



December 6, 2016

VIA U.S. MAIL AND E-MAIL

State Superintendent Tom Torlakson
c/o Local Agency Systems Support Office
California Department of Education
1430 N Street
Sacramento, CA 95814
lcff@cde.ca.gov

**RE: Uniform Complaint Procedure Complaint re: Fresno Unified School
District's Failure to Comply with the LCAP Legal Requirements Pertaining
to 2016-2017 LCAP**

Dear Superintendent Torlakson,

We submit this appeal of the Fresno Unified School District's ("District") determination of the District's Uniform Complaint Procedure ("UCP") complaint ("Complaint") the ACLU filed on September 21, 2016. We appeal the District's failure to comply with the Local Control and Accountability Plan ("LCAP") legal requirements. Fresno County Office of Education received a copy of both the August 2, 2016 letter filed by the ACLU, community organizations, and residents, and the September 21, 2016 Complaint filed with the District.¹

As discussed more fully in the attached Complaint, Exhibit 1, 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 towards high-need students.

On November 21, 2016, we received Exhibit 3, the District's response where it concluded that the District did not fail to comply with the legal requirements under Education Code § 42238.07 or CCR § 15496.²

¹ See Exhibit 1, Complaint (Sept. 21, 2016); *see also* Exhibit 2 ACLU Letter to FUSD (August 2, 2016).

² See Exhibit 3, District Response (Nov. 21, 2016).

The Petitioners made every effort to resolve this dispute with the District without filing a complaint or appeal.

On October 23, 2015, the ACLU met with District staff member Tammy Townsend for several hours to discuss ways to strengthen the District's 2016-2017 LCAP. The ACLU attended three District LCAP meetings during January and February of 2016. On May 20, 2016, the District released its more finalized version of the 2016-17 LCAP, while it continued to gather input from the community. The ACLU and community partners subsequently sent a letter on August 2, 2016 to the District outlining problems with the LCAP and agreed to an in-person meeting on August 9, 2016 to discuss the ACLU's and community's concerns. The District refused to address any of the issues meaningfully at the meeting and the ACLU had no choice but to file the Complaint on September 21, 2016.

Even after filing the complaint, the ACLU continued outreach to the District to attempt to resolve the dispute. However, the District made little attempt to negotiate changes that would lead to a different result than the meeting the ACLU and community partners held on August 9, 2016 regarding the District's LCAP. The ACLU emailed, called, or answered phone calls from the District seven times to attempt to schedule the meeting. For nearly 60 days, the ACLU explained to the District that Tammy Townsend, whom the District offered for negotiation, explicitly told the ACLU, community partners, and Fresno residents that Ms. Townsend could not make decisions without receiving approval from the District Superintendent or member of the financial department. For example, on September 29, 2016, the ACLU suggested an agenda for negotiations and next steps. The District did not acknowledge the ACLU's proposed agenda in their reply on October 3, 2016, but asked for meeting times. The ACLU promptly replied the same day and asked the District to confirm the agenda, and the District called the ACLU to schedule a meeting, without ever acknowledging the purpose of the meeting. Moreover, in phone conversations, the District continued to request the ACLU meet only with Ms. Townsend. The ACLU explained its position regarding efficient negotiation, but the District never granted the ACLU the recommended meeting to discuss the District's LCAP issues.

Despite the numerous letters and phone calls between the District and the ACLU and other community partners since October 2015, the District still fails to amend or even address the violations in its LCAP.

The District's response fails to explain how almost 90% of funds will be "principally directed towards, and effective in, meeting the District's goals for high-need students."

First, the District fails to adequately explain why almost 90% of supplemental and concentration funds do not need proper identification and justification for how they are "principally directed towards, and effective in, meeting the district's goals for its high-need pupils in the state priority areas."³ The District ignores any specific justification for high-need

³ See 5 CCR § 15496(b)(1)(B).

students by stating that the District has a large population of unduplicated pupils.⁴ Specifically, the District has failed to provide an explanation of how the following services are “principally directed or effective in meeting the needs of” high-need students:

- 14.7 million dollars has been allocated to school sites,
- \$5.6 million for middle school redesign,
- \$3.8 million dollars in employee supports, and
- \$5.6 million in high school bathroom renovations, additional custodians, and maintenance positions.

