

Exhibit 1



December 21, 2017

Via US Mail and Email to:

Dan Wright, Acting Superintendent
Sergio E. Betancourt, Compliance Analyst
Stockton Unified School District
701 N. Madison Street
Stockton, CA 95202

Re: UCP Complaint regarding Stockton Unified School District's Failure to Comply with Legal Requirements Governing Local Control Accountability Plans

Dear Mr. Wright and Mr. Betancourt,

California Rural Legal Assistance and the American Civil Liberties Union of Northern California submit the following Uniform Complaint Procedure ("UCP") complaint regarding Stockton Unified School District's ("SUSD" or "District") 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 has failed to explain large discrepancies in its budgeted versus actual expenditures of supplemental and concentration grant ("S&C") funding for the 2016-2017 school year and has failed to adequately justify several key allocations of S&C funding for the 2017-2018 school year.

The District additionally fails to meet its obligation to provide evidence demonstrating how funding apportioned on the basis of the number and concentration of unduplicated pupils is used to support them. While districts have flexibility in how they allocate S&C funds, the money must be allocated to "increase or improve services for unduplicated pupils as compared to the services

provided to all pupils.” 5 CCR § 15496. “[T]o increase or improve services” means “to grow services in quality [or] quantity,” and districts must demonstrate this growth in their LCAP, in addition to demonstrating how the funds are principally directed towards and effective at meeting the needs of unduplicated students. The SUSD LCAP fails to adequately identify an increase or improvement in the overwhelming majority of actions which use districtwide S&C funds. *Id.*

1. The LCAP indicates significant shortfalls in Budgeted vs. Estimated Actual spending in several Actions supported by S&C Funding in 2016-2017 for which there is no record where the S&C funds were in fact spent or how SUSD plans to allocate the remaining S&C funds.¹

SUSD LCAP ANNUAL UPDATE		
ACTION	Budgeted vs. Estimated Actual	Shortfall
SA: 2 - Instructional Materials and Supplies	Budgeted: \$1,582,095; Estimated Actual: \$1,047,379	\$534,716
SA: 3 Primary Language Support	Budgeted: \$1,620,425; Estimated Actual: \$371,306	\$1,249,119
SA: 5 Teacher Collaboration, Monitoring and Support	Budgeted: \$7,912,987; Estimated Actual: \$6,030,206	\$1,882,781
SA: 8 - Instructional Coaching	Budgeted: \$5,900,440; Estimated Actual: \$2,362,589	\$3,537,851
SA: 9 – Extended Day/Year Programs	Budgeted: \$2,037,989; Estimated Actual: \$1,226,651	\$811,338
SA: 10 - Site Allocation	Budgeted: \$12,958,311; Estimated Actual: \$9,885,220	\$3,073,091
SA: 11 - College and Career Preparatory Opportunities	Budgeted: \$3,998,721; Estimated Actual: \$1,912,121	\$2,086,600
LE: 7 - Parent and Community Relations	Budgeted: \$645,059; Estimated Actual: \$460,001	\$185,058
MP: 1 - Parent Empowerment	Budgeted: \$1,644,356; Estimated Actual: \$1,360,690	\$283,666

¹ See SUSD LCAP at pgs. 13 – 60.

MP: 4 - Student Engagement and Leadership Opportunities	Budgeted: \$687,440; Estimated Actual: \$455,597	\$231,843
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Although SUSD budgeted S&C funds for English Learner, foster youth and low-income students in several state priority areas for the 2016-2017 LCAP, its reporting in the Annual Update shows significant amounts of those funds were not in fact used towards those priorities and goals for unduplicated pupils. Moreover, it is not possible to tell from SUSD's descriptions explaining material differences between its Budgeted Expenditures and Estimated Actual Expenditures² where the money allocated to these students has been re-directed or been used on behalf of students.

SUSD also fails to indicate for most Actions the discrete amount of funding that comes from any one source. However, as indicated in the table above, it is not clear how \$12,092,228 of the total funds budgeted to help students reach state priorities, including the S&C funding allocated to address barriers faced by English Learners, foster youth and low-income students to reach those same goals, has been used for these students, if at all. There is no accounting whether or how the S&C funds were in fact used to increase or improve services for unduplicated pupils, and no indication of whether the funds were or will be re-allocated for their legislatively mandated purpose.

2. SUSD continually fails to describe how allocations of S&C funds are principally directed towards, and effective in meeting the goals for, unduplicated pupils in violation of 5 CCR § 15496.

In its 2017-2018 LCAP, SUSD has budgeted \$55,073,875 in S&C funds, however, there are several of these key Actions for which the District fails to include language describing how LEA-wide uses of this funding will be principally directed towards, or effective in meeting, the District's goals for unduplicated pupils in the eight state priority areas and any local priority areas, as required by 5 CCR 15496(b)(1)(B).³

According to its 2017-2018 LCAP, SUSD will use S&C funds⁴ on an LEA-Wide Basis for the following Actions⁵ in 2017-2018:

- SA: 2 - Instructional Materials and Supplies - \$986,500 (LCAP at p. 77)
- SA: 3 - Primary Language Support - \$485,185 (LCAP at p. 79)
- SA: 5 - Teacher Collaboration, Monitoring and Support - \$11,184,130 (LCAP at p. 83)
- SA: 7 - Student Intervention Strategies and Support - \$3,323,665 (LCAP at p. 87)

² Id. at pgs. 28 – 29.

³ See Exhibit A - SUSD 2017-2018 LCAP S&C Actions and Exhibit B - SUSD 2017-2018 S&C Justifications.

⁴ See SUSD LCAP at pgs. 139-142 "Supplemental/Concentration funds are being expended in a LEA-wide manner to provide the following programs and services", also attached as Exhibit B- SUSD 2017-2018 S&C Justifications.

⁵ SUSD Goals and their corresponding Actions are identified as Student Achievement (SA); Safe and Healthy Learning Environments (LE); and Meaningful Partnerships (MP).

- SA: 8 - Instructional Coaching - \$2,593,647 (LCAP at p. 88)
- SA: 9 - Extended Day/Year Programs - \$2,298,447 (LCAP at p. 91)
- SA: 10 - Site Allocation - \$14,204,787 (LCAP at p. 93)
- SA: 11 - College and Career Preparatory Opportunities - \$3,569,770 (LCAP at p. 96)
- SA: 12 - Special Education Assistive Opportunities - \$100,000 (LCAP at p. 102)
- LE: 1 - Technology Infrastructure and Support - \$1,338,976 (LCAP at p. 103)
- LE: 2 - High-Quality Teachers, Substitutes, Administrators and Staff - \$5,341,516 (LCAP at p. 105)
- LE: 5 - Facility Support - \$3,679,705 (LCAP at p. 110)
- LE: 6 - Basic Instruction and Teacher Staffing - \$134,929,035 (LCAP at p. 112)
- LE: 7 - Parent and Community Relations - \$515,842 (LCAP at p. 114)
- LE: 10 - School Counseling - \$3,596,441 (LCAP at p. 121)
- MP: 1 - Parent Empowerment - \$271,960 (LCAP at p. 127)
- MP: 2 - Parent and School Communication - \$403,869 (LCAP at p. 129)
- MP: 4 - Student Engagement and Leadership Opportunities - \$696,554 (LCAP at p. 133)
- MP: 6 - Visual and Performing Arts (VAPA) Activities - \$310,018 (LCAP at p. 136)
- MP: 7 - Student Attendance Accountability - \$1,001,710 (LCAP at p. 138)

SUSD relies on the same boilerplate statement to justify each of these Actions using S&C funds: “these services are principally directed and are an effective use of funds, targeting our unduplicated pupils (or students) in meeting the district’s goals in the state priority areas”. None of the descriptions for these Actions contain statements identifying the needs, conditions or circumstances of unduplicated pupils or how the services being provided by the Action will take these factors in to consideration. Furthermore, only two of all the Action descriptions specifically mention low income, foster youth or English Learner students at all.⁶

These statements fail to satisfy the requirements of 5 CCR § 15496. Indeed, the California Department of Education (CDE) has specifically rejected such summary justifications and found that without more analysis of unduplicated pupils’ needs and circumstances and a description of how those factors will be taken in to consideration, descriptions fail to provide the required justification for using S&C funds.⁷

⁶ See SUSD LCAP at pg. 142 and Exhibit A (full descriptions for each SUSD Action using S&C funding).

⁷ See California Department of Education decision dated May 5, 2017 regarding a UCP complaint filed against the Fresno Unified School District based on violations of LCAP requirements. “CDE FUSD Dec.” attached as Exhibit C. In its review of the FUSD’s LCAP, the CDE found FUSD’s conclusory statement that “the District is able to allocate services that are principally directed towards, and are effective in meeting the District’s goals for its unduplicated pupils...” and “all districtwide and schoolwide actions and services have been developed based upon the needs of all students as well” inadequate without more:

(A)n LEA describes how a service is principally directed to meeting the LEA’s goals for unduplicated pupils when it explains in its LCAP how it considered factors such as the needs, conditions or circumstances of its unduplicated pupils, and how the service takes these factors in to consideration...When properly explained in the LCAP, it will be apparent how the LEA is acting to increase or improve services for unduplicated pupils, and why it has determined the services identified will be effective to achieve its goals for unduplicated pupils.
CDE FUSD Dec., pg. 6.

Finally, in order to justify services “provided on a ‘wide’ basis, the District must distinguish between services directed toward unduplicated pupils based on that status and services available to all pupils”.⁸ School districts may not fund services with S&C funds that are, in fact, designed for and provided to all students regardless of circumstance or need.⁹

SUSD has justified every planned expenditure of S&C funds for 2017-2018 with a summary statement that its Actions simply are “principally directed” and “effective” in meeting the district’s goals in the state priority areas without describing anything further related to unduplicated pupils. This statement is conclusory and without more does not justify the use of S&C funds for any of the aforementioned Actions.

3. SUSD fails to include a description of annual goals for the 2017-2018 school year for each subgroup of pupils identified pursuant to Ed. Code § 52052 to be achieved for each of the eight state priorities as well as additional local priorities identified by the SUSD School Board. Ed. Code § 52060 (c)(1).

Education Code § 52060 requires that SUSD’s LCAP include for the school district and each school within the school district: (1) A description of the annual goals, for all pupils and each numerically significant subgroup of pupils identified pursuant to Section 52052: (A) Ethnic subgroups; (B) Socioeconomically disadvantaged pupils; (C) English learners; (D) Pupils with disabilities; (E) Foster youth; (F) Homeless youth. Ed. Code § 52052(a)(2).

There are no annual goal statements in the SUSD LCAP for any ethnic subgroups, socioeconomically disadvantaged students, students with disabilities, foster youth, or homeless youth. Many of these students for whom there are no annual goals, are a numerically significant part of the Stockton Unified School District. For example, 94.2% of SUSD students identify with one or more ethnic subgroup.¹⁰ African American students make up 11.56% of these students¹¹ and Hispanic/Latino students represent 65% of all students in SUSD.¹² At least 588 SUSD students were foster youth during the 2015-2016 school year.¹³ Finally, nearly 85% of SUSD students are also socio-economically disadvantaged students.¹⁴

Without specific annual goals to address their academic needs, the District cannot meaningfully improve outcomes for these students, all of which were ranked in the lowest three performance levels for all reported indicators. Of particular concern is the lack of goals for African-Americans and students with disabilities as the indicators for these student groups were at the lowest two ranking levels in every reported indicator.¹⁵

⁸ Id. at pg. 6

⁹ Id. at pg. 6.

¹⁰ See California Department of Education, Dataquest, Stockton Unified District Report (39-68676) 201617 Enrollment by Ethnicity and Grade.

¹¹ Id.

¹² Id.

¹³ See California Department of Education, Dataquest, Stockton Unified District Report Count of Matched Foster Students by School of Enrollment and Grade for 2015-2016.

¹⁴ See 2017 CDE Dashboard, www.caschooldashboard.org/#/Details/39686760000000/3/EquityReport.

¹⁵ See 2017 CDE Dashboard, www.caschooldashboard.org/#/Details/39686760000000/1/StudentGroupReport.

Additionally, although SUSD discusses services for English Learner students in the Expected Annual Measurable Outcomes section of the SUSD LCAP in relation to three State Priorities,¹⁶ these goals and services are not related to increasing or improving services for English Learner students. For example, the statement for 2B is:

(T)o maintain the percentage of English Learners receiving at minimum of 30 minutes a day of designated English Language Development and access to integrated English Language Development standards. (Verified by SUSD EL Master Plan, SUSD Site Master Schedules, Synergy.)¹⁷

Although this service is identified for English Learners, if S&C funds are being used, this service may not simply be maintained from year to year, it must be increased or improved for English Learner students.¹⁸

Finally, goals for students with disabilities, foster and homeless youth are not specifically mentioned once in the Annual Goals for 2017-2018 and or anywhere else in the SUSD LCAP.

The SUSD LCAP fails to identify goals specifically for student subgroups required by Ed. Code § 52060 (c)(1) that would measure any improvement by those students expected to result from allocations of LCAP funds.

4. The SUSD LCAP lacks transparency regarding the use of S&C funding.

Meaningful engagement of parents, students, and other stakeholders, including those representing and/or serving unduplicated pupils, is critical to the development of the LCAP and the budget process.¹⁹ The current LCAP makes it impossible for anyone to determine how SUSD is using its S&C grant funds including: (1) how much S&C funding was or will be allocated to any given Action in the LCAP, (2) what services and supports the S&C funding did or is expected to provide for unduplicated pupils, and (3) exactly which S&C funding was directed towards unduplicated pupils but either never was used on their behalf, or was spent for something else.

As noted in Item 1 above, SUSD has not explained how \$12,092,228 in funding was used or reallocated from the 2016-2017 LCAP to benefit students. SUSD further obfuscates how funding is being used to benefit students in its 2017-2018 LCAP because it removes all designations as to S&C funding and no Actions include discrete amounts of any one funding source per Action.

¹⁶ See SUSD LCAP Expected Annual Measurable Outcomes, pgs. 70-71.

¹⁷ Id., Goal 1, State Priority 2B, p. 70.

¹⁸ See 5 CCR § 15496.

¹⁹ See Local Control Accountability Plan and **Annual Update (LCAP)Template**. Addendum: Stakeholder Engagement.

For example, in 2016-2017, for Action SA: 8, SUSD budgeted \$5,900,440 of “Supp/Conc” funds for Instructional Coaching, and \$3,537,851 was not used or has not been accounted for.²⁰ For the same Action (SA: 8 Instructional Coaching) in the current LCAP, SUSD indicates that \$2,593,647 of “LCFF funds” have been budgeted. SUSD no longer uses “Supp/Conc” or any other designation indicating S&C, as a funding designation. Further, SUSD does not indicate how much S&C funding is being used to support SA: 8, or any other Action, in its LCAP. SUSD fails to indicate whether any of the LCFF funds being used for this Action are S&C and if so, how much S&C funding has been allocated.

The issues with Action SA: 8 are not limited to SA:8. The same issues come up with respect to all the other Actions supported by S&C funding in the current LCAP.

Although SUSD includes a list of Actions supported by S&C funds at the end of the LCAP,²¹ the list is confusing and by itself does not provide information that helps stakeholders provide feedback to support improved outcomes for pupils, including unduplicated pupils, related to state priorities.²² Instead, the list includes Actions that specify \$0 making it unclear how unduplicated students are receiving any services at all. The list further does not provide any additional or clarifying information for stakeholders as to how \$55,073,875 in S&C funds are going to be used to increase and improve services for unduplicated pupils this school year.

Stakeholders cannot meaningfully participate in developing, reviewing, and supporting implementation of the LCAP without information relevant to the services being provided to students. If it is not possible to tell how money is or is not being used, the most basic principle of being involved in funding decisions is missing. Parents and other stakeholders cannot provide feedback about the Plan for students in their schools and District if significant information is obscured. The risk of SUSD using funding in a way that does not create effective outcomes for students, and does not increase or improve services for unduplicated pupils is too great to not inform stakeholders properly.

Remedy Requested:

1. Investigate the shortfalls in funds outlined in the Actions in Item 1 for 2016-2017 and provide a report identifying how funds budgeted but not used were or will be re-allocated, including but not limited to specifically and discretely identifying Supplemental and Concentration Funds;
2. Clearly designate S&C amounts for the 2017-2018 LCAP;
3. Before adopting its 2018-2019 LCAP and Annual Update, the District must:
 - a. review the descriptions and justification for SUSD’S 2017-2018 LCAP LEA-wide Actions including: SA: 1, SA: 2, SA: 3, SA: 5, SA: 7, SA: 8, SA: 9, SA: 10, SA:

²⁰ See SUSD LCAP at pg. 19.

²¹ See SUSD LCAP at pgs. 139-142.

²² See Local Control Accountability Plan and **Annual Update (LCAP)Template**. Appendix B: Guiding Questions: Stakeholder Engagement, pg. 12.

- 11, SA: 12, LE: 1, LE: 2, LE: 5, LE: 6, LE: 7, LE: 10, MP: 1. MP: 2, MP: 4, MP: 6, and MP: 7; and
- b. revise them to provide the required descriptions and justifications consistent with 5 CCR § 15496, and as further described by the California Department of Education.²³
4. Present any revisions to SUSU's parent advisory committee, the English learner parent advisory committee, and members of the public in accordance with Ed. Code § 52062.
 5. In the event there are such expenditures which cannot be described and justified as set forth in #3, SUSU shall not include those expenditures in its estimate of prior year expenditures for unduplicated pupils that were in addition to what was expended for all pupils when it calculates the minimum proportion by which it must increase or improve services for unduplicated pupils in the 2019-2020 LCAP year. 5 CCR §15496(a)(2). In addition, the District must exclude any such services included in its 2018-2019 LCAP from services that contribute to meeting the requirement to increase or improve services for unduplicated pupils over services provided to all pupils in the LCAP year.

We are interested in working directly with you to work towards a resolution of this complaint. Please contact me directly at swalker@crla.org or 946-0409 x320 with any questions.

Sincerely,

California Rural Legal Assistance, Inc.

Shannon Walker, Attorney, Rural Education Equity
Franchesca S. Verdin, Rural Education Equity Program Director
Cynthia L. Rice, Director of Litigation, Advocacy, and Training

American Civil Liberties Union of Northern California

Linnea Nelson, Attorney Education Equity

²³ Id., CDE FUSD Dec., May 5, 2017, attached here as Exhibit C.

SUSD 2017-2018 LCAP Actions Using Supplemental & Concentration Funding		
ACTION	DESCRIPTION	FUNDING
Goal 1: Student Achievement		
SA: 1 - Student Technology	SA: 1 - Student Technology To enhance student access to information technologies that promote increased learning and academic achievement. SA1.1 Annual purchase and replacement of Chromebooks/technology devices and secure storage carts for students. (SUSD LCAP at pg. 74)	2018-2019 - \$1.5 million (There is no money allocated for this in the 2017-2018 LCAP)LCFF; Budget Reference: 4XXX
SA: 1 - Student Technology	To provide necessary and relevant instructional materials and supplies to help teachers incorporate responsive teaching and strategies that related to the Common Core State Standards. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through the purchase of technology devices and associated accessories. (SUSD LCAP pgs. 139-142)	
SA: 2 - Instructional Materials and Supplies	SA: 2 - Instructional Materials and Supplies To provide necessary and relevant instructional materials and supplies to help teachers incorporate responsive teaching and strategies that related to the Common Core State Standards. SA2.1 Increase classroom supplies and resources to teachers SA2.2 High School Science (SUSD LCAP pg. 77)	\$986,500 - LCFF, Budget Reference: 4XXX
SA: 2 - Instructional Materials and Supplies	To provide necessary and relevant instructional materials and supplies to help teachers incorporate responsive teaching and strategies that related to the Common Core State Standards. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through the purchase of classroom supplies. (SUSD LCAP pgs. 139-142)	

SA: 3 – Primary Language Support	SA: 3 - Primary Language Support To provide appropriate intervention and supplemental support to students and their families that values their native language and culture while fostering academic success in English Language Development. SA3.1 Bilingual Instructional Program SA3.2 Professional Learning of Integrated and Designated ELD Strategies and Coaching SA3.3 Training and Implementation of the EL Instructional Program and Master Plan SA3.4 Translation Services. (SUSD LCAP at pg. 79)	\$485,185, LCFF; Budget Reference: 1XXX, 2XXX, 3XXX
SA: 3 – Primary Language Support	To provide appropriate intervention and supplemental support to students and their families that values their native language and culture while fostering academic success in English Language Development. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 2, 4, 7, and 8 through professional learning in primary language supports. (SUSD LCAP at pgs. 139-142)	
SA: 5 - Teacher Collaboration, Monitoring and Support	SA: 5 - Teacher Collaboration, Monitoring and Support To provide educators with opportunities to collaborate within grade level Professional Learning Communities (PLCs) and cross grade level Professional Learning Communities (PLCs) to review relevant and appropriate data to support and enhance effective instructional strategies. SA5.1 Regular, routine, scheduled teacher collaboration time, including monitoring and support for use of collaboration time. (USA PD Day and 2017-2018 STA, plus 3 days). (SUSD LCAP pg. 83)	\$11,184,130, LCFF, Other; Budget Reference: 1XXX, 3XXX
SA: 5 - Teacher Collaboration, Monitoring and Support	To provide educators with opportunities to collaborate within grade level Professional Learning Communities (PLCs) and cross grade level Professional Learning Communities (PLCs) to review relevant and appropriate data to support and enhance effective instructional strategies. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 2, 4, 7, and 8 through the regular, routine, scheduled teacher collaboration time, including monitoring and support for use of collaboration time. (SUSD LCAP pgs. 139-142)	

SA: 7 - Student Intervention Strategies and Support	SA: 7 - Student Intervention Strategies and Support To provide students with appropriate and relevant intervention that supports a guaranteed and viable curriculum that meet the needs of students as they progress towards mastery of academic achievement. SA7.1 Hire, retain, and train "Highly Qualified" Supplemental Intervention Teachers SA7.2 Tools, software, and resources to enhance student language and literacy acquisition as well as mathematic proficiency SA7.3 Credit Recovery and Dropout Recovery Programs SA7.4 Inactive SA7.5 Inactive SA7.6 Resources for Teacher Participation in IEP Meetings. (SUSD LCAP at pg. 87)	\$3,323,665, LCFF, Title 1, Title II; Budget Reference: 1XXX, 3XXX
SA: 7 - Student Intervention Strategies and Support	To provide students with appropriate and relevant intervention supports a guaranteed and viable curriculum that meet the needs of students as they progress towards mastery of academic achievement. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 2, 4, 7, and 8 through the hiring and training of supplemental intervention teachers, intervention tool/software/resources and the implementation of credit recovery programs. (SUSD LCAP at pgs. 139-142).	
SA: 8 - Instructional Coaching	SA: 8 - Instructional Coaching To provide educators with instructional strategies and resources that aid in the differentiated instruction promoting student academic success. SA8.1 Instructional Coaches. (SUSD LCAP at pg. 88).	\$2,593,647, LCFF; Budget Reference: 1XXX, 3XXX
SA: 8 - Instructional Coaching	To provide educators with instructional strategies and resources that aid in the differentiated instruction promoting student academic success. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 2, 4, 7, and 8 through the hiring, training and assignment of Instructional Coaches and by providing resources for teachers to prepare and meaningfully participate in student Individual Educational Program (IEP) meetings. (SUSD LCAP at pgs. 139-142).	

SA: 9 – Extended Day/Year Programs	SA: 9 – Extended Day/Year Programs To provide educational, recreational and social activities for students that aligns with and extends beyond the mandatory instructional/academic day. SA9.1 After School Program Homework Assistance, Tutoring and Enrichment SA9.2 Inactive SA9.3 Inactive SA9.4 Maintain After School Site Facilitators for Non After School Program Grant Supported Schools Sites SA9.5 Extended Year Programs. (SUSD LCAP at pg. 91).	
SA: 9 – Extended Day/Year Programs	To provide educational, recreational and social activities for students that aligns with and extends beyond the mandatory instructional/academic day. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 2, 4, 7, and 8 through the purchase credit recovery software licenses (including staffing), staffing for homework assistance and tutoring; field trips supporting college and career activities, providing staffing and equipment for exercise opportunities and intramural sports programs; providing Visual and Performing Arts (VAPA), ensuring student interest enrichment activities are available, and by fulfilling base needs at non After School Program Grant Supported school sites. (SUSD LCAP at pgs. 139-142).	\$2,298,447, LCFF; Budget Reference: 1XXX, 3XXX, 4XXX, 5XXX
SA: 10 - Site Allocation	SA: 10 - Site Allocation To provide individual school sites the ability to allocate programmatic elements that are clearly associated with meeting the essential core instructional needs of their students. SA10.1 School Site Allocation (Expenditures approved by School Site Council) SA10.2 Department Allocation and Centralized Services. (SUSD LCAP at pg. 92)	
SA: 10 - Site Allocation	To provide individual school sites the ability to allocate programmatic elements that are clearly associated with meeting the essential core instructional needs of their students. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 2, 4, 7, and 8 through school site budgetary oversight. (SUSD LCAP at pgs. 139-142).	\$14,204,787, LCFF; Budget Reference: 1XXX, 2XXX, 3XXX, 4XXX, 5XXX, 6XXX

SA: 11 - College and Career Preparatory Opportunities	<p>SA: 11 - College and Career Preparatory Opportunities To provide students with career and college strategies, increases to the A-G course completion rate, activities and opportunities that prepares them for the continuation of the educational path into college and with accurate and relevant resources when entering into the workforce.</p> <p>SA11.1 Continue National Academy Foundation - Merlo/Chavez SA11.2 Continue and support AVID programs at each comprehensive high school area SA11.3 Reestablish and expand career centers and provide a technician at the high schools SA11.4 Computer mini-labs in comprehensive high school career centers and small high schools. SA11.5 Student Data Technicians - Comprehensive High Schools SA11.6 Support Career Technical Education (CTE) by funding career pathways and foundational programs SA11.7 Mathematics, Engineering, Science Achievement (MESA) Program SA11.8 Stockton Public Safety Academy SA11.9 Engineering Career Pathways (Project Lead the Way) for grades K-12 SA11.10 JROTC Teacher SA11.11 College Entrance Examinations SA11.12 Tutoring Activities to Support AP, IB, and Dual Enrollment Students SA11.13 Partner with Greater Stockton Chamber of Commerce Business Education Alliance. SA11.14 Career Exploration Software and Programs for grades K-12. (SUSD LCAP at pg. 95).</p>	\$3,569,770, LCFF, Title I; Budget Reference: 1XXX, 2XXX, 3XXX, 4XXX, 5XXX
SA: 11 - College and Career Preparatory Opportunities	<p>To provide students with career and college strategies, activities and opportunities that prepares them for the continuation of the educational path into college and with accurate and relevant resources when entering into the workforce. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through the continuation of successful evidence based pathway programs, maintaining college and career guidance support to students, participation of college and career events to include mock interviews, guest speakers, etc., and to provide opportunities for age appropriate college entrance examinations. (SUSD LCAP pgs. 139-142).</p>	

SA: 12 - Special Education Assistive Opportunities	SA: 12 - Special Education Assistive Opportunities To provide students with assistive technology to meet their needs to achieve academic success. SA12.1 Special Education Student Assistive Technology and Support. (SUSD LCAP at pgs. 97-98).	\$100,00 LCFF; Budget Reference: 4XXX, 5XXX
SA: 12 - Special Education Assistive Opportunities	To provide students with assistive technology to meet their needs to achieve academic success. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 2, 4, 7, and 8 through hiring staff to assist in the oversight and adherence to student Individual Education Program (IEPs) and the purchase of innovative technologies for students to attain academic success. (SUSD LCAP at pgs. 139-142).	
Goal 2: Safe and Healthy Learning Environments		
LE: 1 – Technology Infrastructure and Support	LE: 1 - Technology Infrastructure and Support To retrofit and enhance technology infrastructure to allow for increased device/equipment usage and meet the requirements necessary to conduct applicable state mandated testing. LE1.1 Windows XP computer replacement LE1.2 Information Services Technology Support. (SUSD LCAP at pg. 103).	\$1,338,976, LCFF; Budget Reference: 2XXX, 3XXX, 4XXX
LE: 1 – Technology Infrastructure and Support	To improve technology infrastructure and devices to ensure students can receive appropriate and relevant instruction to enhance learning opportunities. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 1 and 6 through the improvement of technology infrastructure and the purchase of technology devices and associated accessories. (SUSD LCAP at pgs. 139-142).	

LE: 2 - High-Quality Teachers, Substitutes, Administrators and Staff	LE: 2 - High-Quality Teachers, Substitutes, Administrators and Staff To obtain, retain, train and support educators to be high quality and well-rounded role models that embody the vision that every student will succeed academically, socially, emotionally, and able to learn in a safe and supportive school climate. LE2.1 Improve teacher, speech language pathologists and psychologists hiring timelines, incentives and credentialing LE2.2 Training for Developing and Maintaining High-Quality Employees LE2.3 Positive Behavior Intervention Support (PBIS) framework LE2.4 Inactive LE2.5 Inactive LE2.6 Student Success Teams (SST) and Student Assistance Program (SAP) development LE2.7 Behavior Intervention Team (BIT) development LE2.8 Administrative Staff and Assistant Principals for K-8 LE2.9 Educational Equity and Cultural Diversity. (SUSD LCAP at pg. 105).	\$5,341,516, LCFF, Title I, Title II, CEIS, SpEd, Mental Health; Budget Reference: 1XXX, 2XXX, 3XXX, 4XXX, 5XXX
LE: 2 - High-Quality Teachers, Substitutes, Administrators and Staff	To obtain, retain, train and support educators to be high quality and well-rounded role models that embody the vision that every student will succeed academically, socially, and emotionally. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 1 and 6 through the improvement of teacher hiring timelines including incentives and credentialing, training to develop and maintain high quality substitutes, continuation of Positive Behavior Intervention Support (PBIS) framework, piloting Executive Functions, development of the Student Success Teams (SST) and Student Assistance Program (SAP) and Behavior Intervention Team (BIT). (SUSD LCAP at pgs. 139-142).	
LE: 5 – Facility Support	LE: 5 - Facility Support To provide students and educators with facilities that are clean and functional to received and deliver instruction. LE5.1 Custodial/Maintenance Services Gap Restoration LE5.2 Deferred Maintenance LE5.3 Environmental Compliance and Building Safety Oversight and Response. (SUSD LCAP at pg. 105).	\$3,679,705, LCFF; Budget Reference: 2XXX, 3XXX, 4XXX, 5XXX (cont. on next page)

LE: 5 – Facility Support	To provide students and educators with facilities that are clean and functional to received and deliver instruction. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 1 and 6 through the improvement of facilities, restoration of custodial/maintenance services and environmental compliance/building safety oversight and response. (SUSD LCAP at pgs. 139-142).	\$3,679,705, LCFF; Budget Reference: 2XXX, 3XXX, 4XXX, 5XXX (cont. from previous page)
LE: 6 – Basic Instruction and Teacher Staffing	LE: 6 - Basic Instruction and Teacher Staffing To maintain staffing ratios for each grade span to meet compliance standards and negotiated agreements, to include Grade Span Adjustment. LE6.1 Basic Instruction and Teacher Staffing. (SUSD LCAP at pg. 112).	\$134,929,035, LCFF; Budget Reference: 1XXX, 3XXX
LE: 6 – Basic Instruction and Teacher Staffing	To maintain staffing ratios for each grade span to meet compliance standards and negotiated agreements, to include Grade Span Adjustment. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 1 and 6 through hiring and retention of high-quality teachers and paraprofessionals. (SUSD LCAP at pgs. 139-142).	
LE: 7 - Parent and Community Relations	LE: 7 - Parent and Community Relations To provide parents and students (including homeless and foster youth) with the resources necessary to enhance relationships that creates safe and healthy learning environments. LE7.1 "Whole-Family" Response and Resources. (SUSD LCAP at pg. 114).	\$515,842, LCFF; Budget Reference: 2XXX, 3XXX (cont. next page)

LE: 7 - Parent and Community Relations	To provide parents and students with the resources necessary to enhance relationships that creates safe and healthy learning environments. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 1 and 6 through "Whole-Family" response and resources. LE: 8 - Health Services - To provide student and families with appropriate health services interventions to be healthy and more able to learn. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 1 and 6 through subacute and specialized health care services response and management. (SUSD LCAP at pgs. 139-142)	\$515,842, LCFF; Budget Reference: 2XXX, 3XXX (cont. from previous page)
LE: 10 - School Counseling	LE: 10 - School Counseling To provide all students with social and emotional systems of supports that lead to improved academic success and college/career readiness. LE10.1 Counseling Services for Social Emotional, Behavioral and Academic Learning Supports, and A-G course completion LE10.2 Continue and expand gender/LGBT diversity training for staff. (SUSD LCAP at pg. 120).	\$3,596,441, LCFF; Budget Reference: 1XXX, 3XXX
LE: 10 - School Counseling	To provide all students with social and emotional systems of supports that lead to improved academic success and college/career readiness. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 1 and 6 through counseling services for students who need additional social emotional, behavioral and academic learning supports. (SUSD LCAP at pgs. 139-142)	
Goal 3: Meaningful Partnerships		

MP: 1 - Parent Empowerment	MP: 1 - Parent Empowerment To develop and fosters relationships with parents that lead to active and meaningful engagement supporting student academic success. MP1.1 Parent Academy MP1.2 Inactive MP1.3 Continue to offer Adult Education services at SUSD School Sites, Literacy training for families MP1.4 Inactive. (SUSD LCAP at pg. 127).	\$271,960, LCFF, Title I; Budget Reference: 2XXX, 3XXX, 4XXX, 5XXX
MP: 1 - Parent Empowerment	To develop and fosters relationships with parents that lead to active and meaningful engagement supporting student academic success. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 3 and 5 through the facilitation of Parent Academies, literacy activities, offering Adult Education services at SUSD School Sites, Literacy training for families, and the continuation of English as a Second Language/Civics Education. (SUSD LCAP at pgs. 139-142).	
MP: 2 - Parent and School Communication	MP: 2 - Parent and School Communication To provide and maintain systems of communication that meets the needs of the school, parents, students and the community. MP2.1 Continuous improvement of system of communication with SUSD community and stakeholders. (SUSD LCAP pgs. 128-129).	\$403,869, LCFF; Budget Reference: 2XXX, 3XXX, 5XXX
MP: 2 - Parent and School Communication	To provide and maintain systems of communication that meets the needs of the school, parents, students and the community. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 3 and 5 through the continuous improvement in systems of communication with the district, community and stakeholders. (SUSD LCAP at pgs. 139-142)	

MP: 4 - Student Engagement and Leadership Opportunities	MP: 4 - Student Engagement and Leadership Opportunities To provide all students with engaging and meaningful activities that drives students to be more involved and engaged in their academic success. MP4.1 Opportunities for students to participate in CTSO-related clubs and CTE-related activities MP4.2 Peer Leaders Uniting Students (PLUS) Program supporting inclusiveness, Anti-Bullying, LGBT Summit/Awareness, and positive school climate MP4.3 Coordination of Districtwide Physical Education Program and Intermediate Grades Athletics Program. (SUSD LCAP at pg. 133).	\$696,554, LCFF; Budget Reference: 1XXX, 2XXX, 3XXX, 4XXX
MP: 4 - Student Engagement and Leadership Opportunities	To provide students with engaging and meaningful activities that drives students to be more involved and engaged in their academic success. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas 3 and 5 through providing opportunities for students to participate in clubs and activities and in Peer Leaders Uniting Students (PLUS) program. (SUSD LCAP at pgs. 139-142).	
MP: 6 - Visual and Performing Arts (VAPA) Activities	MP: 6 - Visual and Performing Arts (VAPA) Activities To provide students with hands on activities and exposure to opportunities in areas beyond the core instructional requirements. MP6.1 Visual and Performing Arts Activities. (SUSD LCAP at pg. 136).	\$310,018, LCFF; Budget Reference: 1XXX, 3XXX
MP: 6 - Visual and Performing Arts (VAPA) Activities	To provide students with hands on activities and exposure to opportunities in areas beyond the core instructional requirements. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 3 and 5 through music, band, art, physical education, and intramural sporting activities. (SUSD LCAP at pgs. 139-142).	
MP7: - Student Attendance Accountability	MP: 7 - Student Attendance Accountability To provide a system of supports that enables students to be academically successful through regular and on-time attendance. MP7.1 Improve student attendance accountability MP7.2 Truancy Intervention. (SUSD LCAP at pgs. 137-138).	\$1,001,710, LCFF; Budget Reference: 2XXX, 3XXX (cont. next page)

<p>MP7: - Student Attendance Accountability</p>	<p>To provide a system of supports that enables students to be academically successful through regular and on-time attendance. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 3 and 5 through Improve student attendance accountability. Justification: The justification for these projects (actions/services) is to ensure positive outcomes for student achievement and school connectedness. Our Blueprint for Students Achievement focuses on all stakeholders working together as a team, and we believe this focus begins in the classroom. Although LEA-wide spending is principally directed towards our unduplicated students, all students at all academic or language levels should have the opportunities to work together, collaborate, and be accountable for one another's learning. (SUSD LCAP at pgs. 139-142)</p>	<p>\$1,001,710, LCFF; Budget Reference: 2XXX, 3XXX (cont. from previous page)</p>
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Demonstration of Increased or Improved Services for Unduplicated Pupils

LCAP Year

☒ 2017–18 ☐ 2018–19 ☐ 2019–20

Estimated Supplemental and Concentration Grant Funds:

\$ 55,073,875

Percentage to Increase or Improve Services:

19.55 %

Describe how services provided for unduplicated pupils are increased or improved by at least the percentage identified above, either qualitatively or quantitatively, as compared to services provided for all students in the LCAP year.

