



September 21, 2016

**VIA U.S. MAIL AND E-MAIL**

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**RE: Uniform Complaint Procedure Complaint re: Fresno Unified School District's Failure to Comply with the LCAP Legal Requirements Pertaining to LCAP**

Dear Superintendent Hanson and Director Plascencia,

The ACLU of California submits the following Uniform Complaint Procedure (“UCP”) complaint regarding Fresno Unified School District’s failure to comply with the legal requirements pertaining to its Local Control and Accountability Plan (“LCAP”). Currently, the District’s LCAP fails to meet basic legal requirements of the statutes and regulations governing the Local Control Funding Formula (“LCFF”). Specifically, the District violated its legal obligations under Education Code § 42238.07 and 5 CCR § 15496 by failing to adequately justify supplemental and concentration (“S&C”) fund allocations to special education programs, employee supports, middle school redesigns, custodial support, and Fresno police department program spending in its 2016-2017 LCAP. Further, the Annual Update section disregards any meaningful assessment of last year’s LCAP goals with specific attention towards high-need students.

The LCFF permanent regulations and the current LCAP template clearly state school districts’ legal obligations to use S&C funds. In October 2015, the ACLU met with the District’s representative, Tammy Townsend,<sup>1</sup> to discuss the District’s legal obligations regarding the District’s 2015-2016 LCAP Update. Since then, the ACLU has reiterated to the District its legal obligation to use S&C funds to increase or improve services specifically for low-income, English

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<sup>1</sup> It is our understanding that Tammy Townsend coordinates all LCAP work for the District.

Learner, or foster youth students (collectively, “high-need students”).<sup>2</sup> Generally, the District’s LCAP inadequately explains to parents, students, and other community members decisions regarding the District’s educational services and expenditures. Despite these facts, the District unremittingly ignores the law and continues to deprive high-need students of state-allocated S&C funding by refusing to comply with the law.

During a District meeting in August 2016, the ACLU discussed the District’s past two LCAPs and the consistent errors therein. The ACLU explained to the District in our July 2016 letter how the District could correct the LCAP to meet the legal requirements. We engaged in thoughtful negotiations with the District to correct these changes. Notwithstanding these efforts, the District ignored each recommended change and sent a new version of the LCAP to the County Office of Education without making critical revisions. In doing so, the District made clear it had no intentions to follow the law.<sup>3</sup>

First, the LCAP fails to identify and justify each schoolwide and districtwide use of S&C funding by not explaining how the proposed use of S&C funds is “principally directed towards, and effective in, meeting the district’s goals for its high-need pupils in the state priority areas.”<sup>4</sup>

Second, because the LCAP does not include or describe any disaggregated data to evaluate improvements (or lack thereof) for high-need students, the Annual Update section fails to meaningfully assess the effectiveness of the specific actions supporting last year’s LCAP goals.<sup>5</sup>

Third, the District continues to use S&C funds to pay for police programs to monitor District students and make other inexplicable expenditures with S&C funds that shortchange high-need students of essential services. In sum, the District’s use of S&C funds violates the law.

Accordingly, the District must revise its 2016-2017 LCAP to identify and properly justify all S&C funds allocated on a districtwide and schoolwide basis; revise its Annual Update section; and, reallocate all S&C funds for classroom services for high-need students, rather than services and equipment for the Fresno Police Department.

**I. The District’s LCAP fails to explain how S&C funds will be “principally directed towards, and effective in, meeting the district’s goals for its high-need pupils.”**

LCFF regulations require the District to identify *each* proposed districtwide use of S&C funds and explain how each is “principally directed towards, and effective in, meeting the

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<sup>2</sup> On June 17, 2016, the ACLU and Public Advocates, Inc. wrote a letter to all school districts in California – including Fresno Unified – highlighting essential legal requirements for LCAPs.

<sup>3</sup> We note that the District told the ACLU and community organizations that the County office of Education denied its first LCAP because the District did not properly identify or justify S&C funds in several portions of its LCAP.

