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April 2, 2021

Via Electronic Mail Only

Albany Disability Squad  
C/O Nery Castillo-McIntyre  
[albanydisabilitysquad@gmail.com](mailto:albanydisabilitysquad@gmail.com)

Re: March 11, 2021 California Public Records Act Request

Dear Mr. Castillo-McIntyre:

This correspondence responds to your March 11, 2021 request for documents and information from the Albany Unified School District ("District") under the California Public Records Act ("PRA"; Gov. Code, § 6250, et seq.).

Under the PRA, a public agency must provide non-privileged or non-exempt public records in response to a request that reasonably identifies a public record or records. The PRA does not require a public agency to create documents, answer questions or interrogatories, or summarize records. Further, a public agency is not required to create, compile or summarize any records in order to respond to a PRA request. The PRA also does not require a public agency to make disclosable documents available within a certain time frame or by a set date established by the requestor. Rather, public agencies are required to make an initial determination of whether they possess disclosable public records responsive to the request and set an estimated date and time of when the records will be made available to the requestor. (See Gov. Code, § 6253(c).)

To this end, the District notes that several of your requests are vague and overly broad in that they do not "reasonably [describe] an identifiable record or records" but rather, seek answers to questions and/or classes or categories of records (e.g., "cumulative number of service hours," "disaggregated by services," "aggregate responses," "percentage of students," etc.) (See, Gov. Code, § 6253, subd. (b).) Further, as written, the scope of your requests, *i.e.*, "any and all documents," without a specified time-frame, potentially encompass an excessively broad range of records requiring the District to review a voluminous amount of documents, in detail, to determine whether, in fact, it has non-exempt and non-privileged records responsive to your requests.

Notwithstanding the foregoing concerns, the District is aware of its obligation under Government Code section 6253.1 to assist you in making more focused and effective requests that reasonably describe an identifiable record or records. To the extent that you wish to clarify or narrow your requests, as this may facilitate the District's prompt production of records, please contact me at your convenience.

Based on the District's good faith interpretation of your requests, the District responds to your requests as follows:

**Request No. 1:**

*Any and all documents containing information or data related to AUSD obligations and commitments in existing IEP/504 Plans, and how they are being fulfilled during remote instruction during the COVID-19 pandemic. Responsive records, include, but are not limited to, all of the following information:*

- a. Number of students with IEPs and number of students with 504 plans;*
- b. Number of students with IEPs and 504 plans disaggregated by grade level;*
- c. Number of students receiving out-of-district placements;*
- d. Number of students placed in CDE approved non-public schools ("NPS");*
- e. Number of students receiving related services and specialized academic instruction through non-public agencies (mental health, behavior, instruction, healthcare);*
- f. Cumulative number of hours required to fulfill all IEPs, including and disaggregated by:
  - i. Specialized Academic Instruction in a separate classroom in a public integrated facility (e.g. SDC class) to be delivered by a credentialed special education teacher;*
  - ii. Specialized Academic Instruction in a regular classroom/public day school to be delivered by a credentialed special education teacher;*
  - iii. Intensive individual services to be delivered by a credentialed special education teacher;*
  - iv. Specialized academic instruction in a regular classroom/public day school delivered by a paraeducator;*
  - v. Language and speech services;*
  - vi. Occupational therapy services;*
  - vii. Adapted physical education services;*
  - viii. Physical therapy services;*
  - ix. Adaptive technology services; and*
  - x. Psychological services.**
- g. Cumulative number of service hours required to fulfill all 504 plans including and disaggregated by services listed in 1.f.;*
- h. How the District is supporting students who require supervision during distance learning but whose families are not able to supervise;*

- i. *Policies and procedures to monitor delivery of instruction and related services in IEPs;*
- j. *Policies and procedures for tracking when service minutes required by Continuity Learning Plans ("CLPS") are not delivered, how make up services are provided and how parents are informed;*
- k. *Policies and procedures, training documents and protocols as to how delivery of instruction is monitored by administrators;*
- l. *Reports to North Region SELPA, the Alameda County Office of Education, and the California Department of Education regarding process, model documents, procedures, and protocols for developing distance/community learning plans, securing parent consent, implementation procedures, staff training and monitoring progress towards goals in a virtual/distance learning modality.*

**Response to Request No. 1:**

Please be advised, the District objects to this request in that it is vague, overly broad, burdensome, and fails to "reasonably [describe] an identifiable record or records." (See Gov't Code § 6253(b).) For example, the District notes that your request for all documents containing information and/or data related to all students with IEPs and/or 504 Plans is overly broad as the District has in excess of 300 students receiving special education and related services at any time period. Moreover, your request does not provide a relevant time-period for your request. Based on this, the District interprets your above requests to request data from all students requiring IEPs and/or 504 Plans in perpetuity, and searching through all documents pertaining to all student IEPs and/or 504 plans would be unduly burdensome. In fact, courts have held that requesting an agency to "search an enormous volume of data for a 'needle in the haystack' . . . may be objectionable as unduly burdensome." (*California First Amendment Coal. v. Superior Court* (1998) 67 Cal. App. 4th 159, 166, *citing American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440.)