The District’s response is that “families living in extreme poverty” should be a factor, without actually allocating money for low-income students, nor explaining how their actions help high-need students.⁵ This fails to satisfy the District’s obligations under LCFF and the regulations. As outlined in a recent investigation report CDE issued, a District must “distinguish between services directed to unduplicated pupils based on that status, and services available for all pupils, without regard to their status as unduplicated pupils or not.”⁶ The District has not made any attempt to distinguish these groups in 90% of their funds. The District implies that because more money has been allocated towards two high-need student programs, this alleviates their duty to identify and justify the funding in their LCAP.⁷

Further, the District’s response to the Complaint fails to meaningfully explain how its S&C allocations for students with disabilities are principally directed towards, and are effective in, meeting the district’s goals for its high need students. The District’s justification for using S&C funds for students with disabilities is that the District had available S&C funds to allocate to those programs.⁸ This response is inadequate. As outlined in CDE’s LAUSD investigative report assessing LAUSD’s LCAP, “the articulation of reasons supporting districtwide use is critical to meeting the statutory requirement that such funds be used to ‘increase or improve’

⁴ See District response page 3 (The District only concedes that they have a high unduplicated pupil count and then proceeds to state that a great number of their programs are designed for “all students” without offering any justification.).

⁵ See District response page 3 (The District states that “it would be appropriate to factor the challenges faced by families living in extreme poverty into any action” when explaining their rationale for funding all students as opposed to high-need students.).

⁶ California Department of Education Investigation of Appeal Against the Los Angeles Unified School District (CDE Investigation Report of LAUSD) page 15.

⁷ See District response page 3 (In the Findings of Facts, the District outlines two areas where planned expenditures increased in actual funding, without explaining how this increase in funding alleviates the District of its LCFF obligations.).

⁸ See District response page 3.

services for unduplicated pupils in proportion to the amount of the increase in funding.”⁹ Here, the District has inappropriately used S&C funds because it has not provided any justification for how spending on students with special needs will be “principally directed towards, and effective in,” meeting the District’s goals for English learners, low income students, and foster youth.

The District’s response fails to demonstrate how parents, students, and community members can evaluate outcomes through general data in its Annual Update.

Second, the District’s response fails to explain how parents and students can meaningfully evaluate high-need student data and specific actions regarding last year’s LCAP goals.¹⁰ The Annual Update section includes general information that is not disaggregated by high-need pupil group. The District’s response is that the LCAP indicates outcomes for “students” generally. However, the Complaint outlined that the District should disaggregate this data by pupil group. As community partners and the ACLU explained in previous letters, the Complaint, and in our meetings, parents and students cannot decipher which programs actually help high-need students. This confusion happens because the District’s Annual Update does not provide metrics to evaluate success or areas of improvement in allocating funds for those pupil groups. The District never responded to why they refuse to disaggregate the data and show clear and specific actions of how high-need students have improved in the UCP response.

The District continues to use S&C funds for police expenditures without sufficiently identifying how such expenditures are “principally directed towards, and effective in, meeting the District’s goals for high-need students.”

Third, contrary to District school board members’ questions regarding S&C allocations, petitions signed by Fresno residents, and community members’ concerns, the District improperly continues to use S&C funds to pay for police programs to monitor District students. For investments in school police and the Fresno Police Department’s shot spotter program, the District fails to respond to the ACLU’s concerns in using S&C funds for crime investments. The District explains that “violent crime” in Fresno justifies using S&C funds for more school police and a shot spotter program.¹¹ As outlined in our Complaint, this statement is not an adequate justification. As discussed above, the regulations require districts to describe how such services are “principally directed towards, and are effective in, meeting the district’s goals for its unduplicated pupils in the state and any local priority areas.”¹² Again, the District fails to assert any articulable reason why the program will help meet the district’s goals for its high-need

⁹ See CDE Investigation Report of LAUSD page 15.

¹⁰ 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...”).

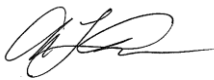
¹¹ See District response page 4 (The District explanation is that “...violent crime in Fresno is significantly higher than the state and national average.”).

¹² See 5 CCR § 15496(b)(1)(B).

students. To reiterate, the District has not—and cannot—justify that more police or a shot spotter program will help high-need students in the District. Indeed, as outlined in our Complaint, students of color often have negative interactions with law enforcement officers in Fresno, that actually prevents them from reaching the District’s goals for high need students. The District must correct this allocation.

For the reasons stated supra and in our complaint, 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. We request that CDE investigate and issue a ruling to revise its LCAP immediately. We look forward to CDE’s initial response within 14 days of receipt. Pursuant to Education Code section 51075(a), CDE must provide “a written appeal decision within 60 days of the Superintendent’s receipt of the appeal.” Please contact Abre’ Conner at aconner@aclunc.org if you have any additional questions.

