



California

November 8, 2018

Keith Bray  
Dannis Woliver Kelley  
555 Capitol Mall, Suite 645  
Sacramento, CA 95814  
[kbray@DWKesq.com](mailto:kbray@DWKesq.com)

Re: 2018-2019 District LCAP Justifications for Districtwide Expenditures of S&C Funds

Dear Keith,

Thank you for sending Stockton Unified School District’s (“District”) response to the concerns the ACLU Foundations of California (“ACLU”) and California Rural Legal Assistance raised about the use of and insufficient justifications for spending supplemental and concentration (“S&C”) funds on districtwide programs in the District’s 2018-2019 LCAP, specifically with regard to the actions and services described in SA 12, LE 1, LE 5, LE 9, MP 6 and MP7. To be clear, this is not simply about the language the District uses in its LCAP. Our questions are equity-driven and factual: is the District spending S&C funds—which are specifically designated by the State to be “principally directed toward and effective in meeting the district’s goals for its unduplicated pupils [“high-need students”] in the state and local priority areas”—to increase and improve services for those high-need students, or are those S&C dollars being used to fund services for all students in the District? If the latter, then the District is not spending its S&C funds with the equity lens required by the intent and text of the LCFF statute.

We appreciate the time and effort the District spent in drafting additional language to address the questions raised about how the District is using S&C funds and the sufficiency of the District’s justifications during our September 24 meeting. Our concerns are ongoing for SA 12 (“Special Education Assistive Opportunities”), LE 5 (“Facility Support”), and LE 9 (“Community Oriented Outreach Program”). Below, we discuss each in turn. To summarize briefly: the District’s LCAP describes the ways in which high-need students benefit generally from SA 12, LE 5 and LE 9, but does not articulate how the programs are principally directed toward and effective in meeting the District’s goals for its high-need students *as compared to all students*. Instead, the District describes how these programs serve “schools with high levels of unduplicated pupils,” which, as Superintendent Deasy pointed out on September 24, could describe every school in the District. For the sake of clarity, we start with a brief review of the relevant statutes and decisions.

*Applicable Law*

Regardless of a district’s proportion of high-need students, S&C funds “shall be used to increase or improve services for unduplicated pupils *as compared to the services provided to all pupils* in proportion to the increase in funds apportioned on the basis of the number and concentration of unduplicated pupils as required by Education Code section 42238.07(a)(1).” 5 CCR § 15496(a) (emphasis added). A school

district that has an enrollment of high-need students that is of 55% or more of total district enrollment may spend S&C dollars to upgrade its districtwide educational program, but only if its LCAP describes how the expenditure of S&C funds for those actions and services are “principally directed toward and effective in meeting the district’s goals for its unduplicated pupils in the state and local priority areas.” 5 CCR § 15496(b)(1)(B). These requirements were further clarified by the California Department of Education (“CDE”) in at least three formal decisions: 1) CDE’s August 6, 2016 decision regarding Los Angeles Unified School District’s (“LAUSD”) 2014-2015 and 2015-2016 LCAPs; 2) CDE’s May 5, 2017 decision regarding Fresno Unified School District’s (“FUSD”) 2015-2016 LCAP; and 3) CDE’s November 2, 2018 decision regarding Klamath-Trinity Joint Unified School District’s (“KTJUSD”) 2017-2018 LCAP. For your reference, all three decisions are attached to this letter and I have summarized the relevant findings below.

#### CDE’s August 6, 2016 Decision

In 2015, complainants represented by the ACLU and Public Advocates, Inc., filed a Uniform Complaint Procedure (“UCP”) complaint against LAUSD, a school district in which 84% of enrolled students were high-need students, for including special education services in its calculation of “LCFF funds expended...on services for unduplicated pupils” for the purpose of calculating its minimum proportionality percentage (“MPP”). CDE Investigation of Appeal Against the Los Angeles Unified School District, *As Clarified on Reconsideration August 5, 2016*, at 15 (“CDE August 6, 2016 Decision”). In its response to the UCP complaint, LAUSD found no violation of the applicable law, asserting that special education services are not provided to “all students” and therefore its spending on special education services for unduplicated pupils was properly credited towards its estimate of “prior year [S&C] expenditures” in its MPP calculation. *Id.* Complainants appealed to the CDE.