The District also objects to this request on the grounds that the PRA does not require the District to compile information or data and is only required to provide existing records that are currently in its possession, custody, or control that are not exempt from disclosure pursuant to the PRA.

Moreover, to the extent that portions of the information and records requested exist in student records, such information is exempt, or at least partially exempt, from disclosure under both state and federal law as pupil education records. Specifically, the information is exempt from disclosure as release of such information is likely to allow individual identification of students in violation of the federal Family Educational Rights and Privacy Act ("FERPA") and corresponding California state law, Education Code section 49076. (20 U.S.C. § 1232g.)

Notwithstanding the foregoing, the District is aware of its obligation under Government Code section 6253.1 to assist you in making more focused and effective requests that reasonably describe an identifiable record or records. Accordingly, the District respectfully requests that you narrow your search to a more reasonable scope, such as by limiting your request to a reasonable and specific time period. Upon receiving such clarification from you, the District will provide its response accordingly.

**Request No. 2:**

*Any and all documents containing information or data related to staff and qualifications available to fulfill IEP obligations and 504 Plan commitments during the COVID-19 pandemic from March 16, 2020 to March 12, 2021. Responsive records include, but are not limited to, all of the following information:*

- a. FTE of credentialed special education instructors on duty during the time period;*
- b. FTE of licensed related service providers on duty during the time period disaggregated by classroom type (e.g. SDC), subject (e.g. math and English);*
- c. FTE of paraprofessionals on duty during the time period;*
- d. Staffing gap analysis comparing and contrasting special education staffing needs with special education staffing availability;*
- e. Monthly hours of specialized academic service delivered disaggregated by grade level;*
- f. Monthly hours of related services disaggregated by grade level;*
- g. Monthly hours of paraprofessional services disaggregated by grade level;*
- h. Service minute gap analysis comparing and contrasting special education service minutes required with special education service minutes actually delivered;*
- i. Data the District gathered and analyzed to match staffing availability and service requirements with family constraints created by shelter-in-place during the COVID-19 pandemic;*
- j. Paraeducator training protocols, requirements, and process for assigning paraeducators;*
- k. Percentage of Specialized Academic Instruction delivered through paraeducators; and*
- l. Policies and procedures for monitoring and supervising paraeducators to ensure special education staff are providing modified/adapted materials, instruction, curriculum and paraeducators are implementing services and supports but not teaching.*

**Response to Request No. 2:**

The District objects to this request in that it is potentially seeking records that are exempt from disclosure, at least in part, pursuant to various exceptions under the PRA. Specifically, the District objects to this request in that it appears to be seeking records exempted from disclosure pursuant to attorney-client privilege, work product privilege, investigatory files exemption, deliberative process privilege, the Brown Act (including but not limited to closed session matters), personnel records exemptions, pending litigation, and/or the official information privilege. (See Gov. Code §§ 6254, 6255; Evid. Code, §§ 954; 1040.)

The District further objects to this request on the grounds that the PRA does not require the District to compile information or data and is only required to provide existing records that are currently in its possession, custody, or control that are not exempt from disclosure pursuant to the PRA.

Finally, the District objects to this request in that it is also potentially seeking records exempt from disclosure under the public interest exemption as such information may be related to student/staff safety. (See e.g., Gov. Code §§ 6254, 6255.)

Without waiving the aforementioned objections, the District has determined that it has disclosable records, at least in part, to your request.

