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April 16, 2008

VIA E-MAIL

Santa Monica-Malibu Board of Education
1651 Sixteenth Street
Santa Monica, CA 90404

Re: Special Education Reform
Hearing Date: April 17, 2008
Agenda Item No. D.03

Dear Board Members:

I am writing to urge the Board to direct prompt implementation of the Barber report's recommendations for reforming District special education practices. Reforming these practices is long overdue.

District special education practices have been the subject of great controversy for quite some time. Last year, a significant number of parents and others expressed opposition to District practices -- including excessive use of settlement agreements, compelling parents to accept confidentiality provisions in such agreements, refusing to include settlement agreement-related services in student IEPs, and the District's abusive treatment of those parents who do not easily acquiesce in District decisions affecting their children.

Frustrated with the District's lack of responsiveness, as a last resort parents turned to the Santa Monica City Council for help. Fortunately, the City Council listened to these parents and conditioned increased City funding for the District on completion of an independent audit of District special education practices. The Barber report is the result of this parent-led effort.

The Barber report confirms the key criticisms which parents and others have leveled at District special education practices and provides a roadmap for District reform. It is imperative that the Board endorse the Barber report by requiring full implementation of its recommendations.

In addition, it is vitally important that the Board retain an independent consultant to oversee this implementation process. Special education parents and others have no confidence that District Staff -- who are responsible for the District special education practices that have been criticized in the Barber report -- will attempt in good faith to fix

these practices. And they can hardly be blamed for their skepticism. This is a classic "fox guarding the hen house" dilemma. Only by appointing an independent special education expert to oversee implementation of the Barber report can the District have any realistic chance of regaining credibility concerning special education.

If you have any doubts about the necessity of retaining an independent consultant for this purpose, I direct your attention to the Superintendent's March 31, 2008 letter to Santa Monica City Manager Lamont Ewell. In her letter, the Superintendent characterizes the Barber report's treatment of District settlement agreement practices as follows:

"According to Lou Barber & Associates, settlement agreements are legal and widely used. Secondly, confidentiality clauses in settlement agreements are legal and considered common practice."

This statement is grossly misleading; it clearly misrepresents the Barber report on this important and sensitive issue. Contrary to the Superintendent's letter, the Barber report states:

"During the past three years the District reports having over 140 settlement agreements. The number of settlement agreements utilized by the district raises legal concern. Although the use of settlement agreements is legal, the large number of settlement agreements raises concern whether there is compliance with the intent of IDEA. The intent of IDEA is to have a team knowledgeable about the student determine the student's needs." (Barber report at p. 67)

The Barber report then recommends that the District's use of settlement agreements "be reduced dramatically." (Barber report, Recommendation no. 25)

Moreover, the Superintendent's recommendations to the Board provide further confirmation that senior District officials fail to grasp what needs to be done. The contrast between the Barber report and the Superintendent's recommendations is telling. In particular:

- Barber recommends that, "the use of settlement agreements with confidentiality clauses needs to be reduced dramatically." (Barber report,

Recommendation No. 25) The Superintendent fails to include this critically important reform in her recommendations.

- Barber recommends that services required by settlement agreements should be incorporated into the students' IEPs. (Barber report, Recommendation No. 25) Again, the Superintendent does not include this reform in her recommendations.
- Barber recommends that, "the authority to address special education issues needs to be decentralized and site level staff need to be empowered to resolve issues that arise during the course of IEP meetings." (Barber report, Recommendation No. 26) The Superintendent essentially ignores this reform -- limiting her recommendations to vague language about reorganizing the central office and "the ultimate goal" of empowering school site staff.

In other words, the Superintendent's recommendations sidestep the key parent concerns that triggered the City Council-requested audit -- concerns that are validated by the Barber report. In light of this, senior District management cannot be trusted to implement the Barber report and reform District special education practices.

Finally, the District's pattern of abusing the settlement agreement process can only be corrected if the District ends its practice of imposing confidentiality clauses in settlement agreements. As the Barber report recognizes, the District's widespread use of settlement agreements with confidentiality clauses "raises concern as to the transparency of the district programs and services." Barber elaborates:

"A final concern with the use of confidentiality statements is the parents are therefore discouraged from speaking with each other. Best practices shows that districts with quality programs generally have a strong parent component. As is often the case, parents of students with disabilities are best able to train and support other parents. In SMMUSD the extensive use of settlement agreements with confidentiality clauses further alienates parents from each other. At a time when parents should be working together and supporting each other, many parents feel they, by virtue of their confidentiality clause are excluded from talking and working with other parents."
(Barber report at p. 71)

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Public confidence in the District's expressed commitment to openness and transparency will only begin to be restored if this commitment is backed by an end to the practice of imposing confidentiality clauses on special education parents.

Sincerely,



Christopher M. Harding

CMH:aes

cc: Dianne Talarico, Superintendent
Tim Walker, Deputy Superintendent
Dr. Michael Matthews, Assistant Superintendent
Lamont Ewell
Santa Monica City Council

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