



November 16, 2018

Sent via Email and U.S. Mail

Jeff Harris, Superintendent
Del Norte County Unified School District
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Re: Del Norte Unified School District's 2018-2019 LCAP

Dear Superintendent Harris,

The American Civil Liberties Union Foundations of California (“ACLU”) submits the following Uniform Complaint Procedure (“UCP”) complaint regarding Del Norte County Unified School District’s (“DNCUSD” or “District”) failure to comply with the legal requirements of the Local Control Funding Formula (“LCFF”) in its 2018-2019 Local Control Accountability Plan (“LCAP”) and Annual Update.

The requirement to increase and improve services for low-income, English Learner, and foster youth students in proportion to the additional supplemental and concentration (“S&C”) funds they generate for the District is core to the equity promise of LCFF. School districts must properly justify such expenditures in their LCAPs to promote transparency and ensure that parents and stakeholders can understand their district’s spending decisions and provide meaningful input. The District’s LCAP fails to comply with LCFF in two significant ways: (1) it fails to adequately justify each districtwide S&C expenditure as principally directed towards and effective in meeting its goals for its low-income, English Learner, or foster youth and homeless students (collectively, “high-need students”) and allocates S&C funds for services that it likely cannot justify as principally directed; and (2) the District fails to adequately describe in the Annual Update how its actions/services were effective in meeting the District’s goals for its high-need students.

In our June 25, 2018 letter to the District, we expressed these and additional concerns, especially regarding the District’s stakeholder engagement process in developing its LCAP. We provided a series of remedies we hoped the District would employ prior to final approval of its 2018-2019 LCAP; and we are greatly encouraged that the District has been working with our partners, the Yurok Tribe Education Department and the True North Organizing Network, since September 2018 to implement remedies to strengthen its stakeholder engagement for the 2019-2020 LCAP. We are committed to fostering an inclusive school climate and access to the highest quality education for all students, especially the most vulnerable, including American Indian students, low-income youth, English learners, and homeless and

foster youth. We reiterate our desire to work with the District to ensure its 2018-2019 LCAP meets legal requirements and is in the best interests of all students.

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—such as DNCUSD—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). "In order to use [S&C] grant funds for an across-the-board salary increase, or for any other districtwide purpose, a district must demonstrate in its LCAP how this use of the grant funds will increase or improve services for unduplicated pupils as compared to services provided all pupils. This should be in proportion to the increase in supplemental and concentration funds apportioned on the basis of the number and concentration of unduplicated pupils." June 10, 2015 Letter from Tom Torlakson, State Superintendent of Instruction, to County and District Superintendents and Charter School Administrators at 3 (attached) (citations omitted).

The Annual Update is a critical tool to evaluate a school district's cycle of continuous improvement. Districts must describe the previous year's goals in this section and monitor progress toward expected outcomes for their high-need students, indicating areas for improvement, and "an assessment of the effectiveness of the specific actions." 5 CCR § 15497.5, Local Control and Accountability Plan and Annual Update Template. It "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." May 5, 2017 Letter from California Department of Education re: Request for Appeal – Fresno Unified School District, American Civil Liberties Union, Appellant ("CDE May 5, 2017 Decision") at 13 (attached).

Subsequent CDE decisions have clarified these legal requirements, as summarized below.

CDE's May 5, 2017 Decision

In 2016, the ACLU filed a UCP complaint against Fresno Unified School District ("FUSD"), 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. CDE May 5, 2017 Decision. In its 2015-2016 LCAP, FUSD allocated approximately \$35 million in S&C funds on special education programs, building maintenance, "employee supports," "middle school redesign," and push-down grants to school sites. *Id.* at 2. FUSD asserted its expenditures were properly justified because 86% of students in the district were high-need students, and services for English Learners and foster youth were increased overall. *Id.* at 3.

CDE found FUSD's justifications included no meaningful description of 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. Almost none of FUSD’s justifications for the challenged expenditures were found to be sufficient. In particular, FUSD’s actions and services for building maintenance, which noted 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). CDE also found FUSD’s descriptions of numerous actions and services related to teacher salaries and supports insufficient. Specifically, FUSD’s proposed action to “reduce large core classes in high schools” “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.” *Id.* at 9.

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 are high-need students. Most relevant here, the complaint alleged that KTJUSD’s LCAP 1) 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; 2) failed to adequately describe actual actions/services implemented in its Annual Update and how those actions/services were effective in meeting KTJUSD’s goals; and 3) failed to properly account for S&C funds in its Annual Update. 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 were 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.* Regarding the Annual Update, KTJUSD found that it provided adequate descriptions of actual actions and services which reported whether the action was implemented; and it explained all “material differences” between its budgeted and actual expenditures of S&C dollars. *Id.*

CDE sustained all three allegations against KTJUSD. First, CDE found that KTJUSD’s LCAP failed to explain 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 in particular. *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...* Simply stating that an LEA has a high percentage of unduplicated student enrollment does not meet this standard.

