



March 29, 2021

Sent via electronic mail

Superintendent Cheryl Hunt
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Dear Superintendent Hunt,

All children have a right to be educated in a safe and nurturing learning environment. However, we have heard from parents in Lemoore Union Elementary School District (the “District”) that, since November 2020, the District has failed, and continues to fail, to provide all students with a distance learning option during the COVID-19 pandemic, thereby preventing students from accessing their fundamental right to education. Forcing students to attend school in-person when they fear for their and their families’ health and safety undermines basic tenets of educational and public health equity. The District’s failure to make distance learning available to all students who need that option is particularly troubling given that most of the students the District serves are Latinx, Black, and/or low-income - precisely the communities hardest hit by the pandemic. As such, we urge the District to change course immediately and offer both in-person and distance instruction of commensurate quality to all of its students.

I. The District has failed to provide students with sufficient access to distance learning and is jeopardizing students’ and families’ health by forcing many students to return to in-person instruction.

Lemoore Union Elementary School District closed its schools in March 2020 in response to the pandemic and transitioned to remote learning for all students. In July 2020, the District circulated a survey asking parents to request remote learning once schools were allowed to reopen for in-person instruction.¹ Two months later, in September 2020, the District requested a waiver from

¹See LEMOORE UNION ELEMENTARY DIST., JULY 20, 2020 DISTRICT COMMUNICATION (July 20, 2020), available at <https://www.luesd.k12.ca.us/article/273448?org=luesd>.

the State that would allow schools to reopen for in-person instruction.² We understand families were last notified of an option to assign their students to distance learning on September 23, 2020, towards the end of a lengthy general email explaining the District's recent developments in its plans to reopen schools.³ The State granted the District's request for a waiver to allow schools to re-open on October 19, 2020,⁴ and the District re-opened all schools for in-person instruction by November 2, 2020.

After the District resumed in-person instruction, District staff required many students who sought to continue the distance learning option to return to school. If a parent or guardian did not complete the questionnaire requesting distance learning for their child before October 6, 2020, their child was—and continues to be—excluded from distance learning for the remainder of the 2020-2021 school year.⁵ Parents who requested the distance learning option after October 2020 report being placed on a waitlist that includes hundreds of other families. The District informed parents that waitlisted students will receive distance learning only after other students free up virtual slots by transitioning to in-person learning.

In the ensuing months since the District re-opened its schools, the COVID-19 pandemic has grown significantly worse. From November 2020 through February 2021, the U.S. experienced the largest spike ever in new cases of COVID-19 with a peak of over 200,000 new cases of COVID-19 *per day* nationally for several weeks in December and January,⁶ while California experienced around 40,000 new cases *per day* for nearly a month in that time frame.⁷ 94% of California was placed in a public health emergency lockdown at that time due to unprecedented numbers of people requiring

² See LEMOORE UNION ELEMENTARY DIST., SEPTEMBER 23, 2020 DISTRICT COMMUNICATION (Sept. 23, 2020), available at: <https://www.luesd.k12.ca.us/article/313528?org=luesd> (reporting plan to submit a waiver if cases continued to stay low); LEMOORE UNION ELEMENTARY DIST., OCTOBER 6, 2020 DISTRICT COMMUNICATION (Oct. 6, 2020), available at: <https://www.luesd.k12.ca.us/article/321659?org=luesd> (reporting submission of waiver)

³ See SEPTEMBER 23, 2020 PARENT COMMUNICATION, *supra* n.2.

⁴ See LEMOORE UNION ELEMENTARY DIST., OCTOBER 19, 2020 DISTRICT COMMUNICATION (Oct. 19, 2020), available at: <https://www.luesd.k12.ca.us/article/323854?org=luesd>.

⁵ See OCTOBER 6, 2020 PARENT COMMUNICATION (Oct. 6, 2020), *supra* n.2.

