



May 11, 2020

Keisha Thomas, Board President
Fresno Unified School District
2309 Tulare St.
Fresno, CA 93721
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Re: Response to Remote Learning Barriers and Resource Disparities in Education

Dear Board President Thomas:

As schools across California close in response to the COVID-19 outbreak, we urge you to minimize the impact on the Fresno community and proactively support your most vulnerable and under resourced students. As you know, while schools are closed, Fresno parents and guardians will need to make unexpected arrangements for childcare, students will lose instructional time and other resources, and families will lose access to other essential services their schools traditionally provide. It is essential that the Fresno Unified School District (the “District”) continue to maintain and improve these critical services – as well as remove known barriers – while addressing the public health concerns posed by the outbreak. Specifically, the District must provide inclusive access to remote instruction, create a plan to help students recover lost learning time, provide remote health and mental health services, provide alternative childcare, and maintain services for students with disabilities and students experiencing homelessness, English learners, amongst others. And in providing these services, the District must focus on holistically supporting its most vulnerable students, creating long-term planning goals for students of color, students with disabilities, foster youth, unhoused youth, LGBTQIA students, and other vulnerable student groups.

Further, the District must eliminate any barriers by, for example, issuing a moratorium on suspensions and expulsions, which have disproportionately impacted students of color. As student and parent groups have been consistently requesting, the District must also provide culturally responsive and trauma-informed trainings for staff on topics such as mental health and wellness to ensure equity for students of color and other student populations. Finally, the District must improve its community engagement, making a more concerted effort to allow students and families to provide input into the District’s decision-making. We hope that we can work together to ensure that all students and families in Fresno remain safe and are well supported during these difficult times.

Inclusive remote instruction and restoring learning time

Fresno Unified must do more to ensure that all students can meaningfully access distance learning. As the District is aware, students in rural communities and many Black and Brown

students across the state and country lack access to internet and technology at home.¹ The District must do a better job to assist families to access the internet and to provide IT support when they have issues. The District's current strategy is to allocate tablets for K-3 students and laptops for students in grades 4-12. However, as confirmed by parents at the April 1, 2020 Board meeting, many students across all grade levels still lack access to these devices, and the District has still failed to provide many families with clear instructions about how to receive them. Additionally, hundreds of families have reported that versions of the instructions are not up to date and families are not able to access programs the District offers, like academic support. The District is purportedly providing devices on a rolling basis, but parents and students are concerned about the timeliness of the District's roll out. Indeed, the District recently acknowledged equity issues in remote learning after parents stated that some students have not been contacted by teachers in nearly six weeks.²

The families that do not yet have a device and internet access have been forced to make other arrangements to access the curriculum. The current alternative the District has relied upon is to provide students with physical instructional packets. First, we have received reports that the District frequently runs out of physical packets, meaning some students are not receiving any instruction at all. Second, parents question the effectiveness of the packets, stating that their children cannot effectively learn with them. Finally, parents are concerned that there is not anyone monitoring the students' learning nor supporting where students need assistance.

Instead, parents and students seek instruction through technology that (1) allows students to work with teachers remotely such as online classrooms and/or (2) ensures teachers and District staff work through ways to provide particularized instruction that adapts to students' abilities and an inclusive academic plan. Schools cannot allow students who lack resources to be further disadvantaged and fall behind. The District has a responsibility to ensure that students can access any remote learning tools that it makes available and to provide supplemental services to English learners and students with disabilities in particular.

Given the need for the District to adapt and develop new curriculum for distance education, now is the time to ensure that all content is culturally-responsive and that District staff are trained in culturally-responsive practices. As community members have consistently explained, given the demographics of the students and families the District serves, culturally-responsive content is necessary for the District to meet its obligations under the California Education Code to create a safe and welcoming environment for all students.

Finally, even if schools provide remote learning options, students will necessarily lose valuable instruction time, putting many at risk to not graduate or not satisfy other requirements. Indeed, as discussed, we have received numerous reports that some teachers have not yet even contacted students. As such, schools must develop a plan to allow students to make up lost time and satisfy their curricular requirements, for example by providing credit recovery options, by developing a robust summer school program, or by extending the school year.

¹ Disconnected: Internet stops once school ends for many rural California students, EdSource, Dec. 2019, *available at* <https://edsources.org/2019/disconnected-internet-stops-once-school-ends-for-many-rural-california-students/620825>; The Perilous Future of Internet Access for Students of Color, New America, July 2018, *available at* <https://www.newamerica.org/weekly/perilous-future-internet-access-students-color/>.