Id. at 7-8 (emphasis added). CDE held 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.” *Id.* at 8. 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, the LCAP completely failed to address how the actions and services were effective in meeting goals for high-need students. *Id.* at 9.

Second, CDE concluded that KTJUSD’s description in its Annual Update of the actual actions and services that were implemented in previous years fell far short of what is required. “[W]hat 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.” *Id.* at 10. KTJUSD’s LCAP provided very brief descriptions for complex actions/services; e.g., the planned action/service of “Dealing with students in crisis/trauma, brain development” requires “[i]dentifying the extent to which the needs of students in crisis or who have suffered traumatic events have been met” and the district’s brief explanation that this action was “implemented” failed to sufficiently identify the actual action/service undertaken. *Id.* at 11. Additionally, the Annual Update “d[id] not ‘include a discussion of relevant challenges and successes experienced with the implementation process’” as required, did not relate “overall effectiveness of the actions/services...with the relevant LCAP goal,” and did not adequately address the goals, actions or services planned for the 2017-2018 year. *Id.* at 11-13.

Third, CDE sustained complainants’ allegation that KTJUSD unlawfully failed to account for over \$650,000 in S&C funds and failed to explain and justify a material increase of \$296,450 for “maintenance” in the Annual Report. *Id.* at 13-15. “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.” *Id.* at 14. “[A]n increase of \$296,450 likely results from a meaningful change in the implementation of the action/service” and CDE directed KTJUSD to explain this material difference. *Id.*

Application of Law to DNCUSD's 2018-2019 LCAP

I. The District fails to adequately justify districtwide S&C expenditures for “maintenance,” “class size reduction,” and “transportation.”

In its 2018-2019 LCAP, 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 are principally directed and effective in meeting goals for high-need students. Over 50% of the District’s total S&C funds received from the State, or \$2.9 million, are allocated for three districtwide programs for which the District fails to explain how the services are principally directed toward and effective in meeting the District’s goals for its high-need students. This violates both the legal requirements of 5 CCR § 15496 and clear guidance from CDE, as described above. Moreover, it is likely impossible that the District can properly justify this spending of S&C dollars.

A. “Maintenance”

From 2017-2018 to 2019-2020, the District allocated \$1,244,542 in S&C funds intended for high-need students on facility “maintenance” that benefits *all* students with no meaningful explanation of how spending S&C dollars on these services is principally directed towards and effective in meeting the District’s goals for its high-need students. Moreover, it is likely impossible for the District to invoke such reasoning here, where S&C dollars are being spent on districtwide building maintenance; and doubly so for the \$100,000 in S&C funds that the District is placing in reserve for unspecified future “Capital Outlay Board Allocation to Deferred Maintenance.”

In its 2018-2019 LCAP, the District set aside \$336,124 total in S&C funds for “[c]ontinued Assessment of site cleanliness and implementation of maintenance plan with continued funding of additional staff and deferred maintenance funding to ensure safe, clean, and welcoming facilities.” District LCAP at 64. This amount includes \$100,000 in “Board allocation to deferred maintenance,” an action for which the District offers absolutely no explanation or justification for using S&C funds. Reporting in the Annual Update for the 2017-2018 school year, the District estimates spending \$243,835 in S&C funds on maintenance staff and \$323,733 on “Capital Outlay Board Allocation to Deferred Maintenance,” representing over 10% of the total \$5.2 million in S&C funds the District received for that school year. District LCAP at 21. Nowhere does the District meaningfully describe how those S&C dollars were principally directed and effective in meeting its goals for high-need students as compared all students. District LCAP at 71 (noting only that S&C expenditures provided “more welcoming schools through significant increases in site maintenance funding”).

As noted above, CDE has squarely rejected attempts to use S&C funds for general maintenance and made clear that the fact that high-need students benefit from any given action does not serve as an explanation of how these actions are *principally directed*. CDE May 5, 2017 Decision at 6, 11. 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 compared 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”). Here, the District offers no justification for spending hundreds of thousands of S&C dollars on “site cleanliness” and no meaningful description of what “deferred maintenance” entails or how could increase or improve services for high-need students in particular. Indeed, it is difficult to summon a legally sufficient justification for a districtwide building maintenance program that equally benefits all students in the district, let alone for putting such a large sum of S&C funds into reserves for future unspecified expenditures.

This is not simply about the language the District uses in its LCAP. If the District is spending S&C funds for services for all students in the District without regard to its goals for high-need students *in particular*, then it is not spending its S&C funds with the equity lens required by the intent and text of the LCFF statute. 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.