Sincerely,



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Enclosures

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EXHIBIT 1



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,¹ 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

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

Learner, or foster youth students (collectively, “high-need students”).² 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.³

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.”⁴

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.⁵

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

² 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.

³ 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.

⁴ See 5 CCR § 15496(b)(1)(B).

⁵ 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.”⁶ 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).”⁷ 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,”⁸ 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.”⁹ 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.¹⁰ 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.¹¹ 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,¹² does not reflect any increase or improvement of services for high-need students specifically.¹³ 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:

⁶ See 5 CCR § 15496(b) (emphasis added).

⁷ 5 CCR § 15497.5, LCAP Template, Section 3 Instructions.

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

⁹ *Id.* at 183.

¹⁰ *Id.* at 41, 53, 54.

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

¹² Fresno LCAP at 50.

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

- **\$14.7 million in S&C funds allocated to school sites.**¹⁴ 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.**¹⁵ 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.¹⁶ 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.**¹⁷ 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.¹⁸ During our August 2016 meeting with the District, the District

¹⁴ *Id.* at 117.

¹⁵ *Id.* at 24.

¹⁶ *Id.*

¹⁷ *Id.* at 27.

¹⁸ *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.¹⁹ 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.²⁰ The District must also monitor progress towards expected outcomes and measure areas where it still needs to improve.²¹ Additionally, the LCAP template instructions state that the District must “include an assessment of the effectiveness of the specific actions.”²²

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.”²³ 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

¹⁹ 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.

²⁰ Educ. Code Sec. 52061.

²¹ See 5 CCR § 15497.5, LCAP Template, Annual Update Instructions.

²² LCAP Template, Annual Update Instructions at pg. 10.

²³ 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.²⁴ 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.²⁵ 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.²⁶ 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,"²⁷ "additional officers at secondary schools," as well as a "police department chaplaincy program at elementary schools."²⁸ 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.²⁹ The LCAP

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

²⁵ *Id.* at 134.

²⁶ *Id.* at 136.

²⁷ *Id.* at 110.

²⁸ *Id.* at 109.

²⁹ 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?”³⁰ 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.”³¹ 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.³² An arrest during elementary, middle, or high school can have terrible consequences for a student’s future.³³ In Fresno Unified, Black and Latino students, many of whom are high-need students, are more likely to be arrested or reported to police.³⁴ Research confirms that providing more counselors and mental health professionals in schools is the most effective approach to school safety.³⁵ 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

³⁰ Fresno LCAP at 110.

³¹ 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>.

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

³³ 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.

³⁴ 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.).

³⁵ 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.³⁶ 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.

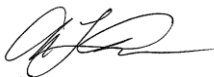
The District must revise its LCAP to spend these S&C dollars on school programs that are principally directed toward, and effective in, meeting District goals for high-need students.

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 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,



Abre' Conner
Staff Attorney
ACLU of Northern California
aconner@aclunc.org

Sylvia Torres-Guillen
Director of Education
ACLU of California
strokes-guillen@aclusocal.org

cc: Tammy Townsend, Executive Officer
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Fresno Unified School District
tammy.townsend@fresnounified.org

³⁶ 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.

EXHIBIT 2



**Californians
for Justice**



August 2, 2016

VIA U.S. MAIL AND E-MAIL

Michael E. Hanson, Superintendent
Fresno Unified School District
2309 Tulare St
Fresno, CA 93721
michael.hanson@fresnounified.org

RE: Fresno Unified School District's 2016-2017 LCAP Update

Dear Superintendent Hanson,

The American Civil Liberties Union of California (“ACLU”) is committed to fostering an inclusive school climate and access to education for the most vulnerable students in California, including students of color, LGBTQ youth, and low-income youth. We are writing to express concern regarding the Fresno Unified School District’s (“District”) fulfillment of the legal requirements of the statutes and regulations governing the Local Control Funding Formula (“LCFF”). The State Board of Education has adopted permanent regulations and an updated Local Control Accountability Plan (“LCAP”) template that affirm and clarify school districts’ legal obligations to use supplemental and concentration (“S&C”) funds. The state allocates these funds to increase or improve services specifically for low-income, English Learner, or foster youth students (collectively, “high-need students”). Generally, the LCAP should clarify District decisions about educational services and expenditures to parents, students, and other community members.