² Old frustrations linger for some parents, as Fresno schools pass out student computers, Fresno Bee, April 19, 2020, *available at* <https://www.fresnobee.com/news/local/education-lab/article241855406.html>.

Continuing health and mental health services

School counselors, psychologists, social workers, and nurses provide essential health and mental health services. For many students, school-based resources represent the only access they have to these essential services. Students, particularly students of color, have been asking for holistic wellness options and additional mental health and counselor services long before the pandemic, and such resources are now more important than ever. Accordingly, the District should expand its current plan to make these resources available to all of its students, particularly in light of the current mental health crisis and the need for medical care for students who exhibit flu-like symptoms but do not have access to other healthcare. For example, the District should ensure that mental health staff reach out directly to students and families and provide a variety of ways students can request individualized assistance. It should also conduct online and/or in-person needs assessments to identify students and families that need additional services. In addition, the District should implement holistic wellness approaches moving forward and broadly promote its services through traditional media, social media, email, and robocalls.

Further, the District must provide remote academic counseling for all students, and in particular juniors and seniors. The California Partnership for the Future of Learning conducted a needs assessment based on feedback from more than 20 grassroots education and racial justice organizations who heard from over 600 students and families from low-income communities of color in more than 20 school districts. The assessment revealed that stakeholders reported that the anxiety and uncertainty seniors and juniors are experiencing during this time is consistently one of the highest needs. As such, the District must proactively reach out to every student, particularly those who are approaching graduation, to provide academic and other supports to mitigate anxiety and keep them on track.

For the reasons outlined above, online and/or in-person counseling and mental health resources, services, and needs assessments are critical during this time, and the District must track information about when it is providing such services to identify gaps and ensure that all students are receiving equitable access. Moreover, it is important that the District's LCAP reflects the need for additional services that are trauma-informed and include clinical and non-clinical modalities for the upcoming school year.

Finally, as we make plans to resume in-person classes, the District should prioritize counseling, mental health supports, and holistic wellness for returning students. We cannot move forward with the idea of going back to "normal" will be straightforward, when youth have experienced a tremendous amount of anxiety and trauma that must be addressed. The District must address students' ongoing mental health needs, so that they can recover and participate fully in school and life.

LCAP engagement and community input for the District's budget

Based on parent comments that have previously been raised with the Board on April 1, 2020 by Familias Empoderadas, it is clear that the District has failed to conduct meaningful engagement in its LCAP process, as required by statute.³ While the school closures have impacted the LCAP

³ Cal. Educ. Code §§ 52062-52063.

process this year, the CDE has made clear that districts still must develop LCAPs, albeit on a longer timeline. We expect the District to improve its stakeholder engagement processes significantly given it now has more time to solicit input.

Authentic community input and transparency are cornerstones of LCFF, and these principles are even more important given the numerous critical budget decisions that are being made about the future of education for Fresno Unified students during and following the closures. Thus far, the District's attempts have been inadequate. If parents, students, and community members have not even reviewed a meaningful outline for LCAP review in April regarding a budget that will likely be reviewed in a few months, the District is woefully falling short of its obligation to obtain the "significant input from their communities" required⁴ by failing to provide sufficient time for public comment, to notify stakeholders of opportunities for input, and to meaningfully take contributions of the community into account in reviewing and updating the LCAP.

Additionally, we have heard that the District is providing its school board packets only in English, but now only one additional language has been added – Spanish. However, the District's composition of students is very diverse, with Asian, Filipino, Black, and Pacific Islander students comprising over 10 percent of the student population. The District's failure to provide information in multiple languages will continue to create barriers to meaningful input and participation from students, parents, and community members. Moreover, the District's April 1, 2020 Board minutes were translated by Google and not a trained translator who would have ensured that the translation is correct. Given that 13,354 Fresno Unified students are English Learner students⁵ and may have families that includes non-Native English speakers, the failure to translate materials properly excludes many community members from District decision-making.