Identify each action/service being funded and provided on a schoolwide or LEA-wide basis. Include the required descriptions supporting each schoolwide or LEA-wide use of funds ([see instructions](#)).

Stockton Unified School District has an unduplicated pupil count of 85.3% for 2017-2018.

Supplemental/Concentration funds are being expended in a LEA-wide manner to provide the following programs and services that are principally directed towards meeting the district's goals for its unduplicated pupils in the eight state priorities;

Goal 1: Student Achievement

SA: 1 – Student Technology - To provide necessary and relevant instructional materials and supplies to help teachers incorporate responsive teaching and strategies that related to the Common Core State Standards. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through the purchase of technology devices and associated accessories.

SA: 2 - Instructional Materials and Supplies - To provide necessary and relevant instructional materials and supplies to help teachers incorporate responsive teaching and strategies that related to the Common Core State Standards. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through the purchase of classroom supplies.

SA: 3 – Primary Language Support - To provide appropriate intervention and supplemental support to students and their families that values their native language and culture while fostering academic success in English Language Development. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through professional learning in primary language supports.

SA: 5 - Teacher Collaboration, Monitoring and Support - To provide educators with opportunities to collaborate within grade level Professional Learning Communities (PLCs) and cross grade level Professional Learning Communities (PLCs) to review relevant and appropriate data to support and enhance effective instructional strategies. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through the regular, routine, scheduled teacher collaboration time, including monitoring and support for use of collaboration time.

SA: 7 - Student Intervention Strategies and Support - To provide students with appropriate and relevant intervention supports a guaranteed and viable curriculum that meet the needs of students as they progress towards mastery of academic achievement. These services are principally directed and are an effective use of funds, targeting our

unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through the hiring and training of supplemental intervention teachers, intervention tool/software/resources and the implementation of credit recovery programs.

SA: 8 - Instructional Coaching - To provide educators with instructional strategies and resources that aid in the differentiated instruction promoting student academic success. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through the hiring, training and assignment of Instructional Coaches and by providing resources for teachers to prepare and meaningfully participate in student Individual Educational Program (IEP) meetings.

SA: 9 – Extended Day/Year Programs - To provide educational, recreational and social activities for students that aligns with and extends beyond the mandatory instructional/academic day. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through the purchase credit recovery software licenses (including staffing), staffing for homework assistance and tutoring; field trips supporting college and career activities, providing staffing and equipment for exercise opportunities and intramural sports programs; providing Visual and Performing Arts (VAPA), ensuring student interest enrichment activities are available, and by fulfilling base needs at non After School Program Grant Supported school sites.

SA: 10 - Site Allocation - To provide individual school sites the ability to allocate programmatic elements that are clearly associated with meeting the essential core instructional needs of their students. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through school site budgetary oversight.

SA: 11 - College and Career Preparatory Opportunities - To provide students with career and college strategies, activities and opportunities that prepares them for the continuation of the educational path into college and with accurate and relevant resources when entering into the workforce. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through the continuation of successful evidence based pathway programs, maintaining college and career guidance support to students, participation of college and career events to include mock interviews, guest speakers, etc., and to provide opportunities for age appropriate college entrance examinations.

SA: 12 - Special Education Assistive Opportunities - To provide students with assistive technology to meet their needs to achieve academic success. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 2, 4, 7, and 8 through hiring staff to assist in the oversight and adherence to student Individual Education Program (IEPs) and the purchase of innovative technologies for students to attain academic success.

Goal 2: Safe and Healthy Learning Environments

LE: 1 – Technology Infrastructure and Support - To improve technology infrastructure and devices to ensure students can receive appropriate and relevant instruction to enhance learning opportunities. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 1 and 6 through the improvement of technology infrastructure and the purchase of technology devices and associated accessories.

LE: 2 - High-Quality Teachers, Substitutes, Administrators and Staff - To obtain, retain, train and support educators to be high quality and well-rounded role models that embody the vision that every student will succeed academically, socially, and emotionally. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 1 and 6 through the improvement of teacher hiring timelines including incentives and credentialing, training to develop and maintain high quality substitutes, continuation of Positive Behavior Intervention Support (PBIS) framework, piloting Executive Functions, development of the Student Success Teams (SST) and Student Assistance Program (SAP) and Behavior Intervention Team (BIT).

LE: 5 – Facility Support - To provide students and educators with facilities that are clean and functional to received and deliver instruction. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 1 and 6 through the improvement of facilities, restoration of custodial/maintenance services and environmental compliance/building safety oversight and response.

LE: 6 – Basic Instruction and Teacher Staffing - To maintain staffing ratios for each grade span to meet compliance standards and negotiated agreements, to include Grade Span Adjustment. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 1 and 6 through hiring and retention of high-quality teachers and paraprofessionals.

LE: 7 - Parent and Community Relations - To provide parents and students with the resources necessary to enhance relationships that creates safe and healthy learning environments. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 1 and 6 through "Whole-Family" response and resources.

LE: 8 - Health Services - To provide student and families with appropriate health services interventions to be healthy and more able to learn. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 1 and 6 through subacute and specialized health care services response and management.

LE: 10 - School Counseling - To provide all students with social and emotional systems of supports that lead to improved academic success and college/career readiness. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 1 and 6 through counseling services for students who need additional social emotional, behavioral and academic learning supports.

Goal 3: Meaningful Partnerships

MP: 1 - Parent Empowerment - To develop and fosters relationships with parents that lead to active and meaningful engagement supporting student academic success. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 3 and 5 through the facilitation of Parent Academies, literacy activities, offering Adult Education services at SUSD School Sites, Literacy training for families, and the continuation of English as a Second Language/Civics Education.

MP: 2 - Parent and School Communication - To provide and maintain systems of communication that meets the needs of the school, parents, students and the community. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 3 and 5 through the continuous improvement in systems of communication with the district, community and stakeholders.

MP: 4 - Student Engagement and Leadership Opportunities - To provide students with engaging and meaningful activities that drives students to be more involved and engaged in their academic success. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas 3 and 5 through providing opportunities for students to participate in clubs and activities and in Peer Leaders Uniting Students (PLUS) program.

MP: 6 - Visual and Performing Arts (VAPA) Activities - To provide students with hands on activities and exposure to opportunities in areas beyond the core instructional requirements. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district’s goals in the state priority areas, 3 and 5 through music, band, art, physical education, and intramural sporting activities.

MP7: - Student Attendance Accountability - To provide a system of supports that enables students to be academically successful through regular and on-time attendance. These services are principally directed and are an effective use of funds, targeting our unduplicated students in meeting the district's goals in the state priority areas, 3 and 5 through Improve student attendance accountability.

Justification:

The justification for these projects (actions/services) is to ensure positive outcomes for student achievement and school connectedness. Our Blueprint for Students Achievement focuses on all stakeholders working together as a team, and we believe this focus begins in the classroom. Although LEA-wide spending is principally directed towards our unduplicated students, all students at all academic or language levels should have the opportunities to work together, collaborate, and be accountable for one another's learning.



CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

May 5, 2017

Abre' Conner, Staff Attorney
Sylvia Torres-Guillen, Director of Education
ACLU of Northern California
39 Drumm Street
San Francisco, CA 94111

Subject: **Request for Appeal – Fresno Unified School District
American Civil Liberties Union, Appellant**

Dear Abre' Conner and Ms. Torres-Guillen:

The Local Agency Systems Support Office (LASSO) of the California Department of Education (CDE) is in receipt of your request for appeal received on December 6, 2016. You are appealing the Fresno Unified School District's (District) Decision (Decision) dated November 18, 2016.

I. BACKGROUND

On September 21, 2016, the ACLU (Appellant) submitted a Uniform Complaint Procedure Complaint to the District regarding alleged failures of the District related to its 2015-2016 Local Control and Accountability Plan (LCAP). The District considered the Complaint, and on November 18, 2016, it issued a written decision in which it determined that the District had not violated applicable law and that the requested remedies would not be granted. The ACLU appealed this decision to the CDE on December 6, 2016. On December 7, 2016, the CDE sent a Notice of Appeal letter to the District per *California Code of Regulations*, Title 5 (5 CCR), Section 4633. On February 6, 2017, the CDE sent a letter to the Appellant and the District indicating it would require additional time to complete its investigation of the Complaint. Following receipt of the District's Investigation file, the CDE reviewed all material received related to the District's complaint investigation, applicable laws and the District's complaint procedures. The CDE finds that the District complied with its complaint procedures.

II. SUMMARY OF COMPLAINT AND DISTRICT DECISION

The Complaint

The Complaint contained the following allegations, summarized by the District in its Decision and restated by the Appellant in the Appeal:

Allegation 1: “The District’s LCAP fails to explain how S&C¹ funds will be ‘principally directed towards, and effective in, meeting the district’s goals for its high-need pupils.’”

The Complaint alleged the District’s description of districtwide and schoolwide actions and services provided in the LCAP are vague, summary statements and do not meet the requirements of the LCAP Template and 5 CCR 15496(b) because the statements do not explain how the expenditures are principally directed toward and effective in meeting the District’s goals for unduplicated pupils. (Attachment A, Complaint, p.3.) The Complaint focused on five actions and related expenditures for which it alleged the District fails to provide the required justification:

- \$14.7 million allocated to school sites
- \$5.6 million for middle school redesign
- \$3.8 million for employee supports
- \$5.6 million for bathroom renovations, additional custodians, and maintenance positions
- \$7.153 million for various special education programs

(Complaint, p.3-5.) Citing Section 3A of the LCAP Template, the Complaint stated that the District must revise its LCAP to identify and justify each schoolwide and district use of funds and explain how each such use is “principally directed towards, and effective in, meeting the needs of high-needs pupils.” (Complaint, p.5.)

Allegation 2: “The LCAP fails to include data that demonstrates specific outcomes for high-need students in the Annual Update.”

The Complaint alleged that the data in the annual update must be disaggregated by each high-need pupil group in order to help parents and students decipher which programs help high-need students. (Complaint, p.5.)

Allegation 3: “The District fails to offer any meaningful justification for use of S&C funds on police expenditures.”

The Complaint alleged that the District did not adequately describe how the expenditure of supplemental and concentration grant funding on School Site Security Enhancements, including Community and School Resource Officers, and the Fresno Police Department’s Chaplaincy and shot spotter programs, is principally directed toward and effective in meeting the District’s goals for unduplicated pupils. (Complaint p. 5-6.) In this regard, the

¹ “S&C” is an acronym used by Appellant to reference funding apportioned to the District on the basis of the number and concentration of unduplicated pupils (low income, foster youth and English learners), identified by Appellant as “high-need” pupils. (EC sections 44238.01, 44238.02, 44238.07.)

Complaint stated that the LCAP is unclear as to how the shot spotter program, which may allow better pinpointing of gunfire across the city, will help pupils, and unduplicated pupils in particular. The Complaint also stated the LCAP does not, and likely cannot, provide, the required justification for expenditures for additional police officers. According to the Complaint, in the District, black and Latino students, many of whom meet the unduplicated criteria, are more likely to be arrested or reported to police, with terrible consequences for their futures. (Complaint, p.7-8.)

Requested Remedy: The Complaint requested that the District amend its 2016-2017 LCAP to provide the required justifications 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 increase or improve services for high-needs students...”. In addition, the Complaint requested the District “reallocate its proposed S&C funds to enhance school safety and school climate rather than on police expenditures.” (Complaint, p. 8.)

The District’s Decision

Allegation 1: The District determined that its LCAP includes adequate justification for each districtwide use of supplemental and concentration funding. According to the District, statements are included within the actions and services in the goals section of the LCAP. In addition, the District notes that its unduplicated count of English learners, foster youth and students living in poverty exceeds 86%. The District states “86% of students live below the Federal Poverty level” and “[e]ach action taken by the District, regardless of the funding source, must take into account the challenging economic environment of our community.” (Attachment B, Decision, p. 3.) According to the Decision, planned expenditures for 2016-2017, as described in its LCAP, reflect increases over 2015-2016 in the area of services for English learners and foster youth. (Decision, p. 3.) Also, the District notes that “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.” The District stated that “[t]hese programs, including specialized preschool programs and early autism screening, provide increased benefits to students living in extreme poverty.” (Decision, p. 3-4.)

Allegation 2: The District concluded that disaggregating data in the Annual Update by high-need pupil group is not required by statute or regulation. However, the Decision points out that the District’s LCAP provides data on 49 different indicators of student success, most of which include information disaggregated into 13 student subgroups. In addition to the data incorporated into the Annual Update portion of its LCAP, the District included all the data in an Appendix A to the LCAP, as a matter of “best practice.” (Decision, p. 4.)

Allegation 3: In its Decision, the District described the shot spotter program in the context of a broader approach to support school site security. In addition to the shot spotter program, the District provided additional crossing guards, additional school community

resource officers, and police chaplain volunteers. According to the Decision, “violent crime in Fresno is significantly higher than the state and national average.” Also, District engagement efforts identified additional security investments as a request of certificated staff. With respect to the “Shot Spotter” device, the District decision stated it is intended to reduce school time disruption at 24 schools with a high propensity for gunfire. (Decision, p. 4.)

Based on its findings, the District determined that the allegations of the Complaint were not substantiated, and that there was no violation of *EC* Section 42238.07 or 5 *CCR* 15496 with respect to the District’s 2016-2017 LCAP. (Decision, p. 5.)

III. APPEAL

The Appeal reiterates the allegations of the Complaint. Appellant rejects the Decision’s finding that the LCAP sufficiently justified services provided on a districtwide and schoolwide basis as “principally directed towards, and effective in, meeting the district’s goals for its high-needs students.” (Attachment C, Appeal, p. 2.) The Appeal again focuses on particular services identified in the Complaint. (described above at p. 2.) The Appeal also asserts that the Decision failed to explain why its LCAP Annual Update does not disaggregate data by high-need pupil group. (Appeal, p. 4.) Finally, the Appeal states that the District failed to identify sufficiently how police expenditures are principally directed towards, and effective in, meeting its goals for high-need students. (Appeal, p. 4.) Appellants continue to seek remedies for the alleged violations of law as set forth in their Complaint. (described above at p. 3.)

IV. LEGAL AUTHORITIES

California Education Code sections 44238.01, 42238.02, 42238.07, 52060 – 52077
California Code of Regulations sections 15494 – 15497.5

V. ANALYSIS OF APPEAL

Allegations 1 and 3: The CDE considers and responds to Allegations 1 and 3 together. Both allege that the District LCAP does not justify how supplemental and concentration grant funding for schoolwide or districtwide actions and/or services (services) are principally directed to and effective in meeting the District’s goals for unduplicated students.

The Local Control Funding Formula (LCFF) apportions additional funds to Local Education Agencies (LEAs) on the basis of the number and concentration of unduplicated pupils (low-income, English learner, and foster youth). (*EC* sections 442238.01, 42238.02.) LEAs are

required to increase or improve services for unduplicated pupils as compared to the services provided to all pupils in the fiscal year in proportion to the additional funding provided. (EC Section 42238.07; 5 CCR 15496.) “To improve services” means to “grow services in quality,” and “to increase services” means to “grow services in quantity.” (5 CCR 15495(k) and (l).) As such, there is no spending requirement; rather, an LEA must demonstrate in its LCAP how the services provided will meet the requirement to increase or improve services for unduplicated students over services provided for all pupils in the LCAP year.² The regulations provide the formula for calculating the percentage by which services must be proportionally increased or improved for unduplicated pupils above services provided to all pupils in the fiscal year.³ (5 CCR 15496(a)(1)–(8).)

The collective set of services described by an LEA that will contribute to meeting the required proportional increase or improvement in services for unduplicated students over services provided to all pupils may include two categories of services:

- Services that are limited to serving one or more unduplicated student group, or
- Services that upgrade the entire educational program of an LEA or a school site(s).

Services of the latter category are referred to as either a schoolwide or an LEA-wide (i.e., districtwide, countywide, or charterwide) service. The LCAP Template applicable to the 2016-2017 year addresses supplemental and concentration grant funding in Section 3.⁴ An LEA is required to follow the LCAP Template approved by the State Board of Education (SBE). (EC sections 52064, 52070.) Section 3A of the LCAP Template required the District to identify the amount of its LCFF funds in the LCAP year calculated on the basis of the number and concentration of unduplicated pupils, and to describe how it was expending these funds in the LCAP year, including a description of, and justification for, the use of any funds in a districtwide or schoolwide manner. (5 CCR 15496.) Because the District’s unduplicated pupil enrollment was 88%, the District was required to describe in its LCAP how services provided on a districtwide basis are “*principally directed towards*” and “*effective in*” meeting its goals for unduplicated pupils.⁵ (EC Section 42238.07, 5 CCR 15496(b).)

² As the District has done in its LCAP, an LEA may choose to refer to LCFF funds as “Base”, “Supplemental” or “Concentration” grant funds at the local level. However, they are not required to do so. An LEA may choose to simply identify the fund source to implement an action or service as LCFF.

³ Note the requirement is to increase or improve services for unduplicated pupils over services for all pupils *in the fiscal year for which the LCAP is adopted*. (5 CCR 15496(a).) It is not a requirement to increase or improve services from year to year.

⁴ This LCAP Template was adopted as 5 CCR 15497.5. In November 2016, the SBE adopted a new LCAP Template, applicable beginning with the 2017-2018 school year.

⁵ Schoolwide services at a school district school with enrollment of unduplicated pupils that is 40 percent or more of its total enrollment must be supported by the same description.

In order to provide the required justification for services provided on a “wide” basis, an LEA must distinguish between services directed toward unduplicated pupils based on that status, and services available to all pupils 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 pupils when it explains in its LCAP how it considered factors such as the needs, conditions or circumstances of its unduplicated pupils, 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 LEA expects the service to support the LEA’s conclusion that the service will be *effective* to meet the LCAP goals for its unduplicated pupils. When properly explained in the LCAP, it will be apparent how the LEA is acting to increase or improve services for unduplicated pupils, and why it has determined the services identified will be effective to achieve its goals for unduplicated pupils.

CDE reviewed the District’s 2016-2017 LCAP to determine whether it provided the required description of, and justification for, use of supplemental and concentration grant funding on a districtwide or schoolwide basis, focusing on the services challenged in the Complaint and Appeal:

The District’s 2016-17 LCAP Section 3A identifies \$154.3 million as the amount of funds calculated on the basis of the number and concentration of unduplicated pupils. (Attachment D, District 2016-2017 LCAP.) It further states that “Supplemental and Concentration fund expenditures are itemized in Section 2” of the LCAP, and that “[a]ll actions and expenditures were developed based on an analysis of data, input from our stakeholders, and the needs of our unduplicated population in mind, and that “[d]ue to this high risk population, the actions below, and described in section 2, are being implemented school wide or district wide.” (2016-2017 LCAP Section 3A, p. 181 of 185.) Section 3A lists 49 actions, identified numerically to correspond to their respective locations in Section 2 of the LCAP.

Section 3A of the District’s LCAP also states that district and school site leadership have access to current data using the “School Quality Improvement Index (SQII)”, and the SQII is used by district “leaders to identify schools with the most need and site leaders use SQII to identify school wide and individual student need. Using the SQII tool the District is able to allocate services that are principally directed towards, and are effective in meeting the District’s goals for its unduplicated pupils...” Finally, Section 3A states “[a]ll districtwide and schoolwide actions and services have been developed based upon the needs of unduplicated students, but will serve the needs of all students as well.”

In Section 3B, the District identified 29.57% as the percentage by which it was required to increase or improve services for unduplicated pupils in the LCAP year as compared to services for all pupils. As noted above, Section 3B required the District to demonstrate how it met this requirement to proportionately increase or improve the services for unduplicated

pupils. Section 3B states “the proportionality percentage is met by expending Supplemental and Concentration funds allocated to the district on services for the unduplicated student populations as demonstrated and detailed in section 2 of the LCAP plan.” (2016-2017 LCAP Section 3B, p. 183 of 185.)

With respect to Section 3A, the CDE finds the LCAP enumerates in summary fashion “Supplemental and Concentration fund expenditures” and indicates that actions enumerated are being provided on a districtwide or schoolwide basis due to its unduplicated student population of 88% (described as a high risk population.) There is no description of how the use of funds proposed are “principally directed towards” and “effective in” meeting its goals for unduplicated pupils. The LCAP statement that the District “had the needs of our unduplicated population in mind” is a conclusory statement that fails to provide the required description.

The reference to the use of SQII tool to “allocate services that are principally directed towards, and are effective in, meeting the District’s goals for its unduplicated as measured by the required metrics” is not associated with any particular action or service in the LCAP. The statement lacks sufficient information to constitute a description of and justification for how a districtwide or schoolwide service is “principally directed towards” and “effective in” meeting its goals for unduplicated pupils.

CDE also notes that the District references its 88% unduplicated pupil enrollment as a reason it provides actions on a districtwide or schoolwide basis. However, while a high unduplicated pupil percentage may be a reason to offer a majority of services directed toward increasing or improving services for unduplicated pupils on a “wide” basis, by itself it does not provide a sufficient explanation of how such services are principally directed towards unduplicated students. Thus, based on the above, Section 3A, standing alone, does not provide adequate description and justification of services provided on a districtwide and schoolwide basis.

CDE also reviewed the descriptions of the particular districtwide and schoolwide services in the 2016-2017 LCAP, Section 2, for which Appellant alleged the District failed to provide the required justification. (see the list above at p. 2.) The District response to the Complaint states that additional clarifying language was incorporated into the LCAP following meeting with Appellate to address concerns.

Appellant challenges the description associated with districtwide Action #48 (Goal 5), “School Site Allocations to be prioritized by each School’s Site Council.” (2016-2017 LCAP Section 2, p. 117.) Budgeted expenditures are \$19.8 million (\$14.7 million LCFF Sup and Con)⁶ and \$5.1 million Title 1 (there is also additional reference to these site allocations

⁶ The abbreviation “Sup and Con” is as it appears in the District’s LCAP, and CDE understands it to be a reference to funding apportioned on the basis of the number and the concentration of unduplicated pupils.

being combined with “EL investments” for a total of \$26 million.) The action is described as follows:

- “Supplemental materials and technology
- Academic interventions and supports
- Supplemental counseling services
- Staff for attendance support
- Parent involvement
- Psychological services
- Bilingual office staff
- Each school was required to evaluate data on low income, English learner and foster youth student populations, as well as other subgroups, to create plans focused on addressing the needs of those groups
- Site personnel worked with School Site Councils to incorporate feedback and revise plans
- Developing a site-based plan for English learners is a requirement of this process”

The associated identified need for Goal #5 is “each school needs a Single Plan for Student Achievement (SPSA) that is aligned with school goals for improving student achievement and is based on school site data (AR 0420).” By review of the materials submitted in connection with this appeal, it appears the District added further explanation to this action based on communications with Appellant (the last bullets above). The additional material assists to some extent in providing the required justification. However, because the description states that the sites were to direct plans focused on the needs of low income, English learner and foster youth student populations, *as well as other subgroups*, it is not possible to definitely conclude that the action is “principally directed towards” unduplicated pupils. In addition, the description lacks sufficient information describing how the actions are “effective in” meeting goals for unduplicated pupils, as required for districtwide actions. Thus, the requirements of 5 CCR 15496(b) and the LCAP Template are not met with regard to Action #48.

Action #5, “Maintain Middle School Redesign,” (LCAP Section 2 p. 24) is also challenged. This action is associated with Goal #1 (“All students will excel in reading, writing and math”), and is budgeted \$5.6 million (LCFF Sup and Con). It is schoolwide at district middle schools. The LCAP states:

- “Initiated in 2013-2014
- ensures all students have access to electives as well as core classes

- Allows teachers, teaching the same subjects, to have a common preparation time
- PLUS teams (Professional Learning Updraft System) added to ensure direct instruction to students when teachers attend professional learning or collaboration days.
- This action is principally directed towards, and is effective in, increasing or improving services for unduplicated students as teams allow for no loss of instructional time while teachers are attending profession learning or collaboration days. Loss of instruction time unfairly impacts high-need students.”

From the LCAP description of Action #5, it is not possible to adequately understand what the “Middle School Redesign” consists of and how the various actions described are related, if at all, and how the budget expenditure is associated with the components. One aspect appears to give all students access to electives. There is no explanation offered as to how this is “principally directed towards” unduplicated pupils. Other aspects are common preparation time and the addition of PLUS teams to ensure pupils direct instruction when teachers attend professional development or collaboration days. The LCAP description and justification for “this action” appear to apply only to *a portion* of the action; i.e., the common preparation time and PLUS teams, and is unclear. Ideally, this description and justification would be more clearly stated, perhaps by a description and justification such as “loss of instructional time results in significant decreases in the academic achievement of low income, English learner, and foster youth” and use of PLUS teams will reduce loss of instructional time and assist in maintaining these students’ academic progress. As stated, the description is insufficient to meet the requirement to describe and justify Action #48 in total as “principally directed towards and effective in meeting the goals for unduplicated pupils.”

The Complaint challenged Action #10 “Employee Supports.” (2016-2017 LCAP Section 2, p. 27.) This action is associated with Goal #1, and budgeted \$3.8 million (LCFF Sup and Con). The LCAP indicates this action is for high schools, and 2 specific middle schools. The description of this action is as follows:

- “Reduce large core classes in high schools (not an class enrollment cap)
- Additional middle school Vice Principals for Gaston and Fort Miller. Both have amongst the highest concentrations of English learners, foster youth and students living below the Federal poverty level in the District
- Since introducing additional supports, both Fort Miller and Gaston have seen an improvement in test scores and attendance as well as a reduction in suspensions and expulsions”

The above description of Action #10 provides no information as to how reducing large core classes in high schools is an action principally directed towards unduplicated pupils. Accordingly, the description does not meet the requirements of 5 CCR 15496(b) or the

LCAP Template. However, the action and accompanying description related to additional middle school vice principals does meet these requirements. The explanation provided shows the action is directed to two middle schools with among the “highest concentrations of unduplicated pupils” and also that the test scores and attendance have increased, and discipline incidences decreased. Thus, the LCAP describes how this portion of the action is principally directed towards and effective in meeting the district’s goals for unduplicated pupils. However, the stated description and justification is not sufficient to meet the requirements to describe and justify Action #10, in total, as “principally directed towards and effective in meeting the goals for unduplicated pupils.”

Actions #43 and #44 of Goal 4 are challenged by the Appellant. (2016-2017 LCAP Section 2, p. 108.) Goal #4 is stated as “All students will stay in school, on track to graduate”, and the identified need 4B is stated as “Fresno USD needs to provide a safe, clean and orderly learning and working environment.” Action #43 is to maintain 40 additional custodians, 3 custodial supervisors and 4 grounds maintenance positions. Action #44 is to renovate high school bathrooms. The LCAP identifies budgeted expenditures of \$5.6 million (LCFF Sup and Con) with these two actions. The description for Action #43 is:

- “To ensure facilities are clean and in good repair
- Custodians were requested during the engagement for the 2014/15 LCAP and are above former base staffing levels to ensure school sites are positive and clean centers for each of the Fresno neighborhoods served
- Custodians are located in schools with older facilities
- According to the National Education Association, clean schools reduce the spread of infectious illness, reduce triggers for asthma and allergies and reduce absenteeism for both students and staff”

The description for Action #44 is:

- “Replace damaged fixtures, incorporate standardization of facilities, and increase accessibility for high school bathrooms
- Focus on partitions, hand dryers and soap dispensers
- Campus Culture team will work with student representatives to create a campaign to keep bathrooms clean
- Invitations were sent for student input to 75 foster and English learner students.
- Properly maintained bathrooms was the single most consistent request made during the 17 meetings the district conducted with students

- According to the National Education Association, clean schools reduce the spread of infectious illness, reduce triggers for asthma and allergies and reduce absenteeism for both students and staff”

The description of these actions states benefits for each. However, neither provides any description of how the District considered the factors such as the needs, conditions or circumstances of its unduplicated pupils in particular, in connection with these actions. The description fails to explain how the actions are principally directed towards and effective in meeting the District’s goals for unduplicated pupils. Accordingly, the requirements of 5 CCR 15496(b) and the LCAP Template are not met with regard to these actions.

Appellant also specifically challenged some of the District’s districtwide special education programs, alleging the District fails to sufficiently describe and justify how they are “principally directed towards, and effective in, meeting the District’s goals for high-need students.” Included in the challenge are Actions #13, #14 and #25. (2016-2017 LCAP Section 2, p. 41, 54-55.) Actions #13 and #14 are associated with the District Goal #1, “All students will excel in reading, writing and math” and the Identified Need 1B: “Every student can and must read at grade level.” The District’s LCAP describes these actions as follows:

Action #13 is “Maintain Elementary Augmentation for Students with Disabilities.” It is identified as “districtwide” and students served are “ALL.” Budgeted expenditures are \$2.3 million (LCFF Sup and Con). The action is described as:

- “Expanding inclusive educational opportunities for preschool students with disabilities
- Providing specialized classes for preschool students with moderate to severe disabilities
- Early intervention and continuum of services for students with Autistic-like behaviors
- Starting school and identifying disabilities early will assist unduplicated students to achieve higher levels of academic achievement”

Action #14 is “Additional Special Education Director.” The action is Districtwide for “students with disabilities”; budgeted expenditures are identified as \$153,000 (LCFF Sup and Con). The action is described as:

- “Close monitoring and oversight of programs for students with disabilities
- Improving continuum of service for students with disabilities up to age 22
- Experience has shown additional oversight of Special Education programs allow high-need students the best access to the least restrictive environment”

Action #25 is “Investments for Secondary Students with Disabilities.” It is also associated with District Goal #1, and the associated Identified Need is 1C: “Fresno Unified School

District needs to ensure students have the greatest number of postsecondary choices from the widest array of options.” The action is identified as being districtwide for pupils with disabilities; budgeted expenditures are identified as \$3.4 million (LCFF Sup and Con).

While 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. Each generally describes actions that are available to all pupils, and in some cases those actions are required to be available to all pupils who qualify under the Individuals with Disabilities Act (IDEA). The descriptions are not a sufficient description and justification as principally directed towards and effective in meeting the district’s goals for unduplicated pupils as specified in 5 CCR 15496(b).

Allegation 3 of the Complaint challenges districtwide and schoolwide Action #47 (Goal 4) “School Site Security Enhancements.” (2016-2017 LCAP Section 2, p. 109.) The budgeted expenditures are identified as \$440,000 (LCFF Sup and Con). As noted above, the Complaint and Appeal expressed concern that expenditures for the actions described may actually be detrimental to unduplicated pupils. In addition, the Complaint and Appeal also alleged the LCAP does not set out the required description and justification for this districtwide and schoolwide action. The action is accompanied by the following description in Section 2 of the LCAP:

- “School safety was a top request from teachers resulting from the District’s outreach to stakeholders
- Funds to support additional crossing guards
- District share of Police Department grant for additional Community and School Resource Officers at secondary schools
- Police Department Chaplaincy programs at Elementary schools. School Resource Chaplains volunteer at Elementary school campuses teaching a characters and integrity curriculum and assist in identifying and reducing crimes against children. School Resource Chaplains are trained to connect children and families to needed resource in the community.
- Continue expanded coverage for Shot Spotter to reduce school time disruptions in areas with high crime. Shot Spotter assists responding officers with identifying gunshots (versus fireworks, car backfires, or other loud noises) often within a few feet.
- This leads to school and community safety, as well as reduced downtime and classroom disruption that occurs from the stoppage of classroom instruction when safety protocols need to be implemented”

Addressing the issue of whether this schoolwide and districtwide action is supported by the required description of how the security-related actions are principally directed towards and

effective in meeting the goals for unduplicated pupils point, it is evident from the description contained above that the LCAP provides no such description. In the District Decision, the District stated that, as outlined in its LCAP, the \$440,000 expenditure for school site security is part of “a comprehensive approach to serving the unique needs of our large student population”. It also stated that “crime in Fresno is significantly higher than the state and national average.” (Decision, p. 4.) No statement describing how the security investments are directed towards meeting the needs of unduplicated pupils, as opposed to all pupils, is provided. Based on the description provided, the requirements of 5 CCR 15496(b) and Section 3A of the LCAP Template are not met with respect to Action #47.

Furthermore, Appellant suggested that the District “cannot justify that more police or the shot spotter program will help high-needs students in the District” (Appeal, p. 5.) In light of its determination that the District’s LCAP does not provide a sufficient description and justification for Action #47, the CDE does not make a determination on this additional issue raised by Appellant.

For the reasons set forth above, the CDE finds that the District’s 2016-2017 LCAP fails to describe how the districtwide and schoolwide services described in Actions #48, #5, #10, #43, #44, #13, #14, #25 and #47 are principally directed toward and effective in meeting the District’s goals for its unduplicated pupils as required by 5 CCR 15496(b) and Section 3A of the LCAP Template.

Allegation 2: “The LCAP fails to include data that demonstrates specific outcomes for high-need students in the Annual Update.”

The Appeal states that the District should disaggregate outcome data based on pupil groups, and high-need pupils in particular (Appeal, p. 4.) According to the Appeal, the data must be disaggregated in order to help parents and students decipher which programs help high-need students, and that the District never responded to why it refuses to disaggregate the data and “show clear and specific actions of how high-need students have improved.” (Appeal, p. 4.)

EC Section 52061 requires that an annual update to an LCAP be developed using the template adopted by the SBE. The annual update must include a review of any changes in the applicability of an action, a review of progress on the goals included in the LCAP, an assessment of the effectiveness of the specific actions included in the LCAP toward achieving the goals, and a description of any changes to the specific actions the school district plans to make as a result of the review. (EC Section 52061(a)(1) and (2).) Expenditures to implement actions in the LCAP, including those that serve unduplicated pupils, must be provided as well. (EC Section 52061(a)(3) and (4).)

The LCAP Template Annual Update Instructions specify: “For each goal in the prior year LCAP, review the progress toward the expected annual outcome(s) based on, at a

minimum, the required metrics pursuant to Education Code sections 52060 and 52066.⁷ 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 of the review and assessment. In addition, review the applicability of each goal in the LCAP.”

Appellant appears to argue that the District is required to include disaggregated data as part of its Annual Update in the LCAP. However, neither the statute nor the LCAP Template instructions require this disaggregation. The District’s Annual Update in the LCAP does show that it reviewed progress on goals as required. In addition, in responding to the Complaint, the District made clear that it regularly monitors data tied to its LCAP goals. Further, it has made available an “Appendix A” to its LCAP which shows disaggregated outcome data on the LCAP priorities. For these reasons, the CDE finds that Allegation 2 is not sustained.

VI. CORRECTIVE ACTIONS

Before the District adopts its 2017-2018 LCAP and Annual Update, the District must review the descriptions and justification for the District’s 2016-2017 LCAP schoolwide and districtwide Actions #48, #5, #10, #43, #44, #13, #14, #25 and #47 and revise them to provide the required descriptions and justifications consistent with this report. Any revisions shall be presented to the District’s parent advisory committee, the English learner parent advisory committee, and members of the public in accordance with *EC* Section 52062. In the event there are such expenditures which cannot be so described and justified as set forth in this report, the District shall not include those expenditures in its estimate of prior year expenditures for unduplicated pupils that were in addition to what was expended for all pupils when it calculates the minimum proportion by which it must increase or improve services for unduplicated pupils in the 2017-2018 LCAP year. (5 *CCR* 15496(a)(2).) In addition, the District must exclude any such services included in its 2017-2018 LCAP from services that contribute to meeting the requirement to increase or improve services for unduplicated pupils over services provided to all pupils in the LCAP year. The CDE will monitor and support the District’s progress in this regard, and is prepared to work in consultation with the District and the Fresno County Office of Education to achieve this result.

