



By U.S. Mail and Electronic Mail

June 12, 2020

Interim Superintendent Brian Biedermann
Stockton Unified School District
701 N. Madison Street
Stockton, CA 95202
Email: bbiedermann@stocktonusd.net

Re: Uniform Complaint Procedure Complaint Regarding the District 2019-2020 Local Control and Accountability Plan and Misallocated Supplemental & Concentration Funds

Dear Superintendent Biedermann,

The Stockton Education Equity Coalition (“SEEC”) submits this complaint under the Uniform Complaint Procedure (“UCP”) regarding Stockton Unified School District’s (“District”) unlawful misallocation of \$6,717,886 in supplemental and concentration (“S&C”) funds for “general operations” in the 2019-2020 school year. We are deeply troubled that the District appears to have reneged on its public commitments, and its legal obligation under the Local Control Funding Formula (“LCFF”) statutes, to spend these S&C dollars to increase and improve services for low-income, foster youth, English Learner students (collectively, “high-need students”). We demand that the District conduct the stakeholder engagement process required by law to determine how these S&C funds will be re-allocated, and to re-allocate the funds accordingly upon approval by the District Board of Education, as soon as possible and no later than 60 days from the date of this letter.

Below we describe the previous communications between the District and certain members of SEEC regarding this \$6,717,886 in S&C funds that was distributed to the District during the 2018-2019 school year. We also discuss the District’s legal obligations in this matter. In no uncertain terms, we strongly recommend that the \$6,717,886 be allocated to expand and greatly improve the District’s restorative justice program, which is particularly beneficial to high-need students who are disproportionately impacted by exclusionary discipline in the District.

I. Extensive Prior Communication Between the District and Members of SEEC Regarding These S&C Funds.

On December 21, 2017, California Rural Legal Assistance (“CRLA”) and the ACLU Foundation of Northern California (“ACLU”) submitted a UCP Complaint to the District regarding the District’s misuse of S&C funds in the 2016-17 LCAP year and other violations of the LCFF statutes. A copy of that UCP Complaint is attached as Exhibit 1. After extensive communications between the District, CRLA, and the ACLU over the course of several months – including an in-person meeting on March 7, 2018 – the District entered into a Settlement Agreement with CRLA and the ACLU on June 8, 2018. A copy of the Settlement Agreement is attached as Exhibit 2. Under the terms of the Settlement Agreement, among other things, the District agreed to allocate \$6,323,916 in a “designated reserve of unspent S&C funding from 2016-17 that will be principally expended for services directed towards unduplicated pupils consistent with the 2018-19 LCAP.” In its 2018-19 Local Control and Accountability Plan and Annual Update (“LCAP”), the District indicated on page 313 that it had carried over this amount of S&C money to be spent during the 2018-19 LCAP year.

Between September 2018 and January 2019, the District had several communications with ACLU Staff Attorney Linnea Nelson – including an in-person meeting on September 24, 2018 – regarding millions of dollars in S&C funds in the District’s 2018-19 LCAP that were apparently (again) misallocated to fund general services instead of to increase and improve services for high-need students, in violation of the intent and text of the LCFF statutes. On November 8, 2018, Ms. Nelson sent Attorney Keith Bray a letter laying out the ACLU’s serious concerns with the District’s 2018-19 LCAP, including the expenditure of \$7,470,040 in S&C dollars for “campus security,” facilities maintenance, and special education services. A copy of the ACLU’s November 8, 2018 letter is attached as Exhibit 3.

In November 2018, the District agreed to revise its 2018-19 LCAP so that \$6,717,886 in S&C funds previously earmarked for “campus security,” facilities maintenance, and special education services would be set aside, and LCFF “Base funds” would be used instead to fund those services. In January 2019, District LCAP Director Connor Sloan provided a PowerPoint presentation to the District Board of Education, which was later made publicly available online, reflecting this shift in \$6,717,886 “from S&C to Base” (at Slide 6). A copy of Mr. Sloan’s PowerPoint presentation is attached as Exhibit 4. Between December 2018 and January 2019, the ACLU expressed concern to the District on multiple occasions that the \$6,717,886 in S&C funds remained unallocated. In January 2019, Mr. Bray told Ms. Nelson during a telephone conversation that the District would roll the \$6,717,886 in unspent S&C funds from the 2018-19 LCAP year into the 2019-20 LCAP, to be spent during the 2019-20 school year. Thus, the District would allot the S&C funds it received from the State for the 2019-2020 LCAP year, plus an additional \$6,717,886, to increase and improve services for high-need students during the 2019-20 school year.