<sup>4</sup> See 5 CCR § 15496(b)(1)(B).

<sup>5</sup> See 5 CCR § 15497.5, LCAP Template, Annual Update Instructions. (“For each goal in the prior year LCAP, review the progress toward the expected annual outcomes(s)…The review must include an assessment of the effectiveness of the specific actions. Describe any changes to the actions or goals the LEA will take as a result…”).

district's goals for its *high-need pupils* in the state priority areas.”<sup>6</sup> The instructions for Section 3.B further require the District to “demonstrate how the services provided in the LCAP year for low income pupils, foster youth, and English Learners provide for increased or improved services for these pupils in proportion to the increase in funding provided for such pupils in that year as calculated pursuant to 5 CCR 15496(a)(7).”<sup>7</sup> The District disregards its obligations under the law by refusing to identify and justify S&C funds.

The vast majority – almost 90% – of the actions and services listed in Section 2 of the District's LCAP are identified as serving *all* students, rather than being targeted at the high-need students who generated the S&C funding received by the District. The District purports to justify districtwide uses of S&C funds in Section 3.A by stating generally that “the needs of our high-need population [were] in mind,”<sup>8</sup> and that “all districtwide and schoolwide actions and services have been developed based upon the needs of high-need students, *but* will serve the needs of *all* students.”<sup>9</sup> Not so. Vague, summary statements that simply restate statutory language are not expenditure-specific explanations of how these uses are principally directed towards, and effective in, meeting the District's goals for its high-need students. And therefore, do not meet the legal requirements set forth in 5 CCR § 15496(b) and the LCAP Template instructions.

Special education programs which use S&C funds, must reflect needs for high-need students. The District proposes to use at least \$7,153,000 in S&C funds for special education programs without explaining how those programs are directed towards, and effective in, meeting the District's goals for its high-need students.<sup>10</sup> The District ignores the needs of high-need students to fund special education services that the District is already required to provide under federal and state law. According to the Education Code, “high-need students” include *only* foster youth, low-income, and English Learner students.<sup>11</sup> While high-need students may also be eligible for special education programs, special education is a service that is available to *all* students. This expenditure, which includes \$3.4 million in S&C dollars to provide “co-teaching classes” for students with disabilities,<sup>12</sup> does not reflect any increase or improvement of services for high-need students specifically.<sup>13</sup> These allocations violate state law and must be corrected in the District's LCAP.

Other examples of districtwide programs for which the District proposes to use S&C funds, without the required justification, include:

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<sup>6</sup> See 5 CCR § 15496(b) (emphasis added).

<sup>7</sup> 5 CCR § 15497.5, LCAP Template, Section 3 Instructions.

<sup>8</sup> Fresno Unified School District Local Control Accountability Plan, 2016-2019 (“Fresno LCAP”) at 181.

<sup>9</sup> *Id.* at 183.

<sup>10</sup> *Id.* at 41, 53, 54.

<sup>11</sup> See Educ. Code § 2574(b)(2); 5 CCR § 15495 (m) (2015).

<sup>12</sup> Fresno LCAP at 50.

<sup>13</sup> See Educ. Code § 42238.07(a)(1); 5 CCR § 15496(b)).