This letter reflects the ACLU, Gay-Straight Alliance, Fresno Interdenominational Refugee Ministries, East Bay Asian Youth Center, Fresno Center for New Americans, and Californians for Justice’s continuing concerns with the District’s LCAPs. In October 2015, the

ACLU met with the District’s representative, Tammy Townsend,¹ to discuss our recommendations regarding the District’s 2015-2016 LCAP Update. At that time, the ACLU suggested that the District better identify and justify S&C funds for high-need students in its 2016-2017 LCAP Update. After the October 2015 meeting, we also attended several community hearings regarding the LCAP. 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.

We are troubled that certain essential legal requirements, which we have previously discussed with the District, are still not met in the District’s 2016-2017 LCAP. First, the LCAP fails to identify and justify each schoolwide and districtwide use of S&C funding by explaining how the proposed use is “principally directed towards, and effective in, meeting the district’s goals for its high-need pupils in the state priority areas.”² 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.³ Finally, we have strong reservations about the District using S&C funds, which must be spent to increase and improve services for high-need students, to pay for police programs to monitor District students.

Accordingly, we request that the District revise its 2016-2017 LCAP to identify and properly justify all S&C funds allocated on a districtwide or 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 the S&C funding will be “principally directed towards, and effective in, meeting the district’s goals for its high-need pupils in the state priority areas.”

The instructions for Section 3.A of the LCAP direct the District to “describe how the LEA is expending these funds in the LCAP year. Include a description of, and justification for, the use of any funds in a districtwide [or] schoolwide...manner as specified in 5 CCR 15496.”⁴ LCFF regulations make clear that the District must identify *each* proposed districtwide use of S&C funds 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.”⁵ The instructions for Section 3.B further require the District to, “[c]onsistent with the requirements of 5 CCR 15496, 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

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

² See 5 CCR § 15496(b)(1)(B).

³ 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...”).

⁴ 5 CCR § 15497.5, LCAP Template, Section 3 Instructions.

⁵ See 5 CCR § 15496(b) (emphasis added).

proportion to the increase in funding provided for such pupils in that year as calculated pursuant to 5 CCR 15496(a)(7).”⁶

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,”⁷ 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.”⁸ That rationale does not explain how the specific proposed districtwide uses—some examples of which are listed below—are principally directed towards, and effective in, meeting the District’s goals for its high-need students, and therefore does not meet legal requirements laid out in 5 CCR § 15496(b) and the LCAP Template instructions.

For example, the District proposes to use at least \$5,853,000 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.⁹ According to the Education Code, “high-need students” include *only* foster youth, low-income, and English Learner students.¹⁰ While high-need students may also be eligible for special education programs, special education is a service that is available to *all* students and not just high-need students. This expenditure, which includes \$3.4 million in S&C dollars to provide “rigorous classes” for students with disabilities,¹¹ does not reflect any increase or improvement of services for high-need students specifically.¹² Therefore, the District should explain this expenditure further in its LCAP.

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

- **\$14.7 million in S&C funds allocated to school sites.**¹³ The LCAP does not explain 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.” This is not a proper justification under LCFF regulations because it does not explain how that data will guide spending of S&C funds at each school site.

⁶ 5 CCR § 15497.5, LCAP Template, Section 3 Instructions.

⁷ Fresno Unified School District Local Control Accountability Plan, 2016-2019 (“Fresno LCAP”) at 168.

⁸ *Id.* at 170.

⁹ *Id.* at 37, 39, 50.

¹⁰ See Educ. Code § 2574(b)(2); 5 CCR § 15495 (m) (2015).

¹¹ Fresno LCAP at 50.

¹² See Educ. Code § 42238.07(a)(1); 5 CCR § 15496(b)).

¹³ *Id.* at 100.

- **\$5.6 million to maintain middle school redesign.**¹⁴ The District cannot expect stakeholders to meaningfully engage in the LCAP process, as required by the LCFF statutes, if the District does not clearly identify how high-need students will principally benefit from a middle school redesign through S&C funds.
- **\$3.8 million in employee supports.**¹⁵ The District lists several schools that will receive “employee supports.” This includes reducing “large core classes,” but is apparently not a class enrollment cap. It will also fund additional vice principals at two middle schools. The LCAP fails to explain how those expenditures are or will be principally directed towards, and effective in, meeting the District’s goals for its high-need students.
- **\$5.6 million to renovate high school bathrooms and maintain 40 additional custodians, three custodial supervisors, and four ground maintenance positions.** It is extremely difficult to understand how this proposed use of S&C funds will be principally directed towards, and effective in, meeting the District’s goals for its high-need students.¹⁶ This proposed expenditure appears to be for structural maintenance and improvement, which is clearly what “base” LCFF funds are intended for.