CDE’s decision unambiguously stated that LAUSD’s “inclusion of any expenditures for services in programs that serve both unduplicated and duplicated pupils as expenditures on services for unduplicated pupils, even when the services are provided without regard to pupils’ unduplicated status...is not consistent with the LCFF statute and regulations.” *Id.* CDE noted that “the comparison 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.” *Id.* at 15-16. This articulates the principle that, regardless of the number of high-need students enrolled in a school district, expenditures on special education services cannot be credited as “principally directed toward and effective in meeting the district’s goals” for its high-need students absent further justification. *Id.* at 16. LAUSD argued that it should have the highest degree of flexibility to spend S&C funds because the overwhelming majority of its students are high-need students. *Id.* In response, CDE noted that “[t]he required articulation of reasons supporting districtwide or schoolwide use is critical to meeting the statutory requirement that such funds be used to ‘increase or improve’ services for unduplicated pupils...and is essential to transparency.” *Id.* at 16-17. General special education expenditures that are not “principally directed” towards high-need students are not properly credited as expenditures to increase or improve services for high-need students. *See id.* at 18.

CDE's May 5, 2017 Decision

In 2016, the ACLU filed a UCP complaint against Fresno USD, a school district in which 86% of enrolled students were high-need students, for failing to explain how S&C funds spent on districtwide and schoolwide actions and services were principally directed towards, and effective in, meeting the district's goals for its high-need students. May 5, 2017 Letter from CDE re: Request for Appeal – Fresno Unified School District, American Civil Liberties Union, Appellant (“CDE May 5, 2017 Decision”). In its 2015-2016 LCAP, FUSD allocated approximately \$35 million in S&C funds towards special education programs, building maintenance, “employee supports,” “middle school redesign,” and push-down grants to school sites. *Id.* at 2. The UCP complaint also challenged FUSD's expenditure of S&C dollars on “security enhancements,” including police officers, police chaplain volunteers, and a “shot spotter” program. *Id.* In its response to the UCP complaint, FUSD asserted its expenditures were properly justified because 86% of students in the district were high-need students, services for English Learners and foster youth were increased overall, and “supplemental programs for students with disabilities...provide increased benefits to students living in extreme poverty.” *Id.* at 3. With respect to S&C expenditures on security enhancements, FUSD noted that “violent crime in Fresno is significantly higher than the state and national average” and its “shot spotter” program was intended to reduce school time disruption. *Id.* at 3-4.

CDE found FUSD's justifications did not meaningfully describe how the funds were principally directed and effective in meeting its goals for high-need students *in particular*. *Id.* at 7. “[W]hile a high unduplicated pupil percentage may be a reason to offer a majority of services directed toward increasing or improving services on a ‘wide’ basis, by itself it does not provide a sufficient explanation of how such services are principally directed toward unduplicated students.” *Id.* Thus, a district cannot simply refer to the fact that a significant majority of its enrolled students are high-need students to justify districtwide and schoolwide expenditures of S&C dollars. Of particular note here, CDE found that FUSD's actions and services for building maintenance, which described the benefits to students of “clean schools,” did not provide any description of how FUSD “considered the factors such as the needs, conditions or circumstances of its unduplicated students *in particular*, in connection with these actions.” *Id.* at 11 (emphasis added). Regarding FUSD's use of S&C funds for special education programs, CDE concluded that “[w]hile there is some description of how unduplicated students might benefit from each of these actions, there is no description of how the actions are ‘principally directed toward’ unduplicated pupils.” *Id.* at 12. Thus, the justifications failed to meet the standard articulated in 5 CCR 165496(b). Finally, FUSD's LCAP failed to describe how its “security investments are directed towards meeting the needs of unduplicated pupils, as opposed to all pupils,” i.e., to provide the legally-required justifications. *Id.* at 13.

