that occurred on September 8, 2021, in which a Department police officer deployed pepper spray to disperse a group of students at Stagg High School. This was described in the September 8, 2021, Memorandum from Chief Barries to Superintendent Ramirez Re: "Stagg High School Incident[.]"¹⁹

We are alarmed that Department officers are using serious physical force against students, in the form of pepper spray, apparently without using other less violent de-escalation tactics first. Pepper spray is a caustic and harmful chemical that should be used **only** in the direst emergencies, where a person is in imminent danger of serious bodily injury or death, and **not to disperse students who are fighting**. This incident was also improperly excluded from the "School Requests for Assistance" log for the period between July 1, 2021 and September 30, 2021.

3. A Third Use of Force Incident Was Not Reported to the CAG.

The November 5, 2021 Memorandum from Chief Barries to Superintendent Ramirez Re: Student Contacts on District Sites - 3rd Quarter 2021, circulated to the CAG, states that "[t]here were three (3) instances involving use of force/restraint on students this quarter." However, the accompanying "School Requests for Assistance" log for the period between July 1, 2021 and September 30, 2021 identifies only two (2) incidents where force was used. We are concerned that this discrepancy reflects that the Department is improperly documenting and reporting use of force incidents to the CAG.

The District must practice transparency when reporting use of force as a matter of grave importance. It is imperative for the safety of our students that the District can be held accountable by the CAG. **Given our deep concerns that these incidents are not being properly recorded or reported, we demand that the detailed reports of use of force incidents described in Section 300.5 of the proposed Use of Force policy be circulated to the CAG on a quarterly basis. We also demand that the District ensure all Department officer interactions with students are reported to the CAG on a quarterly basis.**

¹⁸ *Ibid.*

¹⁹ Memorandum from Richard M. Barries, Interim Chief of Police to John Ramirez, Superintendent, *Stagg High School Incident* (Sept. 8, 2021).

II. District Policy and Procedures Improperly Involve Law Enforcement Officers in Perceived Student Mental Health Crises

In reviewing the “School Requests for Assistance” logs circulated to the CAG as required by the Settlement Agreement, we have noticed there are several recent incidents in which a school administrator or teacher has called the Department for assistance with a student undergoing a perceived mental health crisis. It appears that, in these instances, staff are not following the District “Protocol for Responding to Students Experiencing Mental Health Needs/Crisis” (“Student Mental Health Needs Protocol”). This Protocol states that mental health clinicians should be contacted in the first instance, before a request for assistance from police officers is made.²⁰

We are aware that that the District has a separate Suicide Risk Assessment Process.²¹ We believe that the Suicide Risk Assessment Policy may instruct staff to contact the Department in the first instance when a student is exhibiting suicidal intentions or thoughts, in conflict with the Student Mental Health Needs Protocol. **We request access to the Suicide Risk Assessment Process document to better understand whether the District is following its own policies, and to ensure that the District is following through on the intent of the Settlement Agreement to reduce police involvement during student mental health crises.** Jasmine Dellafosse, the SEEC representative on the CAG, requested the Suicide Risk Assessment Policy document as well as the District’s “Threat Inquiry Process” (also referenced in the Protocol for Responding to Students Experiencing Mental Health Needs/Crisis) during the November 4, 2021 CAG meeting. The CAG has not yet received these documents from the District.

Relevant incidents from the School Requests for Assistance logs are:

■ Second Quarter 2021:

- Case #: 21-05-20- 029102. Description (emphasis added): “**A teacher reported** she received a message via an application from a student stating, “I’m done, I’m truly done. I can’t deal with this anymore, I get blamed for everything. I hate being the problem honestly this is just the right way for me. Thanks for being a great teacher.” The teacher was concerned the student would harm herself as she had a history of mental health crisis. Officers notified Mental Health Crisis Response. Officers contacted the student at her residence. Student did not meet the mental health crisis criteria and was upset over an incident with her parents.”