Further, the District recently considered using valuable LCFF funding for a shot-spotter program that will serve little purpose other than diverting essential education funds towards law enforcement and policing activities during a pandemic. As we have outlined for the District in the past, the District has already demonstrated that it overly polices and criminalizes students of color. Additionally, the District was not able to justify its need for shot-spotter funds to CDE when we filed our UCP Complaint and Appeal against the District regarding its shot-spotter program. It is unfathomable that the District continues to try to find ways to fund this program despite the lack of need for it and the community and student opposition to more policing. We appreciate the board members who also believe that this program has no place in discussion during the midst of this pandemic and even after in-person instruction resumes. Indeed, policing students has never helped students succeed, particularly for students of color, and using funds that should be used for trauma-informed care and holistic and preventative wellness does all students a disservice.

⁴ CDE Guidance Letter on Use of S&C Funds; *see also* Letter from Tom Torlakson, State Superintendent of Instruction, to District Superintendents (Oct. 2, 2017) (stating that "[r]ather than top-down, transactional exchanges between districts and support providers, the new system expects support providers to work collaboratively with districts to identify key challenges and opportunities. And rather than packaged interventions, the new system favors teams of local educators engaging with their communities to tailor approaches to specific needs ... To create change that is supported at the grassroots level, stakeholders must be authentically engaged, and transparency must be a top priority. Ensuring that each student has the support they need to succeed is a collective responsibility we all share. As such, we urge you to redouble your efforts to increase awareness and use of the Dashboard, the LCAP, and any improvement plans within your district this fall.").

⁵ English Learner Students by Language by Grade, California Department of Education, 2018-2019, <https://dq.cde.ca.gov/dataquest/SpringData/StudentsByLanguage.aspx?Level=District&TheYear=2018-19&SubGroup=All&ShortYear=1819&GenderGroup=B&RecordType=EL&CDSCode=10621660000000>.

Ultimately, the District should be leading with parent, student, and community comments and input first. We hope that the District can rectify our concerns immediately and provide next steps publicly and in multiple forums so that the community can provide input into resource allocations for Fresno Unified students. Such outreach should, at a minimum, include online surveys, online townhalls, written feedback, surveys at school sites that are handing out meals, and other ways to solicit community input and engagement. Finally, the District must translate all its outreach, including collaborating with non-profit organizations to perform the services.

Providing alternative childcare

Any school closure will result in significant disruptions for working families. Parents and guardians who are already facing uncertainty in their jobs will need to find childcare alternatives. And many low-income parents and guardians who are not able to take time off, cannot work remotely, and do not have alternative caretakers will feel the impact most acutely. The District's plan should strive to provide childcare options for their families who need it most, including keeping certain schools and parent centers open and working with community-based organizations to provide alternative childcare. Schools should also publish information broadly and make staff available to answer parent questions through multiple channels and in multiple languages.

Maintaining services for students with disabilities

The District must take particular precautions to support students with disabilities. Such students must receive equal access to any remote learning alternatives schools provide to all students. For example, students with vision disabilities, learning disabilities, and limitations in upper body mobility may not be able to access online classes if the format is not accessible to screen readers and other assistive technology. Schools must ensure that online classes meet Web Content Accessibility Guidelines (WCAG) 2.0 Levels AA standards and provide the appropriate accommodations and assistive software. Further, federal law, including the Individuals with Disabilities Education Act (IDEA), requires schools to provide students with disabilities with specialized services in accordance with their Individualized Education Plans (IEPs).

A remote convening of the student's IEP or 504 team may be necessary to ensure that the student receives the necessary remote accommodations to receive a Free and Appropriate Public Education (FAPE). Such specialized services should continue even in the event of a school closure and, if any services are lost, the student's IEP/504 team must make an individualized determination to assess the compensatory services necessary to make up for the lost services when school resumes. Thus, the District should affirm that students with 1:1 behavior paraprofessionals on their IEPs/504 Plans must have access to remote paraprofessional support during remote instruction and that paraprofessionals should receive training, that is created with the help of parents, community members, and trained consultants, through school districts. For more information about how to ensure equal access to education for students with disabilities, see: <https://www.ncsecs.org/news/covid-19-and-students-with-disabilities/>.

Delivering school nutrition

Across the District, thousands of students are food-insecure and rely on school meals as an essential source of nutrition. We understand that Fresno Unified is continuing to provide meals to students and distributing them to families directly or allowing them to pick meals up throughout the duration of any closure. However, it is important that the District ensure that there are enough locations to meet transportation needs that parents and students may have. It is our understanding that the District has collapsed locations, therefore making the travel distance for many of these services a challenge for families. Now is not the time to impose additional unforeseen costs on students and families.