CDE's November 2, 2018 Decision

In September 2018, the ACLU, the Yurok Tribe, and the Hoopa Valley Education Association filed a UCP complaint against Klamath-Trinity Joint USD, a school district in which nearly 90% of enrolled students were high-need students. Among other things, the UCP complaint alleged that KTJUSD's LCAP failed to explain how S&C funds spent on districtwide and schoolwide actions and services were principally directed towards, and effective in, meeting the district's goals for its high-need students. November 2, 2018 Letter from CDE re: Request for Appeal – Klamath-Trinity Joint Unified School District; Yurok Tribe, Hoopa Valley Education Association, and American Civil Liberties Union,

Appellants (“CDE November 2, 2018 Decision”). In response to the UCP complaint, KTJUSD stated that its districtwide use of S&C funds was adequately justified because “the District-wide use of such funds is based on impacting the learning environment at the school, which would in turn positively impact unduplicated pupils, especially considering the District’s nearly 90% unduplicated pupil count.” *Id.* at 4. The district also pointed to language in the 2017-2018 LCAP that it intended to use S&C funds to “offer a variety of programs and supports specifically for low income students and foster youth” and “Response to Instruction and Intervention specialists [who] are ‘targeting foster youth, students with disabilities, and/or students who are Native America[n], and/or Socio-Economically Disadvantaged.’” *Id.*

CDE found that KTJUSD’s LCAP failed to sufficiently describe how its actions contributed to meeting the requirement to increase or improve services for its high-need students, and how those actions were principally directed to meeting the district’s goals for its high-need students. *Id.* at 7-9.

To provide the required justification for services provided on a ‘wide’ basis, a[] L[ocal] E[ducational] A[gency] must distinguish between services directed toward unduplicated students based on that status, and services available to all students without regard to their status as unduplicated pupils or not. An LEA describes how a service is principally directed to meeting the LEA’s goals for unduplicated students in any state or local priorities when it explains in its LCAP how it considered factors such as the needs, conditions, or circumstances of its unduplicated students, and how the service takes these factors into consideration (such as, for example, by the service’s design, content, methods, or location).

In addition, the description must explain how the service will be *effective* in meeting the LCAP goals for its unduplicated students. An LEA meets this requirement by providing in the LCAP an explanation of how it believes the action/service will help achieve one or more of the expected outcomes for the goal. Conclusory statements that an action/service will help achieve an expected outcome for the goal, without further explanation as to how, are not sufficient.

*Id.* at 7-8. CDE found that KTJUSD did not explain in its LCAP “how it considered factors such as the needs, conditions, or circumstances” of its high-need students, “nor how the actions/services take[] these factors into consideration.” Additionally, the district failed to tether the actions and services in its “Demonstration of Increased or Improved Services for Unduplicated Pupils” to its annual measurable outcomes; thus, it completely failed to address how the actions and services were effective in meeting goals for high-need students. *Id.* at 9.

#### *Application of Law to District’s 2018-2019 LCAP*

##### SA 12 (“Special Education Assistive Opportunities”) (\$852,154 S&C)

The District contravenes both the equity intent of the LCFF statutes – to provide increased or improved services to high-need students *as compared to all students* – and CDE’s controlling guidance requiring school districts to provide robust explanations of how expenditures of S&C funds—for special education services in particular—are principally directed and effective in meeting goals for high-need students.