The legal requirement to identify and justify districtwide uses of S&C funds is critical both to ensure that the District is not misusing those funds and to provide transparency to facilitate meaningful stakeholder input. Providing the required explanation ensures that the decisions are anchored in the particular needs of the students who generate the funds, and that stakeholders have appropriate insight into the rationale so that they can participate meaningfully in the local conversation about priorities.

The District must revise its LCAP to identify and justify each schoolwide and districtwide use of S&C funding, explaining 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.” Attached, for your reference, is a Public Advocates LCAP training which reflects the kind of justification required in LCAPs for districtwide and schoolwide uses of S&C funds.

II. The LCAP does not include data necessary for stakeholders to meaningfully engage with the Annual Update.

Under the LCFF regulations, the Annual Update section of the LCAP, which describes last year’s LCAP goals, should monitor progress towards expected outcomes and measure areas where improvement is still needed.¹⁷ This section should communicate to parents, students, and community members how the District is improving specific outcomes for its high-need

¹⁴ *Id.* at 24.

¹⁵ *Id.* at 26.

¹⁶ *Id.* at 99.

¹⁷ See 5 CCR § 15497.5, LCAP Template, Annual Update Instructions.

students.¹⁸ The LCAP template instructions state that the District must “include an assessment of the effectiveness of the specific actions.”¹⁹

Fresno Unified received almost \$126,000,000 dollars in S&C funds last year. As previously noted, this money must be principally directed toward and effective in meeting the needs of high-need students. However, in the Annual Update section, the District does not present any data to explain whether it is progressing to meet its goals for *high-need students* in particular. Instead, the Annual Update only gives information about *all* students in the District. For example, Goal 1 of the District’s 2015-2016 LCAP was that “all students excel in reading, writing, and math.”²⁰ In the October 2015 meeting with Ms. Townsend to discuss the District’s 2015-2016 LCAP, she stated that it is the District’s intent that this goal include progress in each metric for each subgroup of high-need students.²¹ However, the Annual Update section within the District’s 2016-2017 LCAP does not include any data evaluating the progress of high-need student subgroups. 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.²² While this is good news, this does not tell us whether *high-need students* completed more AP/IB courses and by what percentage – and thus, whether the actions supporting this goal were effective in improving this metric for high-need students. Similarly, the Annual Update section does not report the graduation rates of high-need student subgroups.²³ Because the LCAP does not disaggregate data about high-need students in the Annual Update section, parents, students, and community members are unable to meaningfully assess whether high-need students have benefited from the District’s use of S&C funds last year.

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

III. The District fails to justify S&C funds for police expenditures.

The District proposes to expend \$440,000 of its S&C funds this year for “school site security enhancements” including funds for “additional officers at secondary schools” as well as a “police department chaplaincy program at elementary schools.”²⁴ The District also proposes to fund a “shot spotter” program, for “reduc[ing] school time disruptions in areas with high

¹⁸ Educ. Code Sec. 52061.

¹⁹ LCAP Template, Annual Update Instructions at pg. 10.

²⁰ Fresno LCAP at 122.

²¹ Staff Attorney Abre’ Conner Meeting with District Representative Tammy Townsend, October 23, 2015.

²² *Id.* at 122.

²³ *Id.* at 123.

²⁴ *Id.* at 101.

crime.”²⁵ No further explanation of any of these programs is included in the LCAP. First, without further information, the “police department chaplaincy program” raises constitutional concerns for the ACLU of potential First Amendment violations.²⁶

Second, we have questions and concerns about the proposed “shot spotter” program. Is this the same program which will fund Fresno Police Department’s new technology, as noted in a February 28, 2016 Fresno Bee article?²⁷ The LCAP mentions “areas of high crime” without describing how the District will collect or validate this data. How will the District determine which areas are considered “areas with high crime” that will be targeted by the new program?²⁸ How should parents, students, and community members expect the District to implement the program? The lack of transparency about the program and how it will be implemented raises alarm that “gunshots” from the area surrounding a school may be wrongly imputed to students, or that students in schools in “high-crime areas” may be wrongly labeled as criminally deviant. Moreover, school staff could unconsciously incorporate these biases into the school discipline context. Assuming the shot spotter program is the one described in the Fresno Bee article, the District cannot properly use S&C dollars to fund it. The District has not, and likely cannot, justify how this program is principally directed and effective in meeting the needs of high-need students, as required by the LCFF regulations for all districtwide and schoolwide uses of S&C funds. Indeed, the Fresno Bee notes that the proposed shot spotter program will allow “better pinpointing [of] gunfire across the city.”²⁹ It is unclear how this will help students in particular, let alone high-need students specifically.