- **\$14.7 million in S&C funds allocated to school sites.**<sup>14</sup> The LCAP omits how the District will ensure that funds pushed down to the school site will be principally directed towards, and effective in, meeting the District’s goals for its high-need students. The description only states that “each school was provided data on high-need student populations.” Even after the ACLU’s August 2016 meeting with the District, the District refused to justify this action. The District’s consistent failure to provide a legally sufficient justification under the LCFF regulations compels a finding that S&C funds are improperly being used at the school sites. The District must remove the unjustified expenditure or use base funds.
- **\$5.6 million to maintain middle school redesign.**<sup>15</sup> By failing to identify how high-need students will principally benefit from a middle school redesign through S&C funds, the District continues to violate the LCFF mandate to “identify and justify” its S&C funds. The District fails to substantively respond to the ACLU’s letter asking how a middle school redesign that is meant to “ensure a broad course of study” for *all* students through “access to electives as well as core classes” is a service for high-need students.<sup>16</sup> Accordingly, the District is not permitted to allocate these S&C funds for a middle school redesign without a legally sufficient justification.
- **\$3.8 million in employee supports.**<sup>17</sup> The District lists several schools that will receive “employee supports,” without justifying how this expenditure is principally directed towards high-need students. This expenditure includes reducing “large core classes.” But it is apparently not a class enrollment cap. It will also fund additional vice principals at two middle schools. The assertion that reducing “large core classes” for *all* students will somehow justify District goals for its high-need students, fails to meet any legal standard of justification for S&C funds. The District has conflated the fact that high-need students *may* attend those schools with a duty to create programs *for* high-need students. These two points are not the same. Thus, the District must amend its LCAP or remove S&C funding to meet the legal requirements for the “employee supports” expenditure.
- **\$5.6 million to renovate high school bathrooms and maintain 40 additional custodians, three custodial supervisors, and four ground maintenance positions.** Under no circumstance can renovations of bathrooms and additional custodians be considered a program “principally directed” for high-need students.<sup>18</sup> During our August 2016 meeting with the District, the District

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<sup>14</sup> *Id.* at 117.

<sup>15</sup> *Id.* at 24.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 27.

<sup>18</sup> *Id.* at 108.

conceded this point; but, nevertheless maintained this use in its LCAP. Structural maintenance and improvement, which is clearly what “base” LCFF funds are intended for, will not improve the education of high-need students more than it will benefit any other District student. The District cannot subsidize its preexisting costs to maintain schools by misappropriating funding meant for high-need students. Therefore, the District must remove this proposed use from S&C funding.

The legal requirement to identify and justify districtwide uses of S&C funds is critical both to ensure that the District directs the funds to the appropriate places and to provide necessary transparency so that stakeholders understand how or whether the district is properly spending dollars intended to benefit high-need students.

The District must revise its LCAP to identify and justify each schoolwide and districtwide use of S&C funding, and explain how each proposed use is “principally directed towards, and effective in, meeting the district’s goals for its high-need pupils in the state priority areas.” We have explained these legal requirements to the District multiple times apparently to no avail.<sup>19</sup> The District’s LCAP illustrates a lack of critical analysis to create programs for high-need students to meet legal justifications required in LCAPs for districtwide and schoolwide uses of S&C funds.

## **II. The LCAP fails to include data that demonstrates specific outcomes for high-need students in the Annual Update.**

Under the LCFF regulations, the Annual Update section of the LCAP, which describes last year’s LCAP goals, requires the District to demonstrate improvements of specific outcomes for its high-need students.<sup>20</sup> The District must also monitor progress towards expected outcomes and measure areas where it still needs to improve.<sup>21</sup> Additionally, the LCAP template instructions state that the District must “include an assessment of the effectiveness of the specific actions.”<sup>22</sup>

Fresno Unified received almost \$126,000,000 dollars in S&C funds last year, yet its LCAP fails to present any data to support that it met any of its goals for *high-need* students. This money must be principally directed toward and effective in meeting the needs of high-need students. The District indeed continuously misses the mark by only reporting commentary for *all* students in the District. For example, Goal 1 of the District’s 2015-2016 LCAP states that “all students excel in reading, writing, and math.”<sup>23</sup> In the October 2015 and in the August 2016 meeting with Ms. Townsend to discuss the District’s 2015-2016 and 2016-2017 LCAPs, she

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<sup>19</sup> In addition, the ACLU provided a copy of Public Advocates’ joint training materials with Sacramento County Office of Education on Section 3 of the LCAP during the August 2016 meeting with the District.

<sup>20</sup> Educ. Code Sec. 52061.

<sup>21</sup> See 5 CCR § 15497.5, LCAP Template, Annual Update Instructions.

<sup>22</sup> LCAP Template, Annual Update Instructions at pg. 10.