■ Third Quarter 2021:

²⁰ STOCKTON UNIFIED SCH. DIST. BD. OF EDUC., *Protocol for Responding to Students Experiencing Mental Health Needs/Crisis* (on file with ACLU-NC) (last accessed Dec. 14, 2021).

²¹ “Whenever there is a concern about a student involving SUICIDE AND/OR THREATS OF VIOLENCE, please follow the Suicide Risk Assessment and/or Threat Inquiry process (TH-INQ).” Stockton Unified Sch. Dist. Bd. of Educ., *Protocol for Referrals Relating to Students Who Exhibit Mental Health Needs or Who are Experiencing a Mental Health Crisis* at 1 (on file with ACLU-NC) (last accessed Dec. 14, 2021).

- Case #: 21-0579. Description (emphasis added): “**The school Principal reported** a student made statement he heard voices and wanted to kill himself and others. The School Resource Officer responded and contacted the student who stated he was depressed since he was two [2] and wants to kill himself. The student stated he heard voices in his head that told him to kill on sight. The student was detained and transported to San Joaquin Behavioral Health for a mental health evaluation. Parents were notified.”
- Case #: 21-0665. Description (emphasis added): “**A Rio Calaveras Elementary Assistant Principal reported** that a student wished to harm himself. An officer responded and contacted the student who stated he was planning on giving away his belongings then killing himself with a kitchen knife. The student was placed on a mental health evaluation hold per 5150 W&I and transported to San Joaquin Behavioral Health Services. Parents were notified.”
- Case #: 21-0680. Description (emphasis added): “**The assistant principal reported** a student made statements they wanted to hurt themselves. The SRO responded and determined the student planned to kill himself on his birthday with a rope. The student was placed on a mental health evaluation hold per 5150 W&I and transported to San Joaquin County Behavioral Health Services. Parents were notified.”

III. The District’s Diversion Program Has Apparently Been Implemented Without Meaningful Input from the CAG.

The Settlement Agreement requires the District and Department to “formalize their stated goal to...develop a diversion program aimed at minimizing arrests for minor school-based offenses when a less punitive measure, such as diversion, restorative justice, or discipline, could be applied.”²² Per Section XII(A) of the Settlement Agreement, CAG must be given the opportunity to give meaningful input into the District’s proposed diversion program.²³ While some initial information about the diversion program was circulated to the CAG in a meeting in February, 2021²⁴ and via email on March 29, 2021,²⁵ this item was never placed on the CAG agenda for discussion and there has been no detailed discussion in the CAG regarding implementation, operation, or details of the program, including which direct service providers will be responsible

²² Final J., *supra* n.17.

²³ *Id.* (stating that one of the purposes of the CAG is to “provide comments to the Department and the District on...the diversion program established as an alternative to citations and bookings[.]”).

²⁴ STOCKTON UNIFIED SCH. DIST., *CAG Quarterly Meeting* (Feb. 18, 2021), available at: <https://www.stocktonusd.net/cms/lib/CA01902791/Centricity/Domain/159/CAG%20FEB%2018th.pdf> (noting that the Department was “[w]orking on the diversion efforts” and “April was the task date for the Diversion Policy”).

²⁵ Email from Alan Caddell, Public Safety Practices Consultant, to the CAG re: Task 15 Diversion Program documents for CAG review (Mar. 29, 2021, 10:26 a.m. PST) (on file with ACLU-NC).

for diversion. The District did not circulate a final draft of the diversion program policy to the CAG, and the last formal statement the Department made about the diversion program was in its February 2021 State of the Department report:

“The Department has begun the process of identifying relevant stakeholders and community resources to develop a formal diversion program for school-based offenses that avoid the use of the criminal justice system to address these types of behaviors. Draft documents are currently under review. These tasks remain in progress.”²⁶

However, we have noticed that the “School Requests for Assistance” log for the period between July 1, 2021 and September 30, 2021 refers to a diversion program that has apparently now been adopted by the District:

- Case #: 21-0516. Description (in relevant part): “It was later medically determined the Victim was not pregnant, thus the suspect was referred to diversion.”
- Case #: 21-0543. Description (in relevant part): “The juveniles sustained minor injuries and were referred to diversion.”
- Case #: 21-0564. Description (in relevant part): “Suspect student was referred to diversion.”
- Case #: 21-0581. Description (in relevant part): “Suspect student was referred to diversion.”