VII. CONCLUSION

⁷ *EC* sections 52060 and 52066 set out the state priorities which must be addressed in the LCAP for school districts and county offices of education respectively.

Abre Conner, Staff Attorney
Sylvia Torres-Guillen, Director of Education
May 5, 2017
Page 15

The CDE has investigated the complaint initially filed with the Fresno Unified School District on September 21, 2016. The District is required to implement the Corrective Actions specified above.

Further questions about the uniform complaint process or this letter may be addressed to the CDE as follows:

**Local Agency Systems Support Office
California Department of Education
1430 N Street, Suite 5506
Sacramento, CA 95814
ATTN: Jeff Breshears, Director**

Pursuant to 5 CCR Section 4665, within 35 days of receipt of this report, either party may request reconsideration.

I may be reached in the Local Agency Systems Support Office by phone at 916-319-0809 or by e-mail at jbreshears@cde.ca.gov.

Sincerely,



Jeff Breshears, Director
Local Agency Systems Support Office

JB:jf

Attachment A: Complaint (September 2, 2016)
Attachment B: District Decision on Complaint (November 18, 2016)
Attachment C: Appeal to the CDE (December 6, 2016)
Attachment D: District 2016-2017 LCAP

cc: Bob Nelson, Interim Superintendent, Fresno Unified School District
Tammy Townsend, Executive Officer of State and Federal Programs, Fresno
Unified School District
Jim Yovino, Fresno County Superintendent of Schools
Kathryn Catania, Deputy Superintendent, Fresno County Office of Education

Exhibit 2

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered into by the California Rural Legal Assistance ("CRLA"), the American Civil Liberties Union Foundation of Northern California ("ACLU"), and the Stockton Unified School District ("District" or "SUSD"). CRLA and ACLU are hereinafter collectively referred to as the "Complainants." This Agreement is entered into to resolve the complaint dated December 21, 2017 (the "UCP Complaint"), filed by Complainants pursuant to the District's Uniform Complaint Procedure.

I. NATURE AND STATUS OF DISPUTE. The UCP Complaint involved the District's 2017-18 Local Control and Accountability Plan ("LCAP") adopted by the Board on June 27, 2017. The UCP Complaint, which alleged that SUSD's 2017-18 LCAP fails to comply with the legal requirements applying to LCAPs, is attached for reference to this Agreement as Exhibit A.

Specifically, the UCP Complaint includes four allegations of non-compliance:

- A. The LCAP indicates significant shortfalls in Budgeted vs. Estimated Actual spending in several Actions supported by the Supplemental and Concentration grant funding (S&C) in 2016-17 for which there is no record where the S&C funds were in fact spent or how SUSD plans to allocate the remaining S&C funds.
- B. SUSD continually fails to describe how allocations of S&C funds are principally directed towards, and effective in meeting the goals for, unduplicated pupils in violation of 5 CCR § 15496.
- C. SUSD fails to include a description of annual goals for the 2017-2018 school year for each subgroup of pupils identified pursuant to California Education Code § 52052 to be achieved for each of the eight state priorities as well as additional local priorities identified by the SUSD School Board. Ed. Code § 52060 (c) (1).

D. The SUSD LCAP lacks transparency regarding the use of S&C funding.

The Complainants and the District met on March 7, 2018, to discuss the UCP Complaint and to begin the process of resolving the differences between the parties regarding the 2017-18 LCAP. Subsequently, the parties exchanged emails and correspondence, have engaged in telephone conversations, and are prepared to resolve the UCP Complaint as provided for below.

II. PURPOSE OF THE AGREEMENT. The purpose of this Agreement is to resolve fully, finally, and forever any and all claims, rights, demands, or causes of action between the District and the Complainants relating to the 2017-18 LCAP without resorting to litigation, including without limitation, all claims, rights, demands or causes of action that were raised or that could have been raised in the UCP Complaint about the 2017-18 LCAP.

NOW, THEREFORE, in consideration of the promises, agreements and representations in this Agreement, the District and the Complainant agree to settle the UCP Complaint as follows:

A. RESOLUTION. That the six remedies proposed in the letter from Shannon Walker to Keith J. Bray, dated April 25, 2018, a copy of which is attached hereto as Exhibit B, are acceptable to the parties to the Agreement and shall form the basis for the resolution of the UCP Complaint. In sum, the remedies agreed to are as follows:

- i. The District has allocated, on a one-time basis, \$6,323,916.00 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.
- ii. The District will specifically identify the actions/services in the 2018-19 Annual Update where S&C funds were used along with the estimated actual amount of each expenditure.

- iii. The District will utilize the guidance provided by both the California Department of Education and the San Joaquin County Office of Education in the 2018-19 LCAP to describe the justifications for districtwide actions/services that use S&C funding to meet the goals established for unduplicated pupils consistent with the requirements of 5 CCR § 15496.
- iv. The District has provided Complainants a complete list of the stakeholder meetings, including the Parent Advisory Committee meetings and the District English Learner Advisory Committee meetings, held on the 2018-19 LCAP (Attached as Exhibit C is the list of meetings that was organized by the District) and the District will provide a complete draft of the 2018-19 LCAP to Complainants on or about May 23, 2018.
- v. The District will not count any actions/services using S&C funding as having contributed to meeting the requirement to increase or improve services to unduplicated pupils unless the actions/services meet the required written descriptions and justifications referenced above.
- vi. The District will include annual goals in the 2018-19 LCAP for each of the student subgroups identified in Education Code § 52052 for each of the eight state priorities as well as any additional local priorities identified by the SUSD School Board.

B. RELEASE. Complainants, hereby fully release and discharge the District, its assigns, insurers, officers, directors, agents, consultants, attorneys, employees, and members of its Governing Board, both present and past, from any and all claims, rights, demands, and causes of action, known and unknown, that they may have against the District, arising from or related to the

UCP Complaint No. 18.099 dated December 21, 2017. Without limiting the generality of this release, Complainants represent and agree that this release shall include any claims, rights, demands, or causes of action arising under any state or federal statute, regulation or common law rule applicable to school districts, including without limitation the California Education Code, the California Government Code, 42 U.S.C. Section 1983, the Unruh Civil Rights Act, and any amendments thereto or implementing regulations or guidelines thereof, and that it shall cover any type of relief Complainants sought or could potentially seek against the District, including attorneys' fees, and costs.

C. **CONDITIONS OF EXECUTION.** Each party acknowledges and warrants that their signing of this Agreement is free and voluntary. Each of the signatories warrants that he or she is authorized to sign this Agreement on behalf of the party for whom he or she signs. The parties represent they fully understand its terms, ramifications and effect, and accept the same.

D. **NON-ADMISSION.** This Agreement is not and shall not be construed as an admission of liability, fault or wrongdoing of any kind by the District.

E. **COST AND ATTORNEY'S FEES.** For the purposes of this Agreement, there is no prevailing party. Each party agrees to bear the costs of their own attorney's fees unless otherwise specified herein as applicable.

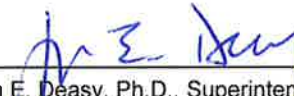
F. **SEVERABILITY.** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that determination shall not invalidate or render unenforceable any other provision of this Agreement.

G. **GOVERNING LAW.** This Agreement constitutes a contract and shall be construed and interpreted in accordance with the laws of the State of California and shall be enforceable in any court of competent jurisdiction venued in San Joaquin County.

H. ENTIRE AGREEMENT. This Agreement contains the entire Agreement between the parties. This Agreement supersedes any and all prior agreements and understandings, written or oral, between the parties. This Agreement may not be modified in any respect except by a writing duly executed and approved by the person or entity to be bound.

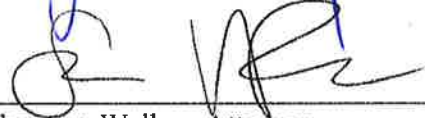
SO AGREED.

Dated: 6/8/18



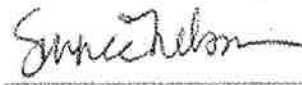
John E. Deasy, Ph.D., Superintendent

Dated: 6/5/2018



Shannon Walker, Attorney
California Rural Legal Assistance, Inc.

Dated: 6/5/2018



Linnea Nelson, Attorney
American Civil Liberties Union Foundation of
Northern California

Dated: _____



Marie A. Nakamura
Legal Counsel for Stockton Unified School District

Exhibit 3



California

November 8, 2018

Keith Bray
Dannis Woliver Kelley
555 Capitol Mall, Suite 645
Sacramento, CA 95814
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 LCFF 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

**CALIFORNIA DEPARTMENT OF EDUCATION (CDE)
INVESTIGATION OF APPEAL AGAINST THE
LOS ANGELES UNIFIED SCHOOL DISTRICT**

REYNA FRIAS, APPELLANT

As Clarified on Reconsideration August 5, 2016

District: Los Angeles Unified School District (LAUSD)

County: Los Angeles

Date of Investigation: November 12, 2015 – May 25, 2016

Appellant: Reyna Frias
Community Coalition of South Los Angeles

Primary District Staff: Michelle King, Superintendent
Los Angeles Unified School District

Julie Hall-Panameno, Director
Los Angeles Unified School District

Binh Nguyen, Coordinator of Litigation Research
Los Angeles Unified School District

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Local Agency Systems Support Office

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Legal Affairs

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Date of Report August 5, 2016

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INVESTIGATION OF APPEAL

Los Angeles Unified School District Reyna Frias, Appellant

DEPARTMENT INVESTIGATIVE REPORT

I. BACKGROUND

On November 12, 2015, the Local Agency Systems Support Office (LASSO) of the California Department of Education (CDE) received an appeal, pursuant to California *Education Code* (EC) Section 52075, of the Los Angeles Unified School District's decision dated November 9, 2015. The complaint alleged that Los Angeles Unified School District (LAUSD) violated statute by including special education spending as part of its estimate of prior year expenditures for services for foster youth, low income students, and English learners in its 2014–15 and 2015–16 local control and accountability plans (LCAP).

The initial complaint (Complaint) was filed by Ms. Reyna Frias and the Community Coalition of South Los Angeles (Complainants), with representation, on September 9, 2015 with LAUSD. Complainants requested that LAUSD revise its 2015–16 LCAP to remove special education funding as part of its prior year spending for unduplicated pupils and revise its proportionality calculation and its LCAP to ensure that it spends the appropriate amount of money on increased and improved services for unduplicated pupils in fiscal year 201516 and future years.

The District's Decision in response to the initial complaint was presented in a letter from Julie Hall-Panameno, Director of Educational Equity Compliance Office, dated November 9, 2015 (District Report). Complainants, with representation, submitted an appeal to the CDE. In response to the appeal, the CDE notified LAUSD, by letter dated November 13, 2015, that the CDE had received an appeal of its Decision dated November 9, 2015, and requested that LAUSD provide the required documents pursuant to *California Code of Regulations*, Title 5 (5 CCR) Section 4633(a). LAUSD responded to the CDE with an email dated November 20, 2015. All required documents were included as attachments to this email. In a letter dated January 13, 2016, the CDE notified LAUSD and the appellant that the CDE would conduct a further investigation of the allegations and, due to the complexity and state-wide nature of the issues, had found good cause to extend the investigation timeline pursuant to 5 CCR Section 4662(b).

On May 27, 2016, the CDE issued its Investigative Report (Report). Thereafter, on June 13, 2016, LAUSD submitted a "Request for Reconsideration of Report of Appeal Against the Los Angeles Unified School District (Reyna Frias et al., Appellants) pursuant to 5 CCR 4665(a). (LAUSD Reconsideration Request.) LAUSD's request put forth additional arguments in support of its position, and it urged reconsideration of the Report. LAUSD also requested the Superintendent of Public Instruction (SPI) to immediately stay its effectiveness pending reconsideration.

On June 14, 2016, the CDE received correspondence from Michelle King, LAUSD Superintendent regarding the Report stating that as result of the Report, LAUSD could be required to identify \$1 billion in programmatic cuts. On June 14, the SPI corresponded with Superintendent King, indicating that in order to allow LAUSD to make thoughtful adjustments to its LCAP consistent with the Report, the CDE would not require adjustments until the 2017–2018 fiscal year.

On July 1, 2016, the Complainants submitted Opposition to LAUSD's Request for Reconsideration, along with a Request for Reconsideration of the Report. Complainants objected to delaying any adjustments until the 2017–2018 fiscal year. The CDE corresponded with LAUSD and Complainants on July 14, 2016, to inform them that the requests for reconsideration would be considered together and that any response would issue on or before August 5, 2016.

On June 16, 2016, CDE staff met with LAUSD staff to discuss the Report. On July 8, 2016, LAUSD submitted a revised narrative account of why its spending on unduplicated pupils with disabilities was properly included in its "prior year estimate of funds expended on unduplicated pupils in its LCAP."

On July 15, 2016, LAUSD submitted opposition to the Complainants' July 1, 2016 Opposition and Request for Reconsideration. Complainants submitted a reply on July 29, 2016 to LAUSD's July 15, 2016 correspondence opposing Complainants' opposition to the district's request for reconsideration.

II. SUMMARY OF ALLEGATIONS, DISTRICT RESPONSE AND APPEAL

The Complaint

The Complaint alleges LAUSD failed to comply with legal requirements related to its 2014–15 and 2015–16 LCAPs. In particular, the complaint alleges LAUSD violated *EC* Section 42238.07 and 5 *CCR* Section 15496 by including a portion of the district's special education spending as part of its estimate of prior year expenditures for services for foster youth, low income students, and English learners (unduplicated pupils) in its 2014–15 and 2015–16 LCAPs

The Local Control Funding Formula (LCFF) includes a seven-step proportionality calculation to determine the minimal proportionality percentage (MPP) by which a local educational agency (LEA) must increase or improve services for unduplicated pupils above services provided to all pupils in the fiscal year. (See below, p. 10) Step two of this calculation requires an LEA to estimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on services provided for all pupils ("prior year expenditures").

According to the Complaint, when calculating the MPP for the 2014–15 LCAP and 2015–16 LCAP, LAUSD includes \$450 million of special education expenditures as part of its

\$700 million estimate of "prior year expenditures." The complaint asserts that special education expenditures may not be counted as such "prior year expenditures" because special education services are available to all students. In support of this assertion, the complaint states that all pupils may request an Individual Education Plan for special education services, and an LEA must provide these services to all students who qualify, regardless of whether or not they are counted as an unduplicated pupil. The Complaint therefore concludes that special education expenditures are not services targeted for unduplicated pupils and may not be counted as prior year expenditures for unduplicated pupils.

The Complaint alleges that as a result of the inclusion of the \$450 million of special education expenditures in the estimation of prior year expenditures, LAUSD shortchanged unduplicated pupils \$126 million in increased or improved services in 2014–15, and \$288 million in such services in 2015–16. The Complaint further alleges the "deficit" in expenditures on programs for

unduplicated pupils will continue to build each year until it grows to \$450 million annually at full implementation of LCFF (estimated to be in 2020–21). Finally, the Complaint alleges that inclusion of special education as prior year expenditures will cost unduplicated pupils “\$2 billion in increased or improved services between now and FY 2020–21” (Original Complaint, p. 5).

The Complaint requests LAUSD revise its 2015–16 LCAP to remove special education funding as part of its prior year spending for foster youth, low income pupils, and English learners, and also revise its MPP calculation and its 2015–16 LCAP to ensure it spends the appropriate amount of money on increased and improved services for such pupils in 2015–16 and in future years. (Complaint, p. 6.)

LAUSD Response to the Complaint

LAUSD investigated the Complaint pursuant to its Uniform Complaint Procedures and issued a report of its determination (District Report) on November 9, 2015. It concluded the complainants’ legal contentions were without merit. The district’s view is summarized as follows:

The plain language of the 5 CCR Section 15496 directs LEAs to estimate the amount of LCFF funds expended by the LEAs on services for unduplicated pupils in the prior year that is in addition to what was expended on services provided for all pupils. (Emphasis in District Report, p. 18.) According to LAUSD, special education services are not services provided to all pupils, but are instead services provided only to a small percentage of pupils who meet specific eligibility requirements prescribed by federal and state special education laws. (Individuals with Disabilities Act [20 U.S.C. Section 1400 et seq.]; EC 56000 et seq.) Therefore, special education services may be included in the estimate of prior year expenditures on services for unduplicated pupils under 5 CCR Section 15496(a)(2).

LAUSD further argues the regulations broadly define “services.” (District Report, p. 14.) LAUSD determined it was within its “discretion to interpret subdivision (a) of Section 15496 according to its plain meaning.” (District Report, p. 18.)

LAUSD further described how it determined the “prior year expenditure” figure to be \$450 million in 2013–14 and 2014–15. LAUSD utilized its estimate of District General Fund contribution to special education (net of revenue limit and affiliated charters),¹ which was \$653.4 million for 2013–14 and \$633.9 million for 2014–15.² It further calculated the percentage of unduplicated

¹ CDE understands net of revenue limit to mean the amount of contributions to special education excluding an amount equal to revenue limit funding for certain special education pupils. CDE understands net of affiliated charters to mean that LAUSD excluded charter school expenditures that are included in its general ledger. The expenditures are not expenditures of federal Individual with Disabilities Education Act funds (20 U.S.C. Section 1400 et seq.)

² Special education services are funded by a combination of three funding sources: federal, state, and local. Federal funds and state funds are provided through special education categorical grants. The contribution of local funds to special education typically comes from a school district’s unrestricted general funds, and this contribution is sometimes referred to as “encroachment” - based on the idea a contribution of local funds for special education “encroaches” on general education program. However, the label can be a misnomer when it is used to describe any local expenditure for special education, as “regular” education costs for pupils receiving special education are intended to be funded from other local sources, including LCFF. However, it is the case that Federal and state special education categorical funds do not fund the full excess costs of educating pupils with disabilities.

pupils who receive special education services, excluding those attending affiliated charter schools, utilizing 2012–13 CALPADS and CASEMIS student enrollment data.³ That percentage was determined to be 79.38%. LAUSD reports it identified the subset of special education programs that benefit unduplicated pupils and applied the 79% to the expenditures for those programs, yielding \$449.88 million in expenditures for 2013–14 and 2014–15. (District Report, p. 10.)

The district response to the Complaint included general descriptions of some of the expenditures included in the \$450 million. These included: initiatives addressing integration of student with disabilities into general education settings, and reducing disproportionality among subgroups identified for special education; increased support services to advance academic achievement of English learners with disabilities; aligning IEPs with the district’s English Learner Master Plan, inclusion of IEP goals for English proficiency in each IEP, and identification of the ELD present level of performance in each student. (District Report, p. 10.)

LAUSD’s response further states that certain expenditures were excluded from its calculation of prior year expenditures for unduplicated pupils, even though the District believes that the regulations would permit inclusion of a wide array of expenditures in the calculation. Special education expenditures excluded were described as: \$33 million on spending for pre-school and adult populations; \$6.5 million for Special Education (SPED) Career & Transition Program, which serves pupils from both K–12 and adult student populations. LAUSD reports it took a conservative approach in making its calculation and excluded an additional \$34.5 million, “to ensure that its proportionality calculations were based upon services geared directly to unduplicated pupils.” The exclusions included:

- SPED Central Office (\$11.15 million)
- SPED IMA Equipment-Materials (\$4.56 million)
- SPED Reimbursement Due Process (\$4.26 million)
- SPED Allocation to Schools for Compliance (3.25 million)
- SPED Program Specialists Certificated (\$2.94 million)
- SPED IMA Allocation to Schools (\$1.05 million)
- SPED Least Restrict Environment Counselors (\$0.65 million)
- SPED Temporary Personnel Account (\$0.13 million)

LAUSD also reports it excluded some amount in expenditures for services that may involve minimal contact between special education personnel and the general education population,

³ CALPADS and CASEMIS are student information systems, CASEMIS including data specific to Special Education.

including some amount for salaries and health benefits for therapists and specialist who participate in assessments to determine pupil eligibility for special education. (District Report, p. 13.)

The LAUSD response concludes the district's actions as described above are appropriate under 5 CCR Section 15496(a). It states that the regulation setting forth the requirements for estimates of prior year expenditures for unduplicated pupils does not exclude expenditures for services that are ""available to all students...who are eligible"", or services that are not ""targeted for"" unduplicated pupils. (District Report, p. 14, citing allegations of the Complaint.) It concludes that 5 CCR Section 15496 directs LEAs to exclude only "services provided to all services 'services provided to all pupils' under Section 15496 of title 5 of the *California Code of Regulations*?" (District Report, p. 14.)

LAUSD states its view that, factually, special education services are services provided only to those eligible to receive them according to statute, and the expenditures included in its estimate are only for those students who have an IEP. It further asserts that no authority in the LCFF or implementing regulations, or legislative or regulatory history, support a conclusion that services for special education are "services provided to all students" despite that phrase's "plain meaning." (District Report, p.15.) LAUSD asserts that Complainants' construction of the regulations is inconsistent with the Legislature's lack of inclusion of a "do not supplant" restriction in the LCFF. (District Report, p.17.)

In addition, LAUSD argues that the legislative direction to authorize expenditure of supplemental and concentration funds on a "district-wide" or "school-wide" basis support its methods for determining "prior year expenditures." (District Report, p. 17.) According to LAUSD, the fact that 84% of its pupils are unduplicated pupils, means the "district-wide core educational program is itself ""principally directed towards...meeting the district's goals for its unduplicated pupils."" (District Report, p.18.) Based on the above, LAUSD's response concludes \$450 million in special education expenditures described above may be included in its estimate of prior year expenditures on services for unduplicated pupils.

The Appeal

In their appeal, Complainants state that there are no material facts in dispute. (Appeal, p. 2.) Complainants point out that LAUSD derived its estimate of "prior year expenditures" by application of a formula:

79% (representing unduplicated pupils), multiplied by expenses associated with a subset of special education programs that would benefit these pupils, yielding \$449.8 million in prior year expenditures.

This figure, notes Complainants, is nearly all of the special education general fund encroachment. Complainants describe the key issue as the legal interpretation to be given 5 CCR Section 15496(a)(2)'s requirement to "[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended *on services provided for all pupils*." (Appeal, p. 2, emphasis in Appeal.)

Complainants allege that LAUSD essentially interprets "services provided for all pupils" to mean only those services provided to "precisely 100% of pupils," and such interpretation is not supported by law. According to Complainants, such an interpretation would lead to absurd results, allowing a district to apply its unduplicated percentage to any program that is available

to all pupils but serves only a portion of pupils, such as summer school, after-school programs, extracurricular activities and such. (Appeal, p. 2.)

Complainants further assert LAUSD failed to address Complainants' argument that 5 CCR Section 15496(a)(2) recognizes only two types of spending for services: (1) expenditures on services for unduplicated pupils and (2) expenditures on services for all pupils. According to Complainants, expenditures for services that serve pupils without regard to students' low-income, English learner, or foster youth status are not "expenditures for unduplicated pupils," and, therefore, do not meet the regulatory standard for inclusion as part of "prior year expenditures." (Appeal, p. 2.)

Complainants also restate their assertion that because special education expenditures are incurred pursuant to preexisting federal and state mandates, LAUSD's action violates the mandate to "increase or improve services for unduplicated pupils as compared to services provided to all pupils" as required by the statute and regulations. (Appeal, p. 3.)

Complainants requested remedy is that the SPI overturn LAUSD's decision, and require LAUSD to revise its 2015–16 LCAP to remove special education funding as part of its prior year spending for unduplicated pupils, and also to revise its proportionality calculation and 2015–16 LCAP to ensure it spends the appropriate of money on increased and improved services for such pupils in 2015–16 and future years.

III. GENERAL PROCEDURES OF INVESTIGATION

Upon receipt of the appeal, CDE requested LAUSD provide the following documents in accordance with 5 CCR Section 4633(a):

- A copy of the original complaint
- A copy of the Decision
- A summary of the nature and extent of the investigation conducted by the local educational agency, if not covered in the Decision
- A copy of the investigation file, including but not limited to, all notes, interviews and documents submitted by the parties or gathered by the investigator
- A report of any action taken to resolve the complaint
- A copy of the local educational agency complaint procedures
- Such other relevant information as the Department may request

CDE reviewed these documents. In addition, CDE reviewed the LAUSD 2014–15 LCAP and 2015–16 LCAP. CDE conducted a telephone conference with Complainants' representatives on February 24, 2016, to discuss the complaint. Complainants' representatives explained the basis for the complaint consistent with the written appeal submission. CDE conducted a telephone conference with representatives of LAUSD on April 6, 2016. In that conference CDE requested LAUSD provide information identifying the program expenditures which it included it in its calculation of the \$450 million prior year expenditures. In response, LAUSD provided a list of special education programs included in SACS Resource Code 6500, specifying which programs

were included and which were excluded, as well as further argument in support of its determination. (Exhibit F.)

IV. APPLICABLE STATUTES AND REGULATIONS

- California *Education Code (EC)* sections 42238.02, 42238.07, 52060–52075
- California *Code of Regulations*, Title 5 (5 *CCR*) 15494–15497.5

V. FINDINGS OF FACTS AND CONCLUSIONS OF LAW

LCFF Overview

An overview of the LCFF legislation is helpful to understanding the allegations of this Complaint. The LCFF was enacted by Assembly Bill No. 97 (Chapter 47, Statutes of 2013)⁴, and was effective on July 1, 2013. The LCFF establishes a new funding formula for school districts (as well county offices of education, and charter schools (LEA's)). It replaces the long-standing “revenue limit” system of funding. Under revenue limits, districts received funds based on a unique revenue limit amount multiplied by their average daily attendance (ADA). This statutory formula provided school districts most of their general purpose funding.

Under the old system, revenue limit funding was coupled with “categorical” programs. These programs provided funding for specific, restricted purposes, typically funded either by program-specific formula grants, or pursuant to an application submitted by a school district. Often, categorical programs were designed to provide targeted services based on demographics and needs of the pupils in a district. The LCFF replaced the approximately three-quarters of categorical programs.

The LCFF establishes a “base” level of funding for school districts, which is a specified amount for each unit of ADA based on grade spans: \$6,845 for K–3; \$6,947 for grades 4–6, \$7,154 for grades 7 and 8, and \$8,239 for grades 9–12. (*EC* Section 42238.02(d).) These base rates may then be subject to additional adjustments as described below.

Implementation of the LCFF requirements began in 2013–2014, but full funding of the formula is being phased in over several years. The LCFF is anticipated to be fully funded by 2020–21. The Legislative Analyst reports that at the time of the LCFF's adoption, the base LCFF funding rate was estimated to be about \$500 per pupil higher than the 2012–13 revenue limit rates, and the state has provided approximately \$12.8 billion in additional K–12 funds over the past three years under the LCFF.⁵ When fully implemented, the LCFF will result in significantly more funding than was provided by the previous system of revenue limits coupled with categorical

⁴ Senate Bill No. 91 (Chapter 70, Statutes of 2013) and Senate Bill No. 97 (Chapter 357, Statutes of 2013), made minor changes to the LCFF as adopted by AB 97).

⁵ Legislative Analyst's Office, Overview of Local Control Funding Formula and New State Accountability System; presentation to Assembly Budget Subcommittee No. 2 on Education Finance, March 8, 2016.

programs.

Grade-Span Adjustments and Adjustments for “Unduplicated Pupils”

The LCFF provides for two adjustments to the base funding level described above. The first adjustment is based upon the grade level of the pupils. A Kindergarten through grade 3 adjustment increases the base rate by 10.4 percent tied to a reduction in class-size to a schoolsite-average of no more than 24 pupils, upon full implementation, unless collectively bargained otherwise. (*EC* Section 42238.02(d)(3).) In addition, the formula provides for an increase in the base amount by 2.6 percent for pupils in grades 9–12 to reflect higher operating costs and a focus on college and career readiness. (*EC* Section 42238.02(d)(4).)

The second adjustment to the LCFF formula is based on pupil demographics. The formula provides additional funding in the form of supplemental and concentration amounts based on the number and concentration of low income, English learners and foster youth pupils (“unduplicated pupils”) as defined by *EC* Section 42238.02(b). The LCFF formula provides an additional 20 percent of the base amount for each unduplicated pupil. (*EC* Section 42238.02(e).) When the number of unduplicated pupils exceeds 55 percent of a school district’s enrollment, the LCFF formula provides an additional 50 percent of the base amount for each unduplicated pupil that exceeds the 55 percent enrollment. (*EC* Section 42238.02(f).)

Expenditure Requirements for Supplemental and Concentration Funds

EC Section 42238.07 governs the expenditure of supplemental and concentration funds). It provides:

“(a) On or before January 31, 2014, the state board shall adopt regulations that govern the expenditure of funds apportioned on the basis of the number and concentration of unduplicated pupils pursuant to sections 2574, 2575, 42238.02, and 42238.03. The regulations shall include, but are not limited to, provisions that do all of the following:

(1) Require a school district, county office of education, or charter school to increase or improve services for unduplicated pupils in proportion to the increase in funds apportioned on the basis of the number and concentration of unduplicated pupils in the school district, county office of education, or charter school.

(2) Authorize a school district, county office of education, or charter school to use funds apportioned on the basis of the number of unduplicated pupils for schoolwide purposes, or, for school districts, districtwide purposes, for county offices of education, countywide purposes, or for charter schools, charter-wide purposes, in a manner that is no more restrictive than the restrictions provided for in Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Section 6301, et seq.).

(b) The state board may adopt emergency regulations for purposes of this section.”

Consistent with the provisions of *EC* Section 42238.07, the State Board of Education (SBE) adopted regulations governing the expenditure of supplemental and concentration funds in January 2015. These regulations are at 5 CCR sections 15495–15497.5.

5 CCR Section 15496 addresses the requirement that schools districts “increase or improve” services for unduplicated pupils in proportion to the increase in supplemental and concentration

funds (EC Section 42238.07(a).)⁶

Calculating the Minimum Proportionality Percentage (MPP)

As noted above, funding increases provided for by LCFF are being phased in over several years, with the funding target expected to be reached by 2020–21. Prior to the implementation of LCFF, districts varied in the extent to which they participated in various categorical programs and in the level of services provided for low-income pupils, English learners, and foster youth. Thus, in 2012–13, the year immediately preceding the year of LCFF's initial implementation, there was variation across districts in the level of expenditures for services provided to pupils who met the criteria for low-income, English learner, and foster youth. During the phase-in of funding, districts will receive LCFF funding based upon the difference (gap) between their prior year funding and the amount they will receive when the LCFF is fully funded (the target LCFF base funding level [LCFF target]). Because of the phase in of LCFF funding, the base funding level and supplemental and concentration grant funding level must be estimated until full funding is reached.

In consideration of the phase-in of LCFF funding and the varying “starting” points for school districts, 5 CCR Section 15496 provides a seven-step process for determining the amount of funding attributable to supplemental and concentration grants in the LCAP year and the minimum proportion by which a district must “increase or improve” services for unduplicated pupils (MPP). (5 CCR Section 15496(b)(1)–(7).) During the transition to full funding, these amounts will depend, in part, on a district's estimate of LCFF funds expended on services for unduplicated pupils in the prior year that is in addition to what was expended on services for all pupils. (5 CCR Section 15496(b)(2) [Step two].) Pursuant to the formula, districts make incremental progress toward the supplemental and concentration grant expenditures levels required at full implementation to proportionally increase or improve services for unduplicated pupils.

At full funding, a district's supplemental and concentration grant funding level will be identifiable, and the regulations at that point require the MPP to be calculated by dividing that grant amount by the remainder of the district's LCFF funds (with exclusion of certain funds as identified in the regulation.) (5 CCR Section 15496(a)(8).)

Schoolwide and Districtwide Expenditures of Supplemental and Concentration Funds

EC Section 42238.07(b) required the SBE to adopt regulations to authorize a school district to use funds apportioned on the basis of the number and concentration of unduplicated pupils for “districtwide” or “schoolwide” purposes, in a manner no more restrictive than provided for in Title I of the federal No Child Left Behind Act of 2001 (20 Section 6301, et seq.). Title I provides

⁶ The process for adoption of permanent regulations proceeded in parallel with adoption of emergency regulations, which were adopted in January 2014 and went into immediate effect. The emergency and permanent regulations were the same with respect to determination of prior year expenditures and calculating the minimum proportionality percentage.

federal financial assistance distributed through state education agencies to LEAs with a high number or percentage of children from low-income families to assist them in ensuring that all pupils meet the state's academic standards. LEAs are required to allocate funding to schools with the highest percentages of children from low-income families. Unless the receiving school is operating a schoolwide program, it is required to focus Title I services on children who are identified as failing, or most at risk of failing, to meet state academic standards.

A school operating a schoolwide program is authorized to provide services to upgrade the entire educational program of a school. A school serving an attendance area in which least 40% of the pupils are from low income families may operate a schoolwide program. Educational programs may be designed to serve all students, provided requirements such as conducting a needs assessment, developing a comprehensive plan, and conducting an annual evaluation of the plan are met. (20 U.S.C. sections 6313–6314.)⁷ Title I does not include a provision for districtwide programs.

Consistent with EC Section 42238.07(b), the expenditure regulations identify the circumstances in which LEAs may use supplemental and concentration funds on a districtwide or schoolwide basis. (5 CCR Section 15496(b).) The conditions imposed on LEAs for such use vary depending on the type of LEA and the percentage of unduplicated pupils. For a district such as LAUSD, with an enrollment of unduplicated pupils of 84%, the requirements for districtwide use of supplemental and concentration grant funding are as follows:

“(b) ...an LEA may demonstrate it has increased or improved services for unduplicated pupils... by using funds to upgrade the entire educational program of ... a school district...as follows:

(1) A school district that has an enrollment of unduplicated pupils of 55 percent or more of the district's total enrollment in the fiscal year for which an LCAP is adopted or in the prior year may expend supplemental and concentration grant funds on a districtwide basis. A school district expending funds on a districtwide basis shall do all of the following:

(A) Identify in the LCAP those services that are being funded and provided on a districtwide basis.

(B) Describe in the LCAP 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.”

The Local Control and Accountability Plan (LCAP)

LCFF requires the governing board of each school district to adopt an LCAP, on or before July 1, 2014, using a template adopted by the SBE. (EC Section 52060.) The LCAP is required to be

⁷ NCLB was recently amended by the Every Student Succeeds Act (“ESSA”, Pub. Law No. 114-95). ESSA contains provisions for schoolwide Title I programs.

updated on or before July 1 of each year. According to statute, the LCAP is required to include, for the school district and each school within the district:

- a description of the annual goals, for all pupils and each subgroup of pupils identified pursuant to *EC* Section 52052,⁸ to be achieved for each of the eight state priorities identified in *EC* Section 52060(d), as well as for any additional local priorities identified by the district governing board, and
- a description of the specific actions the school district will take during each year of the local control and accountability plan to achieve the goals identified in its plan.

EC Section 52064 required the SBE to adopt a template by March 31, 2014, for LEAs to use for their LCAPs and annual updates to the plan. The SBE-adopted template for the LCAP and Annual Update is at 5 CCR Section 15497.5.

Stakeholder Input on Development and Approval of the LCAP

The LCAP must be developed with stakeholder input, as prescribed by *EC* sections 52060, 52062 and 52063. There must be consultation with teachers, principals, administrators, other school personnel, local bargaining units of the school district, parents, and pupils. (*EC* Section 52060(g).) A district also must have a parent advisory committee to advise on the LCAP. Before a governing board adopts the LCAP, the district superintendent must present it to the parent advisory committee, and respond in writing to advisory committee comments. (*EC* sections 52062(a)(1); 52063(a)(1).)

Districts, such as LAUSD, that have enrollment of English learners of at least 15 percent and at least 50 English learners, also must have an English learner parent advisory committee. (*EC* Section 52063(b).) Prior to adoption, the district superintendent must present it to the English learner parent advisory committee for review and comment, and respond, in writing, to comments received from the committee. (*EC* Section 52062(a)(2).)

Members of the public must be informed by the district of the opportunity to submit written comments regarding the specific actions and expenditures proposed to be included in the plan. (*EC* Section 52062(a)(3).) A school district governing board is required to adopt its LCAP and annual update using a two-meeting process. It must first hold a public hearing at which it receives public comment; this hearing must be held at the same meeting as its first public hearing on adoption of its proposed budget. The district may then adopt its LCAP or annual update at a public meeting held at least one-day after the initial public hearing, and that meeting must be the same meeting at which the district adopts its budget. (*EC* Section 52062(b).)