The District’s description of SA 12 provided to us on October 12 discusses “unduplicated students with I[n]dividualized] E[ducation] P[lan]s” throughout. However, there is no description of how the special

education services are principally directed toward high-need students as compared to other students. For example, the discussion of “Read Naturally,” an online reading intervention program, notes that it “will provide a valuable intervention for unduplicated students with IEPs and a variety of students identified as S[tudents] W[ith] D[isabilities] in the least restrictive setting.” It may be undeniable that high-need students with IEPs will benefit from Read Naturally, but that does not answer how the program is principally directed towards meeting the District’s goals for its *high-need students* (as compared to “a variety of students identified as SWD”). The description notes that aspects of the Read Naturally program will be tailored to high-need students, such as “designated and integrated English Language Development, and after school tutor sessions structured specifically for unduplicated students that will utilize Read Naturally as a supplemental instructional support and intensive intervention addressing increasing reading comprehension skills,” but does not explain how much (if any) of the designated \$852,154 in S&C funds will go towards those aspects which are obviously principally directed towards high-need students. Similarly, the description notes that the District identified the “need for technology and A-G support for our SWD who are also identified as unduplicated pupils,” which, again, does not describe how technology and A-G support paid for by S&C funds is principally directed towards meeting the District’s goals for its high-need students as compared to all students with disabilities.

Simply describing how high-need students benefit from special education services does not meet the standard articulated in 5 CCR 165496(b). CDE May 5, 2017 Decision at 12. Expenditures of S&C funds on special education services must explain how those services are principally directed towards high-need students and not incidentally benefitted because some students with disabilities also happen to be high-need students. *See* CDE November 2, 2018 Decision at 7-8 (stating that “[a]n LEA describes how a service is principally directed to meeting the LEA’s goals for unduplicated students in any state or local priorities when it explains in its LCAP how it considered factors such as the needs, conditions, or circumstances of its unduplicated students, and how the service takes these factors into consideration (such as, for example, by the service’s design, content, methods, or location).”). If the District chooses to spend S&C dollars on districtwide special education services, it must explain how factors such as the needs, conditions, or circumstances of its high-need students, in particular, were taken into account in determining that those services are principally directed toward the District’s goals for its high-need students. *Id.*; CDE May 5, 2017 Decision at 11. Regardless of the number of high-need students in the District, special education services cannot be paid for with S&C funds without “[t]he required articulation of reasons supporting districtwide or schoolwide use [that] is critical to meeting the statutory requirement that such funds be used to ‘increase or improve’ services for unduplicated pupils...and [] essential to transparency.” CDE August 6, 2016 Decision at 16-17.

SA 5 (Facility Support) (\$4,309,808, including \$2 million for “deferred maintenance”)

Again, the District disregards both the equity intent of the LCFE statutes – to provide increased or improved services to high-need students *as compared to all students* – and the specific direction from CDE’s May 5, 2017 Decision that S&C dollars spent on facility maintenance cannot be justified without a statement of how the school district “considered the factors such as the needs, conditions or circumstances of its unduplicated students *in particular*, in connection with these actions.” *Id.* at 11 (emphasis added). Moreover, it is likely impossible for the District to invoke such reasoning here, where S&C dollars are

being spent on districtwide building maintenance that benefits all students; and doubly so for the \$2 million in S&C funds that the District is placing in reserve for unspecified future “deferred maintenance.”

The District’s LCAP states, “[t]he district provided school sites with high percentages of unduplicated students with custodial support and facility improvements to address the safety, cleanliness, and environmental learning needs of unduplicated students and their families.” As Superintendent Deasy stated on September 24, all schools in the District have “high percentages of unduplicated students,” so this is insufficient to describe how facility support is principally directed toward the District’s goals for its high-need students *as compared to all students*. The District’s discussion in this section about the presumed poor quality of the residences and neighborhoods of high-need students (e.g., “Many unduplicated pupils live in places of residence, double or tripled up with families with no central heat or air, some even with no electricity...”) is irrelevant and likely offensive to many low-income families who work hard to make their homes comfortable. The LCAP does not even attempt to explain how “deferred maintenance” is principally directed toward or effective in meeting goals for high-need students or how this increases or improves services for high-need students as compared to all students.