**Request No. 3:**

*Any and all documents containing information or data related to preparations for and delivery of in-person cohort academic instruction during the COVID-19 pandemic for students with IEPs and 504 plans. English Language Learners, students with free and reduced lunch, and other vulnerable student populations. Responsive records include, but are not limited to, all of the following information:*

- a. *Surveys of students and caregivers, including:*
  - i. *Copies of survey questions and survey forms distributed;*
  - ii. *Number of families and students to whom surveys were distributed;*
  - iii. *Number of survey responses received;*
  - iv. *Aggregate responses to each survey question, by demographic;*
  - v. *Summary charts, tables, findings, and conclusions from surveys;*
  - vi. *Reports to the CDE and/or COE related to special education outcomes, staffing, parent satisfaction and concerns regarding special education outcomes, staffing, parent satisfaction and concerns regarding special education, including internal and external reviews and audits, including CDE verification reviews in the most recent 4-year period.*
  - vii. *Surveys of instructional staff and support staff, including:*
  - viii. *Copies of survey questions and survey forms distributed;*
  - ix. *Number of staff to whom surveys were distributed, including staff roles, such as special education instructors, general education instructors, general education instructors, related service providers, paraprofessionals, administrative staff, and support staff (e.g. nurses, janitors, food service workers, etc.)*
  - x. *Number of survey responses received;*
  - xi. *Aggregate responses to each survey question by staff category; and*
  - xii. *Summary charts, tables, findings, and conclusions from surveys.*
- b. *Cohort classes provided for students with IEPs and 504 plans, English Language Learners, students with free and reduced lunch, and other vulnerable student populations, including:*
  - i. *Number of students invited to participate in cohorts;*

- ii. *Criteria for determining who was invited and how they were selected;*
  - iii. *Number of individual students that actually participated in cohorts;*
  - iv. *Dates, times, setting, and grade level of social/emotional cohorts, credentials of instructional staff, and number of student-hours of cohort service delivered;*
  - v. *Dates, times, setting, and grade level of instructional cohorts, credentials of instructional staff, and number of student-hours of cohort instruction delivery;*
  - vi. *Safety measures implemented prior to, during, and after cohort instruction; and*
  - vii. *Survey results or feedback from cohort participants.*
- c. *Number of students with IEPs or 504 Plans who have left the District from March 13, 2020 through March 12, 2021;*
  - d. *Number of students placed in non-public schools from March 13, 2020 through March 12, 2021; and*
  - e. *Number of inter-SELPA placements*
    - i. *Into AUSD; and*
    - ii. *Out of AUSD.*

**Response to Request No. 3:**

Please be advised that the District objects to this request on the grounds that the PRA does not require the District to compile information or data and is only required to provide existing records that are currently in its possession, custody, or control that are not exempt from disclosure pursuant to the PRA.

Moreover, to the extent that portions of the information and records requested exist in student records, such information is exempt, or at least partially exempt, from disclosure under both state and federal law as pupil education records. Specifically, the information is exempt from disclosure as release of such information is likely to allow individual identification of students in violation of the federal Family Educational Rights and Privacy Act ("FERPA") and corresponding California state law, Education Code section 49076. (20 U.S.C. § 1232g.)

Without waiving the aforementioned objections, the District has determined that it has disclosable records, at least in part, to your request.

**Request No. 4:**

*Breakdown of AUSD placements by percentage of inclusion/Least Restrictive Environment ("LRE") including, but not limited to resource program students, Special Day Class ("SDC") and NPS placements, disaggregated by gender and race/ethnicity.*

- a. *Percentage of students moving to increased or decreased inclusion time from preschool to elementary;*

- b. *Percentage of students moving to increased or decreased inclusion time from elementary school to middle school; and*
- c. *Percentage of students moving to increased or decreased inclusion time from middle school to high school.*

**Response to Request No. 4:**

The District has determined that it does not have disclosable public records, or any records, responsive to your request.

**Request No. 5:**

*Evaluations*

- a. *Number of initial evaluation/assessment requests, including referrals through the Student Study Team ("SST") process, direct teacher referrals, and parent/guardian requests in the most recent 2-year period, broken down by:*

- i. *Total number of requests;*
- ii. *Number refused for which Prior Written Notice was Provided to Parent;*
- iii. *Number approved*

*1. Number of students found eligible for an IEP or 504 plan as a percentage of total requests made, disaggregated by gender, race, and socioeconomic status.*

*2. Number of assessments/evaluations currently pending outside of California timelines (i.e. assessment plan signed but assessments not complete and/or eligibility determination not made in compliance with state law and board policy) from March 1, 2020 through March 12, 2021.*

- b. *Policies and procedures for completing initial and subsequent special education assessments, including but not limited to:*

- i. *Whether the District is offering and providing parents with in-person assessment, virtual assessments, and/or records review only.*
- ii. *Number of currently outstanding assessments.*

*1. Number of outstanding assessments requested before March 13, 2020.*

*2. Number of outstanding assessments requested between September 15, 2020 and December 18, 2020.*

*3. Number of outstanding assessments requested between January 4, 2021 and March 10, 2021.*

**Response to Request No. 5:**

Please be advised that the District objects to this request on the grounds that the PRA does not require the District to compile information or data and is only required to provide existing records that are currently in its possession, custody, or control that are not exempt from disclosure pursuant to the PRA.