<sup>23</sup> Fresno LCAP at 133.

stated that it is the District's intent that this goal include progress in each metric for each subgroup of high-need students.<sup>24</sup> However, the District did not include any high-need student data within the Annual Update section within the District's 2016-2017 LCAP as to any of these points. For example, the 2016-2017 Annual Update section states that 24.18% of students completed Advanced Placement (AP)/ International Baccalaureate (IB) courses, which exceeded the District's planned outcome for Goal 1C in its 2015-2016 LCAP.<sup>25</sup> But there is no data on this point for high-need students. Without disaggregated data, there is no way to measure AP/IB program completion for *high-need students* and by what percentage. Thus, the District fails to explain whether the actions supporting this goal were effective in improving this metric for high-need students. Similarly, the Annual Update section fails to report the graduation rates of high-need student subgroups.<sup>26</sup> Without disaggregated data for key indicators such as graduation, suspension, and course completion in the District's LCAP, the District will not know whether S&C funds are actually helping high-need students. Lack of high-need student data will make it impossible for the District to address the needs of high-need students adequately as they have no measure for services nor specific outcomes.

In its 2016-2017 LCAP Annual Update section, the District must assess the effectiveness of the specific actions focusing on high-need students, including data reflecting outcomes for high-need students. Regulated data includes graduation rates, enrollment rates in advanced coursework, discipline rates, and college readiness rates.

### **III. The District fails to offer any meaningful justification for use of S&C funds on police expenditures.**

The District proposes to expend \$440,000 of its S&C funds this year for "school site security enhancements" including funds for a "shot spotter" program to allegedly "reduc[e] school time disruptions in areas with high crime,"<sup>27</sup> "additional officers at secondary schools," as well as a "police department chaplaincy program at elementary schools."<sup>28</sup> Little explanation for any of these programs is included in the LCAP, and these expenditures fail to demonstrate they are principally directed and effective in meeting the needs of high-need students.

First, the District cannot justify funding a Fresno Police Department "shot spotter" program with S&C funds. This program unfairly increases funding for a Fresno Police Department program by taking money away from high-need student programming. If the shot spotter program is the one described in the *Fresno Bee* article, the District's practice violates the law by failing to demonstrate any possible relation to high-need students' needs.<sup>29</sup> The LCAP

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<sup>24</sup> Staff Attorney Abre' Conner Meeting with District Representative Tammy Townsend, October 23, 2015 and August 9, 2016.

<sup>25</sup> *Id.* at 134.

<sup>26</sup> *Id.* at 136.

<sup>27</sup> *Id.* at 110.

<sup>28</sup> *Id.* at 109.

<sup>29</sup> Fresno Bee "Fresno Unified invests \$500,000 in gunshot-tracking technology" Feb. 28, 2016 available at <http://www.fresnobee.com/news/local/education/article62829927.html>.

mentions the District targets “areas of high crime” without describing how the District will collect or validate this data. The District failed to respond or even acknowledge the ACLU’s July 2016 letter when we asked “how will the District determine which areas are considered ‘areas with high crime’ that will be targeted by the new program?”<sup>30</sup> The District fails to present any evidence that “gunshots” from the area surrounding a school will not be wrongly imputed to students, or that students in schools in “high-crime areas” will not be wrongly labeled as criminally deviant. The District’s duty is to effectively educate students, not to potentially incorporate implicit biases into the school discipline context. Based on the District’s continued lack of justification for these funds, the District fails to establish that this program is principally directed towards and effective in meeting the needs of high-need students. The *Fresno Bee* noted that the proposed shot spotter program will allow “better pinpointing [of] gunfire across the city.”<sup>31</sup> Being able to pinpoint where shots are fired will not help any student in the District, let alone high-need students specifically.