B. “Class Size Reduction” and Unspecified Intervention Services

The District’s LCAP budgets \$1,702,800 in S&C funds for “K-12 Class Size Reduction / Combo Reduction / Intervention Services to decrease middle school and high school dropout rates.” This amounts to over 30% of the District’s total S&C funds for the entire 2018-2019 school year. District LCAP at 47, 50-51. Again, the District fails to demonstrate in its LCAP how this expenditure is principally directed and effective in meeting the District’s goals for its *high need students*, as compared to its goals for all students in the state and local priority areas, as it must when it spends S&C dollars. District LCAP at 71 (stating in conclusory fashion that S&C expenditures provide “improved learning through decreased class size/eliminating combo classes”). As noted above, CDE found FUSD’s similar “justification” for spending S&C funds on class size reduction insufficient as a matter of law. CDE May 5, 2017 Decision at 9, 10 (noting that the district’s proposed action to “reduce large core classes in high schools” “provides no information as to how reducing large core classes in high schools is an action principally directed towards unduplicated pupils”). Additionally, the District’s LCAP does not explain how the S&C funds will be used to reduce class sizes and does not define “intervention services,” which further obscures how this districtwide spending of S&C funds is intended to increase and improve services for high-need students *in particular*, above and beyond what all students receive. CDE November 2, 2018 Decision at 8 (concluding that LCAP justifications for S&C expenditures were legally insufficient where a district failed to explain “how it considered factors such as the needs, conditions, or circumstances” of its high-need students and failed to explain “how the actions/services take[] these factors into consideration.”). As with its spending on “maintenance,” these expenditures should likely be paid for through base funding, because “class size reduction” is directed to the benefit of *all* students in the District. If class size reduction and intervention services are *actually* principally directed towards the District’s goals for its high-need students, the District needs to provide a much more detailed justification in its LCAP demonstrating how that is the case and how it is effective in meeting those goals.

C. “Transportation”

The District allocates \$922,337, or over 15% of its S&C funds for the 2018-2019 school year, for “transportation.” District LCAP at 54-55. The District’s *only* description of this service in the LCAP is

the following: “continue funding transportation beyond state allocation for all students.” Thus, the LCAP offers no justification at all for nearly \$1 million in S&C funds spent on a districtwide service that is – by the terms of its own description – intended to benefit *all* students rather than considering the specific needs of and challenges faced by high-need students, as required. The only mention of this expenditure in the “Demonstration of Increased or Improved Services for Unduplicated Pupils” (“Demonstration”) section is cursory: “Parent, community and student input concur that a more engaging curriculum, incentives, transportation, and improved school climate will increase student motivation to attend more regularly.” *Id.* at 70. It is likely impossible for the District to explain how this action is “principally directed and effective in meeting” its goals for its high-need students as compared to all students.

II. The District fails to adequately justify districtwide actions and services in its Annual Update.

As noted above, the Annual Update is a critical tool to evaluate a school district’s progress toward its goals for high-need students. This section must include a discussion of “relevant challenges and successes” in the implementation process and relate “overall effectiveness” of the district’s services to the district’s goals. CDE November 2, 2018 Decision at 11-13. A comprehensive analysis of the efficacy of District investments is especially critical in DNCUSD where, based on Fall 2017 California Dashboard data, homeless youth, foster youth, students with disabilities, American Indians, and English Learners are generally at “red” performance levels for ELA, math, and suspension rates. Here, the District’s Annual Update does not explain how its previous actions and services were effective in meeting its goals for high-need students, either by assessing relevant factors in its educational program for high-need students or by evaluating the relationship between its educational services and progress made (or not) in its annual measurable outcomes for high-need students *in particular*. The District’s lack of analysis is deeply troubling given the urgent needs identified in the California Dashboard.

A. Needs, conditions, or circumstances of high-need students

As described in detail above, the District must articulate the specific needs and circumstances of its high-need students to assess whether it is increasing or improving services for those students. CDE May 5, 2017 Decision at 11; CDE November 2, 2018 Decision at 7-9 (noting that the district must describe how it took these factors into consideration, “such as, for example, by the service’s design, content, methods, or location”). In its Demonstration section for the 2017-2018 LCAP year, the District identifies three broad “needs” for its high-need students that do not appear to be tethered to their status as high-need students, because all students need and benefit from these things: “additional learning time and intensity,” “increased home-school connections and family engagement,” and “attendance support.” District LCAP at 71. The LCAP and Annual Update offer no explanation as to how these needs are *specific* to high-need students. Furthermore, these terms are so vague and all-encompassing that it is virtually impossible to evaluate whether the District has, in fact, increased or improved services for its high-need students in the previous year. If the stated “needs, conditions or circumstances” of high-need students are stated at such a broad level of generality that virtually every service the District offers would address them, then the District is violating the key requirement of LCFF to provide increased or improved services to high-need students *as compared to all students*.