The District’s 2019-20 LCAP does not indicate any “carry-over” of \$6,717,886 in S&C funds, nor does it indicate how the \$6,717,886 was spent to increase or improve services for high-need

students. When SEEC member Jasmine Dellafosse asked then-Superintendent Deasy in December 2019 how this \$6.7 million in S&C funds was spent, Superintendent Deasy told her that the money was earmarked for “general operations.” At a later date, he told Ms. Dellafosse that the money was spent on “professional development.” Once again, it appears the District has violated its legal obligations and unlawfully misdirected millions of S&C dollars intended to serve high-need students toward other purposes.

II. *The District’s Legal Obligations to Spend S&C Funds to Increase and Improve Services for High-Need Students With Stakeholder Engagement.*

The applicable law is discussed extensively in Exhibit 3, the ACLU’s November 8, 2018 letter to the District. We refer you to that letter to minimize duplication, and only briefly summarize the District’s legal obligations here. First, 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). Second, 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 is “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). A school 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. *See* May 5, 2017 Letter from CDE re: Request for Appeal – Fresno Unified School District, American Civil Liberties Union, Appellant, at 7 (noting that “while 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.”). A school district’s LCAP must 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. 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, at 7-8 (noting that, additionally, the LCAP “must explain how the service will be *effective* in meeting the LCAP goals for its unduplicated students.”).

Here, the District’s 2019-20 LCAP does not appear to even register the \$6,717,886 in S&C funds that was supposed to be carried over from the 2018-19 LCAP per the District’s statements to the ACLU and the District’s public PowerPoint presentation in January 2019. Furthermore, Superintendent Deasy stated to Ms. Dellafosse in December 2019 that the \$6,717,886 in S&C funds was used to pay for “general operations” in the District; but the 2019-20 LCAP fails to explain how this spending on “general operations” is principally directed toward and effective in meeting the District’s goals for its high-need students. These actions and omissions violate both

the legal requirements of 5 CCR § 15496 and clear guidance from CDE as described above and in Exhibit 3. S&C funds are generated by high-need students and provided to the District to increase and improve services for those students in particular, as required by law to level the playing field and realize the equity promise of LCFF.

The District must amend its LCAP to reallocate the \$6,717,886 in S&C funds carried over from the 2018-19 year away from “general operations” and towards actions and services that are principally directed towards and effective in meeting the District’s goals for its high-need students. It is also critical that community stakeholders participate in the revision process to determine how these millions of S&C dollars will be spent to benefit high-need students. See 5 CCR § 52062(c) (noting that a district may “adopt a revision to a local control and accountability plan if it follows the process to adopt a local control and accountability plan pursuant to this section and the revisions are adopted in a public meeting.”).

III. *The District Should Reallocate the \$6,717,886 in S&C Carry-Over Dollars to Fund a Robust Restorative Justice Program in the District.*

SEEC strongly recommends that the District use the \$6,717,886 in S&C carry-over dollars to expand and improve the District’s restorative justice program by, among other things, hiring restorative justice coordinators, hiring community outreach and violence interrupter workers, implementing a diversion programs, and expanding ethnic studies. This action is directly related to the District’s LCAP Goal 2, to “provide equitable and healthy learning environments that enhance the social-emotional and academic learning for all students utilizing a Multi-Tiered System of Supports (MTSS).” Further developing the restorative justice program in all District schools is principally directed toward and effective in creating and providing a more equitable and healthy learning environment for high-need students, because high-need students are disproportionately referred for discipline and to school police for low-level offenses; and a restorative justice program provides an alternative, positive discipline model that keeps students in school and on track to succeed academically. As noted on the District’s website,¹ implementation of restorative justice practices reduced the number of disciplinary referrals at Harrison Elementary “by a stunning 70 percent as a result of their hugely effective ‘circle of friends’ approach”; and at El Dorado Elementary, the number of referrals was reduced by “nearly half.” This demonstrates the proven effectiveness of expanding the District’s restorative justice program to improve school climate and student outcomes.

Using these funds to create a robust restorative justice program in the District would also implement the requirements of the District’s settlement agreement with the California Attorney General. Specifically, an improved and strengthened restorative justice program would advance the following goals listed in the “DOJ – SUSD Stipulated Settlement...Sorted by Task Category” document, attached here as Exhibit 5 and which was provided to us by the California Attorney General’s office:

¹ <https://www.stocktonusd.net/site/default.aspx?PageType=3&ViewID=7b97f7ed-8e5e-4120-848f-a8b4987d588f&RenderLoc=0&FlexDataID=10631&PageID=8921>.