Third, the District has not, and likely cannot, justify spending S&C funds to pay more Fresno Police Department officers to patrol District schools. 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.³⁰ An arrest during elementary, middle, or high school can have terrible consequences for a student’s future.³¹ In Fresno Unified, Black and Latino students, many of whom are high-need students, are more

²⁵ *Id.*

²⁶ *Sands v. Morongo Unified Sch. Dist.*, 53 Cal. 3d 863, 879 (1991) (stating that “[g]overnment cannot endorse the religious practices and beliefs of some citizens without sending a clear message to nonadherents that they are outsiders or less than full members of the political community.”).

²⁷ 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>.

²⁸ Fresno LCAP at 101.

²⁹ 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>.

³⁰ Matthew T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. OF CRIM. JUST. 280, 280–87 (2009).

³¹ 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.

likely to be arrested or reported to police.³² Research confirms that providing more counselors and mental health professionals in schools is the most effective approach to school safety.³³ For these reasons, police officers should be used only as a last resort when there is a real and immediate threat to public safety.³⁴ We are deeply troubled that, rather than funding counselors to teach students how to resolve conflict and to keep high-need students in school and out of the criminal justice system, the District is proposing to fund Fresno Police Department officers. We believe this is also an improper expenditure of S&C dollars.

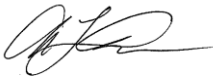
We urge the District to revise its LCAP to spend these S&C dollars on school programs that are principally directed toward, and effective in, meeting District goals for high-need students, such as restorative justice programs in each school.

Remedy Requested

For the reasons described in this letter, we strongly urge the District to 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 through programs such as restorative justice, rather than on police expenditures.

We would like to meet with the District to discuss our concerns with its 2016-2017 LCAP. We are available to meet at your convenience before August 10, 2016. I will contact Ms. Townsend directly, who I understand is the District LCAP coordinator, to set up a meeting as soon as possible. Thank you for your prompt attention to this matter.

Sincerely,



Abre' Conner
Staff Attorney
ACLU of Northern California
aconner@aclunc.org

³² 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.).

³³ 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>.

³⁴ 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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Gay-Straight Alliance

Zachary D. Darrah
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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.

EXHIBIT 3



Preparing Career Ready Graduates

BOARD OF EDUCATION

Luis A. Chavez, President
Christopher De La Cerda, Clerk
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Carol Mills, J.D.
Janet Ryan

SUPERINTENDENT

Michael E. Hanson

CONFIDENTIAL

November 18, 2016

Abre' Conner
P.O. Box 188
Fresno, California 93707

Dear Ms. Conner:

This is the District's final written decision in response to your Uniform Complaint dated September 21, 2016, and received by the Office of Constituent Services on the same date.

In your letter, (**Attachment # 1**) you allege failure to comply with the legal requirements pertaining to the Local Control and Accountability Plan ("LCAP"). Further, your letter states that the District's LCAP fails to meet the basic legal requirements of the statutes and regulations governing the Local Control Funding Formula ("LCFF"). Specifically, the UCP alleges 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, you state that the Annual Update section disregards any meaningful assessment of last year's LCAP goals with specific attention towards high-need students.

COMPLAINT:

In your written complaint, you listed the following allegations:

1. "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".
2. "The LCAP fails to include data that demonstrates specific outcomes for high- need students in the Annual Update."
3. "The District fails to offer any meaningful justification for use of S&C funds on police expenditures."

MEDIATION:

On several occasions representatives of the District offered to schedule an optional mediation meeting with Ms. Conner and appropriate staff in accordance with Title 5, Code of Regulations, § 4631(f). The conditions outlined for the meeting by Ms. Conner did not make it feasible to meet.