Justifications for building maintenance that summarily note the benefits of “clean schools” to high-need students and do not consider “the needs, conditions or circumstances of its unduplicated students, *in particular*, in connection with these actions,” are insufficient and likely *cannot* be justified as principally directed toward the District’s goals for its high-need students as opposed to all of its students. CDE May 5, 2017 Decision; *see also* CDE November 2, 2018 Decision (noting that districtwide expenditures must also explain how the service will be effective in meeting goals for its high-need students and “[c]onclusory statements that an action/service will help achieve an expected outcome for the goal, without further explanation as to how, are not sufficient”). It is doubtless that the District needs to spend a significant amount of money on facility maintenance, which is essential to ensure an adequate education to its students. But those expenditures must come from base funding rather than through unlawful expenditure of S&C funds intended to specifically benefit high-need students.

LE 9 (Campus Security) (\$2,308,078 S&C)

As with special education services and “facility support,” here the District again allocates millions of dollars in S&C funds for districtwide actions under the umbrella of “campus security” in violation of the text and intent of the LCFF statutes and CDE’s controlling interpretations. Of the ten districtwide expenditures of S&C funds listed in this section, *none* are justified as principally directed towards or effective in meeting the District’s goals for its high-need students as compared to its goals for all of its students. Superintendent Deasy said multiple times during our September 24 meeting that S&C funds listed in this section will pay for a “buzzer system,” but there is no description of how the buzzer system is principally directed towards and effective in meeting its goals for its high-need students – and as with SA 5 (facility support), it is difficult to imagine a legally sufficient justification for this use of S&C funds. There are statements in the LCAP that the services are directed towards “schools with high percentages of unduplicated pupils,” but (as stated by Superintendent Deasy on September 24) that could describe every school in the District.

The District here presents almost the identical deficient justifications as Fresno USD did when its expenditure of S&C funds on “security investments” was challenged by the ACLU in 2016, i.e., that

Stockton experiences a high rate of crime (e.g., “Many of our unduplicated students live in daily fear of their parents and family members being picked up by immigration services, shootings occurring at and around their place of residence, gang violence impacting their lives, and sexual predators taking away the innocence and human rights of our unduplicated pupils.”). If the District wishes to spend \$400,000 on a buzzer system for its schools, it can do so with base funds. But it cannot spend \$400,000 in S&C funds, which are generated by high-need students and provided to the District to increase and improve services for those students *in particular* – to level the playing field and hold the equity promise of LCFF – unless it can explain (as it almost certainly cannot) how its expenditures on “campus security” are “directed towards meeting the needs of unduplicated pupils, as opposed to all pupils.” CDE May 5, 2017 Decision at 13; CDE November 2, 2018 Decision at 7-8 (stating that “[t]o provide the required justification for services provided on a ‘wide’ basis, a[] L[ocal] E[ducational] A[gency] must distinguish between services directed toward unduplicated students based on that status, and services available to all students without regard to their status as unduplicated pupils or not”). “Conclusory statements that an action/service will help achieve an expected outcome for the goal, without further explanation as to how, are not sufficient.” *Id.* at 8.

*Conclusion*

We are willing to continue working with the District to resolve the concerns we have articulated above with respect to SA 12, SA 5, and LE 9 over the next two weeks. If the District does not wish to revise its LCAP further or feels that its position is legally sound, then this letter should be processed as a Uniform Complaint Procedure complaint under 5 CCR §§ 4600-4687. We look forward to your response.

Very truly yours,



Linnea Nelson, Education Equity Attorney  
Sylvia Torres-Guillén, Director of Education Equity  
ACLU Foundations of California

Encl.: CDE Investigation of Appeal Against the Los Angeles Unified School District, *As Clarified on Reconsideration August 5, 2016*

May 5, 2017 Letter from CDE re: Request for Appeal – Fresno Unified School District, American Civil Liberties Union, Appellant

November 2, 2018 Letter from CDE re: Request for Appeal – Klamath-Trinity Joint Unified School District; Yurok Tribe, Hoopa Valley Education Association, and American Civil Liberties Union, Appellants