Second, the District has the burden of establishing that its spending on Fresno Police Department school patrols are principally directed and effective in meeting needs for high-need students. Yet it omits any justification for these S&C funds. Indeed, the District cannot justify this claim. Funding counselors to teach students how to resolve conflict helps keep high-need students in school and out of the criminal justice system. Studies show that having a regularly assigned police officer at school can more than double the rate of arrests for “disorderly conduct,” even when controlling for important factors such as school poverty.<sup>32</sup> An arrest during elementary, middle, or high school can have terrible consequences for a student’s future.<sup>33</sup> In Fresno Unified, Black and Latino students, many of whom are high-need students, are more likely to be arrested or reported to police.<sup>34</sup> Research confirms that providing more counselors and mental health professionals in schools is the most effective approach to school safety.<sup>35</sup> If the District is suggesting a clear nexus that low-income, foster youth, and English Learner students require more police to be safe at schools, it should state this point explicitly. However, the District has not and cannot make such a claim. Police officers do not need to stations at each

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<sup>30</sup> Fresno LCAP at 110.

<sup>31</sup> Fresno Bee “Fresno Unified invests \$500,000 in gunshot-tracking technology” Feb. 28, 2016 *available at* <http://www.fresnobee.com/news/local/education/article62829927.html>.

<sup>32</sup> Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. OF CRIM. JUST. 280, 280–87 (2009).

<sup>33</sup> Gary Sweeten, *Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement*, 23 JUST. Q. 462, 473, 478-79 (2006), [http://www.masslegalservices.org/system/files/library/H.S.ed\\_and\\_arrest\\_-\\_ct\\_involvement\\_study\\_by\\_Sweeten.pdf](http://www.masslegalservices.org/system/files/library/H.S.ed_and_arrest_-_ct_involvement_study_by_Sweeten.pdf).

<sup>34</sup> Fresno Police Department “Winter 2015 Student Contact Analysis” at pg. 3 *available at* <http://www.fresno.gov/NR/rdonlyres/5A376E8E-C820-4016-9911-DE21A7E4C186/34701/StudentContractAnalysisWinter2016.pdf>. (showing that while Black students only comprise around 7% of the student population, they represented 21% of reported crime. Latino students comprise around 30% of the student population, but represent over half the reported crime.).

<sup>35</sup> NASP POSITION STATEMENT: BULLYING PREVENTION AND INTERVENTION IN SCHOOLS, NAT’L ASS’N SCH. PSYCHOLOGISTS (2012), <https://www.nasponline.org/assets/Documents/Research%20and%20Policy/Position%20Statements/BullyingPrevention.pdf>.

school and should be used as a last resort when there is a real and immediate threat to public safety.<sup>36</sup> Funding Fresno Police Department programs to punish high-need students will not help high-need students. Fresno Police Department expenditures are an improper expenditure of S&C dollars.

The District must revise its LCAP to spend these S&C dollars on school programs that are principally directed toward, and effective in, meeting District goals for high-need students.

### **Remedy Requested**

For the reasons described in this UCP complaint, to comply with the law, the District must amend its LCAP to provide the robust justifications required for all districtwide and schoolwide spending of S&C funds and to disaggregate Annual Update data to meaningfully evaluate last year's use of S&C funds to improve or increase services for the high-need students who generate those funds. Further, the District should reallocate its proposed S&C funds to enhance safety and school climate rather than on police expenditures.

Given the significant impact on the opportunities of high-need students to succeed, the ACLU is prepared to consider any and all options, including legal recourse, to ensure the District meets its legal requirements. Please contact Abre' Conner at [aconner@aclunc.org](mailto:aconner@aclunc.org) to confirm your adherence with the LCFF statute and expenditure regulations by September 27, 2016. Thank you for your prompt attention to this matter.

Sincerely,



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<sup>36</sup> Gary Fields & John R. Emshwiller, *For More Teens, Arrests by Police Replace School Discipline*, WASH. POST, October 20, 2014, <http://www.wsj.com/articles/for-more-teens-arrests-by-police-replace-school-discipline-1413858602>.



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Enclosures: Letter to County and District Superintendents from ACLU of Northern California and Public Advocates (June 17, 2016).

Public Advocates' joint training materials with Sacramento County Office of Education on Section 3 of the LCAP.