⁶ N.Y. TIMES, *Coronavirus in the U.S.: Latest Map and Case Count*, available at: <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last accessed Mar. 24, 2021)

⁷ N.Y. TIMES, *California Coronavirus Map and Case Count*, available at: https://www.nytimes.com/interactive/2020/us/california-coronavirus-cases.html?action=click&module=covid_tracking&pgtype=Interactive®ion=TableRowLink (last accessed Mar. 24, 2021)

emergency health care due to COVID-19 infection. Since November 2, 2020, more than 40,000 people in California have died from COVID-19.⁸

The pandemic has impacted the Lemoore community directly, as well as its neighboring communities. As of March 24, 2021, there have been a total of 15,341 cases of COVID-19 in Kings County, *which remains in the purple (most critical) tier*.⁹ In the past five months, District schools have experienced numerous COVID-19 outbreaks, infecting dozens of students and staff members.¹⁰ Since November 2020, the District has regularly reported COVID-19 cases in its schools, averaging six cases a week, with ten current cases as of March 24, 2021.¹¹

A. Paul Blair

The District's policies have harmed parents and students. For example, Paul Blair, a busy single father of five children who has a full-time job, missed the October 6 deadline to enroll his three children in distance learning due to numerous constraints on his time and the District's failure to properly publicize and notify parents of this extremely important deadline. When the District returned to in-person instruction in early November, school staff informed Mr. Blair that he is required send his children to school for in-person instruction. Mr. Blair was deeply troubled that the District was taking significant public health risks by requiring students to return to school in person during a global epidemic that had—at that point—already taken hundreds of thousands of lives with no signs of abating. Accordingly, he refused to allow his children's and his own health to be placed in jeopardy by sending them to in-person instruction at school.

From November 2020 until February 2021, the District denied two of Mr. Blair's daughters access to distance learning through Google Classroom or any other online platform. Indeed, District Assistant Superintendent Ed Ochoa told Mr. Blair in early November that no fewer than 180 families were on the waiting list to access distance learning, suggesting that many other families are also seeking remote education. Most egregiously, when Mr. Blair refused to risk his family's health and safety by sending them to school in-person and the District failed to provide a remote option, the District threatened to classify both of his daughters as "habitual truants" in written notices they sent to Mr. Blair in January 2021. Mr. Blair's older daughter was finally allowed

⁸ *Id.*

⁹ KINGS CNTY., CA, *Coronavirus Disease 2019 (COVID-19)* (Mar. 24, 2021), available at: <https://www.countyofkings.com/departments/health-welfare/public-health/coronavirus-disease-2019-covid-19>; CAL. DEP'T OF PUB. HEALTH, *Blueprint for a Safer Economy* (Mar. 23, 2021), <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/COVID19CountyMonitoringOverview.aspx> (denoting purple tier as indicating "widespread" COVID-19 infection rates).

¹⁰ See LEMOORE UNION ELEMENTARY UNIFIED SCHOOL DIST., *Lemoore Union Elementary COVID-19 Information*, available at: <https://www.luesd.k12.ca.us/o/luesd/page/covid-19-information--61> (last accessed Mar. 24, 2021).

¹¹ *See Id.*

access to remote learning in early February 2021. In March 2021, Mr. Blair transferred his youngest daughter, who is in third grade, to a different school district where she was ultimately allowed to access an education.

B. Other Families

We are also aware of reports of Latinx families who remain uncomfortable sending their children for in-person instruction in District schools, but feel they have no other option due to threats from District administrators that their children will be labeled “truant” if they do not attend school in person. Parents are deeply concerned that their children are regularly exposed to COVID-19 transmission at school, as documented by the District itself,¹² and the health of entire families in Lemoore is jeopardized as a result. The desire of Mr. Blair and other families in the District to keep their children in remote learning is in line with the fears and desires of many Black and Brown parents across the country.¹³ Black and Brown parents, like all parents, are entitled to the ability to make decisions that are best for their families and to exercise that right.

II. In-person instruction is not currently safe for all students, particularly those who live in low-income communities or communities of color.

While the pandemic has affected everybody in California, it is now well-established that it has impacted traditionally underresourced and marginalized communities far more acutely. As the U.S. Center for Disease Control has acknowledged, “long-standing systemic health and social inequities have put many people from racial and ethnic minority groups at increased risk of getting sick and dying from COVID-19.”¹⁴ In California, Black and Latinx populations are dying at higher rates than other groups.¹⁵ For people ages 65 to 79, Latinx are 22% of the state’s population, but represent 44% of deaths from COVID-19.¹⁶ According to the California Department of Public Health, Black people are dying from COVID-19 at twice the rate of white people.¹⁷ Black and

¹² *See Id.*

¹³ Gilbert et al., *Racial and Ethnic Differences in Parental Attitudes and Concerns About School Reopening During the COVID-19 Pandemic – United States, July 2020*, 69 MORBIDITY AND MORTALITY WEEKLY REP. 1848 (Dec. 11, 2020), available at: <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6949a2-H.pdf>.

