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November 5, 2020

VIA EMAIL

Mr. Austin Beutner
Superintendent
Los Angeles Unified School District
5223 Tweedy Boulevard
South Gate, CA 90280

Mr. Tony Thurmond
State Superintendent of Public Instruction
California Department of Education
1430 N Street
Sacramento, CA 95814

Re: Students with Disabilities and Students Who Need Special Education

Dear Superintendents Beutner and Thurmond:

This firm represents the Alliance for Children’s Rights. We write to express the Alliance’s grave concern, shared by our co-signatories, that unless the Los Angeles Unified School District (the “District”) acts now, students with disabilities and students who need special education in the District will suffer substantial and irreparable learning loss, even after we emerge from the COVID-19 pandemic. As you know, these students are among the most vulnerable in our community, and the challenges they face have been exacerbated by the pandemic. Federal and state law mandate that schools assess their unique needs regularly and then design and implement an individualized educational program (“IEP”) for each student. Those laws have not been waived during the pandemic and remain in full effect. But for those students who literally cannot access the educational curriculum through a computer screen, the District has barely provided the in-person instructional offerings (through small cohorts) required by the California Legislature and approved by public health officials more than 60 days ago. The District’s failure to provide the requisite assessments, IEP services, and in-person instruction through small cohorts has created a silent, but tragic, crisis for tens of thousands of students who have not, in effect, received an appropriate education since March.

Superintendent Beutner’s November 2 update to the school community asserted that the District has, in fact, “been providing . . . one-on-one instruction, both in person and online, for students who need

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it most.”¹ But with rare exceptions, families in our communities describe a starkly different reality: students with social and emotional disabilities who cannot learn without the constant one-on-one support required by their IEPs; students with diagnosed attention-deficit disorder who cannot focus on a computer screen for hours without the consistent re-direction provided by an in-person instructor; and students with autism (or similar challenges) whose caregivers lack the training necessary to provide instruction or support services throughout the school day. For these students, distance learning is an oxymoron.

We appreciate that the obstacles the District faces are substantial, and we would like to believe that the District is working in good faith to address these issues for all its constituents. Our inquiry here does not seek to address every problem, to encompass every student, or to magically resolve every challenge inherent in distance learning. Rather, our sole focus is on students with disabilities and students who need special education—those children whom the California Legislature described as “pupils who have experienced significant learning loss due to school closures in the 2019-20 school year or are at greater risk of experiencing learning loss due to future school closures.” CAL. EDUC. CODE § 43509(f)(1)(A).

Superintendent Beutner’s update promised that, starting next week, “special education professionals will conduct assessments for students,” but those assessments are already long overdue according to the specific timelines set by federal law. *See* Nov. 2 Update at 2. It further promised that, “in the coming week,” students who need special education will begin to receive “in-person instruction in small groups,” *id.*, but we are not persuaded such is the case: it has been more than 60 days since the California and Los Angeles Departments of Public Health confirmed that such in-person instruction could be provided safely.² And it promised, beginning this week, to “increase the one-on-one efforts” to provide instruction to groups of three students, but the District’s September 28, 2020 Learning Continuity and Attendance Plan promised that the District would follow a maximum cohort size of 12, plus an additional 2 supervising adults. *LAUSD Final Learning Continuity and Attendance Plan* at 17, <https://achieve.lausd.net/Page/17095> (Sept. 28, 2020). Accordingly, we request detailed information about the specific plans that underlie the District’s latest promises:

- How will you identify and target the students needing special education who will be offered these services?

¹ *Superintendent Update - November 2, 2020*, LAUSD, <https://lausd.wistia.com/medias/06q1cibbtu> (“Nov. 2 Update”).

² *See Guidance Related to Cohorts*, CAL. DEP’T OF PUB. HEALTH (Sep. 4, 2020) (authorizing small cohorts to begin as of September 14); *LA County Department of Health News Release re In-Person Services*, LOS ANGELES COUNTY DEP’T OF PUB. HEALTH, (Sept. 2, 2020). (We are not referring to these departments’ guidance with respect to reopening schools for all students.) Notably, the District announced in August 2020 that it would not conduct in-person assessments or in-person services required by IEPs, but that all in-person services/instruction would resume “consistent with County and State health and safety guidance.” *See Distance Learning FAQ*, LAUSD: SPECIAL EDUCATION DIVISION (Aug. 21, 2020). That guidance arrived on September 4, 2020, but the District still has not resumed these in-person services.

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- How have parents and caregivers been engaged in meaningful conversations about whether their children can safely access the offered programs, services, and assessments, including safe transportation services for children with disabilities?
- How many and what types of special education professionals have already agreed to provide these programs, services, and assessments?
- How will you ensure that every student entitled to these services will be able to access them?
- How will you assess for and provide compensatory services?

For the more than 80,000 District students with disabilities and students who need special education whose long-term development and education are at risk, how long is too long? It has been nearly 8 months since schools were shut down. It has been nearly 60 days since the District could have begun small cohort in-person instruction. It has already been too long. And as you know, the District must eventually assess and compensate for all of this learning loss: “[c]ompensatory education . . . seeks to make up for ‘educational services the child should have received in the first place’ and ‘aim[s] to place disabled children in the same position they would have occupied but for the school district’s violations of [the Individuals with Disabilities in Education Act].” *R.P. v. Prescott Unified Sch. Dist.*, 631 F.3d 1117, 1125 (9th Cir. 2011).

Providing the required in-person services for these students is economically feasible. California’s state budget this year included a one-time investment of \$5.3 billion intended for local educational agencies “to address learning loss related to COVID-19 school closures, especially for students most heavily impacted by those closures.” *See California State Budget — 2020-21: K-12 Education* at 32.³ The funds are to be allocated to local educational agencies “on an *equity basis*, with an *emphasis on ensuring the greatest resources are available to local educational agencies serving students with the greatest needs.*” *Id.* (emphasis added). The funds may be used for “[p]roviding additional academic services for pupils, including diagnostic assessments of student learning needs.” *Id.* at 33.

The California Education Code does not authorize school districts to choose either in-person instruction or distance learning; it directs school districts to provide both, whenever possible. *See CAL. EDUC. CODE* § 43509(f). When Senate Bill 98 was enacted, the Legislature made clear that “it [was] the intent of the Legislature that [local educational agencies] offer in-person instruction in 2020–21 *to the greatest extent possible.*” *See California Assembly Daily Journal*, 2019-2020 Regular Session, 196th Session Day (June 26, 2020) (emphasis added). The District has thus far ignored this mandate by placing students with disabilities and students who need special education in distance learning, in most cases with no in-person instructional options or support.

We fervently hope that litigation will not be necessary to induce the District to provide promptly the special education services required by state and federal law. We welcome the commencement of assessments, IEPs, and small group in-person instruction to begin to provide the critical services that these vulnerable and underserved students need. But, on behalf of the Alliance, we are prepared to seek expedited judicial intervention if the District will not provide prompt responses and take immediate action. We also

³ <http://www.ebudget.ca.gov/2020-21/pdf/Enacted/BudgetSummary/K-12Education.pdf>

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would welcome the opportunity to speak with representatives of the District and/or the California Department of Education at any time. Please respond no later than November 11, 2020. In the meantime, the Alliance reserves all its rights and remedies with respect to this matter.

We look forward to hearing from you.

Sincerely,

/s/ Alex G. Romain
Partner
Milbank LLP

/s/ Jennifer L. Braun
President and CEO
Alliance for Children's Rights

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cc: Board of Directors
Los Angeles Unified School District

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