- #5: Develop a formal diversion program aimed at minimizing arrests for minor school-based offenses when lesser measures could be utilized.
- #9: Adopt a Police Assistance and Referral Policy.
- #12: Create a Plan relating to law enforcement referrals of students with disabilities and mental health issues that is consistent with the 2017 OCR agreement, which will include Positive Behavior Interventions and Supports and other restorative strategies.
- #18: Create Protocols that require school administrators to review in non-exigent circumstances the interventions and supports prior to requesting police assistance for students with known or perceived mental health disabilities or an IEP or 504 plan.
- #30: Create a Plan aimed at reducing disproportionalities in referrals by administrators to law enforcement with the goal of reducing disproportionalities in citations and bookings.
- #34: Create a Procedure to handle calls for students experiencing a mental health crisis.
- #46: Develop training regarding working with students with disabilities including mental health disabilities.
- #47: Initiate training of all officers and dispatchers in crisis intervention and de-escalation techniques to handle calls relating to students in a mental health crisis.
- #48: Develop training curriculum that incorporates de-escalation techniques in a school-based policing setting.
- #49: Provide “required” training on use of force and de-escalation strategies/techniques for student behavior that is developmentally appropriate and trauma-informed.
- #50: Implement annual training of school staff involved in responding to student misconduct on strategies – including de-escalation, SWPBS, to prevent behavior that leads to the use of physical restraints, and on state and federal laws involving the use of behavioral restraints.
- #55: Train school administrators annually on issues including implicit bias, cultural competence, and restorative practices.
- #71: Ensure performance evaluation system reinforces other activity geared toward problem solving, developing positive relationships with students, and acknowledging when officers resolve conflicts using alternatives other than force.

The allocation of these funds toward a robust restorative justice program is not only appropriate but essential to building strong students and maintain a healthy community for everyone, especially those affected by pervasive sociohistorical institutional traumas. It is imperative to support social and equitable justice to uphold the mission of the District and “Provide all students with a world-class education, high-quality classroom instruction, a well-rounded educational experience, and the support necessary to success.”

Conclusion

We look forward to your investigation of the issues discussed in this UCP Complaint and response within 60 days, as required by law governing the UCP process. 5 CCR §§ 4600-4687. We are also interested in working directly with you towards a resolution of this complaint. Please

contact Linnea Nelson at lnelson@aclunc.org or 415-293-6383 if you have any questions or wish to set up an in-person meeting with SEEC to discuss this Complaint.

Sincerely,



Linnea Nelson, Education Equity Staff Attorney
ACLU Foundation of Northern California

Monica S. Sousa

Monica S. Sousa, Directing Attorney
Kerndeeep Srail, Staff Attorney
California Rural Legal Assistance



Jasmine Dellafosse, Senior Regional Organizer
The Gathering For Justice



Sammy A. Nunez, Executive Director
Fathers & Families of San Joaquin

cc: Keith Bray, Esq.
Marie A. Nakamura, Esq.
Dannis Wolliver Kelley
kbray@DWKESQ.com
mnakamura@dwkesq.com

Connor Sloan, Director, LCAP
Sonijha Lowery, Assistant Superintendent of Educational Services
MaryJo Cowan, Assistant Superintendent of Educational Support Services
Stockton Unified School District
csloan@stocktonusd.net
slowery@stocktonusd.net
mcown@stocktonusd.net

Kathy Garcia, Board President

Stockton Unified School District Board of Education
Ckatt00@aol.com

Maria Mendez, Board Vice President
Stockton Unified School District Board of Education
msmendez@stocktonusd.net

Cecilia Mendez, Board Clerk
Stockton Unified School District Board of Education
CeciliaMendez@stocktonusd.net

AngelAnn Flores, Board Member
Stockton Unified School District Board of Education
Msangel4susd@gmail.com

Lange Luntao, Board Member
Stockton Unified School District Board of Education
lluntao@stocktonusd.net

Scot McBrian, Board Member
Stockton Unified School District Board of Education
Scmcbrian4susd@gmail.com

Christine Chuang, Supervising Deputy Attorney General
Laura Faer, Deputy Attorney General
Civil Rights Enforcement Section, California Department of Justice
Christine.Chuang@doj.ca.gov
Laura.Faer@doj.ca.gov

Michael Gennaco, OIR Group
Michael.Gennaco@oirgroup.com

Encl: Exhibit 1: Uniform Complaint Procedure Complaint from California Rural Legal Assistance and the ACLU Foundation of Northern California dated December 21, 2017 (with associated Attachments A, B and C).

Exhibit 2: Settlement Agreement and General Release dated June 8, 2018 entered into by California Rural Legal Assistance, the American Civil Liberties Union Foundation of Northern California, and the Stockton Unified School District to resolve the December 21, 2017 UCP Complaint.

Exhibit 3: Letter from the ACLU Foundation of Northern California to Stockton Unified School District dated November 8, 2018 (with three attachments).

Exhibit 4: January 2019 Stockton Unified School District LCAP Director Connor Sloan PowerPoint presentation to the District Board of Education Regarding the Local Control & Accountability Plan 2018-2019 Update & 2019-2020 Development.

Exhibit 5: Document titled “Department of Justice – Stockton Unified Stipulated Settlement 5-year Monitoring Period Beginning February 19, 2019 Sorted By Task Category.”