¹⁴ CTR. FOR DISEASE CONTROL AND PREVENTION, *Health Equity Considerations and Racial and Ethnic Minority Groups* (Feb. 12, 2021), available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>.

¹⁵ Rong-Gong Lin II, *California Latino, Black residents hit even harder by coronavirus as white people see less danger*, L.A. TIMES (June 27, 2020), available at: <https://www.latimes.com/california/story/2020-06-27/california-latinos-black-people-hit-even-harder-by-coronavirus>.

¹⁶ *Id.*

¹⁷ Kuris Alexander, *Coronavirus appears twice as deadly for blacks as whites in California*, S.F. CHRONICLE (April 17, 2020), available at:

Latinx youth are also disproportionately likely to be infected by COVID-19.¹⁸ Similarly, communities with high poverty rates suffer from COVID-19 between two and three times the rates of wealthier areas.¹⁹ Compounding the problem, Black and Latinx communities are currently receiving the vaccine at far lower rates than others.²⁰ It is thus not surprising that recent surveys indicate that most students, particularly those from low-income communities and communities of color, are reluctant to return to school in person.²¹

The great majority of students the District serves belong to these groups, as 65% of students are Latinx, 4% are Black, 5% are Asian American, Filipino, or Pacific Islander, 1.2% are Native American, and 4.6% are multi-racial.²² Further, 69% of the District's students are low-income and nearly 9% are students with disabilities.²³ The District must recognize that its students are likely to live with family members or housemates who are elderly, medically vulnerable, or otherwise at elevated risks of contracting COVID-19; and who are more likely to suffer critical symptoms or even death from COVID-19 infection. The District has a responsibility to support its communities

<https://www.sfchronicle.com/health/article/Coronavirus-appears-twice-as-deadly-for-blacks-as-15206710.php>.

¹⁸ Linda Ha, *COVID-19 Impacts Kids from Black, Latino Community Disproportionately*, ABC-30 (Mar. 4, 2021), available at: <https://abc30.com/latino-children-covid-black-communities-of-color-demographics/10389567/>; Roni Caryn Rabin, *Why the Coronavirus More Often Strikes Children of Color*, N.Y. TIMES (Sept. 1, 2020), available at: <https://www.nytimes.com/2020/09/01/health/coronavirus-children-minorities.html>; CTR. FOR DISEASE CONTROL AND PREVENTION, *COVID-19 Racial and Ethnic Health Disparities* (Dec. 10, 2020), available at: <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-deaths.html> (stating that “Hispanic or Latino, non-Hispanic Black, and non-Hispanic American Indian or Alaska Native people also have a disproportionate burden of COVID-19 deaths among specific age groups across the lifespan – children, youth, adults, and older adults”).

¹⁹ Kaiser Health News, *High-Poverty Neighborhoods in California Are Bearing the Brunt of COVID's Scourge*, U.S. NEWS & WORLD REP. (Dec. 16, 2020), available at: <https://www.usnews.com/news/health-news/articles/2020-12-16/high-poverty-neighborhoods-in-california-bear-the-brunt-of-covid-19>.

²⁰ Anabel Munoz, *SoCal groups hardest hit by the pandemic are lagging in receiving COVID-19 vaccine, data shows*, ABC7 NEWS (Feb. 3, 2021), available at: <https://abc7.com/people-of-color-southern-california-covid-19-vaccine-disparities/10260561/>

²¹ Howard Blume, *Less than a third of students likely to return to LAUSD campuses, survey shows*, L.A. TIMES (Mar. 22, 2021), available at: <https://www.latimes.com/california/story/2021-03-22/less-than-30-of-students-ready-to-return-to-lausd-campuses-survey-shows>

²² CA DASHBOARD, *District Performance Overview: Lemoore Union Elementary (2020)*, available at: <https://www.caschooldashboard.org/reports/16639740000000/2020> (last accessed Mar. 24, 2021).