We are extremely concerned that the District has implemented a diversion program without the CAG having an opportunity to provide meaningful input, including on implementation, operation, or other details of the program. **This appears to be a significant violation of Section XIII(A) of the Settlement Agreement. We demand that all documents describing the adopted diversion program be sent to the CAG as soon as possible. We demand that this item be placed on the agenda of the next CAG meeting for the District to present the diversion program to the CAG and allow opportunity for meaningful discussion and input. We demand that the District cease to refer students to this diversion program until formal input from the CAG has taken place.**

IV. Mandated Training Not Yet Implemented

²⁶ Alan Cadell and Assocs., *Stockton Unified School District Department of Public Safety, State of the Department*, STOCKTON UNIFIED SCH. DIST. 7 (Feb. 2020), available at: <https://www.stocktonusd.net/cms/lib/CA01902791/Centricity/Domain/159/SOD%20Report%202.pdf>.

As noted above, we are deeply troubled that much of the training for District and Department staff which is mandated by the Settlement Agreement has not yet been implemented even though the deadlines in the Settlement Agreement have passed.

A. Training of Department Staff

The Settlement Agreement states that the Department must:

- “[D]evelop training regarding working with students with disabilities, including mental health disabilities.”²⁷ This should have been completed “[w]ithin 360 days of both entry of judgment and the appointment and approval of a monitor,” which would have been April 12, 2020.²⁸
- “[I]nitiate training of all officers and dispatchers in crisis intervention and de-escalation techniques to handle call relating to students in a mental health crisis or who are exhibiting behavior that may be indicators of mental health needs or disability.”²⁹ This should have been completed “[w]ithin 180 days of both entry of judgment and the appointment and approval of a monitor,” which would have been October 13, 2019.³⁰
- “[P]rovide required training on use of force and de-escalation strategies and techniques considering youth behavior that is developmentally appropriate and trauma-informed.”³¹
- “Department officers shall be required to be trained on the new policies set forth in this agreement[.]”³² This should have been completed “[w]ithin 180 days of both entry of judgment and the appointment and approval of a monitor,” which would have been October 13, 2019.³³

Our understanding is that these trainings have still not been fully completed by all officers. This understanding is based on the State of the Department Report from February 2021,³⁴ from conversations that have occurred in CAG meetings, and the fact the CAG has not received documentation of these trainings taking place. Most alarmingly, given the “use of force” incidents described above, based on information given to the CAG, it appears that not all Department officers have been trained in crisis intervention and de-escalation techniques and no dates have not been set to ensure completion of this training.

²⁷ Final J., *supra* n.17.

²⁸ *Id.*

²⁹ *Id.* at § III. D.

³⁰ *Id.*

³¹ *Id.* at § IV. C.

³² *Id.* at § VIII. A.

³³ *Id.*

³⁴ Alan Cadell and Assocs., *supra* n.26.

B. Training of Other District Staff

The Settlement Agreement states that the District must:

