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*Via Email Only*

Craig Oftedahl  
Superintendent  
Luverne Public School District  
709 North Kniss Avenue  
Luverne, Minnesota 56156

**Re: Building Access Requests by Students Attending Distance Learning During the 2020-2021 School Year**

Dear Superintendent Oftedahl:

Recently you contacted our office regarding some questions about the School District's obligation toward students who opt in to virtual learning with respect to in-person services, special classes, and extra-curriculars. We have reviewed the School District's Return to Learn plan, as well as the relevant state guidance documents, including the governor's Executive Order 20-82 and the Safe Learning Plan for 2020-2021.

It is our understanding that pursuant to state guidance, the School District has planned for four different learning scenarios: in-person learning, hybrid learning, distance learning, and virtual learning. The distance learning scenario will be applied to all students if community transmission reaches a point where health officials determine distance learning is necessary to slow the spread of COVID-19. Distance learning may be implemented for a defined amount of time (as short as two weeks) before returning to a hybrid or in-person scenario. Students will be required to log in at certain times of the day to access content from classroom teachers, attendance will be taken each day, and the platforms used will be a continuation of platforms used during in-person learning. Distance-learning students will also have access to daily interactions with their teachers as well as programming from non-teaching staff including nurses, counselors, psychologists, paraprofessionals, social workers, and other School District staff.

The virtual learning scenario, as distinguished from the distance-learning scenario, may be elected by individual families or students, and is a semester-long commitment. Virtual learning may be provided by a third-party provider or through the School District's teachers

in either a synchronous or asynchronous learning environment. These students would remain on the roster of the School District. Alternatively, parents may choose to homeschool their students.

Because of the differences between the virtual- and distance-learning options, the School District's obligations to students with respect to building access are somewhat different in each scenario. If the distance-learning scenario is used, all students will be distance learning at that time, so there will be no in-person special classes occurring. Similarly, implementation of a distance-learning scenario will affect all students who participate in an extra-curricular activity in the same manner; if practices and/or competitions continue, all students will have the same level of access to those activities. Finally, as noted above, other School District services must be provided to students while distance learning is in effect. These will likely be provided remotely or virtually to avoid presence in the school building. As a practical matter, students engaged in distance learning are unlikely to request that they be allowed access to in-person activities, classes, or services because in-person activities, classes, and services will be very limited during distance learning.

The virtual learning scenario, on the other hand, may present more issues, because families or students can opt in to this scenario on an individual basis while in-person learning and activities may be in session for other students. Individual families might therefore request that the School District allow virtual-learning students to join various classes on an individual basis. But the governor's executive order and the Department of Education's guidance grant each school district complete discretion as to which type of learning scenario to employ. Consequently, the School District has ample discretion as to substantive contents of each scenario. There is no requirement that a school district must continue to offer the full array of special courses it had offered in years prior to the 2020-2021 school year to any student, nor is there a requirement that the same course options must be provided in a full-time virtual learning program as in the flexible program that will switch between in-person, hybrid, and distance learning throughout the school year. Virtual-learning students, like all students of the School District, are entitled to curriculum that will allow the students to make progress towards meeting graduation standards. The Return to Learn plan states that in-person learning will "focus on core areas" and that special courses will require additional safety procedures to limit the use of community supplies and increase distance between students in music, band, choir, or physical education classes. In-person special class options will therefore likely be somewhat more limited this year than they have been in previous years, and will not be open to virtual-learning students.

Though some families may prefer otherwise, the notion of a virtual-learning student taking additional in-person classes is not contemplated by the governor's executive order, other state guidance, or the School District's Return to Learn plan. While the hybrid learning scenario does involve both distance learning and in-person learning, in that scenario students spend whole school days in school or out of school on a designated schedule. Moreover, families cannot opt in to hybrid learning; the only options are to participate in the School District's flexible program that will shift between in-person, hybrid, and distance learning as

necessary, or opting in to virtual learning for the full semester. There is no basis for an argument that a student has a right to a partly virtual, partly in-person program.

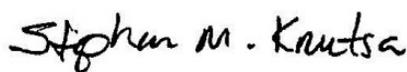
In fact, the notion of cobbling together a partial-virtual learning program is inconsistent with the purpose of the virtual learning option. The virtual learning option is meant for families and students who are concerned about the safety of in-person options. By electing virtual learning, parents and students indicate that their desire is to avoid entering the school building (to the extent possible) for the entire semester. Regularly entering the building on an ad hoc basis for special classes would be inconsistent with this commitment.

Practical considerations further justify the determination that virtual-learning students may not attend in-person classes. The reason for the semester-long commitment is to allow the School District relative certainty about enrollment numbers, which it needs in order to make plans about staffing, class schedules, the breakdown of “red” and “white” groups for hybrid learning, and social distancing measures to be implemented in the school building. These measures are many and varied, and include limiting students’ presence in the building more than 15 minutes before or after the school day, placing students in cohorts to limit potential exposure between students, modifying schedules to limit contact between students, limiting use of the media center to an as-needed basis, disallowing visitors, and limiting field trips, student assemblies, and special performances in favor of virtual options. One or more virtual-learning students participating in only a couple of in-person classes would unnecessarily complicate the planning of cohorts and hybrid groups and potentially require changes to seating arrangements between classes. Accordingly, students who elect to participate in virtual learning must do so with the understanding that for the full semester, all of their learning will take place virtually, and they will not be entitled to attend in-person classes.

Students who elect virtual learning should, however still be allowed to participate in any available extracurricular activities. While this issue does not appear to have been expressly spelled out in recent guidance, homeschool students may participate in their school district’s extracurricular activities pursuant to Minnesota Statutes Section 123B.49, subdivision 4. We believe the same logic applies to students who elect distance learning. Likewise, virtual learning students should be provided health, guidance, and counseling services as necessary, and virtual-learning students who qualify for Section 504 or special education services should continue to be provided with those services.

Please do not hesitate to contact us if you have any further questions about the start of the school year or any other matter.

Very truly yours,



Stephen M. Knutson  
Katharine M. Saphner