A school district may adopt revisions to its LCAP during the time it is in effect, if it follows the above process for adopting an LCAP, including adopting the revisions in a public meeting.

County Superintendent Review and Approval

⁸ These subgroups of pupils are: ethnic subgroups, socioeconomically disadvantaged pupils, English Learners, pupils with disabilities, foster youth, and homeless youth (homeless youth added effective June 24, 2015).

Within five days of adoption of the LCAP or annual update by the governing board, a school district is required to submit it to the county superintendent of schools for review and approval. (EC Section 52070.) The statute establishes a procedure by which a county superintendent may seek clarification from the district regarding the LCAP or annual update. Any recommendations of a county superintendent for amendments to the LCAP or annual update must be considered by the governing board of the school district in a public meeting. By October 8 of each year the county superintendent must approve the district's LCAP or annual update if he or she determines:

- The LCAP or annual update adheres to the SBE-adopted template (EC Section 52070(d)(1))
- The school district's budget for the applicable fiscal year includes expenditures sufficient to implement the specific actions and strategies included in the LCAP based upon projections of the costs included in the plan (EC Section 52070(d)(2)), and
- The LCAP or annual update adheres to the expenditure requirements adopted pursuant to EC 42238.07 for funds apportioned on the basis of the number and concentration of unduplicated pupils. (EC Section 52070(d)(3))

The expenditure regulations adopted by the SBE address county superintendents' responsibilities in reviewing LCAPs for adherence to the requirements of EC Section 52070(d)(3). (5 CCR Section 15497.) The county superintendent is required to review any descriptions in the LCAP of districtwide or schoolwide services to determine whether the district has "fully demonstrated that it will increase or improve services for unduplicated pupils pursuant to Section 15496(a)." If a county superintendent determines a district has failed to increase or improve services for unduplicated pupils as described in 5 CCR Section 15497, the county superintendent must provide technical assistance to the district, as specified in the statute.

Analysis

Special Education Expenditures in Determining MPP

The central issue in this complaint is the meaning of the "second step" in the calculation required by 5 CCR Section 15496(a) to determine the "percentage by which services for unduplicated pupils must be increased or improved above services for all pupils [the MPP]. Step two requires a district to:

"Estimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on services provided for all pupils. The estimated amount of funds expended shall be no less than the amount of Economic Impact Aid expended in the 2012–2013 fiscal year."

In this case, LAUSD asserts special education services are clearly not "services for all pupils" because such services are provided only to those pupils who meet the eligibility criteria specified in statute. Building on its view that special education services are not provided to all

pupils, LAUSD performs a straightforward calculation applying 79% (the percentage of pupils receiving special education who are also unduplicated pupils) to the bulk of its general fund expenditures for special education, resulting in \$450 million in special education expenditures being included as part of its estimate of “prior year expenditures” in the MPP calculation.⁹

LAUSD does exclude from its calculation some of its expenditures for special education. (See exclusions identified at p. 3–4 above.) However, based on the information provided by LAUSD in response to the Complaint, those exclusions are not based on any distinctions between expenditures on special education services for unduplicated pupils, and expenditures on special education services for all pupils receiving special education, including unduplicated pupils. Rather than making such a distinction, the district derives a proportional expenditure amount and identifies that amount as expenditures for unduplicated pupils “in addition” to expenditures for all pupils. As was noted previously, the bulk of expenditures coded to Resource Code 6500 were included in the proportional calculation. The programs identified to Resource Code 6500 reflect a broad array of program services available to special education pupils generally. (Exhibit F.)¹⁰

LAUSD’s approach does, as Complainants argue, give a strained construction to the meaning of the regulation. It focuses on the plain meaning of “all,” as is evident from its framing the question: “Are special education ‘services provided to all pupils’ under section 15496 of the California Code of Regulations?” (District Report, p. 14.) It construes the regulation to permit 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.

The above approach is not consistent with the LCFF statute and regulations. EC Section 42238.07(a) requires that funds apportioned on the basis of the number and concentration of unduplicated pupils be expended to “increase or improve” services for unduplicated pupils in proportion to the increase in funds apportioned. (EC Section 42238.07; 5 CCR Section 15496.) The regulation at issue directs the manner in which districts are to calculate the MPP during the transition period to full funding of the LCFF. At step 2 in the calculation, the regulation directs the district to make a comparison between expenditures on services provided for unduplicated pupils “in addition” to expenditures on services for “all” pupils. To be consistent with the statutory purposes, 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. Expenditures for services available to pupils regardless of their

⁹ Note the same figure is derived for 2013–14 and 2014–15, despite a difference to general fund expenditures for special education services in the two years. (District Report, p 10.)

¹⁰ Schools districts utilize a standard chart of accounts to record and report financial information. A “resource code” is used in schools’ accounting systems to track activities funded with revenues that have special accounting or reporting requirements or are legally restricted. Resource Code 6500 is for special education. Districts often contribute unrestricted general fund resources to this Resource Code 6500 when expenditures for special education exceed federal and state categorical funding (see footnote 2).

status as unduplicated pupils may not be included in the estimate of prior year expenditures on services for unduplicated pupils that are in addition to expenditures for services provided for all pupils.

Not only is the above approach the directive of the statutory language, the regulations demonstrate that legislative purpose, in part, by specifying a floor for “prior year expenditures” in the first year in which the formula was operative consisting of a district’s 2012–13 expenditures of Economic Impact Aid (the pre-LCFF categorical program providing supplemental funds to serve pupils who were low-income or English learners).

Thus, in calculating the MPP under 5 CCR Section 15496, the regulation requires that expenditures on services for unduplicated pupils made without regard to pupils’ unduplicated status be excluded from the estimate of prior year expenditures (5 CCR Section 15496(a)(2)). With regard to expenditures for special education, prior year expenditures on special education services directed to unduplicated pupils based on their status as unduplicated may be included when estimating prior year expenditures under 5 CCR Section 15496(a)(2). For years subsequent to the initial LCAP year (2014–2015), an LEA with 55 percent or more unduplicated pupils, such as LAUSD, may include expenditures for services provided on a districtwide or schoolwide basis to both duplicated and unduplicated pupils so long as they are described in the LEA’s LCAP as principally directed towards and effective in meeting the district’s goals for its unduplicated pupils in the state and any local priority areas (see below). But, in addition, expenditures for special education services that are for duplicated and unduplicated pupils generally, without regard to pupils’ unduplicated status, may not be included in estimating such prior year expenditures.

The Significance of Districtwide Expenditure

In support of its position that it acted consistent with 5 CCR Section 15496(a)(2) and in arguing rejection of Complainants’ demand to remove \$450 million of special education expenditures from its estimate of prior year expenditures, LAUSD argues that the regulations grant districts, such as it, with high enrollments of unduplicated pupils the highest level of flexibility. (District Response, p. 17.) The district further states “[b]ecause the overwhelming majority of LAUSD’s pupils (84%) are unduplicated, the district-wide core program is itself ‘principally directed towards...meeting the district’s goals for its unduplicated pupils,’” citing, in part 5 CCR Section 15496(b)(1)(B). (District Response, p. 18.) While it is the case that LAUSD has flexibility to the extent afforded by the regulations, we do not find its argument persuasive on the issues raised by this appeal.

First, LAUSD’s argument appears to conflate the threshold that permits districtwide use of funds apportioned on the basis and numbers of unduplicated pupils with the justification required when a district decides to proceed districtwide. The 55 percent or more qualifies a district to use funds on a districtwide basis, but it must then identify in its LCAP those services provided on such basis and describe how they 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.” (5 CCR Section 15496(b)(1)(B).)

In accordance with the regulation, LAUSD has flexibility to expend supplemental and concentration grant funds to increase or improve services for unduplicated pupils on a districtwide basis, as circumscribed by the actions necessary to justify such expenditure. The 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 in proportion to the amount of the increase in funding. (EC Section 42238.07(b).) In addition, the requirement to articulate in the LCAP how districtwide expenditures are "...principally directed towards, and effective in..." meeting goals for unduplicated pupils is a critical step that should reflect the culmination of the significant stakeholder engagement called for by the LCFF, and is essential to transparency.

In addition, the authority to expend supplemental and concentration grant funds for services provided on a districtwide basis under EC Section 42238.07(b) and 5 CCR Section 15496(b) is an alternative to expenditure of such for services for unduplicated pupils on a targeted basis (EC Section 44238.07(a).)¹¹ Accordingly, districtwide expenditure is not, necessarily, determinative of whether such expenditure qualifies as a "prior year expenditure" under 5 CCR Section 15496(a)(2), though it may qualify as such (see below).

MPP is a "Proportional" Spending Requirement

We must also note a point of disagreement with the position asserted by Complainants as expressed in their requested remedy. Complainants request that LAUSD be directed to revise its proportionality calculation and its LCAP to insure that it spends the appropriate amount of money on increased and improved services for High Needs Students in FY 2015–16, and in future years (Appeal, p. 2)" The expenditure requirement for supplemental and concentration grant funding is a requirement to increase or improve services for unduplicated pupils in proportion to the increase in funding received based on the number and concentration of unduplicated pupils¹². The proportional increase is determined by the MPP calculation set forth in the regulation. The regulation makes clear the required proportional increase is not a requirement to increase expenditures for unduplicated pupils from one year to the next. The required comparison for MPP purposes is whether there is a proportional increase or improvement in services for unduplicated pupils above what is provided to all pupils in the fiscal year. (5 CCR Section 15496(a).) Thus, an LEA may count towards meeting the MPP its current year expenditures on services it also provided in the prior year, provided they are either targeted towards unduplicated students or, for LEA's with 55 percent or more unduplicated pupils, they are provided on a districtwide or schoolwide basis to both duplicated and unduplicated pupils and the LCAP identifies the expenditures and describes the services as principally directed towards and effective in meeting the district's goals for its unduplicated pupils in the state and any local priority areas. Accordingly, the regulations specify a "proportional" spending requirement, and not a requirement for a "dollar-for-dollar" spending, such as might exist with a restricted, categorically funded program. Accordingly, it is inconsistent with the regulatory framework to state that LAUSD's calculation of its MPP deprived unduplicated pupils of a specific dollar amount of increased or improved services, as alleged in the Complaint. (Complaint, p. 2.)

¹¹ The LCFF does not, however, include a "do not supplant" mandate, as noted by LAUSD. (District Report, p. 17.)

¹² The regulations at 5 CCR Section 15496(b)(1) and (2) specify the requirements regarding districtwide use of funds for districts with 55 percent or more unduplicated pupils, and for those with less than 55 percent unduplicated pupils. Requirements for schoolwide use for schools with enrollment of unduplicated pupils of 40 percent or more, and for those less than 40 percent unduplicated pupils are set out at 5 CCR Section 15496(b)(3) and (4).

Some Special Education Expenditures for Unduplicated Pupils May Count as Prior Year Expenditures

In addition, we do not conclude that any and all expenditures of a district's general fund for special education purposes must be excluded from its estimate of "prior year expenditures" under 5 CCR Section 15496(a)(2). A district may, in fact, make expenditures for special education services for unduplicated pupils that are "in addition" to special education services provided to unduplicated pupils and all other pupils receiving special education services. As noted above, prior year expenditures on special education services provided to pupils based on their status as unduplicated pupils may be included when estimating prior year expenditures under 5 CCR Section 15496(a)(2). In addition, prior year districtwide and schoolwide expenditures on special education services may be included, provided all the requirements applicable to such as described above are met. Such expenditures could be considered "prior year expenditures" and included in the required calculation of the MPP. But, in addition, expenditures for special education services that are made available to duplicated and unduplicated pupils generally, without regard to pupils' unduplicated status nor principally directed towards unduplicated pupils, may not be included in estimating such prior year expenditures under 5 CCR Section 15496(a)(2). These expenditures must be excluded when calculating the MPP for the LCAP year.

In this case, some of the expenditures identified as being included in the \$450 million LAUSD identifies as being spent for special education services may, in fact, be special education services provided on the basis of pupils' unduplicated status or principally directed towards unduplicated pupils. However, based on the information provided and the legal theory articulated by LAUSD in connection with the complaint and appeal, it is not possible to make that determination.

VI. REQUIRED CORRECTIVE ACTIONS

In this case, based on the information provided, LAUSD does not demonstrate that the entire \$450 million consists of expenditures on special education services provided to pupils based on their status as unduplicated pupils, in addition to special education services provided to all pupils, as required by 5 CCR Section 15496(b)(2). Based on the above analysis, LAUSD must revise its calculation practice of "prior year expenditures" as set forth in 5 CCR Section 15496(b)(2) to exclude any special education expenditures which are not for expenditures for special education services provided for unduplicated pupils that are in addition to expenditures on services for all special education pupils or identified and described in its LCAP as principally directed towards and effective in meeting the district's goals for its unduplicated pupils in the state and any local priority areas, and ensure its MPP is consistent with its estimate of "prior year expenditures."

Under LCFF, stakeholders have a key and critical role in developing goals, actions and services, for all pupils, including unduplicated pupils. (EC Sections 52062 and 52063.) This engagement process provides opportunity for public engagement on appropriate increases or improvements in services for unduplicated pupils as compared to services for all pupils, as well as to ensure the district's budget makes provision for the services and actions identified in the district LCAP. In addition, the district's LCAP is required to be annually updated. Stakeholder engagement is also a critical part of this updating process, which must review progress on the LCAP goals, assess the effectiveness of actions towards reaching those goals, and identify and describe expenditures for unduplicated pupils. (EC Sections 52061 and 52062.) Furthermore, as described above, LCFF imposes a proportional increase or improvement in services for

unduplicated pupils as opposed to a “dollar-for-dollar” spending requirement. In light of these circumstances, any changes that could be required to the district’s LCAP as a result of the required action must be arrived at with stakeholder engagement. To allow for thoughtful and meaningful engagement, the statutory purposes are best achieved by requiring full implementation no later than 2017–2018.

However, the CDE urges LAUSD to recalculate its prior year expenditures and MPP immediately and consider whether it may count a portion of the \$450 million or identify other services that are principally directed to unduplicated students towards meeting its MPP rather than making significant budget adjustments. In future years, LAUSD must calculate MPP consistent with the above analysis, and reflect that MPP in its LCAPs, for so long as 5 CCR Section 15496(b)(2) is applicable.

VII. CONCLUSION

The CDE has investigated the complaint initially filed on September 9, 2015, with the Los Angeles Unified District. This district is required to implement the Required Corrective Actions. The CDE will monitor LAUSD’s compliance with the required actions of this report for two years from LAUSD’s receipt of this report. The CDE is ready to work with all stakeholders to thoughtfully carry out the corrective actions specified in this report and minimize any potential negative impact to the provision of services to LAUSD students.

This report, as clarified, constitutes the decision on reconsideration pursuant to 5 CCR Section 4665, and as such is the final administrative determination on the complaint.

VIII. APPENDIX 1: EXHIBITS

Exhibit A: Original Complaint

Exhibit B: District Report of Findings

Exhibit C: Appeal Letter

Exhibit D: LAUSD 2015–16 Local Control and Accountability Plan

Exhibit E: LAUSD Special Education Expenditures in SACS Resource 6500

Exhibit A: Original Complaint



September 9, 2015

Julie Hall-Panameno, Director
Educational Equity Compliance Office
Los Angeles Unified School District
333 South Beaudry Avenue, 20th Floor
Los Angeles, CA 90017
julie.hall@lausd.net

Superintendent Ramon Cortines
Office of the Superintendent
Los Angeles Unified School District
333 S. Beaudry Ave., 24th Floor
Los Angeles, CA 90017
ramon.cortines@lausd.net

Via E-Mail and U.S. Mail

Re: Uniform Complaint Procedure Complaint Re Superintendent Cortines and LAUSD's Failure to Comply with Legal Requirements Pertaining to LCAP

Dear Ms. Hall-Panameno,

We submit the following Uniform Complaint Procedure ("UCP") complaint on behalf of Ms. Reyna Frias and Community Coalition of South Los Angeles ("Community Coalition") regarding Los Angeles Unified School District and Superintendent Cortines's (collectively "LAUSD") failure to comply with the legal requirements pertaining to its Local Control and Accountability Plan ("LCAP"). Specifically, LAUSD has violated its legal obligations under Education Code § 42238.07 and 5 C.C.R. § 15496 by including special education spending as part of its estimate of prior year expenditures for services for foster youth, low income students, and English learners (collectively "High Need Students") in its 2014-15 and 2015-16 LCAPs.

We have brought the issues in this complaint to the district's attention through multiple letters and conferences and most recently in a legal complaint filed with the LA Superior Court on July 1, 2015. LAUSD filed a demurrer on the ground that Ms. Frias and Community Coalition cannot seek judicial relief until they exhaust the administrative remedies provided under section 52075 of the Education Code and file a complaint pursuant to the UCP. While we do not believe that filing a UCP complaint is a prerequisite to filing our lawsuit, out of an abundance of caution and because of the considerable delay before we expect the Court to reach a decision on

the district's demurrer motion, we now file this UCP complaint. Given our prior dealings with the district in attempts to resolve this matter, we maintain that the filing of this complaint is not mandatory and is futile, as we do not expect it to change the district's clear refusal to correct its erroneous calculations in its LCAP and ensure that it increases and improves services for High Need Students in accordance with LCFF regulations.

As a result of this error in LAUSD's LCAP, the district deprived High Need Students of roughly \$126 million in increased or improved services in Fiscal Year 2014-15 and roughly \$288 million in increased or improved services in FY 2015-16. Over the course of LCFF implementation, LAUSD's improper inflation of its baseline starting point of supplemental and concentration funding will deprive High Need Students of more than \$2 billion in increased or improved services between now and FY 2020-21, and \$450 million in services every year thereafter.

Accordingly, we request that LAUSD revise its 2015-16 LCAP to remove special education funding as part of its prior year spending for High Need Students and revise its proportionality calculation to ensure that the district spends the proper amount of money on increased and improved services for High Need Students.

We initially brought this error to LAUSD's attention in April 2014 when LAUSD released the first draft of its proposed 2014-15 LCAP. We subsequently engaged in negotiations for over a year with LAUSD personnel to attempt to resolve the dispute, but the district refused to amend its LCAP to comply with its obligations under the Education Code and relevant regulations. We also sent a letter to the District in December 2014 on behalf of Ms. Frias and Community Coalition raising these same issues. On July 1, 2015, we filed a Petition for Writ of Mandate in Los Angeles Superior Court (No. BS 156259) (the "Action"), which included the same claims we are asserting in this UCP complaint. A copy of the Petition is enclosed as Attachment 1 for your reference.

Because we have already discussed these issues at length with LAUSD and the district has made clear that it will not amend its LCAP, and because none of the underlying facts are in dispute, we trust that LAUSD will be able to conclude its investigation and render a decision in an expeditious manner.

I. Complainants

Ms. Reyna Frias is the mother of two children, both of whom attend public schools in LAUSD. Ms. Frias's youngest child is a third grade student and is classified as an English learner. He also receives special education services to address a speech or language impairment. Ms. Frias's oldest child is a seventh grade student. Both of Ms. Frias' children are eligible to receive a free or reduced-price meal and thus qualify as low-income students.¹

Community Coalition is a non-profit organization that works to transform the social and economic conditions in South Los Angeles that foster addiction, crime, violence and poverty.

¹ For more information regarding Ms. Frias or her children, please contact counsel listed on this letter.

For purposes of investigating this complaint and reporting any findings or decision, both complainants can be contacted through counsel listed on this letter.

II. Attempts to Resolve the Dispute with LAUSD Personnel

LAUSD released a proposed LCAP in early April 2014 that included in its calculation of prior year expenditures for High Need Students approximately \$450 million of expenditures for special education services. Attorneys from Public Advocates and the ACLU reached out to LAUSD staff within days of this release to discuss the improper inclusion of special education expenditures and informed LAUSD's chief operating officer that its proposal would violate the regulation.

On June 6, 2014, Public Advocates and the ACLU contacted LAUSD's then-Superintendent John Deasy by letter, copying staff at LACOE involved in reviewing LCAPs, and cautioned the District that its "improper inclusion of special education funding as part of its estimate of prior year (FY 2013-14) services for unduplicated pupils . . . resulted in a significant under-calculation of the funds allocated to 'increase or improve services for unduplicated pupils' in the district's LCAP." Public Advocates and the ACLU requested that the district remove the \$450 million in special education expenditures from its estimate of prior year services for High Need Students, and increase the proposed supplemental and concentration spending for FY 2014-15 accordingly.

In response, on June 13, 2014, counsel for LAUSD stated that the District "believes it is justified in its approach" but failed to explain the basis for this belief other than to state that the LCFF expenditure regulations "do not preclude the District from including special education expenditures as part of the prior year services for unduplicated pupils." Two weeks later, the LAUSD Board of Education adopted the draft LCAP, which included the inflated and incorrect figures. On September 5, 2014, LACOE approved LAUSD's LCAP without modification.

On December 19, 2014, on behalf of the complainants, Public Advocates and the ACLU sent a letter to LAUSD's new interim Superintendent, Ramon Cortines to "reiterate [their] serious concerns regarding LAUSD's Local Control and Accountability Plan (LCAP) and to advise you that we will pursue legal action" unless "LAUSD . . . agree[s] immediately to correct the decision to impermissibly include special education services as prior year spending on unduplicated students in LAUSD's initial LCAP."

Between January and July 2015, Public Advocates and the ACLU conducted various meetings and telephone calls with LAUSD personnel—including Gregory McNair, the district's Chief Business & Compliance Counsel, and Megan Reilly, the district's Chief Financial Officer—in a final attempt to convince LAUSD to revise its LCAP to comply with the Education Code and regulations. During these negotiations, LAUSD continued to refuse to amend its LCAP to allocate the correct amount of supplemental and concentration funds to increase and improve services for High Need Students. On June 23, 2015, LAUSD's Board of Education approved the 2015-16 LCAP, which again included the erroneous prior year expenditure calculation and deprived High Need Students of hundreds of millions of dollars in increased and improved services.

On July 1, 2015, Public Advocates, the ACLU, and Covington & Burling LLP filed the Action in Los Angeles Superior Court on behalf of Ms. Frias and Community Coalition alleging that LAUSD violated its mandatory duties to use appropriate supplemental and concentration funds to increase or improve services for High Need Students in accordance with Education Code § 42238.07 and 5 C.C.R. § 15496. On August 3, 2015, LAUSD filed a demurrer, arguing that the plaintiffs were required to exhaust administrative remedies by filing a UCP complaint with the relevant governmental entities before filing suit.²

III. Basis for the UCP Complaint

The Local Control Funding Formula (“LCFF”) requires school districts to “increase or improve services for [High Need Students] in proportion to the increase in funds apportioned on the basis of the number and concentration of [High Need Students] in the school district[.]” Educ. Code § 42238.07. In early February 2014, the emergency regulations for implementing LCFF went into effect and are set forth in 5 C.C.R. §§ 15494-97. To ensure the requisite proportional increase in services for High Need Students, the regulations set forth a duty for school districts to engage in a seven-step process to “determine the percentage by which services for [High Need Students] must be increased or improved above services provided to all pupils” in a fiscal year. 5 C.C.R. § 15496(a).

The proportionality calculation is at the heart of LCFF’s equity requirement that school districts must increase or improve services for High Need Students in proportion to the additional dollars those students generate. *See* Educ. Code § 42238.07; 5 C.C.R. § 15496(a). The second step requires school districts to estimate the expenditures of supplemental and concentration funding in the initial “prior year” (*i.e.*, FY 2013-14) and every prior year thereafter. Under the second step of the calculation, school districts may only count as prior year expenditures “funds expended by the LEA on services for [High Need Students] in the prior year that is in addition to what was expended on services provided for all pupils.” 5 C.C.R. § 15496(a)(2). The regulation thus distinguishes between two types of spending: (1) spending on services for High Need Students and (2) spending on services for all students.

The LCAP that LAUSD’s Board of Education approved for FY 2014-15 violates the Education Code and regulations because it includes \$450 million in special education spending as part of the \$700 million it claimed as prior year services for High Need Students. Special education services cannot be counted as spending on prior-year expenditures on services for High Need Students because these services are available to all students—regardless of whether

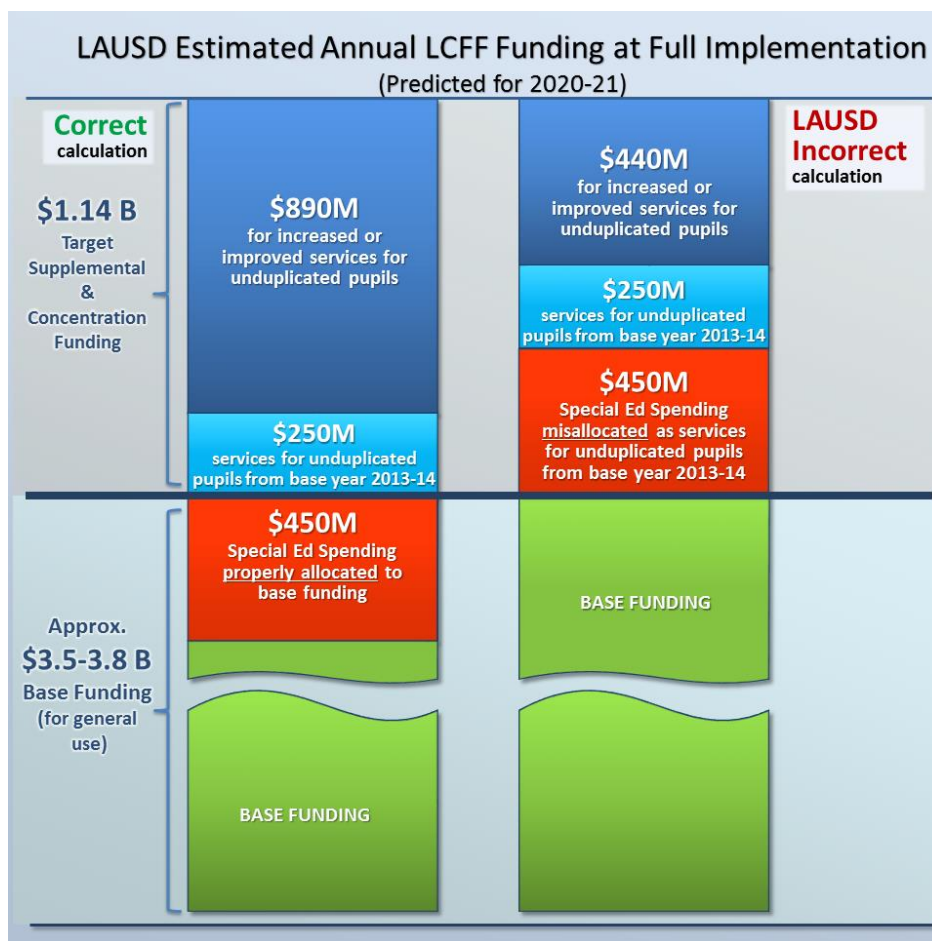
² To be clear, we do not agree that filing a UCP complaint is a prerequisite to challenging LAUSD’s LCAP through litigation. Neither the statute setting forth the LCFF UCP complaint procedure nor its legislative history evidences an intent by the legislature to make the regulatory process the exclusive recourse to vindicate rights. *See, e.g., Kemp v. Nissan Motor Corp.*, 57 Cal. App. 4th 1527, 1531 (1997). Further, it is unnecessary to file a UCP complaint to LAUSD or the State Superintendent of Public Instruction based on these claims because such a complaint would be both futile and inadequate. *See Huntington Beach Police Officers Ass’n v. City of Huntington Beach*, 58 Cal. App. 3d 492, 499 (1976); *Unfair Fire Tax Comm. v. Oakland*, 136 Cal. App. 4th 1424, 1430 (2006). We reserve all rights to continue to assert the non-applicability of exhaustion to the pending Petition for Writ of Mandate. Nonetheless, we are filing this UCP complaint to obviate the need to litigate the demurrer in the interest of judicial economy and to conserve the resources of all parties in this Action.

they are low-income, English Learners, or foster youth—who are eligible to take advantage of special education services under the Individuals with Disabilities Education Act, 20. U.S.C. § 1400 *et seq.* All pupils may request an Individual Education Plan to seek special education services, and the district must provide such services to all who qualify, regardless of whether they are High Need Students. Thus, dollars spent on special education services are not expenditures on services targeted for High Need Students and may not be counted as a prior year expenditure for High Need Students.

Moreover, LAUSD was already required to provide special education under federal and state law. Continuing to provide what LAUSD was already obligated to provide to each eligible student cannot plausibly be viewed as an “increase or improvement” in services.

This error has already had, and will continue to have, a significant detrimental impact on the amount of services High Need Students in LAUSD receive. As a result of the error in LAUSD’s 2014-15 LCAP, the district shortchanged High Need Students \$126 million in increased or improved services in FY 2014-15. On June 23, 2015, LAUSD’s Board of Education approved the district’s 2015-16 LCAP, which included the same erroneous prior year expenditure calculation. During FY 2015-16, this miscalculation will deprive High Need Students of \$288 million on programs counting towards its goal for increasing and improving services for High Need Students. This deficit to High Need Students will continue to build year after year until it grows to \$450 million annually at full implementation (projected for FY 2020-21). Altogether, LAUSD’s inclusion of special education expenditures as a prior year expenditure will cost High Need Students—including Ms. Frias’s children and the constituents Community Coalition serves—over \$2 billion in increased or improved services between now and FY 2020-21.

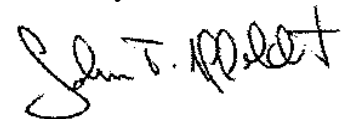
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IV. Remedy Requested

For the reasons described in this UCP complaint, we request that LAUSD revise its 2015-16 LCAP to remove special education funding as part of its prior year spending for High Need Students and revise its proportionality calculation and its LCAP to ensure that it spends the appropriate amount of money on increased and improved services for High Need Students in FY 2015-16 and in future years. For any questions related to this complaint or to contact the complainants, please contact the attorneys listed below.

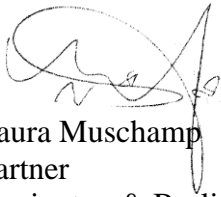
Sincerely,



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Enclosure

Exhibit B: District Report of Findings



Los Angeles Unified School District
OFFICE OF THE GENERAL COUNSEL
 EDUCATIONAL EQUITY COMPLIANCE OFFICE
 333 S. Beaudry Avenue, 20th Floor, Los Angeles, CA 90017
 TELEPHONE (213) 241-7682; FACSIMILE (213) 241-3312

RAMON C. CORTINES
Superintendent of Schools

DAVID R. HOLMQUIST
General Counsel

BELINDA STITH
Interim Chief Education & Litigation Counsel

JULIE HALL-PANAMEÑO
Director
Educational Equity Compliance Office

November 9, 2015

Mr. Victor Leung
 Staff Attorney
 ACLU of Southern California
 1313 West 8th Street, Suite 200
 Los Angeles, CA 90017

Re: Uniform Complaint Procedures (UCP) Case # UCP-029-15/16
Parent and Non-Profit Organization

Dear Mr. Leung,

The Los Angeles Unified School District (the District) has completed its investigation of the above-referenced complaint alleging that LAUSD violated its legal obligations under Education Code § 42238.07 and 5 C.C.R. § 15496 by including special education spending on foster youth, low income students, and English learners (collectively "High Need Students") as part of its estimate of prior year expenditures for services for High Need Students in its 2014-15 and 2015-16 LCAPs. Enclosed is a copy of the final report that includes details of the investigation, conclusions, and, if necessary, corrective actions.

Please be assured of the confidential treatment of this complaint and accompanying report. Information is only being provided to those persons within the District on a need to know basis within the confines of the District's reporting procedures and investigative process. You are advised that the District prohibits retaliation against you or anyone who files a complaint, anyone who requests an appeal or anyone who participates in any complaint investigation process. You are also advised that civil law remedies may be available to you.

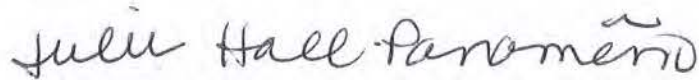
Appeal Information

If you disagree with the findings and conclusions presented to you by this office you have the right to appeal within fifteen days of the receipt of this letter. Such an appeal should specify the reason for appealing the decision. A copy of the original complaint and a copy of this report should be included. Send your appeal to:

**California Department of Education
1430 N Street
Sacramento, CA 95814**

If you have any questions or need more information pertaining to the complaint process or the enclosed report, please feel free to call me at (213) 241-7682.

Sincerely,



Julie Hall-Panameno, Director
Educational Equity Compliance Office

C: Sharyn Howell, Associate Superintendent, Division of Special Education
Megan Reilly, Chief Financial Officer, Los Angeles Unified School District
John Walsh, Deputy Chief Financial Officer
Nargis Merchant, Deputy Budget Director, Budget Services & Financial Planning Division
Tony Atienza, Director, Finance Policy
Cheryl Simpson, Director, Budget Services & Financial Planning Division
Nirupama Jayaraman, Asst. Budget Director, Budget Services & Financial Planning Division
Pedro Salcido, Accountability Advisor, Office of Government Relations
Edgar Zazueta, Chief of External Affairs
Vibiana Andrade, General Counsel, Los Angeles County of Education
Gregory McNair, Chief Business & Compliance Counsel
Mary Kellogg, Assistant General Counsel
Sungyon Lee, Assistant General Counsel
Gregory Luke, Attorney, Strumwasser & Woocher LLP

**Los Angeles Unified School District
Uniform Complaint Procedure Case #UCP-029-15/16
Parent and Non-Profit Organization**

Background:

In 2013, the Legislature adopted a comprehensive reform of the rules governing the financing of schools in California, known as the Local Control Funding Formula (“LCFF”). The LCFF directs state funding to schools under three new “grants” (base, supplemental, and concentration) and delegates broad discretion over the spending of those funds to local educational agencies. The Legislature set a long-term target for the increased funding of public education throughout California and provided for yearly incremental increases in spending over the course of five fiscal years to reach the ultimate LCFF funding goal.

The LCFF provides that schools districts, charter schools, and county offices of education must generate Local Control Accountability Plans (“LCAPs”) for each fiscal year during the period leading up to the full funding of the LCFF. The Legislature did not itself enact rules governing the contents of LCAPs, but instead delegated authority to the State Board of Education to adopt appropriate regulations to ensure that local educational agencies would increase and improve services for unduplicated pupils — i.e., foster youth, English learners, and low-income pupils — in proportion to the supplemental and concentration dollars those students generate during the intervening years leading up to the full funding of LCFF. To that end, the regulations governing LCAPs, codified at Cal. Code Regs, tit., 5, §§ 15494-15497.5, require local educational agencies to “[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on *services provided for all pupils*” as part of the calculation of “the percentage by which services for unduplicated pupils must be increased or improved above services provided to all pupils” in each fiscal year. (Cal. Code Regs., tit. 5, § 15496, subd. (a) [emphasis added].)

The LCAP regulations grant schools that serve high concentrations of unduplicated pupils the highest level of flexibility in demonstrating compliance with these “proportionality” requirements, in recognition of the special expertise those schools have acquired in the provision of education to high needs students. (Cal. Code Regs., tit. 5, § 15496, subd. (b).) The Los Angeles Unified School District (“LAUSD” or “the District”) serves, by far, the largest aggregation of pupils of any school in the state, over 84% of whom are unduplicated. After consultation with the counsel and staff of the State Board of Education, LAUSD issued its initial LCAP in June of 2014, identifying over \$700 million of varied LCFF expenditures on services for unduplicated pupils, which figure included \$450 million of District general fund expenditures on Individualized Education Programs for the many thousands of unduplicated pupils who also meet the eligibility criteria to receive Special Education services under federal and state law. On

September 5, 2014, the Los Angeles County Office of Education (“LACOE”) approved the initial LAUSD LCAP.

On or about July 1, 2015, Complainants filed a lawsuit against LAUSD and LACOE (the “Petition”) seeking a writ of mandate and declaratory relief to remedy alleged District violations of the LCFF and the LCAP regulations arising from the inclusion of Special Education expenditures in the calculation of prior-year expenditures under section 15496. LAUSD demurred to the Petition on the ground that Complainants had failed to exhaust the administrative remedies provided in the LCFF for stakeholders aggrieved by any aspect of an LCAP, which include appeal to the State Superintendent of Public Instruction. (Educ. Code, § 52075.) In response, the Complainants filed the subject Complaint, reserving their argument that exhaustion was not required. The Complaint attaches and incorporates the Petition.