- “Annually, school personnel involved in responding to student misconduct, including Campus Security Monitors (CSMs) and Campus Safety Assistants (CSAs), shall receive training on school-wide programs of positive behavioral supports and other strategies, including de-escalation techniques, for preventing student behavior that leads to the use of physical restraints.”³⁵ This should have been implemented “[w]ithin 360 days of the entry of judgment and the approval of a monitor,” which would have been April 12, 2020.³⁶
- “CSMs, CSAs, and school staff shall be trained not to use force except under exigent circumstances, in compliance with federal and state law, and only after being trained.”³⁷ “The training provided shall include the U.S. Department of Education’s advisory in 2012 that physical restraint techniques shall be avoided unless the student’s behavior poses immediate danger of serious physical harm to the student or others, as well as federal and state law requirements[.]”³⁸ “Each school site shall determine which staff is trained and maintain a list of those who are trained.”³⁹
- “[R]equire annual mandatory training of school administrators (and any other staff who may participate in searches and seizures) and police officers on the Fourth Amendment in schools and the revised policy.”⁴⁰
- “[S]chool Administrators shall be required to be trained on the new policy relating to police assistance and student referrals to law enforcement.”⁴¹ This should have been completed “[w]ithin 180 days of both entry of judgment and the appointment and approval of a monitor,” which would have been October 13, 2019.⁴²
- “[S]chool administrators...shall also be required to be trained annual on the following issues: 1. Implicit bias; 2. Cultural competence; 3. Responses to trauma; 4. Restorative practices; 5. Constitutional and civil rights, including the Fourth Amendment of the U.S. Constitution, Title VI of the Civil Rights Act of 1964, and compliance with the ADA; 6. Conflict resolution and de-escalation techniques.”⁴³ This should have been completed

³⁵ Final J., *supra* n.17.

³⁶ *Id.*

³⁷ *Id.* at § V. B.

³⁸ *Id.* at § V. C.

³⁹ *Id.*

⁴⁰ *Id.* at § VII. A. 2.

⁴¹ *Id.* at § VIII. B.

⁴² *Id.*

⁴³ *Id.*

“[w]ithin 180 days of both entry of judgment and the appointment and approval of a monitor,” which would have been October 13, 2019.⁴⁴

Our understanding is that these trainings have not been completed for District staff and no dates have been set to complete these trainings. Most alarmingly, given that Edison High School Assistant Principal Fugazi used excessive force to backhand a student in the face, as described above and seen in a video taken of the incident, not all school staff have been trained in crisis intervention and de-escalation techniques despite the deadlines to complete those trainings, per the Settlement Agreement, have passed. The CAG has received no information about when these required trainings will be completed.

We demand that the District, including the Department, send an official update to the CAG on all trainings required by the Settlement Agreement, attendance logs clarifying which trainings have been completed, attendance logs clarifying how many members of staff/officers have completed each training, and a written plan for how and when incomplete trainings will be completed. These trainings are of the utmost importance to public and student safety and it is vital that the District send these updates to the CAG.

V. Memorandum of Understanding Between the Department and Stockton Police Department

The “School Requests for Assistance” log for the period between July 1, 2021 and September 30, 2021 that was circulated to the CAG refers to an “MOU” (Memorandum of Understanding) between the District Police Department and the Stockton Police Department:

- Case #: 21-0594. Description: “The school assistant principal reported a student was hit with a belt at home and was scared to go home. Officers responded and contacted the student who stated his father hit him in the back with a belt three [3] times because he did not do his chores at home. Student had visible bruises to his back and on his left thumb. Case was referred to Stockton Police Department for further investigation per agency MOU.”

The CAG has never received or discussed this MOU, and we were not aware of its existence. **We demand that this MOU, as well as any MOUs with other law enforcement and governmental agencies, be sent to the CAG as soon as possible**, so that the CAG can better understand the array of policing systems operating in District schools as it considers and provides input on all of the items described above.

VI. Conduct of the SUSD Board of Education

We are also generally alarmed and disturbed by the conduct of the Board of Education over the last year as it has voted to lay off dozens of District staff who are essential to meaningful implementation of the Settlement Agreement, and as the Board has conducted business in apparent violation of the Brown Act in some instances. The Grand Jury report, “Stockton Unified School

⁴⁴ *Id.*

District Board of Trustees: *Dissension, Dismay, and Disarray*, Case #0620” released on July 1, 2021, documents many of our concerns.⁴⁵ Below we draw attention to issues not addressed in that Grand Jury report.