²³ *Id.*

by preventing the spread of infection in their homes and neighborhoods and directing additional resources to families who cannot safely return to school.

III. California and federal laws prohibit the District from requiring students to return to school in-person during the pandemic.

The District's failure to provide distance learning to all who seek it appears to contradict the law by denying families the opportunity to remain in distance learning and by threatening them with truancy determinations to force them to send their children to in-person instruction. Most fundamentally, under the California Constitution, all students have a right to equal educational opportunity and an "inalienable" right to "pursu[e] and obtain[] safety."²⁴ The California Legislature also recognizes that students have the right to feel safe when attending school.²⁵ The District's requirement that hundreds of students choose between attending school in-person, thereby risking the health of their families and themselves, and receiving no instruction at all appears to violate those fundamental rights.

California and federal civil rights laws also protect students from unlawful discrimination, including when policies have a disparate impact on protected classes, including people of color, people with disabilities, and low-income people.²⁶ As discussed, given the heightened vulnerability of students of color, students with disability, and economically disadvantaged students, requiring students to return to in-person school instruction likely has a disparate impact on these student groups.²⁷

The District's distance learning policy also may violate Title II of the Americans with Disabilities Act (the "ADA") and Section 504 of the Rehabilitation Act of 1973 ("Section 504"). People with

²⁴ CAL. CONST. art. I, § 7(a), art. IV, § 16(a); *Butt v. State*, 4 Cal. 4th 668, 681 (1992) (observing that, under the state constitution, the State is required to take steps to correct disparities "even when the discriminatory effect was not produced by the purposeful conduct of the State or its agents"); Cal. Const., art. 1, § 1; CAL. CONST. art. 1 § 28(a)(7) (declaring that the right to public safety "extends to public and private primary, elementary, junior high, and senior high school[s]").

²⁵ Cal. Educ. Code § 32282.1. The legislative history of this provision includes a declaration that school safety plans should "recognize, appreciate, and include and address within our model and plan the following essential components...(1) Every child must be assured that the school he or she attends is a safe physical environment..." SCHOOL BUILDINGS AND GROUNDS—SAFETY—VIOLENCE PREVENTION PROGRAMS, 2002 Cal. Legis. Serv. Ch. 506 (S.B. 1667).

²⁶ See Cal. Ed. Code §§ 200, 220, 235; Cal. Civil Code §§ 51, *et seq.*; Cal. Govt. Code § 11135; Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c *et seq.*; Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 *et seq.* (Title II) (1990).

²⁷ See, e.g., Cal. Govt. Code § 11135; Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c *et seq.*; *Collins v. Thurmond*, 41 Cal. App. 5th 879, 896-897 (Ct. App. 2019).

a wide variety of disabilities, including asthma, chronic lung disease, diabetes, and heart conditions are at high risk of serious harm including death from COVID-19.²⁸ As a result, people with disabilities at greater risk for severe illness from COVID-19 do not have an equal opportunity as people without those same disabilities to attend school because in-person attendance poses a grave risk to their health. The ADA and Section 504 require that state and local governments provide people with disabilities an equal opportunity to benefit from all local government programs, services, and activities, including public schools.²⁹

The District's disregard of parents and caregivers who prefer to participate in a distance learning program instead of sending their child to school for in-person instruction undermines parents' rights to be collaborators in their children's education and to keep their families safe. California law explicitly recognizes that "the parents and guardians of pupils enrolled in public schools have the right and should have the opportunity, as mutually supportive and respectful partners in the education of their children within the public schools, to be informed by the school, and to participate in the education of their children...[t]o have a school environment for their child that is safe and supportive of learning."³⁰ The District appears to be violating these parental rights by refusing to allow parents and guardians to choose the mode of learning most safe for their children and families.

Finally, the District's failure to expand its distance learning program and to disallow students from entering the program until another student leaves is incompatible with California laws and regulations that require schools to quarantine students who contract or may have contracted COVID-19. It is beyond dispute that the District has an obligation to ensure that no students with COVID-19 or suspected of having been exposed to COVID-19 attend in-person. For example, the California Code of Regulations provides that "[a] pupil while infected with any contagious or infectious disease may not remain in any public school,"³¹ and Education Code section 49451 states that "whenever there is a good reason to believe that the child is suffering from a recognized contagious or infectious disease, he shall be sent home and shall not be permitted to return until

²⁸ CTR. FOR DISEASE CONTROL AND PREVENTION, *People with Certain Medical Conditions* (Mar. 15, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

²⁹ Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132 *et seq.* (Title II) (1990) (declaring that no qualified individual shall be subjected to discrimination, nor excluded from participation or denied the benefits of services, programs, or activities of a public entity); Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (2015) (prohibiting disability-based discrimination in any federally-funded program or activity, including schools).