As of April 16, Fresno is providing school meals at only 22 locations, leaving gaps in South Fresno, specifically in the Roosevelt and Sunnyside areas. Further, the locations do not consistently provide food every day. It is crucial to maintain consistent food access sites during the closures because families need consistency and reliability. The District must do a better job sharing these updates beyond only providing links on Twitter, which is not accessible to all families. Finally, the District should identify additional non-profits/food pantries within the District that are willing to distribute food and remain open on behalf of the District.

Supporting students experiencing homelessness

Students experiencing homelessness, many of whom are unaccompanied minors, are likely to be impacted most severely by the issues discussed above. They will disproportionately lack access to remote learning alternatives, to alternative meals, and reliable adult supervision during school closures. The District should make sure to provide targeted resources to those students to make sure they are safe and supported.

Moreover, the McKinney-Vento Act and guidance from the Department of Education require that homeless⁶ children and youth have access to the same public education as other children and youth, including the necessary educational and related services. The McKinney-Vento Act remains in full force and effect, even when schools are closed.⁷ At this point, we have not heard

⁶The McKinney-Vento Act defines homeless at 42 USC § 11434a(2). The term "homeless children and youths"—

(A) means individuals who lack a fixed, regular, and adequate nighttime residence (within the meaning of section 11302(a)(1) of this title); and

(B) includes—

- (i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; or are abandoned in hospitals;
- (ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings (within the meaning of section 11302(a)(2)(C) ¹ of this title);
- (iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- (iv) migratory children (as such term is defined in section 6399 of title 20) who qualify as homeless for the purposes of this part because the children are living in circumstances described in clauses (i) through (iii).

⁷See for example the United States Interagency Council on Homelessness, Supporting Children and Youth Experiencing Homelessness during the Covid-19 Outbreak: Questions to Consider, March 16, 2020,

of any specific measures that Fresno Unified is doing to ensure that unhoused youth are receiving equitable access to resources. This means ensuring that Fresno Unified ensures that students qualify for McKinney-Vento have the means to participate, including having access to the Internet, the necessary device(s), and nutrition.⁸

Ensuring student privacy

Finally, the District must continue respecting student privacy when handling student records, including medical records. Under the Family Educational Rights and Privacy Act (FERPA), schools must receive prior written consent from parents, guardians, or students over 18 before they disclose personally identifiable student information.

Issuing a moratorium on student discipline

As the District is well-aware, the District disproportionately disciplines students of color. In the midst of a pandemic, the District should refrain from enforcing discipline measures that will continue to adversely impact historically and currently marginalized students. We ask the District to immediately reinstate all students to their home classes, regardless of suspension or discipline status, so that they can benefit from the same remote instruction as their peers and remote access to their regular teachers. Further stigmatization and isolation of suspended students, the vast majority of whom have disabilities, are young people of color, have adverse childhood experiences (“ACEs”), or are otherwise marginalized, serves no meaningful purpose. The District must permanently withdraw suspensions pending at the time remote instruction began and create a moratorium on new suspensions until in-person instruction resumes. As discussed, now is the time for the District to commit to providing holistic wellness, and it must expand behavior supports and interventions in lieu of suspensions and discipline throughout this remote learning period and beyond.

Transparency and Data Collection

To better understand the District’s progress in meeting these goals, we hereby request the following documents pursuant to the California Public Records Act:

1. The number of meals the District has distributed since the closure disaggregated by all food distribution locations and times of day.
2. Please provide documents related to what it means to access an electronic device based on school, grade, and classroom, including, but not limited to, whether a student has to return any device.

<https://www.usich.gov/tools-for-action/supporting-children-and-youth-experiencing-homelessness-during-the-covid-19-outbreak-questions-to-consider/>; SchoolHouse Connection, Q&A and Discussion Covid-19 and Homeless Students, March 19, 2020, <https://docs.google.com/document/d/1TlteU6XatUxuX-kUlhk2BLDystQ3IlwrvBrj-qkgmS0/edit>.

⁸ SchoolHouse Connection, Q&A and Discussion Covid-19 and Homeless Students, March 19, 2020, pgs. 1-3, <https://docs.google.com/document/d/1TlteU6XatUxuX-kUlhk2BLDystQ3IlwrvBrj-qkgmS0/edit>.