Policy/Authority:

- Title 5, Code Cal. Regs., §§ 15494-15497.5
- Education Code §§ 2574, 2575, 42238.01, 42238.02, 42238.03, 42238.07, 47605, 47605.5, 47606.5, 48926, 52052, 52060-52077, and 64001.

Method of Investigation:

- The investigation was conducted at the direction of Julie Hall-Panameño, Director of the Educational Equity Compliance Office. Information was gathered from interviews to investigate the allegations made in the complaint. Additionally, the correspondence between the counsel for Complainants and counsel for the District that preceded the filing of the Petition and the instant Complaint was reviewed.
- Persons interviewed:
 - Megan Reilly, Chief Financial Officer, LAUSD
 - John Walsh, Deputy Chief Financial Officer
 - Tony Atienza, Director, Finance Policy
 - Cheryl Simpson, Director, Budget Services & Financial Planning Division
 - Nargis Merchant, Deputy Budget Director, Budget Services & Financial Planning Division
 - Nirupama Jayaraman, Assistant Budget Director, Budget Services & Financial Planning Division
 - Pedro Salcido, Accountability Advisor, Office of Government Relations
 - Sharyn Howell, Associate Superintendent, Division of Special Education
 - Edgar Zazueta, Chief of External Affairs

Allegation(s):

The Complainant alleges that LAUSD has violated its legal obligations under Education Code section 42238.07 and title 5, section 15496 of the California Code of Regulations by including special education spending on foster youth, low income students and English learners in its estimate of prior year expenditures on services for unduplicated pupils in its 2014-15 and 2015-2016 LCAPs. There does not appear to be any difference between the allegations of the Complaint and the allegations of the antecedent Petition filed by Complainants in the Superior Court of Los Angeles County.

Legal Framework:

The relevant provision of the Code of Regulations on which Complainants rely directs local agencies to do the following when preparing an LCAP each fiscal year:

“[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on services provided for all pupils. The estimated amount of funds expended in 2013-14 shall be no less than the amount of Economic Impact Aid funds the LEA expended in the 2012-13 fiscal year.” (Cal. Code Regs., tit. 5, §15496, subd. (a)(2).)

Notably, this regulation does not require local agencies determine the actual expenditures on services for unduplicated pupils in any given fiscal year, but rather to “estimate the amount” of such expenditures. Complainants contend that LAUSD violated this regulation by including that portion of LCFF funding budgeted for the Individualized Education Programs provided to unduplicated pupils in its LCAP estimate of prior year spending.

Complainants also claim that the District has violated Education Code section 42238.07. However, that statute does not impose any duties upon local educational agencies, but rather comprises a directive to the State Board of Education. In its entirety, it reads:

(a) On or before January 31, 2014, the state board shall adopt regulations that govern the expenditure of funds apportioned on the basis of the number and concentration of unduplicated pupils pursuant to Sections 2574, 2575, 42238.02, and 42238.03. The regulations shall include, but are not limited to, provisions that do all of the following:

(1) Require a school district, county office of education, or charter school to increase or improve services for unduplicated pupils in proportion to the increase in funds apportioned on the basis of the number and

concentration of unduplicated pupils in the school district, county office of education, or charter school.

(2) Authorize a school district, county office of education, or charter school to use funds apportioned on the basis of the number of unduplicated pupils for schoolwide purposes, or, for school districts, districtwide purposes, for county offices of education, countywide purposes, or for charter schools, charterwide purposes, in a manner that is no more restrictive than the restrictions provided for in Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301, et seq.).

(b) The state board may adopt emergency regulations for purposes of this section.

The Complaint does not identify any specific element of this statute that LAUSD is alleged to have violated, or any clear, present ministerial duty imposed by this statute on LAUSD. Complainants reference this statute solely as authority for the proposition that “school districts must increase or improve services for High Need Students in proportion to the additional dollars those students generate.” (Complaint, at p. 4.) Because a statute expressly and solely directed at the State Board of Education does not impose duties upon local educational agencies, this statute does not provide authority for the issuance of a writ or declaratory relief against LAUSD, but, at most, may provide an interpretive aide if the regulations adopted by the State Board of Education are determined to be ambiguous.

Findings:

(1) SPECIAL EDUCATION IS NOT A SERVICE PROVIDED TO ALL STUDENTS.

- a. Special Education is provided only to pupils who satisfy detailed criteria regarding recognized disabilities and who are not subject to specific exclusionary factors.**

The Individuals with Disabilities Education Improvement Act (“IDEA”), codified at 20 U.S.C. § 1400 et seq., imposes duties on states and local educational agencies to provide an Individualized Education Program (“IEP”) to students who meet the specific eligibility requirements.¹ Accordingly, Special Education services are by definition not services provided

¹ The IDEA contains multiple parts. Direct services to children are codified in Parts B and C of the IDEA. Part B of the IDEA covers school aged children (ages 3-22). Part C of the IDEA covers infants and toddlers (ages birth to 3). In California, Part B IDEA services are carried out primarily by local educational agencies, such as the District; Part C IDEA services are carried out primarily by regional centers. (Educ. Code, § 56001; Gov. Code § 95004; *see also*, Educ. Code, §§ 56000 et seq. and Gov. Code, §§ 95000 et seq.) While California school districts may

to all students, but rather specialized services provided to individual students who have qualifying disability and satisfy the related test for eligibility. In 2013-2014, only 12 percent of LAUSD's student population qualified to receive some form of specialized instruction or assistance under an IEP.

Only children of certain ages, with qualifying disabilities who, by reason thereof, require special education intervention are eligible for and entitled to services under the IDEA. (*See*, 20 U.S.C. § 1400 (3) [definition of "child with a disability"].) Special education eligibility is limited in many ways, including by (1) qualifying disability, (2) need for special education, and (3) age.

The first limiting criterion is qualifying disability. In order to qualify as a "child with a disability" under IDEA the student must first meet the definition of one or more of the categories of disability eligibility. These include: intellectual disability, hearing impairment (including deafness), speech or language impairment, visual impairment (including blindness), serious emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, and (for certain age groups) developmental delay. (20 U.S.C. § 1400 (3)(A)(i); *see also*, Educ. Code, § 56026 (a).)

It is important to note that some children may have a qualifying disability but, regardless, may still be ineligible for special education under the IDEA. This second exclusionary factor dictates that disability, or even diagnosis of a disability², is insufficient in and of itself to qualify a child for special education services under the IDEA. Rather, a child must demonstrate a need for special education and related services.³ (20 U.S.C. § 1400 (3)(A)(ii).) California law further explains this standard as a child whose disability (or impairment) "requires instruction and services which cannot be provided with modification of the regular school program." (Educ.

have some limited involvement in Part C IDEA services, this response addresses only Part B IDEA services.

² A diagnosis of a potentially disabling condition is "neither required nor sufficient" to establish eligibility under the IDEA. (*Lakeside Joint School District*, (OAH 2010), Case No. 2009090504.)

³ "Special education" itself is narrowly defined by California law as something above and beyond what is available in the regular school program. Education Code section 56031 defines "special education" as "specially designed instruction . . . to meet the unique needs of individuals with exceptional needs." In addition, certain related services are specifically defined as special education, including: speech and language pathology services, travel training, and vocational education. (Educ. Code, § 56031, subd. (b); *see also* 34 C.F.R. § 300.39(2).) A child who needs only a related service which is not otherwise classified as "special education" will not meet IDEA eligibility criteria. (34 C.F.R. § 300.8 (2).)

Code, § 56026, subd. (b).) As the Ninth Circuit has confirmed, a child will not be eligible for special education, even with a qualifying disability, if the impact of the disability can be addressed through regular education programming. (*Hood v. Encinitas Union Sch. Dist.*, 486 F.3d 1099 (9th Cir. Cal. 2007).)

Even where a need for specialized services is indicated, exclusionary factors may still prevent special education eligibility under the IDEA. To wit, a child will not be eligible for services under the IDEA if the need for special services is due to either of the following: (a) limited English proficiency; (b) lack of appropriate instruction in reading or math; (c) temporary physical disability; (d) social maladjustment; or, (e) environmental, cultural, or economic factors. (34 C.F.R. § 300.306 (b)(1); *see also* Educ. Code § 56026, subd. (e).) For example, a student with ADHD was found not to be eligible for special education during a period of time when it was reasonable to conclude that his school issues were caused primarily by his unstable home life, rather than a qualifying disability and/or the impact of his ADHD. (*Oceanside Unified School District*, (OAH 2010) Case No. 2010071003.) The exclusionary factor related to limited English proficiency is quite significant in the context of the instant Complaint. If Special Education services were indeed a “service provided to all pupils” then all English learner unduplicated pupils would necessarily qualify for Special Education. The fact that the IDEA expressly *prohibits* any such conclusion amply demonstrates that Special Education services are not “services provided to all pupils.”

Finally, the third broad factor which could limit a disabled child’s eligibility for special education under the IDEA is age. Part B of the IDEA narrowly defines qualifying students as those “between the ages of 3 and 21.” (20 U.S.C. § 1412 (a)(1)(A); Educ. Code, § 56026 subd. (c).) Further, even within this age span, other limitations apply, as follows:

- Children incarcerated in an adult correctional facility who were not identified as a “child with a disability” or did not have an individualized education program (the plan implementing special education) prior to incarceration will be ineligible for services under the IDEA. (20 U.S.C. § 1412 (a)(1)(B); Educ. Code, § 56040.)
- Children who have received a regular high school diploma will be ineligible for services under the IDEA. (20 U.S.C. § 1414 (c)(5)(B)(i); 34 C.F.R. § 300.102 (a)(3)(i); *see also* Educ. Code, § 56026.1.)

- Children who did not receive special education prior to their 18th birthday will not be eligible for services under the IDEA. (20 U.S.C. § 1412 (a)(1)(B)(i); Educ. Code, § 56026.)

Special education eligibility is not conferred lightly. In order to qualify, a child must first undergo an extensive formal assessment of his/her abilities and needs. (20 U.S.C. § 1414 (b).) With that information, a team of qualified professionals, along with the child's parents, then determine whether the assessment and other data warrant a finding of IDEA eligibility. (20 U.S.C. § 1414 (d)(1)(B).)

b. Special Education personnel are not permitted to provide services to the general student population.

Both federal and state law prohibit the instructors, assistants, and therapists that provide Special Education services to LAUSD pupils from providing services to general education students. Special Education service providers are not certified to operate as teachers in LAUSD classrooms, as recognized in the collective bargaining agreement between LAUSD and the United Teachers of Los Angeles ("UTLA").

Special Education teachers, including Resource Specialists ("RSP") and Special Day Program providers ("SDP") are funded and allocated to provide services according to stated caseloads and norms, in accordance with the services listed on a students' Individualized Education Program. Certificated assignments for RSP teachers are based on caseload allocations and guidelines referenced in Education Code section 56362. SDP teacher allocations are determined based upon norms negotiated with UTLA. These teachers are assigned solely for the purpose of improving performance outcomes for students with disabilities.

Special Education teachers, trainees, and assistants may not be allocated for teaching non-disabled students, nor may they be re-allocated during the school day for non-special education responsibilities. They may not serve as coordinators, coaches, athletic directors or other non-special education instructional assignments during the school day. They are required to directly support the instructional program for students with disabilities during the entire school day.

If a school wishes to assign a Special Education teacher to act as a coordinator, coach, or perform any other such duties not related to Special Education, the school must budget for this position through grants or other funding sources. It is a misuse of Special Education resources to assign personnel funded to support the instructional program for students with disabilities to any other duties.

(2) LAUSD PROPERLY ESTIMATED ITS PRIOR-YEAR SPECIAL EDUCATION SPENDING ON UNDUPLICATED PUPILS

a. The LCFF Calculation

The District's General Fund contribution to Special Education (net of the Revenue Limit and affiliated charters) was estimated at \$653.4 million for 2013-14 and \$633.9 million for 2014-15. Seventy nine percent (79%) of the District's students with disabilities are identified as low income, English learners, or foster youth. The District identified the subset of Special Education programs that benefit these targeted student populations and applied 79 percent to the expenditures of those programs to estimate the share that would benefit these high needs students. This calculation totals to \$449.88 million for 2013-14 and 2014-15, thereby reflecting the estimated share of General Fund expenditures for services that benefit low income, English learners, or foster youth with an Individualized Education Program. In addition to this amount, \$22.2 million was allocated in supplemental funds for Special Education teachers and assistants in 2014-15, and an additional \$3 million for anticipated cost increases.

These expenditures include initiatives addressing integration of students with disabilities into general education settings, and reducing disproportionality among subgroups identified for special education. Furthermore, the District has increased support services to advance the academic achievement of every English Learner with Disabilities (ELD). The District aligns IEPs with the English Learner Master Plan for each English learner with disabilities. Each IEP is required to include goals for English proficiency, and the ELD present level of performance for each student.

b. Budget and Expenditures used in the Initial Prior Year for 2013-2014

Table 1 shows that the District's Maintenance of Effort (MOE) for Special Education was \$1.5 billion in 13-14. This includes \$178 million in unassigned support costs, known as PCRA. In addition, expenditures in General Fund programs that support Special Education, including administrative and transportation costs, amounted to \$25 million for that year. This reflects a grand total of \$1.6 billion in expenditures. The LCFF supplemental amount of \$449.88 million reflects only 28.9 percent of these expenditures.

Table 1: MOE and Support to Special Ed Expenditures	Amount, 13-14
PCRA*	\$177,894,430
Special Ed Portion of MOE	\$1,354,331,202
Total MOE	\$1,532,225,632
Expenditures in Programs that Support Special Ed**	\$25,401,341
Grand Total, MOE and Support to Special Ed Prog	\$1,557,626,973

*The MOE calculation includes an amount for the Program Cost Report Allocation. Procedure 910 of the California School Accounting Manual provides a method of

distributing unassigned support costs to different user programs such as special education. The calculation is performed in state provided SACS software.

****These are expenditures in Programs 13232 and 13233. They are part of the General Fund and are not included in the MOE.**

Note: Special Ed Portion of MOE also includes Specially Funded Programs. The MOE is calculated using all expenditures in SACS Goal 5000.

Table 2 shows that the District's Special Education program had an authorized budget of \$1.36 billion and expenditures of \$1.34 billion. This excludes amount for Specially-Funded Programs and General Fund programs that support Special Ed.

Table 2: Special Education Budget and Expenditures	Amount, 13-14
Authorized CM0 Budget	\$1,361,780,338
Expenditures	\$1,335,666,481
Difference, Budget Less Expenditures	\$26,113,857

Note: Excludes Specially-Funded Programs and General Fund programs that support Special Education.

Table 3 shows Special Education revenues for 2013-14.

Table 3: Special Education Revenues	Amount in Millions, 2013-14
Federal Revenues	\$110.9
State Revenues	\$353.2
Local Revenues	\$0.1
SELPA Charter Schools Revenue	\$59.7
Contribution-Unrestricted Programs	\$727.6
Contribution-Fair Share	\$11.4
<i>Total Revenue</i>	\$1,262.9

Note: Excludes Specially-Funded Programs and General Fund programs that support Special Education.

The District's General Fund contribution to Special Education (net of the Revenue Limit and of affiliated charters) was estimated at \$653.4 million for 2013-14. Of this amount, supplemental and concentration funds was estimated at \$449.88 million and base funds was estimated at \$203.5 million.

c. Identifying Unduplicated Pupils who Receive Special Education Services

The table below shows how LAUSD determined that 79% of its students who receive Special Education services are unduplicated pupils. It first matched the 2012-13 CALPADS file, which was used for the District's overall unduplicated calculation, to the 2012-13 CASEMIS

file. There were 65,589 students with disabilities (SWD) identified on the 2012-13 CALPADS file. Of this count, 61,265 students were identified as not attending affiliated charter schools. (Affiliated charter students must be excluded from the unduplicated calculation as these schools receive their LCFF allocation independent from the District.) Of the 61,265 students with disabilities in CALPADS not attending affiliated charter schools, 48,633 students were identified as being either EL, Foster, or Low-Income. This computes to an unduplicated percentage of 79.38% for LAUSD's students with disabilities (48,633/61,265).

Table 4: SWD Identified as Unduplicated Pupils	
Count of SWD on CALPADS file, 12-13	65,589
Count of SWD on CALPADS file not attending charter schools, 12-13	61,265
Count of unduplicated SWD on CALPADS file not attending charter schools, 12-13	48,633
Percent unduplicated SWD, 12-13	79.38%

d. LAUSD excluded from its prior year calculation all categories of Special Education expenditures that did not provide direct services to pupils.

The LCAP regulations broadly define “services”, without limitation, to include “services associated with the delivery of instruction, administration, facilities, pupil support services, technology, and other general infrastructure necessary to operate and deliver educational instructions and related services.” (Cal. Code Regs., tit., 5, § 15495, subd. (d).) Though the regulations thus clearly permit school districts to include a wide array of expenditures in the calculation of prior-year expenditures on unduplicated pupils, LAUSD conservatively limited the calculation to the major spending groups within Special Education that provide direct services to pupils. As a result, the calculation of Special Education expenditures on unduplicated pupils is substantially smaller than permitted under the regulations.

In fiscal year 2014-2015, the total authorized budget for Special Education services in LAUSD was in excess of \$ 1.4 billion. The District estimated that \$633.9 million (net of Revenue Limit and affiliated charters) would be contributed towards this budget from the District's LCFF general fund. However, the District only counted \$566 million of this general fund encroachment towards the estimate of proportionality spending. *In other words, despite the broad definition of services in the LCAP regulations, the District did not consider \$68 million in Special Education expenditures as potential sources of proportionality expenditures on unduplicated pupils.* Of this amount, \$ 33 million was excluded because it related to major group categories of Special Education spending on pre-school and adult student populations. An additional \$6.5 million budgeted for the “SPED Career & Transition Program” was excluded because it served pupils from both the K-12 and adult student populations. In other words, the District did not attempt to isolate how much of the expenditures in that major subgroup were

directed to the K-12 pupils that are targets of LCFF funding, but instead took the conservative approach of excluding the major subgroup from the proportionality calculation altogether.

The remainder of the foregone \$68 million excluded from proportionality — \$34.5 million — comprise major subgroup spending that clearly falls within the regulatory definition of “services” in the proportionality calculations, but that the District conservatively opted to exclude. Specifically, the District excluded from its proportionality calculations the following major group categories of Special Education spending that otherwise satisfy the broad regulatory definition of “services” that may be considered to demonstrate proportionality compliance:

- “SPED Central Office” (\$11.15 million);
- “SPED IMA Equipment-Materials” (\$4.56 million);
- “SPED Reimbursement Due Process” (\$4.26 million);
- “SPED Allocation to Schools for Compliance” (\$3.25 million);
- “SPED Program Specialists Certificated” (\$2.94 million);
- “SPED IMA Allocation to Schools” (\$1.05 million);
- “SPED Least Restrictive Environment Counselors” (\$0.65 million); and
- “SPED Temporary Personnel Account” (\$0.13 million).

Though all the subgroups comprise “services associated with the delivery of instruction, administration, facilities, pupil support services, technology, and other general infrastructure necessary to operate and deliver educational instructions and related services” to pupils that is permitted in the proportionality calculations under section 15495, the District opted not to rely on those expenditures to demonstrate proportionality in order to ensure that its proportionality calculations were based upon services geared directly to unduplicated pupils.

e. LAUSD excludes expenditures on services that may involve de minimis contact with general education students from its proportionality calculations.

Finally, the District excludes expenditures on services that may involve de minimis contact between Special Education personnel and the general education population from its proportionality calculations. Specifically, with respect to the five major budget subgroups that fund salaries and health benefits for therapists and specialists who participate in assessments to determine eligibility for Special Education, the District budgets the funding of those activities through other state and federal funding sources, and does not include expenditures on those services in its proportionality calculations.

Analysis:

The Complainants claim that the District's LCAP violates a statute — Education Code section 42238.07 — and a regulation adopted to implement that statute — Cal. Code Regs, tit. 5, § 15496, Subd. (a).) As discussed below, the statute in question does not purport to govern the actions of local educational agencies, but is instead a delegation of authority to the State Board of Education to adopt regulations governing LCAPs. The regulation adopted by the SBE pursuant to this delegation of authority addresses the issue raised in the Complaint by requiring local educational agencies to “[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on *services provided for all pupils*” as part of the calculation of “the percentage by which services for unduplicated pupils must be increased or improved above services provided to all pupils” in each fiscal year. (Cal. Code Regs., tit. 5, § 15496, subd. (a) [emphasis added].) The regulation does not provide any other guidance regarding this aspect of the proportionality requirement for LCAPs, except insofar as it defines “services” broadly, and without limitation, to include “services associated with the delivery of instruction, administration, facilities, pupil support services, technology, and other general infrastructure necessary to operate and deliver educational instructions and related services.” (Cal. Code Regs., tit., 5, § 15495, subd. (d).) Thus, the sole source of a potential violation of law referenced in the Complaint is the regulatory requirement that local educational agencies ““[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on *services provided for all pupils*.”

Complainants contend that “Special Education services cannot be counted as spending on prior year expenditures on services for High Needs Students because these services are *available* to all students . . . who are eligible to take advantage of special education services” and are not “targeted for High Needs Students.” (Complaint, at pp. 4-5 [emphasis added].) But, the LCAP regulations do not employ any of these locutions. The State Board of Education did not exclude services that are “available to all students . . . who are eligible” for those services from the prior-year estimate of unduplicated spending. Nor did it exclude services that are not “targeted for” unduplicated students. To the contrary, section 15496 directs local educational agencies to exclude from the prior year estimate of unduplicated spending only “services provided to all pupils.” Complainants do not address whether Special Education services constitute “services provided to all pupils” under section 15496, but instead introduce language into the regulation that does not exist.

Accordingly, the Complaint presents a single mixed question of fact and statutory interpretation: Are Special Education services “services provided to all pupils” under section 15496 of title 5 of the California Code of Regulations?

As a factual matter, Special Education services are not services provided to all pupils, but rather services provided to individual pupils who are eligible to receive those services. Complainants do not present or identify any evidence to support a factual conclusion that Special Education “services are services provided to all students” or to otherwise contradict the express import of the federal and state laws that set the exacting eligibility criteria for qualified students to receive an Individualized Educational Program. The facts further confirm that the Special Education expenditures counted by the District towards its prior-year estimates of spending are expenditures only on the individual students who have qualified to receive an IEP. Thus, the facts do not support a conclusion that Special Education services are services provided to all pupils.

The only remaining argument suggested in the Complaint is the contention that the Legislature or the State Board of Education intended Special Education services to be exempt from the plain meaning of the phrase “services provided to all students.” Despite numerous requests lodged by the District, Complainants have not identified any authority in the LCFF and its implementing regulations, nor any authority in the relevant legislative and regulatory histories, to support a conclusion that the Legislature or the State Board of Education intended Special Education to be deemed “services provided to all students” despite the plain meaning of that phrase.⁴

It bears noting that the LCFF, its implementing regulations, and the general law require that the District’s quasi-legislative decisions regarding the interpretation and implementation of section 15496 be accorded the most deferential level of judicial scrutiny. (*See, American Coatings Assn., Inc. v. South Coast Air Quality Dist.* (2012) 54 Cal.4th 446, 461-462; *Khan v. Los Angeles City Employees’ Retirement System* (2010) 187 Cal.App.4th 98, 106.) Mandate in this context will only “lie to correct abuses of discretion” and the courts ask whether the public agency’s action was arbitrary, capricious, or entirely lacking in evidentiary support.” (*County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4th 643, 653-654.).

⁴ Notably, the correspondence between counsel for LAUSD and counsel for Complainants contains numerous instances in which LAUSD counsel urged the Complainants to identify any statutory, regulatory, or other authority in the legislative history of the LCFF and its implementing regulations that reflects any legislative intent to deem Special Education services “services provided to all pupils” despite the plain meaning of that phrase. Complainants did not identify any such authority, but instead relied solely on arguments that the District’s proportionality calculations violated the “spirit of the LCFF” and arguments that interpolate language into the relevant statutes and regulations that was neither enacted by the Legislature nor adopted by the State Board of Education. LAUSD has not identified any authority to support the claim that the Legislature or the State Board of Education intended Special Education services to be deemed “services provided to all pupils.”

Alleged Violation of Education Code 42238.07

Complainants allege a violation of Education Code section 42238.07, a statute that by its plain language contains only directives addressed to the California State Board of Education, specifically, directives to “adopt regulations that govern the expenditure of funds apportioned on the basis of the number and concentration of unduplicated pupils.” Standing alone, this statute imposes no clear, present ministerial duties on local educational agencies and, accordingly, no writ of mandate will lie to compel local educational agencies to comply with its terms.

As noted above, the Complaint does not identify any specific term of Education Code section 42238.07 that LAUSD is alleged to have violated. Nor does it articulate how LAUSD could have violated a statute expressly and solely directed at the State Board of Education. Complainants reference this statute solely as authority for the proposition that “school districts must increase or improve services for High Need Students in proportion to the additional dollars those students generate.” (Complaint, at p. 4.) Because the regulations adopted by the Board of Education to govern the LCAP give express effect to this principle, and because Education Code section 42238.07 does not contain any directives regulating the conduct of local educational agencies, that provision does not provide any independent authority for the issuance of a writ of mandate or declaratory relief.

Education Code section 42238.07 may be relevant only to the extent that the regulations adopted by the State Board of Education are ambiguous and properly susceptible to the application of extrinsic aids in support of statutory interpretation. The regulations adopted by the State Board of Education, however, do not admit any ambiguity. Nor are those regulations inconsistent with the Legislative directives set forth in Education Code section 42238.07. In relevant part, the plain terms of the regulations direct local districts to perform two discreet tasks with respect to the calculation of funds expended on services for unduplicated pupils. First, subdivision (a)(2) of section 15496 requires local educational agencies to “[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on services provided for all pupils.” Second, that same provision mandates that “the estimated amount of funds expended in 2013-14 shall be no less than the amount of Economic Impact Aid funds the LEA expended in the 2012-13 fiscal year.”

With respect to the first directive, the evidence clearly shows that LAUSD has properly estimated the amount of funds expended on unduplicated pupils in addition to what was expended on services provided to all pupils. Because Special Education services are not services provided to all pupils, but rather services provided to a small subset of the LAUSD student population under conditions that prohibit the comingling of Special Education expenditures and activities with general education expenditures and activities, LAUSD has clearly acted well within its discretion in its implementation of section 15496.

With respect to the second directive, there is no allegation in the Complaint or Petition that the District's estimated amount of funds is less than the EIA funds expended in 2012-13. Indeed, the District expended \$125.2 from EIA funding in 2012-13, a number far below the estimated amounts expended in 2013-14. There is, accordingly, no factual basis to allege a violation of this directive.

Alleged Violation of Cal. Code Regs., tit. 5, § 15496

Neither the Complaint nor the Petition points to any express language in any provision of law that prohibits school districts from counting *any* category of expenditures made from their general fund on unduplicated pupils in the calculation of prior year spending other than "expenditures on services provided to all pupils," nor to any provision that prohibits school districts from including *any* category of expenditures in the account of increased and improved spending on unduplicated pupils. (Cal. Code Regs., § 15946, subd. (a)(2).) To the contrary, Complainants *infer* a prohibition from the allegedly "absurd results" that they claim would ensue if the LCAP is not implemented according to the strictures their legal counsel unsuccessfully advocated before the Legislature and the State Board of Education. In its correspondence with LAUSD's counsel, counsel to Complainants alternatively asserted that the District's actions violated the "spirit" of the LCFF.

The LCFF returned control over the decisions regarding school spending to local districts and their stakeholders, replacing the complex web of layered categorical funding programs that had formerly constrained the discretion of local school administrators. Complainants' contention that the "spirit" of the LCFF prohibits supplantation of the funds that were formerly devoted to spending on unduplicated pupils through categorical mandates appears to be contradicted in both the text and legislative history of the LCFF. The original version of the LCFF, set forth in Senate Bill 69, contained express "do not supplant" provisions in the form of a draft Education Code section 52062.5. The early committee reports on this bill expressly reflect such an intention. But none of this statutory and committee report language, and no similar mandate, survived through the ensuing legislative process. Instead, the Legislature ultimately directed the State Board of Education to adopt regulations that *explicitly authorize* school districts to use regarding the expenditure of supplemental and concentration funds for "school-wide" and "district-wide" purposes in a manner that "is no more restrictive" than Title 1. (Educ. Code, § 42238.07, subd. (a)(2).) Both the emergency and the final regulations adopted pursuant to this directive consequently outline a more flexible process for ensuring that supplemental and concentration grant funding will be used to benefit unduplicated pupils.

Notably, those regulations grant the highest level of flexibility to school districts, like LAUSD, that already serve high concentrations of unduplicated pupils. When those districts are required to justify demonstrate in the LCAP the proper expenditure of supplemental and concentration grant funds on a districtwide basis, they are not required to "[d]escribe how these

[district-wide] services are *the most effective use* of the [LCFF] funds to meet the district's goals for its unduplicated pupils in the state and local priority areas." (Cal. Code Regs., tit. 5, § 15496, subd. (b)(2)(C) [emphasis added].) Nor are they required to "provide the basis for this determination, including . . . any alternatives considered and any supporting research, experience, or educational theory in defense of their district-wide spending." (*Ibid.*) Rather, the regulations permit a school district like LAUSD to expend supplemental and concentration grant funds on a districtwide basis as long as the LCAP describes "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." (*Id.*, subd. (b)(1)(B) [emphasis added].)

Likewise, on the input side of the equation, the LCFF funding formula itself recognizes that the education of *high concentrations* of unduplicated pupils necessarily comports additional expenditures by school districts, above and beyond the standard supplemental expenditures required for unduplicated pupils. Districts receive a supplemental grant based on the number of low-income students, English learners, and foster children they serve. But, districts in which these students make up at least 55 percent of enrollment will be entitled to an additional "concentration" grant, equaling an extra 50 percent of the base grant for each high-needs student above the 55 percent threshold. The purpose of providing an additional per-pupil bonus grant amount for districts with a greater the concentration of high-need students is clear: it is a legislative recognition that the cost of servicing large numbers of unduplicated pupils is not reflected in simply by increasing the additional per-student grant amount, but that the greater concentration of such students makes the costs of servicing those pupils even higher on a per-pupil basis. In other words, the Legislature clearly recognizes that school districts like LAUSD already incur substantial additional costs, and devote substantial additional resources, simply by providing core educational programs to high concentrations of unduplicated students. This express statutory formula, and the concomitant Legislative decision to reject "do not supplant" requirements to restrict the spending of LCFF supplemental and concentrated funds exclusively on unduplicated pupils, together reflect the manifest "spirit" of flexibility contained in the LCFF, particularly regarding school districts that already serve high concentrations of unduplicated pupils.

Because the overwhelming majority of LAUSD's pupils (84%) are unduplicated, the district-wide core educational program is itself "principally directed towards . . . meeting the district's goals for its unduplicated pupils." (Cal. Code Regs., tit. 5, § 15496, subd. (b)(1)(B).) Complainants have nonetheless demanded that \$450 million of expenditures on the provision of special education services to unduplicated pupils be removed from the estimate of funds expended on unduplicated pupils that is required in the LCAP subdivision (a)(2) of 5 Cal. Code Regs., § 15496. Complainants' demands are not supported in the law, nor are they consistent with the core purpose of the LCFF to grant local districts greater discretion over the expenditure of funds on unduplicated pupils.

Conclusions:

Complainants' legal contentions do not have any support in the law. The plain language of the LCAP regulations directs local educational agencies to "[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on *services provided for all pupils*." (Cal. Code Regs., tit. 5, § 15946, subd. (a)(2) [emphasis added].) Special Education are not "services provided for all pupils," but rather services provided to a small percentage of the student population that qualifies to receive an individualized education program under the requirements set forth in federal and state law. Complainants have not identified any authority in the legislative history of the LCFF or regulatory history of the LCAP regulations that suggests a legislative intent to deem Special Education a service provided to all pupils. Accordingly, LAUSD acted well within its considerable discretion to interpret subdivision (a) of section § 15496 according to its plain meaning.

Exhibit C: Appeal Letter



November 12, 2015

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

Via E-Mail and U.S.P.S. Priority Mail

Re: Appeal of Uniform Complaint Procedure Complaint Re Superintendent Cortines and LAUSD's Failure to Comply with Legal Requirements Pertaining to LCAP

Dear Superintendent Torlakson,

We submit this appeal of the determination of the Los Angeles Unified School District with respect to the Uniform Complaint Procedure ("UCP") complaint our firms filed on behalf of Ms. Reyna Frias and Community Coalition of South Los Angeles ("CoCoSouthLA"). This appeal is regarding Los Angeles Unified School District and Superintendent Cortines's (collectively "LAUSD" or the "District") failure to comply with the legal requirements pertaining to its Local Control and Accountability Plan ("LCAP").

As discussed more fully in the attached UCP complaint (the "Complaint"), LAUSD has violated its legal obligations under Education Code § 42238.07 and 5 C.C.R. § 15496 by including special education spending as part of its estimate of prior year expenditures for services for foster youth, low income students, and English learners (collectively "High Need Students") in its 2014-15 and 2015-16 LCAPs. Accordingly, we requested through a UCP complaint that LAUSD revise its 2015-16 LCAP to ensure that the district spends the proper amount of money on increased and improved services for High Need Students.¹

On November 9, 2015, we received the attached determination and report of findings from LAUSD in which the district concludes that the "[c]omplainants' legal contentions do not

¹ Please find the UCP complaint, dated September 9, 2015, as Exhibit 1 to this appeal. The document may be downloaded electronically at <https://www.dropbox.com/s/9pnqojfzbzk864k/Att%201%20-%202015-09-09%20LAUSD%20UCP%20Complaint%20re%20LAUSD%20LCAP.pdf?dl=0>.

have any support in the law” and thus fails to provide the relief requested by Ms. Frias and CoCoSouthLA in their Complaint.² We now appeal LAUSD’s erroneous legal determination to the Superintendent and request that the Superintendent correct this misapplication of the law for the reasons described in the attached Complaint. We incorporate all arguments in the attached Complaint into this appeal.

In addition to the bases set forth in the attached Complaint, LAUSD’s response acknowledges several points warranting a determination from the Superintendent in favor of Complainants:

- There are no material facts in dispute here. We assert in the Complaint that “[b]ased on its estimate that 79% of students who received special education services were unduplicated pupils in 2013-14, LAUSD counted approximately \$450 million of special education expenses as prior year spending on services for unduplicated pupils.”³ LAUSD concedes in its letter that “79%[] of the District’s students with disabilities are identified as low income, English learners or foster youth” and that the District “identified the subset of Special Education programs that benefit these targeted student populations and applied 79 percent to the expenditures of those programs to estimate the share that would benefit these high need students”—totaling \$449.8 million.⁴ In sum, LAUSD acknowledges it is crediting as baseline prior year supplemental and concentration spending a share of nearly all of its special education “encroachment,” *i.e.*, the general fund special education program costs not covered by federal and state categorical, proportional to the 79% representation of High Need Students in its special education population.
- The key question is purely one of legal interpretation. As the District emphasizes, at issue is the regulation requiring the district to “[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on *services provided for all pupils*.”⁵ Yet, LAUSD fails to respond substantively to the Complaint’s arguments that its reading of “services provided for all pupils” to mean only those services provided to precisely “100% of pupils” is unsupported by the regulatory and statutory language; nor does LAUSD respond to the assertion that its reading would lead to absurd results by allowing districts to apply its unduplicated pupil percentage to any program that, “like special education services—are available to all students, but serve only a portion of students, including summer school, after-school programs, sports and other extracurricular activities, counseling and health services, and class-size reduction initiatives . . . to name a few.”⁶ The District also fails to respond directly to the Complaint’s arguments as to why “special education services” constitute “services provided for all pupils” as opposed to “services for unduplicated pupils.”⁷
- In addition, LAUSD wholly fails to refute the Complaint’s argument that its practice violates the mandate to “increase or improves services for unduplicated pupils as compared to

² See LAUSD Report of Findings, Exhibit 2, at page 19, <https://www.dropbox.com/s/3cdgl9bto1e0kpp/Att%202%20-%20LAUSD%20UCP%20Determination.pdf?dl=0>.

³ Exhibit 1, Attachment 1 (Writ Petition) ¶58; *see also id.* at ¶73.

⁴ Exhibit 2 at p.10.

⁵ Exhibit 2 at p.14 (5 Cal. Code Regs. § 15496(a)).