TIMELINE AND INVESTIGATION OF COMPLAINT:

The following events occurred related to the allegations stated in the complaint:

- October through February - District conducts 73 LCAP meetings and workshops
- February 24, 2016 – District staff presents LCAP stakeholder feedback to the Board of Education
- June 1, 2016 – LCAP approved by the Fresno Unified Board of Education
- August 2, 2016 – District received a letter from the ACLU regarding its LCAP
- August 3, 2016 – District staff reached out to the ACLU to request a meeting to discuss concerns outlined in the August 2, 2016 letter
- August 9, 2016 – District staff met with the ACLU for several hours to review the District's LCAP. At this time, and based on the August 2, 2016 letter, changes are made to incorporate some of the ACLU feedback.
- August 10, 2016 – District staff sent a summary of notes from the Meeting with the ACLU to the meeting attendees
- August 11, 2016 – Ms. Conner acknowledged the notes and added additional notes
- August 12, 2016 – District staff notified the ACLU that based on feedback from the August 9 meeting, additional clarification to language has been incorporated into the LCAP
- August 15, 2016 – First day of School, FUSD
- August 16, 2016 – Ms. Conner emailed staff requesting a timeline
- August 18, 2016 – District staff sent the finalized LCAP to ACLU and Fresno County Office of Education (FCOE)
- August 24, 2016 – FCOE approved the District's LCAP
- September 21, 2016 – ACLU filed a Uniform Complaint Procedure with the District
- September 22, 2016 – District staff extended offer to meet and mediate
- September 26, 2016 – ACLU requested additional details on purpose of a meeting
- September 29, 2016 – District counsel contacted Ms. Conner to offer to schedule a mediation meeting
- September 29, 2016 – Ms. Conner emailed District counsel to set forth conditions precedent to a mediation meeting
- October 3, 2016 – District counsel emailed Ms. Conner to attempt to schedule a mediation meeting date
- October 3, 2016 – Ms. Conner emailed District counsel regarding mediation meeting agenda
- October 10, 2016 – District counsel emailed Ms. Conner to again attempt to determine a mutually-available mediation meeting date
- October 10, 2016 – Ms. Conner emailed District counsel to again establish conditions precedent to a mediation meeting, including an agenda
- October 19, 2016 – District counsel left voicemail message for Ms. Conner regarding scheduling a mediation meeting
- November 2, 2016 – District counsel left another voicemail message for Ms. Conner regarding scheduling a mediation meeting
- November 8, 2016 – telephone call between District counsel and Ms. Conner:

- District counsel responded to Ms. Conner's questions concerning the scope of Ms. Townsend's authority to recommend changes to the LCAP
- Ms. Conner indicated that ACLU would only be interested in a meeting with the Superintendent and/or Deputy Superintendent present
- District council asked whether or not the ACLU had any evidence or other information in support of their UCP beyond what was already provided in the UCP itself that it wanted the District to consider in its investigation of the UCP. Ms. Conner responded that the only other information outside of the four corners of the UCP that it wanted the District to consider was that some members of the District's Governing Board were allegedly unhappy with the District's handling of the LCAP

FINDINGS OF FACTS:

1. Adequate justification is included in the 2016/17 Fresno Unified School District LCAP for each of the actions outlined as funded with supplemental and concentration funding.
 - a. Statements are included in the actions to justify expenditures
 - b. Education Code 42238.07 allows school Districts to expend funds districtwide. With this said, Fresno Unified School District has an unduplicated count of English learners, foster youth and students living in poverty that exceeds 86%. While the UCP points out that a great number of actions funded by supplemental and concentration funds are designed to serve all students, it would be appropriate to factor the challenges faced by families living in extreme poverty into any actions planned by this District.
 - i. Planned expenditures in the 2016/17 LCAP for English Learners are 7.8 million dollars as opposed to 5.8 million dollars in the 2015/16 LCAP. In addition to increased funding, the implementation of recommendations from a English Learner Master Plan Taskforce will emphasize improved services for English Learner students.
 - ii. Planned expenditures in the 2016/17 LCAP for Foster Youth are 1.3 million dollars as opposed to \$450,000 in the 2015/16 LCAP. Increasing social workers for foster youth students from 4 in 2015/16 to 9 in 2016/17 will both increase and improve services for foster youth.
 - iii. At Fresno Unified School District, 86% of students live below the Federal Poverty level. Each action taken by the District, regardless of the funding source, must take into account the challenging economic environment of our community.
 - iv. Supplemental programs for students with disabilities, outlined in the UCP and funded by supplemental and concentration funds, were not possible prior to this availability of this funding. These programs, including

specialized preschool programs and early autism screening, provide increased benefits to students living in extreme poverty.

2. The Annual Update section of the District's LCAP clearly indicates outcomes for students. While the new State Rubric requires districts to report on seven State and four local indicators of student success, Fresno Unified School District's LCAP provides data on 49 different indicators of student success. Most of the 49 indicators include information that is broken into the State's 13 subgroups. While not a requirement, the District has long held onto the belief that careful monitoring of data tied to goals and actions, results in increased accountability and better outcomes for students.