3. The number of laptops or other electronic devices the District has provided to date, in accordance with the 2017-2020 LCAP and what type of funds have been used for their purchase and replacements and the number of students who still lack access to a device.⁹
4. Documents related to the District's plan or process to support families that lack Internet.
5. Any surveys or questionnaires the District issued to assess student and family need during the closures and the results of those surveys.
6. Documents related to the District's plan or process to support families with obsolete devices or who do not support programs with resources that the District offers and any roll-out plan for new devices.
7. Any surveys or questionnaires, as well as results, that the District issues to assess the needs of family and English learners, foster students, students with disabilities, and homeless and unhoused students who need additional support, including tutors and mental health personnel available exclusively to the students.
8. Any surveys or questionnaires that the District issued to assess the needs of students and families during closings and the results of those surveys.
9. Documents related to the District's efforts to provide disclosure and clean instructions to families during closings, including any help lines.
10. Documents related to any protection that the District has put in place to protect the privacy and safety of students.
11. Documents related to any District effort to provide one-on-one tutoring or other services remotely.
 - a. Disaggregated by number of people, timing, and type of tutoring, including, but not limited to, tutoring in languages other than English, please provide all documents related to one-on-one tutoring.
12. Documents related to the budget for the 2019-2020 and 2020-2021 school years.

If portions of any documents are exempt from disclosure, please provide the non-exempt portions.¹⁰ Also, please provide complete documents, even if some of them do not appear to be responsive to this request.

When possible, please provide records in electronic format, to avoid copying costs.¹¹ However, if that is impossible, we would still like to receive all documents.

If you have any questions regarding the scope of this request or anticipate these costs will exceed \$50, or that the time needed to copy the records will delay their release, please contact us so that we can arrange to inspect the documents or that we can decide which documents we would like copied.¹² Otherwise, please send them as soon as possible and on a rolling basis, if necessary.

Recommendations

In sum, we collectively submit the following requests:

⁹ Please provide documents that explain any differences in devices by school, grade, and classrooms and what those differences are.

¹⁰ Gov't Code 6253(a).

¹¹ Gov't Code 6253.9.

¹² Gov't Code 6253.1.

1. Immediately roll out tablets and laptops ready to be used to all students who need them and communicate clear instructions about how families can receive them in multiple languages.
2. Provide individualized and specialized distance instruction to English learners and students with disabilities.
3. Develop a plan to allow students to make up lost instructional time and satisfy their curricular requirements.
4. Promote transparency by publicly sharing all plans for distance learning in multiple languages.
5. Continue making school counselors, psychologists, social workers, and nurses available, and that students can provide feedback regarding accessibility, to students throughout the closures.
6. Widely promote services available through traditional media, social media, email, and automated phone calls to conduct online and/or in-person needs assessments to identify students and families in greatest need so they can get additional services.
7. Track information about dates when providing such services to identify gaps and ensure that all students are receiving equitable access. Moreover, it is important that the District's LCAP reflects the need for preventative additional services that are trauma-informed and include clinical and non-clinical modalities for the upcoming school year.
8. Provide LCAP stakeholder engagement that, at a minimum, includes online surveys, online townhalls, written feedback, surveys at school sites that are handing out meals, and other ways to solicit community input and engagement in multiple languages.
9. Provide childcare options for their families who need it most, including keeping certain schools and parent centers open and working with community-based organizations to provide alternative childcare.
10. Provide students with disabilities all services in accordance with their IEPs and 504 plans and provide compensatory services where needed.
11. Expand number of locations providing school meals and ensure that they provide meals consistently every day and partner with non-profits and food pantries to provide additional meals.
12. Create a plan to ensure that students experiencing homelessness have access to distance education, nutrition, and all other essential services. And ensure effective follow-up.
13. Issue a moratorium on suspensions and expulsions throughout the duration of the closures. Ensure students receive what they need to reintegrate.
14. Do not release any student records to any health or other agencies without permission.

While we understand that the District has been attempting to balance community needs with public health concerns, we reiterate that you must prioritize supporting their most high-need students and families. We are urging you to ensure that all of your District plans are centered around equity, community, and student needs. We look forward to hearing the District's next steps and would welcome a conversation, please contact Abre' Conner at aconner@aclunc.org to set up a call or meeting with community members.

Sincerely,



Abre' Conner, Staff Attorney, ACLU Foundation of Northern California

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