A. Layoffs of District Staff

On March 9, 2021, the Board adopted Resolution No. 20-49 “Resolution to Issue Notices of Intent to Lay-Off Classified Positions for Lack of Work and/or Lack of Funds,”⁴⁶ formalizing the District’s intent to lay off dozens of staff, including the District Disability Coordinator.⁴⁷ This action appeared to violate the Settlement Agreement, which requires “the District shall hire a qualified Disability Coordinator.”⁴⁸ We know that the previous Disability Coordinator is no longer working for the District after the staff layoffs were implemented. **We demand that the CAG be sent written clarification on whether a Disability Coordinator is currently employed by the District.**

Also on March 9, the Board passed Resolution 20-50 “Reducing and Eliminating Particular Kinds of Certificated Services for the 2021-22 School Year,”⁴⁹ formalizing the District’s intent to lay off a large number of staff who are integral to supporting impacted student populations, including: the Education Equity Director, the Local Control Accountability Plan Director, the Special Education/SELPA Executive Director, two (2) Special Education Administrators, the Autism Specialist (Special Education), the Inclusion Specialist (Special Education), one (1) Elementary Counselor and six (6) High School Counselors.⁵⁰ Stockton students with the greatest needs for

⁴⁵ 2020 - 2021 San Joaquin Cnty. Grand Jury, *supra* n.1.

⁴⁶ March 9, 2021 Stockton Unified School District Board of Education Agenda Report, Agenda Item 9.4 (Mar 9, 2021), available at: <http://go.boarddocs.com/ca/susd/Board.nsf/goto?open&id=BYLVV28284B8>.

⁴⁷ Res. No. 20-49, *Resolution to Issue Notices of Intent to Lay-Off Classified Positions for Lack of Work and/or Lack of Funds*, STOCKTON UNIFIED SCH. DIST. BD. OF EDUC. (Mar. 9, 2021), available at:

[https://go.boarddocs.com/ca/susd/Board.nsf/files/BYPNYY61FD26/\\$file/Resolution%20No.%2020-49%20Resolution%20to%20Issue%20Notices%20of%20Intent%20to%20Lay-Off%20Classified%20Positions%20for%20Lack%20of%20Work%20and%20Funds%20-%20Updated.pdf](https://go.boarddocs.com/ca/susd/Board.nsf/files/BYPNYY61FD26/$file/Resolution%20No.%2020-49%20Resolution%20to%20Issue%20Notices%20of%20Intent%20to%20Lay-Off%20Classified%20Positions%20for%20Lack%20of%20Work%20and%20Funds%20-%20Updated.pdf).

⁴⁸ Final J., *supra* n.17 at § III. C.

⁴⁹ March 9, 2021 Stockton Unified School District Board of Education Agenda Report, Agenda Item 9.2, *supra* n.45.

⁵⁰ Res. No. 20-50, *Resolution to Eliminate and/or Reduce the Number of Certificated Employees Due to a Reduction in Particular Kinds of Services*, STOCKTON UNIFIED SCH. DIST. BD. OF EDUC. (Mar. 9, 2021), available at: [https://go.boarddocs.com/ca/susd/Board.nsf/files/BYTVU7826453/\\$file/Resolution%20No.%2020-50%20Reducing%20and%20Eliminating%20Particular%20Kinds%20of%20Certificated%20Services%20for%20the%202021-22%20School%20Year%20-%20Updated.pdf](https://go.boarddocs.com/ca/susd/Board.nsf/files/BYTVU7826453/$file/Resolution%20No.%2020-50%20Reducing%20and%20Eliminating%20Particular%20Kinds%20of%20Certificated%20Services%20for%20the%202021-22%20School%20Year%20-%20Updated.pdf).

school-based support will be (and currently are being) harmed by the Board's action to eliminate these essential positions.

We demand that the District provide a written plan for providing resources to students with special needs and how they plan to hire and contract services for qualified agencies within 30 days.

Potential Brown Act Violations

We are also profoundly concerned that the Board has excluded public opinion from Board meetings or failed to provide adequate information to the public about essential agenda items on multiple occasions, in apparent violation of the Brown Act and the California School Board Association's Professional Governance Standards.⁵¹

I. The Hiring Process for the Current Superintendent

The deficient hiring process for the current District Superintendent was addressed in the Grand Jury report.⁵² The Grand Jury found that the Board "did not follow the "Process for Recruitment and Selection of an Interim Superintendent" nor the "Process for Recruitment and Selection of a Permanent Superintendent" when it hired Superintendent John Ramirez, Jr. as a permanent Superintendent in May 2021. The Board's failure to follow its own protocols created confusion and seriously undermined public trust in the Board.⁵³ In addition, we believe there were multiple Brown Act violations relating to this hiring process.