⁶ Exhibit 1, Attachment 1 (Writ Petition) ¶¶74-76. *See in general*

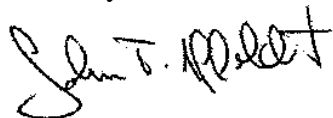
⁷ Exhibit 1, Attachment 1 (Writ Petition) ¶¶66-73.

services provided to all pupils,” as the statute and regulations require.⁸ To “increase” or “improve” means to grow services in “quantity” or “quality.”⁹ Because special education expenditures are incurred pursuant to preexisting legal mandates in federal and state law, “and are used to maintain, not increase, legally required services, they cannot be included as expenditures that ‘increase or improves services for unduplicated pupils as compared to services provided to all pupils.’”¹⁰ Accordingly, LEAs are not permitted to subsidize the pre-existing and ongoing costs of delivering Individualized Education Plans (IEPs) required by federal law with LCFF supplemental and concentration funds.

- Indeed, LAUSD concedes that special education services are not “services *for unduplicated pupils*”—which are the only type of services that may be supported with supplemental and concentration funds. As the District explains, a child will be excluded from special education services for such factors as “limited English proficiency . . . , social maladjustment; or . . . environmental, cultural or economic factors” that may include “unstable home life.”¹¹ Yet students who face such barriers are precisely the type of students who are targeted as “unduplicated students” under LCFF—English language learners, foster youth and low-income students. LAUSD thus acknowledges that students with disabilities who are receiving special education services do so not because of their unduplicated status, but in spite of that status.

For all the reasons stated here and in the attached Complaint, the District has misapplied the law to deny the Complaint and the Superintendent should overturn LAUSD’s determination. Accordingly, the Superintendent must require the District to revise its 2015-16 LCAP to remove special education funding as part of its prior year spending for High Need Students and revise its proportionality calculation and its LCAP to ensure that it spends the appropriate amount of money on increased and improved services for High Need Students in FY 2015-16 and in future years. For any questions related to this appeal or to contact the complainants, please contact the attorneys listed below.

Sincerely,



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⁸ 5 Cal. Code Regs. § 15496(a).

⁹ 5 Cal. Code Regs. §§ 15495(k) & (l).

¹⁰ Exhibit 1, Attachment 1 (Writ Petition) ¶¶86-90.

¹¹ Exhibit 2 at p.8.



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Enclosures

(For the electronic version of this appeal, click on the weblinks below to download attachments.)

[Attachment 1: September 9, 2015 UCP Complaint re: LAUSD LCAP](#)

[Attachment 2: November 9, 2015 LAUSD Report of Findings re: UCP Complaint](#)

Exhibit D: LAUSD 2015–16 Local Control and Accountability Plan

[Click Here for: LAUSD 2015-16 LCAP](#)

Exhibit E: LAUSD Special Education Expenditures in SACS Resource 6500

LAUSD Special Education Programs in SACS Resource 6500

The below tables identify the programs in SACS Resource 6500 that were included in the LCFF supplemental calculation of \$450 million and those that were excluded.

Included in Supplemental Calculation
SPED-ADAPTED PHYSICAL EDUCATION
SPED-ADMINISTRATORS-SPED CENTERS
SPED-ASSISTANT OVERTIME-X & Z TIME/RENORMING
SPED-ASSISTANT PRINCIPAL ELEMENTARY INSTRUCTIONAL SPECIALIST
SPED-ASSISTANTS
SPED-ASSISTIVE TECHNOLOGY
SPED-CLERICAL SUPPORT-SPED CENTERS
SPED-DEAF AND HARD OF HEARING
SPED-EXTENDED SCHOOL YEAR
SPED-NON PUBLIC SERVICES
SPED-NURSING SERVICES
SPED-OCCUPATIONAL & PHYSICAL THERAPY
SPED-OPTIONS
SPED-PSYCHIATRIC SOCIAL WORKERS
SPED-PSYCHOLOGISTS
SPED-SPEECH & LANGUAGE
SPED-TEACHER-ITINERANTS
SPED-TEACHER-RESOURCE SPECIALIST PROGRAM
SPED-TEACHER-SPECIAL DAY PROGRAM
SPED-TEACHER-SUPPL & SUB TIME/RENORMING/PROF DEVELOPMENT
SPED-VISUALLY IMPAIRED

Excluded from Supplemental Calculation
SPED-ALLOCATION TO SCHOOLS FOR COMPLIANCE
SPED-ASSISTANTS-PRESCHOOL
SPED-CAREER & TRANSITION PROGRAM
SPED-DONATIONS
SPED-EDUCATIONALLY RELATED MENTAL HEALTH SERVICES
SPED-IMA ALLOCATION TO SCHOOLS
SPED-IMA-EQUIP-MATERIAL
SPED-LEAST RESTRICTIVE ENVIRONMENT COUNSELORS
SPED-PASS THROUGH FOR INDEPENDENT CHARTERS
SPED-PRESCHOOL PROGRAM SERVICES (INCLUDING ITINERANTS)

SPED-PROGRAM SPECIALISTS-CERTIFICATED
SPED-REIMBURSEMENT-DUE PROCESS
SPED-TEACHER-SPECIAL DAY PROGRAM-PRESCHOOL
SPED-TEMPORARY PERSONNEL ACCOUNT



CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

May 5, 2017

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Sylvia Torres-Guillen, Director of Education
ACLU of Northern California
39 Drumm Street
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Subject: **Request for Appeal – Fresno Unified School District
American Civil Liberties Union, Appellant**

Dear Abre' Conner and Ms. Torres-Guillen:

The Local Agency Systems Support Office (LASSO) of the California Department of Education (CDE) is in receipt of your request for appeal received on December 6, 2016. You are appealing the Fresno Unified School District's (District) Decision (Decision) dated November 18, 2016.

I. BACKGROUND

On September 21, 2016, the ACLU (Appellant) submitted a Uniform Complaint Procedure Complaint to the District regarding alleged failures of the District related to its 2015-2016 Local Control and Accountability Plan (LCAP). The District considered the Complaint, and on November 18, 2016, it issued a written decision in which it determined that the District had not violated applicable law and that the requested remedies would not be granted. The ACLU appealed this decision to the CDE on December 6, 2016. On December 7, 2016, the CDE sent a Notice of Appeal letter to the District per *California Code of Regulations*, Title 5 (5 CCR), Section 4633. On February 6, 2017, the CDE sent a letter to the Appellant and the District indicating it would require additional time to complete its investigation of the Complaint. Following receipt of the District's Investigation file, the CDE reviewed all material received related to the District's complaint investigation, applicable laws and the District's complaint procedures. The CDE finds that the District complied with its complaint procedures.

II. SUMMARY OF COMPLAINT AND DISTRICT DECISION

The Complaint

The Complaint contained the following allegations, summarized by the District in its Decision and restated by the Appellant in the Appeal:

Allegation 1: “The District’s LCAP fails to explain how S&C¹ funds will be ‘principally directed towards, and effective in, meeting the district’s goals for its high-need pupils.’”

The Complaint alleged the District’s description of districtwide and schoolwide actions and services provided in the LCAP are vague, summary statements and do not meet the requirements of the LCAP Template and 5 CCR 15496(b) because the statements do not explain how the expenditures are principally directed toward and effective in meeting the District’s goals for unduplicated pupils. (Attachment A, Complaint, p.3.) The Complaint focused on five actions and related expenditures for which it alleged the District fails to provide the required justification:

- \$14.7 million allocated to school sites
- \$5.6 million for middle school redesign
- \$3.8 million for employee supports
- \$5.6 million for bathroom renovations, additional custodians, and maintenance positions
- \$7.153 million for various special education programs

(Complaint, p.3-5.) Citing Section 3A of the LCAP Template, the Complaint stated that the District must revise its LCAP to identify and justify each schoolwide and district use of funds and explain how each such use is “principally directed towards, and effective in, meeting the needs of high-needs pupils.” (Complaint, p.5.)

Allegation 2: “The LCAP fails to include data that demonstrates specific outcomes for high-need students in the Annual Update.”

The Complaint alleged that the data in the annual update must be disaggregated by each high-need pupil group in order to help parents and students decipher which programs help high-need students. (Complaint, p.5.)

Allegation 3: “The District fails to offer any meaningful justification for use of S&C funds on police expenditures.”

The Complaint alleged that the District did not adequately describe how the expenditure of supplemental and concentration grant funding on School Site Security Enhancements, including Community and School Resource Officers, and the Fresno Police Department’s Chaplaincy and shot spotter programs, is principally directed toward and effective in meeting the District’s goals for unduplicated pupils. (Complaint p. 5-6.) In this regard, the

¹ “S&C” is an acronym used by Appellant to reference funding apportioned to the District on the basis of the number and concentration of unduplicated pupils (low income, foster youth and English learners), identified by Appellant as “high-need” pupils. (EC sections 44238.01, 44238.02, 44238.07.)

Complaint stated that the LCAP is unclear as to how the shot spotter program, which may allow better pinpointing of gunfire across the city, will help pupils, and unduplicated pupils in particular. The Complaint also stated the LCAP does not, and likely cannot, provide, the required justification for expenditures for additional police officers. According to the Complaint, in the District, black and Latino students, many of whom meet the unduplicated criteria, are more likely to be arrested or reported to police, with terrible consequences for their futures. (Complaint, p.7-8.)

Requested Remedy: The Complaint requested that the District amend its 2016-2017 LCAP to provide the required justifications 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 increase or improve services for high-needs students...”. In addition, the Complaint requested the District “reallocate its proposed S&C funds to enhance school safety and school climate rather than on police expenditures.” (Complaint, p. 8.)

The District’s Decision

Allegation 1: The District determined that its LCAP includes adequate justification for each districtwide use of supplemental and concentration funding. According to the District, statements are included within the actions and services in the goals section of the LCAP. In addition, the District notes that its unduplicated count of English learners, foster youth and students living in poverty exceeds 86%. The District states “86% of students live below the Federal Poverty level” and “[e]ach action taken by the District, regardless of the funding source, must take into account the challenging economic environment of our community.” (Attachment B, Decision, p. 3.) According to the Decision, planned expenditures for 2016-2017, as described in its LCAP, reflect increases over 2015-2016 in the area of services for English learners and foster youth. (Decision, p. 3.) Also, the District notes that “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.” The District stated that “[t]hese programs, including specialized preschool programs and early autism screening, provide increased benefits to students living in extreme poverty.” (Decision, p. 3-4.)

Allegation 2: The District concluded that disaggregating data in the Annual Update by high-need pupil group is not required by statute or regulation. However, the Decision points out that the District’s LCAP provides data on 49 different indicators of student success, most of which include information disaggregated into 13 student subgroups. In addition to the data incorporated into the Annual Update portion of its LCAP, the District included all the data in an Appendix A to the LCAP, as a matter of “best practice.” (Decision, p. 4.)

Allegation 3: In its Decision, the District described the shot spotter program in the context of a broader approach to support school site security. In addition to the shot spotter program, the District provided additional crossing guards, additional school community

resource officers, and police chaplain volunteers. According to the Decision, “violent crime in Fresno is significantly higher than the state and national average.” Also, District engagement efforts identified additional security investments as a request of certificated staff. With respect to the “Shot Spotter” device, the District decision stated it is intended to reduce school time disruption at 24 schools with a high propensity for gunfire. (Decision, p. 4.)

Based on its findings, the District determined that the allegations of the Complaint were not substantiated, and that there was no violation of *EC* Section 42238.07 or 5 *CCR* 15496 with respect to the District’s 2016-2017 LCAP. (Decision, p. 5.)

III. APPEAL

The Appeal reiterates the allegations of the Complaint. Appellant rejects the Decision’s finding that the LCAP sufficiently justified services provided on a districtwide and schoolwide basis as “principally directed towards, and effective in, meeting the district’s goals for its high-needs students.” (Attachment C, Appeal, p. 2.) The Appeal again focuses on particular services identified in the Complaint. (described above at p. 2.) The Appeal also asserts that the Decision failed to explain why its LCAP Annual Update does not disaggregate data by high-need pupil group. (Appeal, p. 4.) Finally, the Appeal states that the District failed to identify sufficiently how police expenditures are principally directed towards, and effective in, meeting its goals for high-need students. (Appeal, p. 4.) Appellants continue to seek remedies for the alleged violations of law as set forth in their Complaint. (described above at p. 3.)

IV. LEGAL AUTHORITIES

California Education Code sections 44238.01, 42238.02, 42238.07, 52060 – 52077
California Code of Regulations sections 15494 – 15497.5

V. ANALYSIS OF APPEAL

Allegations 1 and 3: The CDE considers and responds to Allegations 1 and 3 together. Both allege that the District LCAP does not justify how supplemental and concentration grant funding for schoolwide or districtwide actions and/or services (services) are principally directed to and effective in meeting the District’s goals for unduplicated students.

The Local Control Funding Formula (LCFF) apportions additional funds to Local Education Agencies (LEAs) on the basis of the number and concentration of unduplicated pupils (low-income, English learner, and foster youth). (*EC* sections 442238.01, 42238.02.) LEAs are

required to increase or improve services for unduplicated pupils as compared to the services provided to all pupils in the fiscal year in proportion to the additional funding provided. (EC Section 42238.07; 5 CCR 15496.) “To improve services” means to “grow services in quality,” and “to increase services” means to “grow services in quantity.” (5 CCR 15495(k) and (l).) As such, there is no spending requirement; rather, an LEA must demonstrate in its LCAP how the services provided will meet the requirement to increase or improve services for unduplicated students over services provided for all pupils in the LCAP year.² The regulations provide the formula for calculating the percentage by which services must be proportionally increased or improved for unduplicated pupils above services provided to all pupils in the fiscal year.³ (5 CCR 15496(a)(1)–(8).)

The collective set of services described by an LEA that will contribute to meeting the required proportional increase or improvement in services for unduplicated students over services provided to all pupils may include two categories of services:

- Services that are limited to serving one or more unduplicated student group, or
- Services that upgrade the entire educational program of an LEA or a school site(s).

Services of the latter category are referred to as either a schoolwide or an LEA-wide (i.e., districtwide, countywide, or charterwide) service. The LCAP Template applicable to the 2016-2017 year addresses supplemental and concentration grant funding in Section 3.⁴ An LEA is required to follow the LCAP Template approved by the State Board of Education (SBE). (EC sections 52064, 52070.) Section 3A of the LCAP Template required the District to identify the amount of its LCFF funds in the LCAP year calculated on the basis of the number and concentration of unduplicated pupils, and to describe how it was expending these funds in the LCAP year, including a description of, and justification for, the use of any funds in a districtwide or schoolwide manner. (5 CCR 15496.) Because the District’s unduplicated pupil enrollment was 88%, the District was required to describe in its LCAP how services provided on a districtwide basis are “*principally directed towards*” and “*effective in*” meeting its goals for unduplicated pupils.⁵ (EC Section 42238.07, 5 CCR 15496(b).)

² As the District has done in its LCAP, an LEA may choose to refer to LCFF funds as “Base”, “Supplemental” or “Concentration” grant funds at the local level. However, they are not required to do so. An LEA may choose to simply identify the fund source to implement an action or service as LCFF.

³ Note the requirement is to increase or improve services for unduplicated pupils over services for all pupils *in the fiscal year for which the LCAP is adopted*. (5 CCR 15496(a).) It is not a requirement to increase or improve services from year to year.

⁴ This LCAP Template was adopted as 5 CCR 15497.5. In November 2016, the SBE adopted a new LCAP Template, applicable beginning with the 2017-2018 school year.

⁵ Schoolwide services at a school district school with enrollment of unduplicated pupils that is 40 percent or more of its total enrollment must be supported by the same description.

In order to provide the required justification for services provided on a “wide” basis, an LEA must distinguish between services directed toward unduplicated pupils based on that status, and services available to all pupils 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 pupils when it explains in its LCAP how it considered factors such as the needs, conditions or circumstances of its unduplicated pupils, 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 LEA expects the service to support the LEA’s conclusion that the service will be *effective* to meet the LCAP goals for its unduplicated pupils. When properly explained in the LCAP, it will be apparent how the LEA is acting to increase or improve services for unduplicated pupils, and why it has determined the services identified will be effective to achieve its goals for unduplicated pupils.

CDE reviewed the District’s 2016-2017 LCAP to determine whether it provided the required description of, and justification for, use of supplemental and concentration grant funding on a districtwide or schoolwide basis, focusing on the services challenged in the Complaint and Appeal:

The District’s 2016-17 LCAP Section 3A identifies \$154.3 million as the amount of funds calculated on the basis of the number and concentration of unduplicated pupils. (Attachment D, District 2016-2017 LCAP.) It further states that “Supplemental and Concentration fund expenditures are itemized in Section 2” of the LCAP, and that “[a]ll actions and expenditures were developed based on an analysis of data, input from our stakeholders, and the needs of our unduplicated population in mind, and that “[d]ue to this high risk population, the actions below, and described in section 2, are being implemented school wide or district wide.” (2016-2017 LCAP Section 3A, p. 181 of 185.) Section 3A lists 49 actions, identified numerically to correspond to their respective locations in Section 2 of the LCAP.

Section 3A of the District’s LCAP also states that district and school site leadership have access to current data using the “School Quality Improvement Index (SQII)”, and the SQII is used by district “leaders to identify schools with the most need and site leaders use SQII to identify school wide and individual student need. Using the SQII tool the District is able to allocate services that are principally directed towards, and are effective in meeting the District’s goals for its unduplicated pupils...” Finally, Section 3A states “[a]ll districtwide and schoolwide actions and services have been developed based upon the needs of unduplicated students, but will serve the needs of all students as well.”

In Section 3B, the District identified 29.57% as the percentage by which it was required to increase or improve services for unduplicated pupils in the LCAP year as compared to services for all pupils. As noted above, Section 3B required the District to demonstrate how it met this requirement to proportionately increase or improve the services for unduplicated

pupils. Section 3B states “the proportionality percentage is met by expending Supplemental and Concentration funds allocated to the district on services for the unduplicated student populations as demonstrated and detailed in section 2 of the LCAP plan.” (2016-2017 LCAP Section 3B, p. 183 of 185.)

With respect to Section 3A, the CDE finds the LCAP enumerates in summary fashion “Supplemental and Concentration fund expenditures” and indicates that actions enumerated are being provided on a districtwide or schoolwide basis due to its unduplicated student population of 88% (described as a high risk population.) There is no description of how the use of funds proposed are “principally directed towards” and “effective in” meeting its goals for unduplicated pupils. The LCAP statement that the District “had the needs of our unduplicated population in mind” is a conclusory statement that fails to provide the required description.

The reference to the use of SQII tool to “allocate services that are principally directed towards, and are effective in, meeting the District’s goals for its unduplicated as measured by the required metrics” is not associated with any particular action or service in the LCAP. The statement lacks sufficient information to constitute a description of and justification for how a districtwide or schoolwide service is “principally directed towards” and “effective in” meeting its goals for unduplicated pupils.

CDE also notes that the District references its 88% unduplicated pupil enrollment as a reason it provides actions on a districtwide or schoolwide basis. However, while a high unduplicated pupil percentage may be a reason to offer a majority of services directed toward increasing or improving services for unduplicated pupils on a “wide” basis, by itself it does not provide a sufficient explanation of how such services are principally directed towards unduplicated students. Thus, based on the above, Section 3A, standing alone, does not provide adequate description and justification of services provided on a districtwide and schoolwide basis.

CDE also reviewed the descriptions of the particular districtwide and schoolwide services in the 2016-2017 LCAP, Section 2, for which Appellant alleged the District failed to provide the required justification. (see the list above at p. 2.) The District response to the Complaint states that additional clarifying language was incorporated into the LCAP following meeting with Appellate to address concerns.

Appellant challenges the description associated with districtwide Action #48 (Goal 5), “School Site Allocations to be prioritized by each School’s Site Council.” (2016-2017 LCAP Section 2, p. 117.) Budgeted expenditures are \$19.8 million (\$14.7 million LCFF Sup and Con)⁶ and \$5.1 million Title 1 (there is also additional reference to these site allocations

⁶ The abbreviation “Sup and Con” is as it appears in the District’s LCAP, and CDE understands it to be a reference to funding apportioned on the basis of the number and the concentration of unduplicated pupils.

being combined with “EL investments” for a total of \$26 million.) The action is described as follows:

- “Supplemental materials and technology
- Academic interventions and supports
- Supplemental counseling services
- Staff for attendance support
- Parent involvement
- Psychological services
- Bilingual office staff
- Each school was required to evaluate data on low income, English learner and foster youth student populations, as well as other subgroups, to create plans focused on addressing the needs of those groups
- Site personnel worked with School Site Councils to incorporate feedback and revise plans
- Developing a site-based plan for English learners is a requirement of this process”

The associated identified need for Goal #5 is “each school needs a Single Plan for Student Achievement (SPSA) that is aligned with school goals for improving student achievement and is based on school site data (AR 0420).” By review of the materials submitted in connection with this appeal, it appears the District added further explanation to this action based on communications with Appellant (the last bullets above). The additional material assists to some extent in providing the required justification. However, because the description states that the sites were to direct plans focused on the needs of low income, English learner and foster youth student populations, *as well as other subgroups*, it is not possible to definitely conclude that the action is “principally directed towards” unduplicated pupils. In addition, the description lacks sufficient information describing how the actions are “effective in” meeting goals for unduplicated pupils, as required for districtwide actions. Thus, the requirements of 5 CCR 15496(b) and the LCAP Template are not met with regard to Action #48.

Action #5, “Maintain Middle School Redesign,” (LCAP Section 2 p. 24) is also challenged. This action is associated with Goal #1 (“All students will excel in reading, writing and math”), and is budgeted \$5.6 million (LCFF Sup and Con). It is schoolwide at district middle schools. The LCAP states:

- “Initiated in 2013-2014
- ensures all students have access to electives as well as core classes

- Allows teachers, teaching the same subjects, to have a common preparation time
- PLUS teams (Professional Learning Updraft System) added to ensure direct instruction to students when teachers attend professional learning or collaboration days.
- This action is principally directed towards, and is effective in, increasing or improving services for unduplicated students as teams allow for no loss of instructional time while teachers are attending profession learning or collaboration days. Loss of instruction time unfairly impacts high-need students.”

From the LCAP description of Action #5, it is not possible to adequately understand what the “Middle School Redesign” consists of and how the various actions described are related, if at all, and how the budget expenditure is associated with the components. One aspect appears to give all students access to electives. There is no explanation offered as to how this is “principally directed towards” unduplicated pupils. Other aspects are common preparation time and the addition of PLUS teams to ensure pupils direct instruction when teachers attend professional development or collaboration days. The LCAP description and justification for “this action” appear to apply only to *a portion* of the action; i.e., the common preparation time and PLUS teams, and is unclear. Ideally, this description and justification would be more clearly stated, perhaps by a description and justification such as “loss of instructional time results in significant decreases in the academic achievement of low income, English learner, and foster youth” and use of PLUS teams will reduce loss of instructional time and assist in maintaining these students’ academic progress. As stated, the description is insufficient to meet the requirement to describe and justify Action #48 in total as “principally directed towards and effective in meeting the goals for unduplicated pupils.”

The Complaint challenged Action #10 “Employee Supports.” (2016-2017 LCAP Section 2, p. 27.) This action is associated with Goal #1, and budgeted \$3.8 million (LCFF Sup and Con). The LCAP indicates this action is for high schools, and 2 specific middle schools. The description of this action is as follows:

- “Reduce large core classes in high schools (not an class enrollment cap)
- Additional middle school Vice Principals for Gaston and Fort Miller. Both have amongst the highest concentrations of English learners, foster youth and students living below the Federal poverty level in the District
- Since introducing additional supports, both Fort Miller and Gaston have seen an improvement in test scores and attendance as well as a reduction in suspensions and expulsions”

The above description of Action #10 provides no information as to how reducing large core classes in high schools is an action principally directed towards unduplicated pupils. Accordingly, the description does not meet the requirements of 5 CCR 15496(b) or the

LCAP Template. However, the action and accompanying description related to additional middle school vice principals does meet these requirements. The explanation provided shows the action is directed to two middle schools with among the “highest concentrations of unduplicated pupils” and also that the test scores and attendance have increased, and discipline incidences decreased. Thus, the LCAP describes how this portion of the action is principally directed towards and effective in meeting the district’s goals for unduplicated pupils. However, the stated description and justification is not sufficient to meet the requirements to describe and justify Action #10, in total, as “principally directed towards and effective in meeting the goals for unduplicated pupils.”

Actions #43 and #44 of Goal 4 are challenged by the Appellant. (2016-2017 LCAP Section 2, p. 108.) Goal #4 is stated as “All students will stay in school, on track to graduate”, and the identified need 4B is stated as “Fresno USD needs to provide a safe, clean and orderly learning and working environment.” Action #43 is to maintain 40 additional custodians, 3 custodial supervisors and 4 grounds maintenance positions. Action #44 is to renovate high school bathrooms. The LCAP identifies budgeted expenditures of \$5.6 million (LCFF Sup and Con) with these two actions. The description for Action #43 is:

- “To ensure facilities are clean and in good repair
- Custodians were requested during the engagement for the 2014/15 LCAP and are above former base staffing levels to ensure school sites are positive and clean centers for each of the Fresno neighborhoods served
- Custodians are located in schools with older facilities
- According to the National Education Association, clean schools reduce the spread of infectious illness, reduce triggers for asthma and allergies and reduce absenteeism for both students and staff”

The description for Action #44 is:

- “Replace damaged fixtures, incorporate standardization of facilities, and increase accessibility for high school bathrooms
- Focus on partitions, hand dryers and soap dispensers
- Campus Culture team will work with student representatives to create a campaign to keep bathrooms clean
- Invitations were sent for student input to 75 foster and English learner students.
- Properly maintained bathrooms was the single most consistent request made during the 17 meetings the district conducted with students

- According to the National Education Association, clean schools reduce the spread of infectious illness, reduce triggers for asthma and allergies and reduce absenteeism for both students and staff”

The description of these actions states benefits for each. However, neither provides any description of how the District considered the factors such as the needs, conditions or circumstances of its unduplicated pupils in particular, in connection with these actions. The description fails to explain how the actions are principally directed towards and effective in meeting the District’s goals for unduplicated pupils. Accordingly, the requirements of 5 CCR 15496(b) and the LCAP Template are not met with regard to these actions.

Appellant also specifically challenged some of the District’s districtwide special education programs, alleging the District fails to sufficiently describe and justify how they are “principally directed towards, and effective in, meeting the District’s goals for high-need students.” Included in the challenge are Actions #13, #14 and #25. (2016-2017 LCAP Section 2, p. 41, 54-55.) Actions #13 and #14 are associated with the District Goal #1, “All students will excel in reading, writing and math” and the Identified Need 1B: “Every student can and must read at grade level.” The District’s LCAP describes these actions as follows:

Action #13 is “Maintain Elementary Augmentation for Students with Disabilities.” It is identified as “districtwide” and students served are “ALL.” Budgeted expenditures are \$2.3 million (LCFF Sup and Con). The action is described as:

- “Expanding inclusive educational opportunities for preschool students with disabilities
- Providing specialized classes for preschool students with moderate to severe disabilities
- Early intervention and continuum of services for students with Autistic-like behaviors
- Starting school and identifying disabilities early will assist unduplicated students to achieve higher levels of academic achievement”

Action #14 is “Additional Special Education Director.” The action is Districtwide for “students with disabilities”; budgeted expenditures are identified as \$153,000 (LCFF Sup and Con). The action is described as:

- “Close monitoring and oversight of programs for students with disabilities
- Improving continuum of service for students with disabilities up to age 22
- Experience has shown additional oversight of Special Education programs allow high-need students the best access to the least restrictive environment”

Action #25 is “Investments for Secondary Students with Disabilities.” It is also associated with District Goal #1, and the associated Identified Need is 1C: “Fresno Unified School

District needs to ensure students have the greatest number of postsecondary choices from the widest array of options.” The action is identified as being districtwide for pupils with disabilities; budgeted expenditures are identified as \$3.4 million (LCFF Sup and Con).

While 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. Each generally describes actions that are available to all pupils, and in some cases those actions are required to be available to all pupils who qualify under the Individuals with Disabilities Act (IDEA). The descriptions are not a sufficient description and justification as principally directed towards and effective in meeting the district’s goals for unduplicated pupils as specified in 5 CCR 15496(b).

Allegation 3 of the Complaint challenges districtwide and schoolwide Action #47 (Goal 4) “School Site Security Enhancements.” (2016-2017 LCAP Section 2, p. 109.) The budgeted expenditures are identified as \$440,000 (LCFF Sup and Con). As noted above, the Complaint and Appeal expressed concern that expenditures for the actions described may actually be detrimental to unduplicated pupils. In addition, the Complaint and Appeal also alleged the LCAP does not set out the required description and justification for this districtwide and schoolwide action. The action is accompanied by the following description in Section 2 of the LCAP:

- “School safety was a top request from teachers resulting from the District’s outreach to stakeholders
- Funds to support additional crossing guards
- District share of Police Department grant for additional Community and School Resource Officers at secondary schools
- Police Department Chaplaincy programs at Elementary schools. School Resource Chaplains volunteer at Elementary school campuses teaching a characters and integrity curriculum and assist in identifying and reducing crimes against children. School Resource Chaplains are trained to connect children and families to needed resource in the community.
- Continue expanded coverage for Shot Spotter to reduce school time disruptions in areas with high crime. Shot Spotter assists responding officers with identifying gunshots (versus fireworks, car backfires, or other loud noises) often within a few feet.
- This leads to school and community safety, as well as reduced downtime and classroom disruption that occurs from the stoppage of classroom instruction when safety protocols need to be implemented”

Addressing the issue of whether this schoolwide and districtwide action is supported by the required description of how the security-related actions are principally directed towards and

effective in meeting the goals for unduplicated pupils point, it is evident from the description contained above that the LCAP provides no such description. In the District Decision, the District stated that, as outlined in its LCAP, the \$440,000 expenditure for school site security is part of “a comprehensive approach to serving the unique needs of our large student population”. It also stated that “crime in Fresno is significantly higher than the state and national average.” (Decision, p. 4.) No statement describing how the security investments are directed towards meeting the needs of unduplicated pupils, as opposed to all pupils, is provided. Based on the description provided, the requirements of 5 CCR 15496(b) and Section 3A of the LCAP Template are not met with respect to Action #47.

Furthermore, Appellant suggested that the District “cannot justify that more police or the shot spotter program will help high-needs students in the District” (Appeal, p. 5.) In light of its determination that the District’s LCAP does not provide a sufficient description and justification for Action #47, the CDE does not make a determination on this additional issue raised by Appellant.

For the reasons set forth above, the CDE finds that the District’s 2016-2017 LCAP fails to describe how the districtwide and schoolwide services described in Actions #48, #5, #10, #43, #44, #13, #14, #25 and #47 are principally directed toward and effective in meeting the District’s goals for its unduplicated pupils as required by 5 CCR 15496(b) and Section 3A of the LCAP Template.

Allegation 2: “The LCAP fails to include data that demonstrates specific outcomes for high-need students in the Annual Update.”

The Appeal states that the District should disaggregate outcome data based on pupil groups, and high-need pupils in particular (Appeal, p. 4.) According to the Appeal, the data must be disaggregated in order to help parents and students decipher which programs help high-need students, and that the District never responded to why it refuses to disaggregate the data and “show clear and specific actions of how high-need students have improved.” (Appeal, p. 4.)

EC Section 52061 requires that an annual update to an LCAP be developed using the template adopted by the SBE. The annual update must include a review of any changes in the applicability of an action, a review of progress on the goals included in the LCAP, an assessment of the effectiveness of the specific actions included in the LCAP toward achieving the goals, and a description of any changes to the specific actions the school district plans to make as a result of the review. (EC Section 52061(a)(1) and (2).) Expenditures to implement actions in the LCAP, including those that serve unduplicated pupils, must be provided as well. (EC Section 52061(a)(3) and (4).)

The LCAP Template Annual Update Instructions specify: “For each goal in the prior year LCAP, review the progress toward the expected annual outcome(s) based on, at a

minimum, the required metrics pursuant to Education Code sections 52060 and 52066.⁷ 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 of the review and assessment. In addition, review the applicability of each goal in the LCAP.”

Appellant appears to argue that the District is required to include disaggregated data as part of its Annual Update in the LCAP. However, neither the statute nor the LCAP Template instructions require this disaggregation. The District’s Annual Update in the LCAP does show that it reviewed progress on goals as required. In addition, in responding to the Complaint, the District made clear that it regularly monitors data tied to its LCAP goals. Further, it has made available an “Appendix A” to its LCAP which shows disaggregated outcome data on the LCAP priorities. For these reasons, the CDE finds that Allegation 2 is not sustained.

VI. CORRECTIVE ACTIONS

Before the District adopts its 2017-2018 LCAP and Annual Update, the District must review the descriptions and justification for the District’s 2016-2017 LCAP schoolwide and districtwide Actions #48, #5, #10, #43, #44, #13, #14, #25 and #47 and revise them to provide the required descriptions and justifications consistent with this report. Any revisions shall be presented to the District’s parent advisory committee, the English learner parent advisory committee, and members of the public in accordance with *EC* Section 52062. In the event there are such expenditures which cannot be so described and justified as set forth in this report, the District shall not include those expenditures in its estimate of prior year expenditures for unduplicated pupils that were in addition to what was expended for all pupils when it calculates the minimum proportion by which it must increase or improve services for unduplicated pupils in the 2017-2018 LCAP year. (5 *CCR* 15496(a)(2).) In addition, the District must exclude any such services included in its 2017-2018 LCAP from services that contribute to meeting the requirement to increase or improve services for unduplicated pupils over services provided to all pupils in the LCAP year. The CDE will monitor and support the District’s progress in this regard, and is prepared to work in consultation with the District and the Fresno County Office of Education to achieve this result.

VII. CONCLUSION

⁷ *EC* sections 52060 and 52066 set out the state priorities which must be addressed in the LCAP for school districts and county offices of education respectively.

Abre Conner, Staff Attorney
Sylvia Torres-Guillen, Director of Education
May 5, 2017
Page 15

The CDE has investigated the complaint initially filed with the Fresno Unified School District on September 21, 2016. The District is required to implement the Corrective Actions specified above.

Further questions about the uniform complaint process or this letter may be addressed to the CDE as follows:

**Local Agency Systems Support Office
California Department of Education
1430 N Street, Suite 5506
Sacramento, CA 95814
ATTN: Jeff Breshears, Director**

Pursuant to 5 CCR Section 4665, within 35 days of receipt of this report, either party may request reconsideration.

I may be reached in the Local Agency Systems Support Office by phone at 916-319-0809 or by e-mail at jbreshears@cde.ca.gov.

Sincerely,



Jeff Breshears, Director
Local Agency Systems Support Office

JB:jf

Attachment A: Complaint (September 2, 2016)
Attachment B: District Decision on Complaint (November 18, 2016)
Attachment C: Appeal to the CDE (December 6, 2016)
Attachment D: District 2016-2017 LCAP

cc: Bob Nelson, Interim Superintendent, Fresno Unified School District
Tammy Townsend, Executive Officer of State and Federal Programs, Fresno Unified School District
Jim Yovino, Fresno County Superintendent of Schools
Kathryn Catania, Deputy Superintendent, Fresno County Office of Education



**CALIFORNIA DEPARTMENT
OF EDUCATION**

TOM TORLAKSON
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

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November 2, 2018

Sylvia Torres-Guillén
Director of Education Equity/Senior Legal Counsel
ACLU of California
1313 West Eighth Street, Suite 200
Los Angeles, CA 90017

Jim McQuillen
Education Director
Yurok Tribe Klamath Office
190 Klamath Blvd
PO Box 1027
Klamath, CA 95548

Erika Tracy, Executive Director
Hoopa Tribal Education Association
47 Orchard Street
PO Box 428
Hoopa, CA
95546

Dear Ms. Torres-Guillén, Mr. McQuillen, Ms. Tracy:

Subject: Request for Appeal – Klamath-Trinity Joint Unified School District
Yurok Tribe, Hoopa Tribal Education Association, and American Civil Liberties
Union, Appellants

The Local Agency Systems Support Office (LASSO) of the California Department of Education (CDE) is in receipt of your request for appeal received on September 21, 2018. You are appealing the Klamath-Trinity Joint Unified School District's (District's) Decision dated September 7, 2018.

I. Background

The Local Control Funding Formula (LCFF) statute authorizes the filing of an administrative complaint pursuant to the Uniform Complaint Procedures (UCP) to resolve allegations that a

local educational agency (LEA)¹, such as a school district, failed to meet the requirements of Article 4.5. [Local Control and Accountability Plans and the Statewide System of Support [52059.5 – 52077.] (California *Education Code (EC)* Section 52075; *California Code of Regulations*, Title 5 (5 *CCR*) Section 4600 et seq.). On June 25, 2018, the Yurok Tribe, Hoopa Tribal Education Association, and American Civil Liberties Union (Appellants) submitted a UCP Complaint (Complaint) to the District, alleging that the District's 2017-18 Local Control and Accountability Plan (LCAP) violates the LCFF statute.