Moreover, to the extent that portions of the information and records requested exist in student records, such information is exempt, or at least partially exempt, from disclosure under both state and federal law as pupil education records. Specifically, the information is exempt from disclosure as release of such information is likely to allow individual identification of students in violation of the federal Family Educational Rights and Privacy Act ("FERPA") and corresponding California state law, Education Code section 49076. (20 U.S.C. § 1232g.)

Without waiving the aforementioned objections, the District has determined that it has disclosable records, at least in part, to your request.

**Request No. 6:**

*Continuity of service for students with IEPs and 504 Plans, English Language Learners, students with free and reduced lunch, and other vulnerable student populations. Responsive records include but are not limited to, all of the following information:*

- a. A list of all paraeducators laid off in response to the AUSD Board's Resolution dated May 26, 2020, the names of all paraeducators who were later reinstated, and the names of those who are still working for the District as of March 12, 2021;*
- b. Records indicating the length of retention and/or the rate of turnover of AUSD special education staff currently employed by the District;*
- c. A list of the names, job titles, and school assignments of all AUSD special education staff currently employed by AUSD as of the first day of the school year in 2017, 2018, 2019, 2020, and as of March 12, 2021;*
- d. A list of all publicly available names and employment codes of AUSD special education staff that received reduction in force notices (i.e. pink slips) prior to the notification deadline in March of 2017, 2018, 2019, 2020, and 2021;*
- e. The total number of days when credentialed special education instructors were absent from regularly scheduled school days, and the total numbers of days when substitutes were provided to cover those absences during the 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years;*
- f. The total number of days when paraeducators assigned to students with IEPs and 504 plans were absent, and the total number of days when substitutes were provided to cover those absences during the 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years;*
- g. A list of leaves of absence taken by permanent AUSD special education staff during the 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years, including:*
  - i. Name, title, and credential of the employee taking a leave of absence;*
  - ii. The start and end date of that leave of absence;*



- iii. *Name, title, and credential of the substitute(s); and*
- iv. *Any gaps in service during the employee's leave of absence, including the start and end date of those gaps in service and the number of hours of instruction not provided.*

**Response to Request No. 6:**

The District objects to this request in that it is potentially seeking records that are exempt from disclosure, at least in part, pursuant to various exceptions under the PRA. Specifically, the District objects to this request in that it appears to be seeking records exempted from disclosure pursuant to attorney-client privilege, work product privilege, investigatory files exemption, deliberative process privilege, the Brown Act (including but not limited to closed session matters), personnel records exemptions, pending litigation, and/or the official information privilege. (*See* Gov. Code §§ 6254, 6255; Evid. Code, §§ 954; 1040.) The District further objects to this request on the grounds that the PRA does not require the District to compile information or data and is only required to provide existing records that are currently in its possession, custody, or control that are not exempt from disclosure pursuant to the PRA.

Moreover, to the extent that portions of the information and records requested exist in student records, such information is exempt, or at least partially exempt, from disclosure under both state and federal law as pupil education records. Specifically, the information is exempt from disclosure as release of such information is likely to allow individual identification of students in violation of the federal Family Educational Rights and Privacy Act ("FERPA") and corresponding California state law, Education Code section 49076. (20 U.S.C. § 1232g.)

Without waiving the aforementioned objections, the District has determined that it has disclosable records, at least in part, to your request.

**Conclusion**

Due to the COVID-19 health pandemic, the District has reduced staff available to identify, collect, and review District records potentially responsive to your requests. Accordingly, the District plans to provide you with access to responsive, disclosable public records on or about May 31, 2021

As indicated above, the District reiterates that it is aware of its obligation under Government Code section 6253.1 to assist you in making more focused and effective requests that reasonably describe an identifiable record or records. If the District has misinterpreted your requests, or you wish to further clarify your requests, please contact me in writing.

Please note the District will not produce privileged document(s) or information encompassed by any exemption under the PRA or any other state or federal law. (*See* Gov. Code, §§ 6254, 6255.) The District will segregate and redact privileged and/or exempt information as needed. To the extent the District inadvertently produces any privileged documents which are encompassed by an exemption under the PRA or any state or federal law, such production is not intended to be a waiver of any privilege or any right to withhold such document or documents of a similar nature. The District will notify you should it need to amend its response.

If, after reviewing this letter, you have questions or concerns, please contact my office directly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alexia Ritchie', written in a cursive style.

Alexia Ritchie

Executive Director, Student Services & Special Education