First, on February 1, 2021, the Board voted in closed session to appoint Mr. Ramirez as Interim Superintendent. While the Brown Act allows legislative bodies to hold closed sessions on certain topics, such as to "consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee," all actions taken in closed session should be identified clearly on the agenda. Gov't Code §§ 54957, 54954.2. The description on the agenda must state the specific statutory exemption that allows the legislative body to discuss the item in closed session. Gov't Code § 54954.5. The California League of Cities advises that "[c]orrect labeling of the closed session on the agenda is critical."⁵⁴ It appears the Board did not meet these requirements.

⁵¹ CAL. SCH. BOARDS ASS'N, *Professional Governance Standards* (Jun. 2019), available at: https://www.csba.org/-/media/CSBA/Files/GovernanceResources/ProfessionalGovernanceStandards/CSBA_PGS_Brochure.ashx?la=en&rev=5fc78a303c5b45c4a6d89d519f991e56 (stating that a Board of Education should "operate openly," "[e]nsure opportunities for the diverse range of views in the community to inform board deliberations," and "[i]nvolve the community, parents, students and staff in developing a common vision for the district[.]").

⁵² 2020 - 2021 San Joaquin Cnty. Grand Jury, *supra* n.1.

⁵³ *Id.* at 13.

⁵⁴ LEAGUE OF CAL. CITIES, *Open and Public V, A Guide to the Ralph M. Brown Act 46* (Apr. 2016), available at: https://www.calcities.org/docs/default-source/city-attorneys/open-public-v-revised-2016.pdf?sfvrsn=995414c9_3.

The agenda for the meeting on February 1, 2021, included item “3.3 (A) Public Employee Appointment/Employment: Acting Interim Superintendent and Interim Superintendent.”⁵⁵ This agenda item is vague, does not state with specificity that the Board was considering hiring Mr. Ramirez as Interim Superintendent, and does not cite the statutory provision that permitted this item to be discussed in closed session, in apparent violation of Gov’t Code § 54954.5.

Second, on May 11, 2021, again during closed session, the Board voted to hire Mr. Ramirez as the Superintendent on a permanent basis. This agenda item was marked “2.7 (A) Public Employment: Superintendent.”⁵⁶ This agenda item description is insufficiently specific to satisfy the Board’s obligations under the Brown Act for the same reasons as described above: because it is vague and does not state with specificity that the Board was considering Mr. Ramirez as Permanent Superintendent. Additionally, the agenda item description does not cite the statutory provision permitting the item to be discussed in closed session as required by the Act. Gov’t Code §§ 54954.2, 54954.5.

II. Board Resolution to Support the Police Department

On August 25, 2020, the Board passed Item 8.8(A), a “Resolution No. 20-10 SUSD Board of Education to Express Support and Appreciation for the SUSD Police Department.”⁵⁷

Under the Brown Act, the School Board must post its agenda at least seventy-two (72) hours before a regular meeting “containing a brief general description of each item of business to be transacted or discussed at the meeting[.]” Gov’t Code §54954.2(a)(1). Further, “[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda,” meaning that the agenda of the meeting generally cannot change once it is posted. Gov’t Code § 54954.2. There are three exceptions: 1) when there is a majority vote from the members that an emergency situation exists, 2) when two-thirds (2/3) of members vote that “that there is a need to take immediate action and that the need for action came to the attention of the local agency subsequent to the agenda being posted,” or 3) when the item appeared on the agenda of a previous meeting that occurred no more than five (5) calendar days prior to the meeting, and was continued from that meeting. Gov’t Code § 54954.2.