The District issued its Decision in this matter on September 7, 2018. The Appellants submitted an Appeal to the CDE of the District's Decision on September 21, 2018. The CDE sent a notice of appeal letter, dated September 29, 2018, to the District requesting the investigation file and other applicable documentation as required by 5 *CCR* Section 4633. The CDE received the District's documentation on October 12, 2018.

After an initial review of the Complaint, the District's Decision, and the Appeal, the CDE determined that Allegation 4 in the Appeal raised a new allegation not contained in the Complaint. In the Complaint, Allegation 4 states that "the District Must Strengthen Its LCAP Stakeholder Engagement Process" (Complaint, p. 10). As presented and further described in the Complaint, this does not rise to the level of an allegation that the District violated statute. In the Appeal, Allegation 4 was expanded to include the allegation that the District failed to meet basic legal requirements for the LCAP stakeholder engagement process. Specifically, the Appeal alleges that the District failed to consult a Parent Advisory Committee in the LCAP development process as required by *EC* sections 52062-52063.

In a letter dated October 1, 2018, and consistent with 5 *CCR* Section 4632(d), the CDE referred Allegation 4 in the Appeal back to the District for resolution as a new complaint under 5 *CCR* sections 4630 and 4631. The District is required to complete an investigation of this allegation per its uniform complaint procedures and issue a decision to the Appellants within 60 days. The CDE addresses the remaining three allegations of the Complaint below.

Following receipt of this documentation from the District, the CDE reviewed all material received related to the Complaint, applicable laws, and the District's complaint procedures. Title 5 *CCR* 4633(i)(1) requires the CDE to include a finding that the LEA complied or did not comply with its complaint procedures. The CDE has reviewed the complaint procedures for the District and finds that the District fully complied with its complaint procedures in this matter.

II. Summary of Complaint and District Decision

The Complaint

The Complaint alleges the following:

¹ LEA means a school district, county office of education, or charter school (5 *CCR* 15495(d)).

Allegation 1: “The District fails to justify each schoolwide and districtwide S&C expenditure as ‘principally directed towards’ and ‘effective in meeting’ its goals for high-needs students” (Complaint, p. 2). Furthermore, the Complaint alleges that the District does not identify all schoolwide or districtwide uses of supplemental and concentration funds in the “Demonstration of Increased or Improved Services for Unduplicated Pupils” (Demonstration) section of the LCAP.

Allegation 2: “The District fails to provide in its Annual Update adequate description[s] of the actions/services implemented and how these are effective in meeting the District’s goals” (Complaint, p. 7). Specifically, the Complaint alleges that the Annual Update fails to meet the requirements of law in the following four ways:

(2a) First, the descriptions of the *actual* actions and services are deficient. For example, some descriptions of the *actual* actions and services provided in the Annual Update simply state “Implemented” without any additional information. Examples provided in the Complaint include Annual Update Goal 2, Actions 3 and 4.

(2b) Second, the response provided for the first prompt of the Analysis part for each goal in the Annual Update is not sufficient. This prompt requires an LEA to describe the overall implementation of the actions/services to achieve the goal. For each of the four goals in the Annual Update, the District provides the following response to this prompt:

“Although faced with multiple challenges, the overall implementation was successful. The area that still needs to be addressed is staffing shortages.”

(2c) Third, the Complaint argues that it is impossible to determine if the actions had a positive impact on student outcomes because the District does not link its actions with its measures of effectiveness. The response to the second prompt in the Analysis part of the Annual Update, which requires an LEA to describe the overall effectiveness of the actions/services to achieve the goal, is inadequate and fails to address the needs of unduplicated students.

(2d) Fourth, the Complaint claims that, “although the District repeatedly fell short of its own goals, when asked to ‘describe any changes made to this goal, expected outcomes, metrics, or actions and services to achieve this goal as a result of this analysis,’ the only response the District offered was ‘instead of seeking part-time positions, extra efforts were made to make as many positions full-time, with benefits to encourage more applicants and fill more vacancies’” (Complaint, p. 9). The Complaint thereby alleges that the District’s response to the fourth prompt of the Analysis part for each goal in the Annual Update, which requires an LEA to describe changes made to an LCAP goal, is inadequate.

Allegation 3: “The District fails to account for all S&C funds in its estimated actual spending and reallocated significant amounts of S&C funds after the LCAP approval process” (Complaint, p. 9). According to the Complaint, the District allocated an additional \$296,450 in supplemental and concentration funds for the maintenance, operations, and transportation departments without providing an adequate explanation in the Annual Update of this material difference in expenditures. The Complaint also states that the District does not provide a description of how

stakeholders were engaged in a significant reallocation of 2016-17 funds away from services for high-need students to districtwide uses. Furthermore, given a total of \$2,446,550 supplemental and concentration funds received by the District for 2017-18, the District fails to include \$651,077 of these funds in the 2017-18 LCAP.

District's Decision

Allegation 1: The District claims that it adequately justifies districtwide actions and services in the Demonstration section for the 2017-18 LCAP year. The District states,

“The District adequately justified the District-wide use of such funds 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” (Decision, p. 10).

Also in the Decision, the District references language in the 2017-18 LCAP as evidence for its claim that districtwide actions and services are adequately justified. The District claims that the districtwide use of supplemental and concentration funds are justified by “the importance of making an impact on the learning environment and the climate of the schools as [a] whole which will have a positive impact on the targeted subgroups” (KTJUSD 2017-18 LCAP, p. 126 as quoted in Decision, p. 6). The District intends to use supplemental and concentration funds to “offer a variety of programs and supports specifically for low income students and foster youth” (KTJUSD 2017-18 LCAP, p. 126 as quoted in Decision, p. 6). The Response to Instruction and Intervention specialists are “targeting foster youth, students with disabilities, and/or students who are Native America[n], and/or Socio-Economically Disadvantaged” and staff training “that will be especially targeted for Foster Youth and Low Socio-Economic students” (KTJUSD 2017-18 LCAP, p. 126 as quoted in Decision, p.6).

Allegation 2: The District claims that the Annual Update of 2016-17 goals provided in the 2017-18 LCAP provides adequate descriptions of the implemented actions and services as well as descriptions of how the implemented actions and services were effective in meeting the District’s goals and included the overall analysis of each goal. To support this claim, the District makes reference to the data provided on the expected annual measurable outcomes for each goal in the Annual Update as well as the descriptions of *actual* actions and services, which report “whether the action was implemented as written or otherwise” (Decision, p. 4).

Allegation 3: The District claims that it adequately accounted for supplemental and concentration funds and did not inappropriately reallocate such funds after LCAP approval. The District acknowledges the \$296,450 difference between budgeted and estimated actual expenditures of supplemental and concentration funds for maintenance, operations, and transportation departments. The District states that the LCAP template requires “the District to explain only material differences between” budgeted and actual estimated expenditures (Decision, p. 12). The District asserts it has provided the required explanation of material differences in the Annual Update.

III. Appeal

Allegation 1: “The District fails to explain how the majority of its S&C funds will be ‘principally directed towards, and effective in,’ meeting the District’s goals for its high-need students” (Appeal, p. 2).

The Appellants appeal the District’s Decision regarding Allegation 1 on the grounds that the District’s Decision fails to adequately explain how its districtwide uses of supplemental and concentration funds will be principally directed towards, and effective in, meeting the District’s goals for its unduplicated students. The Appellants state that the District is incorrect to reason that a high percentage of unduplicated student enrollment means that the District is not required to provide adequate justification for districtwide uses of supplemental and concentration funds. Appellants also allege that the District fails to identify all schoolwide or districtwide uses of supplemental and concentration funds in the Demonstration of Increased or Improved Services for Unduplicated Pupils section of the LCAP.

Allegation 2: “The District fails to provide in its Annual Update adequate description of the actions/services implemented and how these are effective in meeting the District’s goals” (Appeal, p. 3).

The Appellants appeal the District’s Decision regarding Allegation 2 on the grounds that the District’s Decision is incorrect to state that the Annual Update provides adequate descriptions of *actual* actions and services. Stating only that an actions was “implemented” is deficient because it offers “little to no substantive information” (Appeal, p. 4).

The Appellants also appeal the District’s Decision regarding Allegation 2 on the grounds that the Decision is incorrect to conclude that the Annual Update “included the required overall analysis of each goal” (Decision, p. 12 as quoted in Appeal, p. 4). According to the Appellants, the District’s Decision is conclusory on this point.

Allegation 3: “The District failed to account for all S&C funds in its estimated actual spending and, as reflected in the Annual Update, reallocated significant amounts of S&C funds after the LCAP approval process without undergoing the requisite stakeholder engagement process” (Appeal, p. 4).

Appellants appeal the District’s Decision regarding Allegation 3 on the grounds that the District’s Decision fails to adequately address the lack of accounting for over \$650,000 of supplemental and concentration funds and is incorrect to treat the increase of \$296,450 for maintenance (Annual Update Goal 2, Action 2) as not being material. According to the Appellants, the District is incorrect to state in its Decision that the response to the third prompt of the Analysis part in the Annual Update, which requires an LEA to describe material differences between budgeted and estimated actual expenditures, is adequate. Appellants state that the response provided “is both inadequate and appears to be totally unrelated to spending on ‘maintenance’” (Appeal, p. 4).

IV. Legal Authorities

California *Education Code* sections 44238.01, 42238.02, 42238.07, 52059.5 – 52077
California *Code of Regulations* sections 15494 – 15497

V. CDE Findings of Fact and Conclusions of Law

Allegation 1

The Appellants allege that the District fails to provide the required justification for each of its LEA-wide actions/services in the LCAP and fails to identify all such actions/services in the “Demonstration of Increased or Improved Services for Unduplicated Pupils” (Demonstration) section. The Appellants state that the District is incorrect to reason that a high percentage of unduplicated student enrollment means that the District is not required to provide the necessary justification for districtwide or schoolwide actions/services.

The LCFF apportions additional funds to LEAs on the basis of the number and concentration of unduplicated students (low-income, English learner, and foster youth) (*EC* sections 42238.02, 42238.07.) These funds are commonly referred to as “supplemental and concentration grant funds”. LEAs are required to increase or improve services for unduplicated students as compared to the services provided to all students in the fiscal year in proportion to the additional funding provided (*EC* Section 42238.07; 5 *CCR* 15496). “To improve services” means to “grow services in quality,” and “to increase services” means to “grow services in quantity” (5 *CCR* Section 15495(k) and (l)).

As such, there is no spending requirement; rather, an LEA must demonstrate in its LCAP how the services provided will meet the requirement to increase or improve services for unduplicated students over services provided for all students in the LCAP year. Regulations provide the formula for calculating the percentage by which services must be proportionally increased or improved for unduplicated students above services provided to all students in the fiscal year (5 *CCR* 15496(a)(1)–(8)).

The collective set of services described by an LEA that will contribute to meeting the required proportional increase or improvement in services for unduplicated students over services provided to all students may include two categories of services:

- Services that are limited to serving one or more unduplicated student group, and
- Services that upgrade the entire educational program of an LEA or a school site(s).

Services of the latter category are referred to as either a schoolwide or an LEA-wide (i.e., districtwide, countywide, or charterwide) service. An LEA is required to follow the LCAP Template approved by the State Board of Education (SBE) (*EC* Sections 52064, 52070). The Demonstration section requires an LEA to identify the amount of its LCFF funds in the LCAP year calculated on the basis of the number and concentration of unduplicated students, and to identify the percentage by which it must increase or improve services for unduplicated students over all students. Also in this section, the LEA must describe how the services provided for

unduplicated students are increased or improved by at least this percentage, either quantitatively or qualitatively, as compared to services provided for all students in the LCAP year (EC Section 42238.07; 5 CCR 15496).

The actions/services included as contributing to meeting the increased or improved services requirement must be indicated as such in the Goals, Actions, and Services section of the LCAP. The District's 2017-18 LCAP contains four goals and 18 districtwide or schoolwide actions included as contributing to meeting the increased or improved services requirement. Of the 18 "wide" actions, at most five of them are addressed in some manner by the description of increased or improved services provided in the Demonstration section. The remaining districtwide or schoolwide actions/services do not fall within the scope of the description of increased or improved services provided in the Demonstration section. An adequate description of how a District will meet its increased or improved services requirement must address in some manner all actions/services included in the Goals, Actions, and Services section as contributing to meeting this requirement. As a result, the description provided in the Demonstration section fails to sufficiently describe how the District plans to meet its increased or improved services requirement.

Furthermore, the description of increased or improved services provided in the Demonstration section must be consistent with an LEA's response to the "Increased or Improved Services" prompt in the Plan Summary section of the LCAP. In the 2017-18 LCAP, the District states in the Plan Summary section of the LCAP that one of the most significant ways it will increase or improve services is to "Maintain the implementation of one to one technology for all students" (2017-18 KTJUSD LCAP, p. 4). The description of increased or improved services provided in the Demonstration section does not address such an action/service nor is there any such action/service included in the Goals, Actions, and Services section as contributing to meeting the increased or improved services requirement.

The template also requires an LEA to identify each action/service contributing to the increased or improved services requirement that is funded and provided on a schoolwide or LEA-wide manner, and to include the required description supporting each schoolwide or LEA-wide action/service. An LEA such as KTJUSD, which has an unduplicated student enrollment greater than 55%, must describe in its LCAP how the actions/services are "*principally directed towards*" and "*effective in*" meeting its goals for unduplicated students in the state and any local priority areas² (EC Section 42238.07, 5 CCR 15496(b)).

To provide the required justification for services provided on a "wide" basis, an LEA 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 students or not. An LEA describes how a service is principally directed to meeting the LEA's goals for

² Schoolwide services at a district school with enrollment of unduplicated pupils that is 40 percent or more of its total enrollment must be supported by the same description. Schoolwide services at a school district school with less than 40 percent unduplicated pupil enrollment must be supported by the additional description of how the schoolwide use of funds is the *most effective* use of the funds to meet the LEA's goals for its unduplicated pupils. This tripartite explanation is also required for action/services provided on LEA-wide basis in an LEA with unduplicated pupil enrollment of less than 55%. (5 CCR 15496(b)).

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.

When an LCAP contains the necessary descriptions as described above for actions/services provided on a wide basis, it will be apparent how the LEA is acting to increase or improve services for unduplicated students, and why it has determined the services identified will be effective to achieve its goals for unduplicated students. Simply stating that an LEA has a high percentage of unduplicated student enrollment does not meet this standard.

In the Demonstration section, the District references some of the actions/services being implemented to increase or improve services for unduplicated students. The District states that it will use the amount of supplemental and concentration funds to “offer a variety of programs and supports specifically for low income students and foster youth” (2017-18 KTJUSD LCAP, p. 126). According to the description provided in the Demonstration section, these programs and supports include support for mental health, family engagement, literacy training, positive behavior and attendance, and culturally inclusive training. The District also describes services such as Response to Intervention (RtI) training that will serve “all students including Native American students and students with disabilities” (2017-18 KTJUSD LCAP, p. 126). The District states the following in the Demonstration section as justification for the districtwide and schoolwide services:

“The justification for the district-wide implementation of these practices is the importance of making an impact on the learning environment and the climate of the schools as a whole which will have a positive impact on the targeted subgroups” (2017-18 KTJUSD LCAP, p. 126).

The District does not explain either in the Demonstration section or elsewhere in the LCAP how it considered factors such as the needs, conditions, or circumstances of its unduplicated student, nor how the actions/services takes these factors into consideration. As a result, the District has failed to describe how districtwide and schoolwide actions/services included as contributing to meeting the increased or improved services requirement are principally directed to meeting the LEA's goals for unduplicated student in any state or local priorities.

The District describes how it believes its districtwide services are “the most effective use of our funds” by pointing out that Response to Instruction and Intervention will allocate resources to student groups, that all students will be enrolled in classes with a “lower teacher to student ratio” and will not be enrolled in “combination grade classes” and lists additional services for students such as restorative justice practices and college and career readiness programs (2017-18

KTJUSD LCAP, p. 126). The District concludes its description of how it will increase or improve services for unduplicated students by stating that training for emotional-social well-being, trauma informed care, and training for staff on issues of students living in poverty will meet the needs of all students, “but is especially targeted for Foster Youth and Low Socio-Economic students.” With the exception of college and career readiness programs, the actions/services described in the Demonstration section are not discussed in relation to one or more expected annual measurable outcomes. As a result, the District has failed to explain how the actions/services will be effective in meeting the LCAP goals for its unduplicated students.

While the District describes in its LCAP actions and services that are provided to all students and unduplicated students, the LCAP does not include any consideration of the needs, conditions, or circumstances of the District’s unduplicated students, whether in the Demonstration section specifically or in other sections of the LCAP. As a result, there is no possible way to describe how the districtwide or schoolwide actions/services included as contributing to meeting the increased or improved services requirement take into consideration such factors. Nor is there a description of how such actions/services will help meet one or more expected annual measurable outcomes for the goal. As a result, the District has failed to provide the necessary justification for districtwide and schoolwide actions/services included as contributing to meeting the increased or improved services requirement.

The CDE finds that the District failed to adequately describe how it plans to meet its increased or improved services requirement because its LCAP fails to provide a description in the Demonstration section that applies to all actions/services included in the Goals, Actions, and Services section as contributing to meeting the increased or improved services requirement. The CDE also finds that the District failed to adequately describe how it plans to meet its increased or improved services requirement because its LCAP fails to provide the necessary justification for all districtwide and schoolwide actions/services included in the Goals, Actions, and Services section as contributing to meeting the increased or improved services requirement.

The appeal of the District Decision regarding Allegation 1 is sustained.

Allegation 2

The Appellants allege that the District fails to provide in its Annual Update adequate descriptions of the *actual* actions/services and how these actions/services were effective in meeting the District’s goals. The Complaint makes four separate claims, or sub-allegations (2a – 2d) that constitute Allegation 2. Specifically, the Complaint alleges that the use of the word “implemented” is an insufficient description of *actual* actions/services and the responses to the first, second, and fourth prompts of the Analysis part for each goal in the Annual Update are inadequate.

2a: The District fails to provide adequate descriptions of the actual actions/services in the Annual Update.

The LCAP directions state:

“Identify the planned Actions/Services and the budgeted expenditures to implement these actions toward achieving the described goal. Identify the actual actions/services implemented to meet the described goal and the estimated actual annual expenditures to implement the actions/services. As applicable, identify any changes to the students or student groups served, or to the planned location of the actions/services provided.”

Per the LCAP template directions, the requirement is to identify the *actual* actions/services implemented to meet the described goal and to identify any changes to the students or student groups served, or to the *planned* actions/services provided, as applicable. An LEA transposes the *planned* actions/services from the prior LCAP year into the Annual Update for the relevant LCAP year. *Planned* actions/services are entered into the left hand column. In the right hand column, next to each *planned* action/service, an LEA identifies the *actual* action/service that was implemented relative to what was planned. If all goes as planned for a *planned* action/service, the description of the *actual* action/service will be the same or very similar as that provided for the corresponding *planned* action/service. When not all goes as planned, the description of the *actual* action/service will be different than the description provided for the corresponding *planned* action/service.

The LCAP Template directions do not include specific requirements for what constitutes the identification of an *actual* action/service. The underlying question being addressed by a distinction between *planned* and *actual* actions/services seeks to clarify the extent to which a *planned* action/service was implemented. An LEA is addressing whether or not it carried out the action/service as planned or not, whether in whole or in part. As such, what constitutes a sufficient identification of an *actual* action/service will depend on the relative complexity of the action/service or the level of specificity provided by the description of the corresponding *planned* action/service.

The Appellants maintain that simply stating “implemented” as a description of an *actual* action/service is inadequate in all cases and so all *actual* actions/services described only as “implemented” do not meet the standard. Identifying an *actual* action/service as “implemented”, without any other information, may be sufficient to clarify the extent to which a relatively simple *planned* action/service was implemented. For example, it may be sufficient to identify the *actual* action/service corresponding to the *planned* action/service “hire music teacher” (Annual Update Goal 3, Action 16, p. 64) as “implemented”, as the District has done, if a music teacher was hired.

However, the *actual* action/service corresponding to the *planned* action/service “Dealing with students in crisis/trauma, brain development” (Annual Update Goal 2, Action 10, p. 37) needs additional clarification to be sufficiently identified. Due to the lack of specificity provided in the description of this *planned* action/service, a description of what was actually implemented will need to provide information beyond what the description of the *planned* action/service provides. Also, the *planned* action/service being described is relatively complex. Identifying the extent to which the needs of students in crisis or who have suffered traumatic events have been met is not as simple as identifying whether or not a music teacher has been hired. For these reasons, the description provided for the *actual* action/service for Annual Update Goal 2, Action 10, does

not meet the requirement provided in the LCAP template instructions to identify the *actual* action/service.

Annual Update Goal 1, Action 27 (p. 16) describes the *actual* action/service as “HES”. Such a description fails to identify the action/service implemented. It is not apparent in this case what action/service was implemented and so does not meet the standard. Other examples of descriptions for actual actions/services that are insufficient include Goal 1, Actions 13, 17; Goal 2, Action 3; Goal 3, Action 2 (left blank). The descriptions provided for these actions/services in the Annual Update do not meet the requirement provided in the LCAP template instructions to identify the *actual* action/service.

As a result, the CDE finds that the District fails to adhere to the LCAP template directions pertaining to the identification of the *actual* actions/services in the Annual Update.

2b: The District’s response provided for the first prompt of the Analysis part for each goal in the Annual Update is not sufficient.

The LCAP template directions provided for the Analysis part of the Annual Update state:

“Using actual annual measurable outcome data, including data from the LCFF Evaluation Rubrics, analyze whether the planned actions/services were effective in achieving the goal. Respond to the prompts as instructed” (LCAP Template Directions).

LCAP template directions specific to the first prompt state:

“Describe the overall implementation of the actions/services to achieve the articulated goal. Include a discussion of relevant challenges and successes experienced with the implementation process” (LCAP Template Directions).

For each of the four goals in the Annual Update, the District provides the following response to this prompt:

“...although faced with multiple challenges, the overall implementation was successful. The area that still needs to be addressed is staffing shortages” (2017-18 KTJUSD LCAP, pp. 33, 57, 74, 82).

The response provided by the District does not “include a discussion of relevant challenges and successes experienced with the implementation process” (LCAP Template Directions). As a result, the CDE finds that the District’s response to the first prompt does not adhere to the LCAP template directions for the first prompt of the Analysis part of the Annual Update for all four goals.

2c: The response to the second prompt in the Analysis part of the Annual Update is inadequate and fails to address the needs of unduplicated students.

The LCAP template directions specific to the second prompt state:

“Describe the overall effectiveness of the actions/services to achieve the articulated goal as measured by the LEA” (LCAP Template Directions).

The District’s responses to the second prompt in the Analysis part of the Annual Update are as follows:

Response provided for Annual Update Goal 1: “Goals were clear but individual school plans still lacked the clarity to accomplish goals.”

Response provided for Annual Update Goals 2, 3, 4: “Goals were clear and schools (and their individual communities) were able to communicate a successfully obtain their goals.”

The directions for this prompt do not require an LEA to specifically address the needs of unduplicated students. However, the directions do require that an LEA to relate the overall effectiveness of the actions/services, as measured by the LEA, with the relevant LCAP goal.

Goal 1 in the Annual Update included in the 2017-18 LCAP is stated as follows:

“All students will receive high quality instruction, aligned to Common Core Standards, which will engage them as 21st Century learners and prepare them for college and careers.” (2017-18 KTJUSD LCAP, p. 6).

The response provided to the second prompt in the Analysis part of the Annual Update for goal 1 does not reference anything of substance from the goal 1 statement. The response to the prompt states that the goals were clear but school plans lack clarity. The LCAP template directions for the relevant prompt require an LEA to relate overall effectiveness of the actions/services, as measured by the LEA, with the relevant LCAP goal. The District’s response to the second prompt of the Analysis part for goal 1 of the Annual Update does not adhere to these directions.

The same is true for the remaining three goals of the Annual Update. As a result, the CDE finds that the District does not adhere to the LCAP template directions provided for the second prompt of the Analysis part of the Annual Update for all four goals.

2d: The District’s response to the fourth prompt of the Analysis part for each goal in the Annual Update is inadequate.

The LCAP template directions specific to the fourth prompt state:

“Describe any changes made to this goal, expected outcomes, metrics, or actions and services to achieve this goal as a result of this analysis and analysis of the data provided in the LCFF Evaluation Rubrics, as applicable. Identify where those changes can be found in the LCAP” (LCAP Template Directions).

The District's response to the fourth prompt in the Analysis part of the Annual Update for each goal is as follows:

“Instead of seeking part-time positions, extra efforts were made to make as many positions full-time, with benefits to encourage more applicants and fill more vacancies” (2017-18 KTJUSD LCAP, pp. 33, 57, 74, 82).

Goals 1 – 4 in the Goals, Actions, and Services section of KTJUSD's 2017-18 LCAP do not contain any action that addresses a shift from hiring part-time employees to hiring full-time employees with benefits. Goal 2, Action 1 states that a 0.5 FTE health secretary will be employed. This is not consistent with the District's response to the fourth prompt of the Analysis part in the Annual Update. As the District's response to this prompt does not appear to address the goals, actions, or services planned for the 2017-18 LCAP year, the District fails to adequately respond to this prompt. As a result, the CDE finds that the District does not adhere to the LCAP template directions provided for the fourth prompt of the Analysis part of the Annual Update for all four goals.

The appeal of the District Decision regarding Allegation 2 is sustained.

Allegation 3

The Appellants allege that the District's Decision fails to adequately address the lack of accounting for over \$650,000 of supplemental and concentration funds and is incorrect to treat the increase of \$296,450 for maintenance (Annual Update Goal 2, Action 2) as not being material. More generally, Appellants allege that the District is incorrect to claim that the explanation provided for material differences is adequate.

First, there is no requirement to distinguish between supplemental and concentration funds and other LCFF funds in the LCAP. However, an action or service included as contributing to meeting the increased or improved services requirement must be supported by at least one expenditure of LCFF funds. These LCFF funds may be identified by the LEA as either base or supplemental and concentration funds or simply as LCFF funds or otherwise indicated as unrestricted. Whether an LEA distinguishes between LCFF base and LCFF supplemental and concentration funds in an LCAP is a decision to be made at the local level in consultation with stakeholders.

Regarding material differences, the Annual Update includes a prompt for each goal that requires an LEA to “explain material differences between budgeted expenditures and estimated actual expenditures” (LCAP Template, Annual Update, Analysis section). In responding to this prompt, a school district should review the absolute amount by which expenditures projected when the LCAP was adopted differ from estimated actual expenditures, as well as any resulting impacts on implementation of the related actions or services. Applying the results of this review, an LEA must make a reasonable judgment regarding which of the differences are material, and explain, in the annual update, the reasons for the differences in these expenditures.

What is considered a material difference is not only a function of either the absolute or relative size of the expenditure difference, but is also determined in part by those differences that cause meaningful changes in the implementation of actions or services that support a goal. Small amounts are more likely to be material when purchasing textbooks while larger amounts pertaining to personnel costs may not be material. For example, the cost of providing a full-time teacher may range in cost to an LEA from \$60,000 to \$110,000. On the other hand, in the context of textbook costs, a difference of \$1,000 could indicate that a substantial number of textbooks were not purchased. As a result, a determination of “materiality” based solely on the application of a blanket rule (for example, 20% variance) may not be sufficient, depending on the circumstances applicable to the particular goal, action, or service.

An LEA’s judgment as to “materiality” and writing of related explanations as part of the LCAP annual update and development process should be carried out with awareness that determining material differences and explaining them in the LCAP is critically important to meaningful stakeholder engagement. This knowledge informs stakeholders how resources have been deployed (or not) in support of goals, and can assist both stakeholders and the LEA in deciding whether or not goals, actions, or services should be eliminated or modified to enhance student achievement.

The District’s response to the third prompt in the Analysis part of the Annual Update for each goal is as follows:

“Due to lack of applications or qualified personnel, some positions were left ‘unfilled’ for the year” (2017-18 KTJUSD LCAP, pp. 33, 57, 74, 82).

The requirement is to provide an explanation for those differences between budgeted and estimated actual expenditures considered to be material. There is no requirement that the explanation of material differences provided in the LCAP specifically track any reallocations of shortfalls. The difference of \$296,450 for Annual Update Goal 2, Action 2 is a 37% increase over the planned budgeted expenditure of \$799,429. The description of the *planned* action/service is as follows:

“Maintain Maintenance, Operations and Transportation Department, staff and supplies” (2017-18 KTJUSD LCAP, p. 35).

The explanation of material differences references a lack of applications from qualified personnel as a reason for why some positions were not filled. If the estimated actual expenditures had been less than the expenditure amount initially budgeted, this explanation might account for such a difference. However, in this particular case, the estimated actual expenditure is 37% greater than the budgeted expenditure. No explanation is provided that would reasonably account for such an increase.

While there is no blanket rule that serves to identify a difference as material, an increase of \$296,450 likely results from a meaningful change in the implementation of the action/service. In its Decision, the District explicitly excludes this expenditure difference from consideration as being material with no explanation provided.

The appeal of the District Decision regarding Allegation 3 is sustained.

VI. Conclusions

The CDE sustains the Appeal of Allegations 1, 2, and 3. The CDE has referred Allegation 4 in the Appeal back to the District for resolution as a new complaint under 5 CCR sections 4630 and 4631.

VII. Corrective Actions

With respect to the 2017-20 LCAP adopted for the 2018-19 LCAP year considered in its entirety, the District is required to work with the Humboldt County Office of Education, with the support of the California Department of Education, to ensure that the 2018-19 LCAP meets the requirements of the LCAP template, specifically with respect to the findings included in this report. Should conforming revisions to the 2018-19 LCAP be necessary in order to comply with these corrective actions, the District must adhere to the LCAP and annual update adoption process, including the stakeholder engagement requirements as described in *EC* Section 52062 and be adopted in a public meeting no later than February 15, 2019.

As described in 5 CCR 4665, within 35 days of receipt of this report, either party may request reconsideration by the Superintendent. The request for reconsideration shall designate the finding(s), conclusion(s), or corrective action(s) in the Department's report to be reconsidered and state the specific basis for reconsidering the designated finding(s), conclusion(s), or corrective action(s). The request for reconsideration shall also state whether the findings of fact are incorrect and/or the law is misapplied.

I may be reached in the Local Agency Systems Support Office by phone at 916-319-0809 or by email at jbreshears@cde.ca.gov.

Sincerely,



Jeff Breshears, Director
Local Agency Systems Support Office

JB:jf

cc: Jon Ray, Superintendent, Klamath-Trinity Joint Unified School District
Linnea Nelson, Education Equity Staff Attorney, ACLU of Northern California
Theodora Simon, Investigator, ACLU of Northern California
Jennifer Fairbanks, LCAP Coordinator, Humboldt County Office of Education

Exhibit 4

Local Control & Accountability Plan (LCAP)

2018-2019 Update
&

2019-2020 Development





LCAP Funding Shift From Supplementary & Concentration (S & C) Funds to Base Funds



Goal	LCAP Pg. #	Action/Service	Amount (\$)	Shift of Funds
SA 12.1	198-200	Special Ed. Student Assistive Technology & Support	\$100,000	From S & C to Base Funds



LCAP Funding Shift From Supplementary & Concentration (S & C) Funds to Base Funds



Goal	LCAP Pg #	Action/Service	Amount (\$)	Shift of Funds
LE 5.1	218-220	Custodial/Maintenance Services Gap Restoration	\$2,097,413	From S & C to Base Funds
LE 5.2	218-220	Deferred Maintenance	\$2,000,000	From S & C to Base Funds
LE 5.3	218-220	Environmental Compliance & Building Safety Oversight & Response	\$212,395	From S & C to Base Funds



LCAP Funding Shift From Supplementary & Concentration (S & C) Funds to Base Funds



Goal	LCAP Pg #	Action/Service	Amount (\$)	Shift of Funds
LE 9.1	229-236	School Site Campus Security Assists (CSA) & Campus Security Monitors (CSM)	\$954,891	From S & C to Base Funds
LE 9.3	229-236	Project Evaluator/Crime Data Analyst	\$131,772	From S & C to Base Funds
LE 9.5	229-236	Emergency Preparedness & Response Solutions	\$171,415	From S & C to Base Funds



LCAP Funding Shift From Supplementary & Concentration (S & C) Funds to Base Funds



Goal	LCAP Pg #	Action/Service	Amount (\$)	Shift of Funds
LE 9.8	229-237	Behavior Intervention Training	\$150,000	From S & C to Base Funds
LE 9.9	229-237	Data Analysis & Tools & Software To Achieve Safe & Secure Campuses	\$60,000	From S & C to Base Funds
LE 9.10	229-237	Equipment To Support Safe & Secure Campuses	\$250,000	From S & C to Base Funds



LCAP Funding Shift From Supplementary & Concentration (S & C) Funds to Base Funds



Goal	LCAP Pg #	Action/Service	Amount (\$)	Shift of Funds
LE 9.11	229-237	Safe & Supportive Special Events Outreach	\$115,000	From S & C to Base Funds
LE 9.12	229-238	Youth Explorer Program	\$50,000	From S & C to Base Funds
LE 9.13	229-238	Buzzer System & Gates & All Offices With Cameras	\$400,000	From S & C to Base Funds
LE 9.14	229-238	Threat Assessment Training	\$25,000	From S & C to Base Funds

Total Shift From S & C to Base=\$6,717,886

The State & Local Measures For Each LCFF Priority Areas

Priority Areas	State Indicator	Local Indicator
Basic Services & Conditions At Schools	N/A	Textbooks availability, adequate facilities, and correctly assigned teachers
Implementation Of Common Core State Standards (CCSS)	N/A	Annually report progress in implementing standards for all content areas
Parent Engagement	N/A	Annually report progress toward: (1) seeking input from parents/guardians in decision making; & (2) promoting parental participation in programs
Student Achievement	-Academic Performance (3rd-8th, & 11th) -English Learner Progress	N/A
Student Engagement	-Graduation Rate -Chronic Absenteeism	N/A
School Climate	Suspension Rate	Administer A Local Climate Survey Every Other Year
Access To A Broad Course Of Study		Annually report progress on the extent student have access to, and are enrolled in, a broad course of study.
Outcomes In A Broad Course Of Study	College/Career	N/A

State & Local Priorities Addressed By Each LCAP Goal

Goal 1: Student Achievement (\$49, 487,378)

SUSD will implement a Multi-Tiered System of Support (MTSS) to increase student achievement and provide all students with a well-rounded educational experience, the delivery of high quality instruction, exposure to rigorous and relevant curriculum to become lifelong learners and to address barriers to learning with targeted services for unduplicated pupil populations (i.e. English learners, Foster Youth, low income students) and priority student groups (inc. homeless students, ethnic minorities, disproportionate students of color, and students with disabilities).