Much of the data in the LCAP is incorporated into the individual sections of the Annual Update, but all data is included in Appendix A, which was included at the recommendation of the Fresno County Office of Education as "best practice" to assist stakeholders in a comprehensive data review.

3. Fresno Unified School District outlined in the District's LCAP a comprehensive approach to serving the unique needs of our large student population. Included in the 154 million dollars of supplemental and concentration funds is \$440,000 to support school site security. While the \$440,000 is not the total cost of the security investments, the cost is designed to supplement grant funding. According to Neighborhood Scout violent crime in Fresno is significantly higher than the state and national average. In addition security investments was a top request of certificated staff during the District's numerous engagement efforts. Included in this action for the District's LCAP are four components:
 - a. Additional crossing guards for schools
 - b. Adding School Community Resource Officers at middle schools. As the District expands investments in Restorative Practices, School Community Resource Officers are included in the training process to ensure alignment with campus culture shifts. School Community Resource Officers are in schools to represent a positive police presence.
 - c. Police Chaplain Volunteers at each elementary school
 - d. Shot Spotter: a device to identify and target gunshot fire within two feet. This device is intended to reduce school time disruption and enhance school safety at 24 schools in neighborhoods with a history of a high propensity for gunfire.

CONCLUSION OF LAW:

Based on the foregoing findings of fact, the District has determined that the ACLU's allegations are not substantiated, and that no violation of Education Code Section 42238.07 or CCR 15496 has been committed related to the District's Local Control Accountability Plan.

DISPOSITION OF COMPLAINT:

While the District acknowledges that new guidance from the state legislature continues to be released, there is no violation of state laws. Education Code Section 42238.07 or CCR 15496 was not violated in any way. On that basis, the District denies the ACLU's complaint.

REMEDIES REQUESTED:

The remedies you requested in the complaint were:

1. "The District must revise its 2016-2017 LCAP to identify and properly justify all S & C funds allocated on a schoolwide or district wide 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"

RESPONSE TO REMEDIES REQUESTED BY COMPLAINANT:

1. While the District appreciates the collaboration and input of the American Civil Liberties Union, no changes will be made to the 2016-17 Local Control Accountability Plan beyond the first and second round of clarifying changes made by the District in August, 2016. Recommendations given by the ACLU in the engagement process will be given consideration in future LCAP's, as the District strives to create a document and process embraced by all members of the Fresno community.

APPEALS TO THE CALIFORNIA DEPARTMENT OF EDUCATION:

If dissatisfied with the District's decision, please take notice in accordance with Title 5, Code of Regulations, § 4631 that the complainant may appeal in writing to the California Department of Education (CDE) within 15 calendar days of receiving this final written decision. When appealing to the CDE, pursuant to Title 5, Code of Regulations, § 4632, the complainant must specify the reason for the appeal of the decision; whether the facts are incorrect and/or the law has been misapplied. The appeal shall be accompanied by a copy of the locally filed complaint and a copy of the District's decision.

CIVIL LAW REMEDIES:

A complainant may pursue available civil law remedies outside the district's complaint procedures. Complainants may seek assistance from mediation centers or public/private interest attorneys. Civil law remedies that may be imposed by a court include, but are not limited to, injunctions and restraining orders. For complaints alleging discrimination, harassment, intimidation, and bullying, based on state law, a complainant shall wait until 60 days have elapsed from the filing of an appeal with the CDE before pursuing civil law remedies provided district has appropriately, and in a timely manner, apprised the complainant of his/her right to file a complaint in accordance with 5 CCR 4622. The moratorium does not apply to injunctive relief and to discrimination complaints based on federal law.

In closing I commend you for the effort and time you have devoted to this matter. Collaboration and discussion is key to the LCAP process and the District considers the ACLU a partner for children in our community.

The Board prohibits any form of retaliation against any complainant in the process including, but not limited to, complainant's filing of complaint or the reporting of instances of discrimination.

Should you have any questions about the content of this letter, or would like more clarification, do not hesitate to call me at (559) 457-3661.

Sincerely,



Tammy Townsend

Executive Officer of State and Federal Programs

CC: Michael Hanson, Superintendent
Jim Yovino, Superintendent Fresno County Office of Education
Joshua Daniels, Director Outreach and Communications, California Collaborative for Educational Excellence
Teresa Plascencia, Executive Director of Constituent Services, Fresno Unified School District
Sylvia Torres-Guillen, Director of Education, ACLU of California