B. Assessing the effectiveness of making progress towards goals for high-need students

Additionally, the District must clearly explain how the actions and services described in its Annual Update were (or were not) *effective* in meeting their goals for high-need students, linking those actions and services to expected annual measurable outcomes and relevant goals. CDE November 2, 2018 Decision at 11 (noting that the Annual Update must relate “overall effectiveness of the actions / services...with the relevant LCAP goal”). Here, the Annual Update fails to assess how effective (or not) the District’s actions were in reaching its goals for high-need students, i.e., whether its investments are having a positive impact on student outcomes. Instead, the District simply re-states a number of measurable outcomes without linking them to specific actions and without evaluating its actions when the District failed to meet its target outcomes. For example, for Goal 1, the District reports that it:

met its target of 5% growth in ELA on the CAASPP, but showed no growth in math. The Early Assessment of Progress rate did not change significantly from the prior year. The EL reclassification rate decreased by 6%, but the progress toward proficiency in Fall 2017 increased by 27%. Del Norte High school held the dropout rate below the 5% target, but Sunset High School nearly doubled its dropout rate...

District LCAP at 10. The District does not reference – let alone evaluate – whether any of the 14 actions totaling nearly \$3,000,000 in S&C funds from the 2017-2018 LCAP year had any impact on Goal 1, “increase student achievement and close the achievement gap.” Nine actions, accounting for over \$1,000,000 in S&C funds, are listed under Goal 2 to “increase student attendance”; but the Annual Update does not assess the effectiveness of these actions at all, stating only that “[t]he district met its goal of 94% attendance. The chronic absenteeism rate goal was not met.” District LCAP at 14. Instead, the District summarily states in its Demonstration section, with no supporting evidence, that “[t]he District strongly believes that when students regularly attend welcoming schools that provide an engaging curriculum, extended learning opportunities, and frequent and effective communication with families DNUSD students will meet the achievement goals of the LCAP.” District LCAP at 71. Without an explanation of how its actions and services relate to measurable outcomes, the Annual Update fails to explain how the District’s actions were (or were not) effective in meeting the LCAP goals for its high-need students. CDE November 2, 2018 Decision at 11. Finally, the Annual Update does not include any “discussion of relevant challenges and successes experienced with the implementation process” as required. CDE November 2, 2018 Decision at 11.

The District cannot improve services for high-need students or make steps to close significant performance gaps if it does not critically evaluate progress and interrogate its efforts to serve these students. The lack of analysis and scrutiny of past actions in the Annual Update is not a matter of mere “non-compliance” with LCFF regulations – it undermines the stakeholder engagement process because stakeholders cannot determine whether the District’s actions are effective and thus have incomplete information with which to provide input on District spending.

III. Conclusion

The District’s LCAP should clearly explain to all stakeholders—including students, parents, teachers, and Tribes—the District’s strategy for utilizing S&C funds to support and improve outcomes for high-need students. There is significant work for the District to do to accomplish that end. That the LCAP does not

identify and justify its districtwide uses of S&C funds and does not adequately describe its services undermines LCFF's commitment to transparency and community engagement with District stakeholders.

For the reasons described above, we request that the District amend its LCAP to reallocate its S&C funding towards actions and services that it is able to justify as principally directed towards and effective in meeting the District's goals for its high-need students. It is also critical that the Tribes and community stakeholders participate in the revision process to ensure that their students have equal access to the highest quality education possible. We hope the District will continue to engage in constructive dialogue with the Tribes and community stakeholders to develop and collaborate on strategies to improve school climate and outcomes for high-need students.

Because we have previously presented these issues to the District in our June 25 letter, we trust that DNCUSD will be able to conclude its investigation and render a decision in an expeditious manner. We look forward to finding a collaborative resolution that will best serve the District's students and families and ensure the District's LCAP is fully compliant with state laws and regulations.

Sincerely,



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Enclosures: Letter from ACLU, Yurok Tribe and True North Organizing Network to Del Norte County Unified School District (June 25, 2018).

Letter from Tom Torlakson, State Superintendent of Instruction, to County and District Superintendents and Charter School Administrators (June 10, 2015),
<https://www.documentcloud.org/documents/2096328-lcff-teacherraises-cdememo-ttrevised061015.html>

Letter from Jeff Breshears, Director of Local Agency Systems Support Office, to Abre' Conner, ACLU of Northern California, Regarding Request for Appeal – Fresno Unified School District (May 5, 2017).

Letter from from Jeff Breshears, Director of Local Agency Systems Support Office, to Yurok Tribe, Hoopa Valley Education Association, and American Civil Liberties Union, Appellants, re: Request for Appeal – Klamath-Trinity Joint Unified School District (November 2, 2018).