State & Local Priorities Addressed By LCAP Goal 1	
Priority 2	State Standards (Conditions of Learning)
Priority 4	Pupil Achievement (Pupil Outcomes
Priority 7	Broad Course Access (Conditions of Learning)
Priority 8	Other Pupil Outcomes (Pupil Outcomes)

SUSD LCAP Goal 1: Student Achievement

SA	Goal 1: Student Achievement (SA)	Total Funds	S&C Funds	Base Or Other Funds
SA 1	Student Technology	(\$1,575,000)	\$1,575,000	\$0
SA 2	Instructional Materials & Supplies	(\$4,100,000)	\$4,100,000	\$0
SA 3	Primary Language Support	(\$782,990)	\$782,990	\$0
SA 5	Teacher Collaboration, Monitoring & Support	(\$11,690,523)	\$11,690,523	\$0
SA 6	Implementing of Professional Learning Communities (PLC) Strategies	(\$630,000)	\$0	\$630,000
SA 7	Student Intervention Strategies & Support	(\$3,565,284)	\$1,965,284	\$1,600,000

Actions & Services:

- Chromebooks (1:1) & Software
- Supplemental Curriculum
- STEM Classroom Materials
- Increase Bilingual Aid Support (15)
- ELD PD
- Teacher Collaboration & Prof. Dev. Programs
- Reading Intervention Resources
- PLC Training
- School Admin. Prof. Dev.
- Credit Recovery

SUSD LCAP Goal 1: Student Achievement

SA	Goal 1: Student Achievement (SA)	Total Funds	S&C Funds	Base Or Other Funds
SA 8	Instructional Coaching	(\$5,113,168)	\$5,113,168	\$0
SA 9	After School Programs	(\$2,219,585)	\$2,219,585	\$0
SA 10	Site Allocation	(\$14,002,239)	\$14,002,239	\$0
SA 11	College & Career Preparatory Opportunities	(\$4,525,895)	\$2,893,960	\$1,631,935
SA 12	Special Ed Assistive Opportunities	(\$852,154)	\$100,000	\$752,154
SA 13	Library Support	(\$258,260)	\$258,260	\$0
SA 14	District Program Evaluations	(\$172,280)	\$172,280	\$0

Actions & Services:

<ul style="list-style-type: none"> -Instructional Coaches (36) -New Teacher Support (2) -After School Program (6) -Tutoring & Enrichment 	<ul style="list-style-type: none"> -Site Allocations -LDO Outreach & Training -Cover PSAT Cost -H.S. Sped. A-G Res. Teachers (9) 	<ul style="list-style-type: none"> -AVID & CTE Pathways -Career Centers -Guidance Technicians(12) -District Librarian (1)
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State & Local Priorities Addressed By Each LCAP Goal

Goal 2: Safe & Healthy Learning Environments (\$216,722,145)

SUSD will implement and promote a Multi-Tiered System of Support (MTSS) to promote a safe and healthy learning environment to enhance the social-emotional and academic learning for all students necessary to become productive members of society, increased access of academic and social-emotional supports for our unduplicated pupil populations (i.e. English learners, Foster Youth, and low income students) and priority sub-groups (inc. homeless students, ethnic minorities, disproportionate students of color, and students with disabilities) will be addressed through MTSS targeted strategies.

State & Local Priorities Addressed By LCAP Goal 2	
Priority 1	Basic Conditions (Conditions of Learning)
Priority 6	School Climate (Engagement)

SUSD LCAP Goal 2: Safe & Healthy Learning Environments

LE	Goal 2: Learning Environment (LE)	Total Funds	S&C Funds	Base or Other Funds
LE 1	Technology Infrastructure & Support	(\$1,381,901)	1,381,901	\$0
LE 2	High-Quality Teachers, Substitutes, Administrators & Staff	(\$11,456,760)	\$10,241,258	\$1,215,502
LE 3	Instructional Technology Solutions	(\$100,000)	\$100,000	\$0
LE 5	Facility Support	(\$4,309,808)	\$0	\$4,309,808
LE 6	Basic Instructional & Teacher Staffing	(\$181,780,80)	\$6,800,295	\$174,980,510

Actions & Services:

- | | | |
|---|------------------------|-------------------------|
| -Computer Replacement & Tech Support | -Ed. Equity Director | -PBIS |
| -Bias, Diversity, & Inclusion Training | -SST & SAP Development | -Parent Outreach |
| -Behavior Intervention Team Development(12) | -Teacher Staffing | |
| -Admin. Restoration for K-8 Schools (18) | -All Day Kindergarten | -Over Formula Positions |

SUSD LCAP Goal 2: Safe & Healthy Learning Environments

LE	Goal 2: Learning Environment (LE)	Total Funds	S&C Funds	Base or Other Funds
LE 7	Parent & Community Relations	(\$1,545,131)	\$1,113,658	\$431,473
LE 8	Health Services	(\$2,115,968)	\$2,115,968	\$0
LE 9	Community Oriented Policing Program	(\$3,445,033)	\$0	\$3,445,033
LE 10	School Counseling	(\$10,586,739)	\$10,586,739	\$0

Actions & Services:

- Parent Liaisons(2)
- Foster Youth Comm. Assistant
- Health Care Assistants(20)
- School Counselors (47)
- Social Service Case Managers (Foster & Homeless)
- LDO Interpreters (2)
- Licensed Vocational Nurses (4)
- Social Emotional Learning Curriculum

State &/Or Local Priorities Addressed By Each LCAP Goal

Goal 3: Meaningful Partnerships (\$8,753,532)

Together, in collaboration with families and community stakeholders, SUSD will create a culture of inclusion that will build meaningful partnerships, increase student and parent engagement, and address and remove barriers to learning for unduplicated pupil populations (i.e. English Language Learners, Foster Youth, and Students living in Low-Socioeconomic Status) and priority sub-groups (inc. homeless students, ethnic minorities, disproportionate students of color, and students with disabilities) so all students acquire the attitude, skills, and knowledge to become successful members of society.

State & Local Priorities Addressed By LCAP Goal 3	
Priority 3	Parental Involvement (Engagement)
Priority 5	Pupil Engagement (Engagement)

SUSD LCAP Goal 3: Meaningful Partnerships

MP	Meaningful Partnerships (MP)	Total Funds	S & C	Base or Other Funds
MP 1	Parent Engagement	(\$459,686)	\$30,000	\$429,686
MP 2	Parent & School Communication	(\$767,743)	\$767,743	\$0
MP 4	Student Engagement & Leadership Opportunities	(\$2,099,445)	\$2,199,445	\$0
MP 6	Visual & Performing Arts (VAPA) Activities	(\$3,655,817)	\$3,655,817	\$0
MP 7	Student Attendance & Accountability	(\$1,670,841)	\$1,670,841	\$0

Actions & Services:

- Parent Workshops & Training
- ESL Adult Services
- Student Clubs & Activities
- VAPA Programs & Teachers(28)
- Parent Liaisons(2)
- PLUS Program
- Attendance Techs(4)
- Truancy Outreach
- Parent Involvement Specialists(2)
- LDO Interpreters(3)
- Athletic Programs
- Arts Resource Teachers(9)

8 State Priorities & The California Dashboard Metrics

State Priority	SUSD Status (Fall 2018 Dashboard Data)
<u>Basic Services (Priority 1)</u> (Addressed By SUSD LCAP Goal 2)	Basics: Teachers, Instructional Materials, Facilities STANDARD MET
<u>Implementation of State Academic Standards (Priority 2)</u> (Addressed By SUSD LCAP Goal 1)	Implementation of Academic Standards STANDARD MET
<u>Parent Engagement (Priority 3)</u> (Addressed By SUSD LCAP Goal 3)	Parent Engagement STANDARD MET

8 State Priorities & The California Dashboard Metrics

Pupil Achievement (Priority 4): Addressed By LCAP Goal 1

Focus: English Language Arts (ELA)

LEARN MORE

English Language Arts

All Students

State



Yellow

63.8 points below standard

Increased 3.9 Points ⬆

English Learners

Student Group

State



Red

83.2 points below standard

Maintained -0.6 Points

Number of Students: 7,263

Foster Youth

Student Group

State



Orange

103.6 points below standard

Increased 3.6 Points ⬆

Number of Students: 121

Socioeconomically Disadvantaged

Student Group

State



Yellow

69.6 points below standard

Increased 3.4 Points ⬆

Number of Students: 15,151

Current English Learners

133.2 points below standard

Maintained 0.8 Points

Number of Students: 3,649

Reclassified English Learners

32.8 points below standard

Maintained -1.3 Points

Number of Students: 3,614

English Only

62.3 points below standard

Increased 5.9 Points ⬆

Number of Students: 8,662

EQUITY REPORT

Number of Student Groups in Each Color



8 State Priorities & The California Dashboard Metrics

Pupil Achievement (Priority 4): Addressed By LCAP Goal 1

Focus: Mathematics

LEARN MORE Mathematics

All Students State



Orange

85.1 points below standard

Maintained -1 Points

EQUITY REPORT

Number of Student Groups in Each Color



English Learners

Student Group State



Red

98.7 points below standard

Declined -5.3 Points ⬇️

Number of Students: 7,258

Foster Youth

Student Group State



Red

128.7 points below standard

Maintained -2.2 Points ➡️

Number of Students: 121

Socioeconomically Disadvantaged

Student Group State



Orange

90.1 points below standard

Maintained -1.9 Points ➡️

Number of Students: 15,136

Current English Learners

141.4 points below standard

Declined -4.6 Points ⬇️

Number of Students: 3,649

Reclassified English Learners

55.6 points below standard

Declined -5.5 Points ⬇️

Number of Students: 3,609

English Only

83.8 points below standard

Maintained 1 Points ➡️

Number of Students: 8,652

8 State Priorities & The California Dashboard Metrics

Pupil Achievement (Priority 4): Addressed By LCAP Goal 1

Focus: English Learner Progress (Comparison Data Will Be Available On The Fall 2019 Dashboard)

LEARN MORE

English Learner Progress

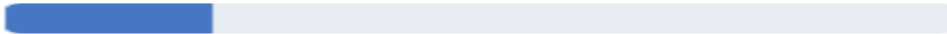
All Students

State

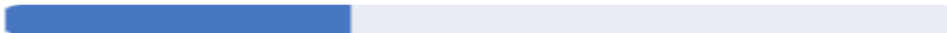
English Language Proficiency
Assessments for California Results

Number of Students: 7,738

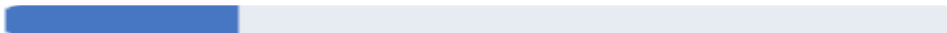
Level 4 - Well Developed
22.1%



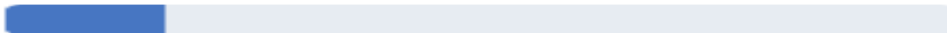
Level 3 - Moderately Developed
36.5%



Level 2 - Somewhat Developed
24.6%



Level 1 - Beginning Stage
16.9%



ELPAC

English Language Proficiency
Assessments for California

8 State Priorities & The California Dashboard Metrics

Student Engagement (Priority 5): Addressed By LCAP Goal 3

Focus: Graduation Rate

All Students

All Students

State



Orange

78.6% graduated

Maintained -0.1%

Number of Students: 2,232

Foster Youth

Student Group

State



Red

66.7% graduated

Increased 1.1% ⬆

Number of Students: 30

English Learners

Student Group

State



Orange

68.6% graduated

Declined -2.4% ⬇

Number of Students: 503

Socioeconomically Disadvantaged

Student Group

State



Orange

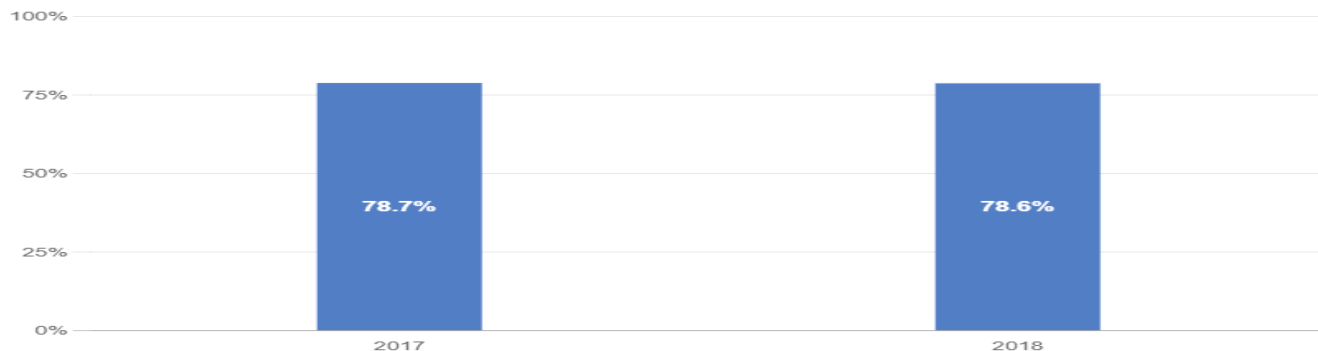
78.7% graduated

Maintained -0.6%

Number of Students: 2,088

Graduation Rate By Year

Percentage of students who received a high school diploma within four years of entering ninth grade or complete their graduation requirements at an alternative school.



8 State Priorities & The California Dashboard Metrics

Student Engagement (Priority 5): Addressed By LCAP Goal 3

Focus: Chronic Absenteeism

All Students

All Students

State



Orange

18.1% chronically absent

Increased 1.2% ⬆

Number of Students: 27,698

Foster Youth

Student Group

State



Red

26.2% chronically absent

Increased 0.6% ⬆

Number of Students: 271

English Learners

Student Group

State



Orange

13% chronically absent

Increased 1.3% ⬆

Number of Students: 8,218

Socioeconomically Disadvantaged

Student Group

State



Orange

19.1% chronically absent

Increased 1.2% ⬆

Number of Students: 23,747

8 State Priorities & The California Dashboard Metrics

School Climate (Priority 6): Addressed By LCAP Goal 3

Focus: Suspension

All Students

All Students State



Yellow

7.3% suspended at least once

Declined -1% ⬇️

Number of Students: 38,148

English Learners

Student Group State



Yellow

4.8% suspended at least once

Declined -0.3% ⬇️

Number of Students: 10,165

Foster Youth

Student Group State



Yellow

16.2% suspended at least once

Declined -2.3% ⬇️

Number of Students: 457

Socioeconomically Disadvantaged

Student Group State



Yellow

7.7% suspended at least once

Declined -0.8% ⬇️

Number of Students: 32,363

Suspension Rate By Year

Percentage of students who were suspended.

100%

75%

50%

25%

0%

10.1%

2016

8.2%

2017

7.3%

2018

8 State Priorities & The California Dashboard Metrics

State Priority	SUSD Status (Fall 2018 Dashboard Data)
Access To A Broad Course Of Study (Priority 7) (Addressed By SUSD LCAP Goal 1)	<div>Access to a Broad Course of Study</div> <div>STANDARD MET</div>
Outcomes In A Broad Course Of Study (Priority 8) (Addressed By SUSD LCAP Goal 1)	Status: Maintained See Below

All Students

All Students State



Orange

21.2% prepared

Maintained 0.9%

Number of Students: 2,232

English Learners

Student Group State



Red

4% prepared

Maintained -0.5%

Number of Students: 503

Foster Youth

Student Group State



Red

6.7% prepared

Maintained -0.2%

Number of Students: 30

Socioeconomically Disadvantaged

Student Group State



Orange

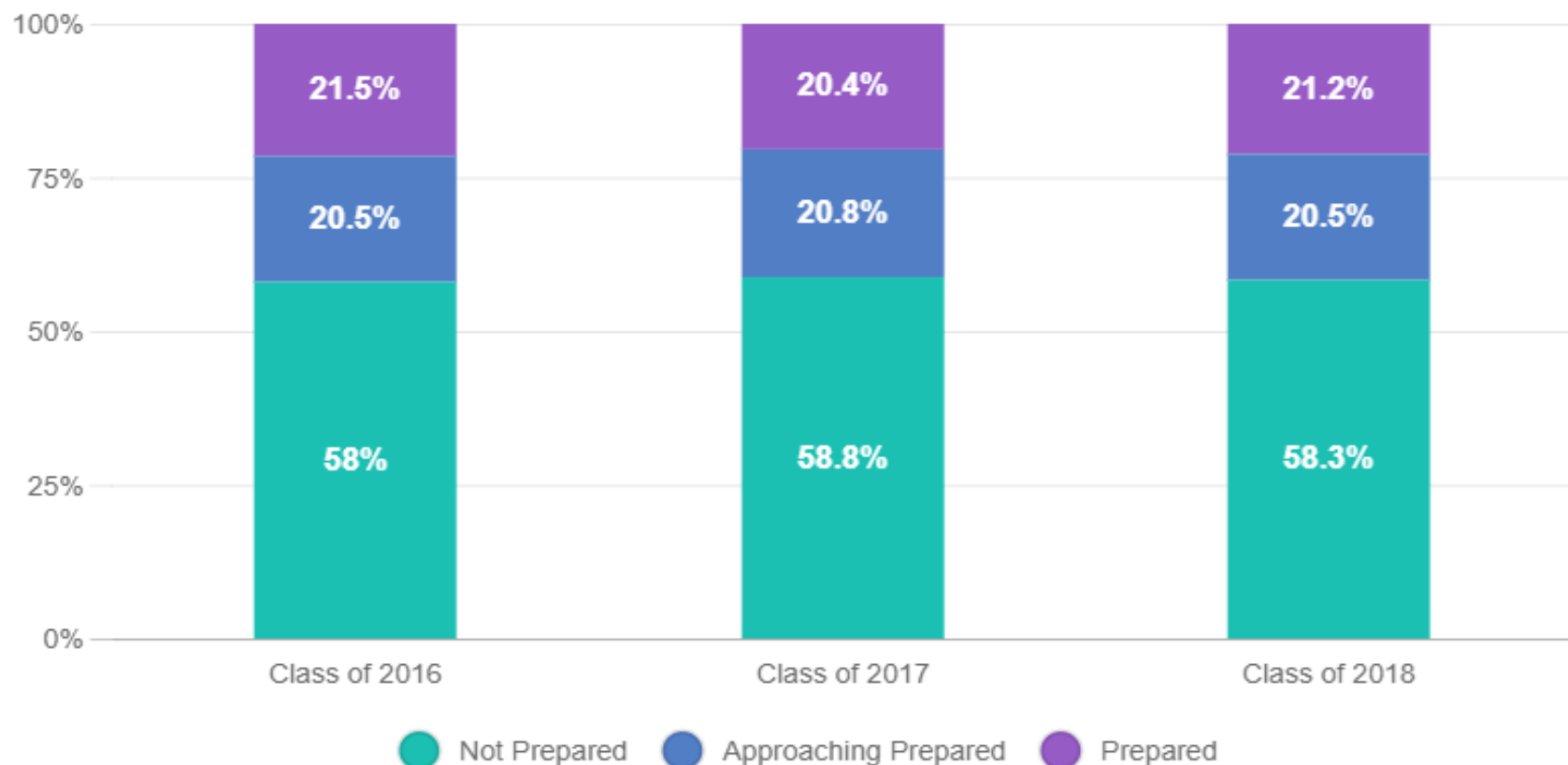
20.9% prepared

Maintained 0.9%

Number of Students: 2,088

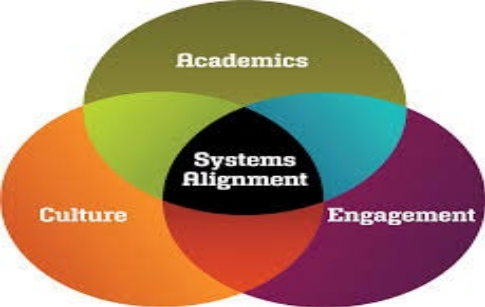
College/Career

The percent of students per year that qualify as Not Prepared, Approaching Prepared, and Prepared.



Student Group Report for 2018

Student Group	Chronic Absenteeism	Suspension Rate	Graduation Rate	College/Career	English Language Arts	Mathematics
All Students	Orange	Yellow	Orange	Orange	Yellow	Orange
→ English Learners	Orange	Yellow	Orange	Red	Red	Red
→ Foster Youth	Red	Yellow	Red	Red	Orange	Red
Homeless	Orange	Red	Yellow	Red	Orange	Orange
→ Socioeconomically Disadvantaged	Orange	Yellow	Orange	Orange	Yellow	Orange
Students with Disabilities	Red	Orange	Red	Red	Red	Red
African American	Red	Orange	Yellow	Orange	Red	Red
American Indian or Alaska Native	Red	Orange	Yellow	Yellow	Yellow	Orange
Asian	Yellow	Green	Green	Yellow	Yellow	Yellow
Filipino	Yellow	Yellow	Blue	Green	Yellow	Yellow
Hispanic	Orange	Yellow	Orange	Orange	Yellow	Orange
Native Hawaiian or Pacific Islander	Red	Yellow	None	None	Yellow	Yellow
White	Red	Yellow	Yellow	Orange	Yellow	Yellow
Two or More Races	Orange	Yellow	None	None	Yellow	Orange



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LCAP Community Engagement Events

<u>Date</u>	<u>Time</u>	<u>Location</u>
Jan 22nd	11:00-1:00	PDC
Feb. 13th	5:00-7:00	Cesar Chavez High School
Feb. 15th	9:00-11:00	Fremont School
Mar. 2nd	9:00-11:00	Edison High School
Jun. 11th	6:00-8:00	SUSD Boardroom
Jun. 25th	6:00-8:00	SUSD Boardroom



Exhibit 5

Department of Justice – Stockton Unified
Stipulated Settlement
5-year Monitoring Period
Beginning February 19, 2019
SORTED BY TASK CATEGORY

This document is for information and planning purposes only. The Judgment entered by the Court on February 19, 2019, governs the terms of this stipulated settlement.

Task		Section No.	Responsible Party	Time for Completion	Due Date(s)	Board Action Required	Completed	Comments/Other
HIRING								
1.	Meet and confer regarding hiring a monitor whose reasonable costs and expenses are paid by the District	XIV	District; AG	Meet and confer with AG within 15 days of entry of judgment. Selection subject to AG approval	03-06-19 with an extension proposed by AG to 03-13-19	Yes	Posting: 04-16-19	
2.	Hire a Disability Coordinator	III (C)	District	Position must be posted within 60 days of entry of judgment	04-20-19	Yes	04-17-19	
3.	Hire a Police Professional	XI (A)	District in consultation with Department	Within 180 days of approval of a monitor	10-13-19	Yes		
4.	Formalize the hiring preference for officers who have experience working with children and youth and who have ties to the community	XIII	Department	Within 240 days of approval of a monitor	12-12-19			
FORMAL DIVERSION PROGRAM								
5.	Develop a formal diversion program aimed at minimizing arrests for minor school-based offenses when lesser measures could be utilized	II (A)	District/Department	Within 180 days of approval of a monitor	10-13-19			
6.	Contact relevant stakeholders to assist with creating the formal diversion program	II (B)	District in consultation with Department	Within 180 days of approval of a monitor	10-13-19			
7.	Implement formal diversion program	II (B)	District/Department	Within 2 years of approval of a monitor	04-17-21			
DISTRICT POLICIES, REGULATIONS, PROTOCOLS, PLANS, PROCEDURES								
8.	Revise BP 5144, Discipline, to include process for referrals of students to law enforcement	I A	District	Within 180 days of approval of a monitor	10-13-19	Yes		

Department of Justice – Stockton Unified
Stipulated Settlement
5-year Monitoring Period
Beginning February 19, 2019
SORTED BY TASK CATEGORY

Task		Section No.	Responsible Party	Time for Completion	Due Date(s)	Board Action Required	Completed	Comments/Other
9.	Adopt a Police Assistance and Referral Policy	I (A); I (A) (3)	District	First draft to monitor, then to AG within 120 days of approval of a monitor. Finalize within 180 days.	08-14-19 10-13-2019	Yes		
10.	Attach as an exhibit to BP 5144 a revised matrix of disciplinary offenses linked to disciplinary measures and/or law enforcement interventions	I (C)	District; AG	First draft of exhibit due to AG for review and approval within 90 days of approval of a monitor. Any revisions by AG addressed within 60 days thereafter.	07-15-19 & 9-13-19	Yes		District has retained an expert in the prevention of discrimination against students with disabilities. The expert will begin her work on July 1, 2019.
11.	Include in the new Police Assistance and Student Referral Policy the prohibition from using “out of control” for law enforcement referrals unless Welf. & Inst. Code § 601 (a) applies	I (D)(2)	District	Within 180 days of approval of a monitor	10-13-19	Yes		
12.	Create a Plan relating to law enforcement referrals of students with disabilities and mental issues that is consistent with the 2017 OCR agreement, which will include Positive Behavior Interventions and Supports and other restorative strategies	I (F)	District	Within 180 days of approval of a monitor	10-13-19			
13.	Create a Protocol to continue the community policing model	II (A)	District/Department	Within 180 days of approval of a monitor	10-13-19			
14.	Create a Protocol for referral by site administrators to psychologists or counselors instead of law enforcement of students who exhibit or suggest mental health needs	III (A)	District’s Mental Health Administrator	Within 180 days of approval of a monitor	10-13-19			Positive School Climate Director to assist with developing all policies, protocols, and procedures related to the non-discrimination of students with disabilities
15.	Create a Policy to assist staff in identifying mental health issues that can be managed at the school site	III (A)	District	Within 180 days of approval of a monitor	10-13-19	Yes		
16.	Create and revise policies and procedures for students with disabilities that identify disciplinary dispositions related to	III (B)	District/Department	Within 240 days of approval of a monitor	12-12-19	Yes		

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Task		Section No.	Responsible Party	Time for Completion	Due Date(s)	Board Action Required	Completed	Comments/Other
	changes in placement that are consistent with laws covering changes in educational placement							
17.	Create/revise a process of referrals of students with disabilities to law enforcement consistent with state and federal law	III (B)	District/Department	With 240 days of approval of monitor	12-12-19			
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	III (B)	District	Within 240 days of the approval of a monitor	12-12-19			
19.	Create and revise policies to account for students with disabilities, except for instances of conduct of a serious nature as defined in 48915 (a) (1) and (c), not being cited or booked for conduct that directly results from their disability	III (C)	Disability Coordinator/Department	None specified in the judgment, but a due date has been set	12-12-19	Yes		
20.	Create a Protocol for referral for mental health assessments	III (D)	District	Within 180 days of the approval of a monitor	10-13-19			
21.	Create a Protocol regarding de-escalation techniques	V (A)	District	Within 180 days of approval of a monitor	10-13-19			
22.	Create a Protocol to include procedures to investigate, review and document any complaint made of excessive force against a CSM, CSA or school staff and the process to establish a timeline for final resolution and remedial action, if warranted.	V (B)	District	Within 180 days of the approval of a monitor	10-13-19			Protocol would be subject to negotiation with the applicable bargaining unit
23.	Revise BP 5144 to specify that physical restraint techniques may only be used by school staff trained in their application, and a list of who is trained shall be maintained by school site staff	V (C)	District	Within 180 days of the approval of a monitor	10-13-19	Yes		
24.	Create a Protocol to document all instances of physical restraint techniques used by staff	V (D)	District	Within 180 days of approval of a monitor	10-13-19			Protocol would be subject to negotiation with the applicable bargaining unit
25.	Revise BP 5145.11 to require that parent/guardian be contacted before interrogation of student by police	VI (A)	District	Within 120 days of approval of a monitor	08-14-19	Yes		
26.	Create a Policy prohibiting the request by administrators of polices to transport students who misbehave	VI (C)	District	Within 120 days of the approval of a monitor	08-14-19	Yes		

Department of Justice – Stockton Unified
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Task		Section No.	Responsible Party	Time for Completion	Due Date(s)	Board Action Required	Completed	Comments/Other
27.	Revise BP 5145.11 to require to centrally maintain student interviews and other information	VI (D)	District	Within 120 days of the approval of a monitor	08-14-19	Yes		
28.	Revise BP and AR 5145.12, Search and Seizure, on random searches of students and searches of personal electronic devices	VII (A)	District in consultation with the monitor; AG	Within 180 days of approval of monitor, obtain AG and Board approval	10-13-19	Yes		
29.	Create a Procedure for formal complaints against school officials	IX (A) (6)	District in consultation with the monitor; AG	Within 180 days of approval of a monitor, obtain approval of AG	10-13-19			
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	XI (D)	District/Department with necessary stakeholders	Within 365 days from the approval of a monitor. Action taken on the plan within 30 days of Board approval	04-15-20	Yes		
DEPARTMENT POLICIES, PROTOCOLS, PLANS, PROCEDURES, PROCESS								
31.	Create a Protocol requiring supervisor approval before citing/booking student on violation of PC 148 (Resisting/Delaying officer)	I (D) (1)	Department	Within 180 days of approval of a monitor	10-13-19			
32.	Create Protocol for dispatchers regarding information gathering and effective use of police resources	I (E)	Department	Within 180 days of approval of a monitor	10-13-19			
33.	Create a Plan to work with the juvenile courts, probation and the DA, to identify the students who were cited or booked for violating PC 415.5 for the purpose of requesting expungement of the violation and provide notice to parents/students of the same	II (C)	Department	Within 180 days of approval of a monitor	10-13-19			
34.	Create a Procedure to handle calls for students experiencing a mental health crisis	III (D)	Department	Within 180 days of the approval of a monitor	10-13-19			
35.	Revise Department Policy 369 to include the use of sign interpreters skilled in interpreting for law enforcement matters, including on-call interpreters, when needed by the Department or the District	III (E)	Department	Within 180 days of the approval of the monitor	10-13-19			

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Task		Section No.	Responsible Party	Time for Completion	Due Date(s)	Board Action Required	Completed	Comments/Other
36.	Revise Department Policy 300, Use of Force, to include new definition of use of force and other criteria included in the final judgment	IV (A) 1-8	Department	Within 240 days of the approval of the monitor	12-12-19			
37.	Revise Department Policy 300 to include the responsibility of the Captain to regularly convene a group of supervisors to review use of force incidents for the purpose of identifying performance issues and trends	IV (D) (7)	Department	Within 240 days of the approval of a monitor	12-12-19			
38.	Revise the use of force review process to include lieutenants reviewing and then forwarding through the chain of command the supervisor's investigation, findings and determination	IV (D) (5)	Department	Within 240 days of the approval of a monitor	12-12-19			
39.	Revise Department Policy 300.6 to include that parents/guardians of student injured as a the result of police activity will be notified as soon as practicable	IV (A) (9)	Department	Within 240 days of the approval of a monitor	12-12-19			
40.	Revise Department Policy 306, Leg Restraint Device, to describe their appropriate use and the reporting of their use	IV (B) (1)	Department	Within 240 days of the approval of a monitor	12-12-19			
41.	Revise Department Policy 300 to include the new use of force review process	IV (D) (1-3, 5, 7)	Department	Within 240 days of the approval of a monitor	12-12-19			
42.	Revise Department Policies 457 and 314, Foot and Vehicle Pursuits, to reinforce the principles of communication and officer safety as well as effective inter-agency communication	IV (D) (9)	Department	Within 240 days of the approval of a monitor	12-12-19			
43.	Revise format of Department Policy 1020, Personnel Complaints, for ease of understanding and designate one police officer with the responsibility to oversee compliance with the policy	IX (A)	Department in consultation with the monitor; AG	Within 180 days of approval of a monitor and approval by the AG	10-13-19			
44.	Create a mandatory training plan, to be reviewed annually, incorporating recommendations from the US DOJ	VIII (A)	Department in consultation with the monitor; AG	Within 180 days of approval of a monitor and approval by the AG	10-13-19			
45.	Develop a complaint mechanism to resolve complaints through mediation and other forms of alternative dispute resolution	IX (A) (2)	Department	Within 180 days of the approval of a monitor	10-13-19			

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Task		Section No.	Responsible Party	Time for Completion	Due Date(s)	Board Action Required	Completed	Comments/Other
TRAINING								
46.	Develop training regarding working with students with disabilities including mental health disabilities	III (C)	Disability Coordinator/ Positive School Climate Director/ Department	Within 360 days of the approval of a monitor	04-12-20			
47.	Initiate training of all officers and dispatchers in crisis intervention and de-escalation techniques to handle call relating to students in a mental health crisis	III (D)	Department	Within 180 days of the approval of a monitor	10-13-19			
48.	Develop training curriculum that incorporates de-escalation techniques in a school-based policing setting	IV (C)	Department	Within 240 days of the approval of a monitor	12-12-19			
49.	Provide “required” training on use of force and de-escalation strategies/techniques for student behavior that is developmentally appropriate and trauma-informed	IV (C)	Department	Within 240 days of the approval of a monitor	12-12-19			
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	V (A)	District	Within 360 days of approval of a monitor	04-12-20			
51.	Train CSMs, CSAs, and other school staff not to use force except in exigent circumstances, and to use such force only after being trained. The training shall include the Department of Education’s 2012 advisory regarding the use of physical restraints	V (B) (C)	District	Within 180 days of the approval of a monitor	10-13-19			
52.	Provide annual training of police officers and school staff involved with searches and seizures on the 4 th Amendment as it applies to schools, and on revised BP 5145.12	VII (A) (2)	District in consultation with the monitor; AG	Within 180 days of the approval of a monitor and approval by the AG	10-13-19			
53.	Train officers on the new policies adopted as required in the final judgment	VIII (A)	Department	Within 180 days of the approval of a monitor	10-13-19			
54.	Train school administrators on the new policy on police assistance and student referrals	VIII (A)	District	Within 180 days of the approval of a monitor	10-13-19			
55.	Train school administrators annually on issues including implicit bias, cultural competence, and restorative practices	VIII (B)	District	Within 180 days of the approval of a monitor	10-13-19			

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Task		Section No.	Responsible Party	Time for Completion	Due Date(s)	Board Action Required	Completed	Comments/Other
COMMUNITY ADVISORY COMMITTEE								
56.	Create a Community Advisory Committee (CAC) to provide comments to the District/Department on changes to policies and procedures, on the formal diversion program, and to make recommendations to reduce disproportionalities in citations and bookings and ensure the CAC meets quarterly	XII (A)	District	Within 240 days of approval of a monitor and quarterly thereafter	12-12-19			
57.	Provide written summary of the meeting to the public, monitor, District Superintendent and Chief of Police	XII (D)	CAC	Within 45 days of each quarterly meeting	First meeting beginning of 2019-20 school year			
58.	Review written summary of the meeting provided by the CAC to the Chief of Police and the Superintendent to identify potential improvements or modifications to Department policies and/or practices	XII (E)	District/Department	None specified in the judgment, but a due date has been set	Within 45 days of receiving the summary			
59.	Invite representatives from the list in the final judgment to participate on the CAC	XII (B)	District	None specified in the judgment, but a due date has been set	6-30-19			
MISCELLANEOUS								
60.	Identify community policing philosophy in the 2019 Strategic Plan	II (D)	Department	Within 240 days of the approval of a monitor	12-12-19			
61.	Establish in writing the expectations for supervisors to document their findings as part of the use of force review process	IV (D) (4)	Department	Within 240 days of the approval of a monitor	12-12-19			
62.	Use U.S. Dept. Of Education's "Restraint and Seclusion Resource Document" for training of school staff and maintain a list of trained staff members	V (C)	District	Within 180 days of the approval of a monitor	10-13-19			
63.	Review behavioral emergency reports monthly to analyze whether restraint techniques are being used disproportionately or in violation of state law	V (E)	District	Within 180 days of the approval of a monitor	10-13-19			
64.	Provide the monitor with a report summarizing all complaints against school officials	IX (A) (7)	District	Biannually	7-31-19 1-31-20			

Department of Justice – Stockton Unified
Stipulated Settlement
5-year Monitoring Period
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SORTED BY TASK CATEGORY

Task		Section No.	Responsible Party	Time for Completion	Due Date(s)	Board Action Required	Completed	Comments/Other
					(and by the same month/date in subsequent years)			
65.	Publish the DOJ Report of Citizen's Complaints on website, provide it to CAC, and consider DOJ Report in relation to the LCAP	IX (A) (5)	District	Annually	No later than April 1 of each year			
66.	Revise Computer Aided Dispatch form to include an "Ethnicity" field	X (A)	Department	Within 90 days of the approval of a monitor	07-15-19			
67.	Analyze and disaggregate data monthly the Department's various contacts with students and school staff and provide a report to District and CAC on a quarterly basis	X (B)	Department	Within 120 days of the approval of a monitor	08-14-19			
68.	Provide Superintendent on a quarterly basis a summary report of complaints	XI (B)	Department	None specified in the judgment, but a due date has been set	7/15, 10/15, 1/15, 4/15			
69.	Convene a meeting annually of school administrators and members of the department to discuss questions, issues or changes to policies relating to the Department's role	XI (C)	District	None specified in the judgment, but a due date has been set	12-1-19 (and by the same date in subsequent years)			
70.	Submit a "State of Department" report to District by the outside police professional with input from the monitor and the CAC	XI (A)	Police Professional	Within 180 days of the approval of a monitor and then annually thereafter	10-13-19			
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	IV (D) (8)	Department	Within 240 days of the approval of a monitor	12-12-19			Any change in the evaluation system would be subject to negotiation with the applicable bargaining unit
72.	Review the data on the use of physical restraints by staff and as needed, develop an individual remediation plan for the staff member or school site	V (A) and (D)	District	Within 180 days of the approval of a monitor	10-13-19			Process to establish remediation plan for staff members would be subject to negotiation with the applicable bargaining unit

Department of Justice – Stockton Unified
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Task		Section No.	Responsible Party	Time for Completion	Due Date(s)	Board Action Required	Completed	Comments/Other
73.	Record all calls for service from school site staff that did not warrant a police response	I (E)	Department	None specified in the judgment, but based on the requisite training of staff, a due date has been set	Starting 10-13-19			
74.	Document any use of force by a CSM, CSA, or school staff for review by the District	V (B)	District	Within 180 days of the approval of a monitor	Starting 10-13-19			

DWK DMS 3388726v1