Despite the clarity of these statutory provisions, it is our understanding that the resolution the Board voted on at the meeting was **different** from the resolution provided to the public in advance

⁵⁵ February 1, 2021 Stockton Unified School District Board of Education Agenda Report, Agenda Item 3.3 (Feb. 1, 2021), available at: <http://go.boarddocs.com/ca/susd/Board.nsf/goto?open&id=BXQ2K7028465>.

⁵⁶ May 11, 2021 Stockton Unified School District Board of Education Agenda Report, Agenda Item 2.7 (May 11, 2021), available at: <http://go.boarddocs.com/ca/susd/Board.nsf/goto?open&id=C2PUQH7A567A>.

⁵⁷ August 25, 2020 Stockton Unified School District Board of Education Agenda Report, Agenda Item 8.8 (Aug. 25, 2021), available at: <http://go.boarddocs.com/ca/susd/Board.nsf/goto?open&id=BSLRXN7024B5>.

of the meeting.⁵⁸ Less than twenty-four (24) hours before the meeting, Resolution 8.8 was edited to add a provision that states: “BE IT FURTHER RESOLVED that the SUSD Board of Education is opposed to any de-funding or reorganization of the SUSD Police Department.”⁵⁹ This revision of Resolution 20-10 represented a substantial change to the resolution because the posted agenda only identified that Resolution 20-10 was to “express support and appreciation for the SUSD Police Department” and not to oppose defunding the Department.⁶⁰ Substantially altering Resolution 20-10 in this manner, less than twenty-four (24) hours before the meeting, violates both the Brown Act’s requirement to post agenda items seventy-two (72) hours before a Board meeting and its prohibition on Board discussion of items not on the posted agenda. Gov’t Code § 54954.2(a)(1). None of the aforementioned exceptions to this rule applied here.

The agenda description for Item 8.8(A) was also legally inadequate, because it failed to inform the public clearly about the item for discussion, as required by the Brown Act’s provision to post “a brief general description of each item of business to be transacted or discussed at the meeting” to the agenda seventy-two (72) hours before a regular meeting. Gov’t Code §54954.2(a)(1). The agenda item states that “[i]t is recommended that the Board of Education adopt Resolution No. 20-10 to express support and appreciation for the SUSD Police Department.”⁶¹ This sentence is insufficient to inform the public that there would be Board discussion to “oppose...de-funding or reorganization of the SUSD Police Department,”⁶² which was improperly added to Resolution 20-10. Expressing support and appreciation for the Department is substantially different than defunding and reorganizing the Department. This violated the Brown Act’s requirement to post a description of each item for discussion under Gov’t Code § 54954.2(a)(1).

Had the Board included language about opposing de-funding of the Department on the agenda, a larger number of community members—including those in our organizations—would have attended the meeting to have their voices heard on the issue. These events occurred at a time when many people in Stockton were calling for a community policing alternatives and investment in student wellness, and it continues to be a matter of utmost public concern. The Board’s unlawful action stifled the participation of community members in the Board’s discussion of this item, in

⁵⁸ May 11, 2021 Stockton Unified School District Board of Education Agenda Report, Agenda Item 6.1, *supra* n.56 (stating that “8.8 Resolution has been Updated”).

⁵⁹ STOCKTON UNIFIED SCH. DIST. BD. OF EDUC., *Adoption of Resolution No. 20-10 SUSD Board of Education to Express Support and Appreciation for the SUSD Police Department* (Aug. 25, 2020), available at:

[https://go.boarddocs.com/ca/susd/Board.nsf/files/BSTM3R5932A1/\\$file/08.08%20REVISED-%20Resolution%20No.%2020-10%20SUSD%20Board%20of%20Education%20to%20Express%20Support%20and%20Appreciation%20for%20the%20SUSD%20Police%20Department.pdf](https://go.boarddocs.com/ca/susd/Board.nsf/files/BSTM3R5932A1/$file/08.08%20REVISED-%20Resolution%20No.%2020-10%20SUSD%20Board%20of%20Education%20to%20Express%20Support%20and%20Appreciation%20for%20the%20SUSD%20Police%20Department.pdf).