³⁰ Cal. Ed. Code § 51101.

³¹ 5 CCR § 202.

the school authorities are satisfied that any contagious or infectious disease does not exist.”³² The Legislature has expressly granted permission to school districts to provide distance learning “[f]or pupils who are medically fragile or would be put at risk by in-person instruction, or who are self-quarantining because of exposure to COVID-19.”³³ As such, the District must offer distance learning immediately to any student who is excluded from in-person instruction because they contracted COVID-19 or may have been exposed to it; and they must offer distance learning to any sibling who may have been exposed to COVID-19 in the classroom. The District may not place those students on a waitlist indefinitely as they wait for distance learning spots to become available. Indeed, the California Department of Education shares this interpretation of the law, confirming that “distance learning must be offered for students who are medically fragile, would be put at risk by in person instruction, or who are self-quarantining because of concerns of exposure to COVID-19.”³⁴

* * *

We understand the District’s staff seeks to support its students, families, and community during these challenging times. While it is commendable that the District has moved to offer in-person instruction and services so quickly to those who seek to return to its school buildings, it must also respect the wishes of community members with greater health risks or who otherwise feel uncomfortable returning to school. An overwhelming majority of school districts in California have managed to strike this balance, and Lemoore Union Elementary School District must do so as well. Indeed, a recent survey found that the majority of California’s public school students (96%) have access to distance learning, while about 14% have access to a hybrid model that offers distance learning and in-person options to students.³⁵ Western Placer Unified School District is an example of a similarly-sized district with 9,700 students in Lincoln, California that has worked with parents to create a 5-day learning schedule that affords teachers the flexibility to teach their in-person cohort in the morning and their remote group in the afternoon. Additionally, it has created online resources for parents and students after collecting survey responses and have maintained an equitable distance learning option available to all students who request it.³⁶

³² Similarly, 15 CCR§ 2526 provides that “[i]t shall be the duty of the principal...to exclude therefrom any child or other person affected with a disease presumably communicable, until the expiration of the prescribed period of isolation for the particular communicable disease.”

³³ Cal. Ed. Code § 43503.

³⁴ CAL. DEP’T OF EDUC., *Distance Learning Frequently Asked Questions*, available at: <https://www.cde.ca.gov/ci/cr/dl/distlearningfaqs.asp> (last accessed Mar. 24, 2021).

³⁵ INST. OF EDUC. SCI., *Monthly School Survey Dashboard – Type of Instruction Offered in Schools*, available at: <https://ies.ed.gov/schoolsurvey/> (last accessed Mar. 24, 2021).

³⁶ Ricardo Cano, *It’s complicated: School reopenings, hybrid learning look different across California*, CAL MATTERS (Oct. 8, 2020), available at: <https://calmatters.org/education/2020/10/school-reopening-hybrid-learning-california/>; W. PLACER UNIFIED SCH. DIST., *COVID-19 Safety Protocols: A Road Map for WPUSD Parents &*

For the foregoing reasons, the District must immediately comply with public health guidance and the law and provide high-quality distance learning options to all students who seek it. We are optimistic that we can resolve these issues collaboratively and without the need for further intervention. Please contact Linnea Nelson at lnelson@aclunc.org or Victor Leung at vleung@aclusocal.org to discuss these issues further. We look forward to working with you to ensure that all of your students have access to a safe, educational environment.

Sincerely,



Linnea Nelson, Education Equity Staff Attorney
Brandon Greene, Director, Racial and Economic Justice Program
ACLU Foundation of Northern California



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Students (Mar. 18, 2021), available at:

<http://www.wpusd.org/documents/MKT%20AND%20COMMUNICATIONS/COVID-19/ROAD%20MAP%20TO%20REOPENING%203.18.2021.pdf/>.

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