⁶⁰ August 25, 2020 Stockton Unified School District Board of Education Agenda Report, Agenda Item 8.8, *supra* n.57.

⁶¹ *Id.*

⁶² *Adoption of Resolution No. 20-10 SUSD Board of Education to Express Support and Appreciation for the SUSD Police Department*, *supra* n.59.

direct opposition to the intent and spirit of the Brown Act to support transparency and accountability of the School Board to its constituents.

The Brown Act was passed with the intention for meetings of legislative bodies to be open and public, not obscured and secretive. Actions taken by legislative bodies are the business of the public. Legislative bodies have a duty to allow for and encourage public participation; “in delegating authority, [Californians] do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” Gov’t Code § 54950. The Board has a pattern of actions that do not conform to this spirit of openness and inclusion which is, at best, insufficient to meet their obligations and, at worst, intentionally misleading to the public.

To address these urgent concerns, we demand that Board trustees complete further training on the Brown Act, facilitated by an external body such as the California School Board Association.⁶³

Requested Action

We look forward to working with you, and the District, to address the concerns we have described above. Below we list the actions we demand the District take to begin to resolve those concerns.

I. Policy and Practices Related to Use of Force on Students

- A. The District should make the demanded changes to the proposed Use of Force policy that we have detailed in this letter.
- B. We demand that the comment period for the proposed Use of Force policy be reopened and that the proposed policy be brought back to the CAG in a special meeting set in January so that our broader community has an opportunity for input.
- C. We demand that the detailed reports of use of force incidents described in Section 300.5 of the proposed Use of Force policy be circulated to the CAG on a quarterly basis. We also demand that the District ensure all Department officer interactions with students are reported to the CAG on a quarterly basis.

II. District Response to Students in Perceived Mental Health Crisis

- A. We request access to the Suicide Risk Assessment Process and Threat Inquiry Process documents to better understand whether the District is following its own policies, and to ensure that the District is following through on the intent of the Settlement Agreement to reduce police involvement during student mental health crises.

⁶³ This suggestion was also made by the Grand Jury in their report. 2020 - 2021 San Joaquin Cnty. Grand Jury, *supra* n.1.

- B. The District should ensure that the Protocol for Responding to Students Experiencing Mental Health Needs/Crisis is being followed during mental health crises.

III. District Lack of Transparency Regarding Its Diversion Program

- A. We demand that all documents describing the adopted diversion program be sent to the CAG as soon as possible. We also demand that this item be placed on the agenda of the next CAG meeting for the District to present the diversion program to the CAG and allow opportunity for meaningful discussion and input.
- B. We demand that the District cease to refer students to the diversion program until formal input from the CAG has taken place.

IV. Training Required by the Settlement Agreement Not Yet Implemented

- A. We demand that the District, including the Department, send an official update to the CAG on all trainings required by the Settlement Agreement, attendance logs clarifying which trainings have been completed, attendance logs clarifying how many members of staff/officers have completed each training, and a written plan for how and when incomplete trainings will be completed.

V. MOU Between the Department and Stockton Police Department

- A. We demand that this MOU, as well as any MOUs with other law enforcement and governmental agencies, be sent to the CAG as soon as possible.

VI. Concerns About Conduct of the District Board of Education

- A. We demand that the CAG be sent written clarification on whether a Disability Coordinator is currently employed by the District.
- B. We demand that the District within 30 days provide a written plan for providing resources to students with special needs and how they plan to hire and contract services for qualified agencies.
- C. We demand that Board trustees complete further training on the Brown Act, facilitated by an external body such as the California School Board Association.

Please do not hesitate to contact SEEC, on behalf of the undersigned, at seec@aclunc.org if you have questions or to discuss our concerns and requested actions.

Sincerely,

Megan Armstrong, Racial & Economic Justice Program Legal Fellow
Linnea Nelson, Senior Staff Attorney, Racial & Economic Justice Program
American Civil Liberties Union of Northern California

American Civil Liberties Union of Northern California

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