



**VIA ELECTRONIC AND U.S. MAIL**

January 30, 2019

Jeff Breshears, Director  
Local Agency Systems Support Office  
California Department of Education  
1430 N Street  
Sacramento, CA 95814  
[Jbreshears@cde.ca.gov](mailto:Jbreshears@cde.ca.gov)

**RE: Appeal of UCP Complaint re: Del Norte County Unified School District's Failure to Comply with Legal Requirements in its 2018-2019 LCAP and Annual Update**

Dear Director Breshears,

We submit this appeal of the Del Norte County Unified School District's ("District") determination on the Uniform Complaint Procedure ("UCP") complaint ("Complaint") the ACLU Foundations of California ("ACLU") filed on November 16, 2018 regarding the District's 2018-2019 Local Control and Accountability Plan and Annual Update ("LCAP"). On January 15, 2019, the District issued a final written decision regarding the November 16 Complaint ("Response"), finding that its 2018-2019 LCAP met all applicable legal requirements. We disagree and appeal the District's Response.

As discussed more fully in the attached Complaint, Exhibit 1, in its 2018-2019 LCAP and Annual Update the District violated its legal obligations under 5 CCR Section 15496(a) by failing to adequately justify supplemental and concentration ("S&C") fund allocations to "maintenance," "class size reduction," and "transportation." Additionally, the District failed to evaluate significant expenditures of prior year's S&C funds in its Annual Update to determine if the programs and services paid for by S&C dollars were effective in meeting its goals for high-need students. The District's Response is attached here as Exhibit 2. In support of its conclusion that its LCAP and Annual Update met all legal requirements, the District reiterates throughout its Response that the California Department of Education ("CDE") approved the LCAP in Fall 2018. We firmly believe the District's LCAP compels a closer look by your office and thus timely appeal our Complaint to your office.

Petitioners will not duplicate here the extensive discussion in our Complaint of how the District's LCAP and Annual Update falls short of legal requirements. Below is a summary of the issues and the District's response to each.

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

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). Petitioners’ Complaint alleges that the District violated its legal requirements under Education Code § 42238.07 and 5 CCR § 15496 by failing to adequately identify and justify districtwide expenditures of S&C funds to “maintenance,” “class size reduction,” and “transportation” in its 2018-2019 LCAP and Annual Update.

The District fails to explain in its LCAP how any of these three actions / services are principally directed toward and effective in meeting its goals for high-need students. In fact, there is no discussion at all of high-need students in the LCAP sections describing expenditures of S&C funds on “maintenance,” “class size reduction,” or “transportation.” In its Response, the District presents post-hoc rationalizations for spending S&C dollars on each of these programs. As a preliminary matter, the additional language purporting to justify these expenditures is not part of the LCAP; thus, language presented in the Response to address this concern does not remedy legal issues presented in the LCAP itself.

More substantively, the purported justifications in the Response fail to describe how these services are principally directed toward the District’s goals for its high-need students *as compared to all students*. For example, regarding its expenditure of hundreds of thousands of dollars in S&C funds on “maintenance,” including \$323,733 on “Capital Outlay Board Allocation to Deferred Maintenance,” the District’s Response states that

[t]he intent behind this item was an acknowledgement that of the facts that the District serves almost 70% unduplicated pupils, that the schools most heavily impacted by minimal custodial and maintenance needs are smaller, outlying schools serving high numbers of unduplicated students, and that State Priority 1 addresses facilities that impact school climate. Many of the input comments made by consultation groups addressed the need for additional staff at these schools, as well as comprehensive high school, and the negative impact that dirty or deteriorating facilities had on the perception of at-risk students, most especially low income students who rely on schools for warmth, stability, cleanliness, food security, etc.

Response at 8. Petitioners appreciate that the District consulted with stakeholders on the question of facility maintenance, which is essential to ensure an adequate education to its students. A warm and stable school environment is a need shared by all students; furthermore, all students have the basic right to school facilities that are safe and healthy. The District’s Response is concerning in that it suggests some current facilities do not meet this basic standard. But nothing in the above cited paragraph from the District’s Response explains how the District

“considered the factors such as the needs, conditions or circumstances of its unduplicated pupils in particular, in connection with” building maintenance. *See* May 5, 2017 Letter from CDE re: Request for Appeal – Fresno Unified School District, American Civil Liberties Union, Appellant at 11 (describing the standard required to meaningfully describe how S&C funds were principally directed and effective in meeting Fresno Unified School District’s goals for its high-need students as compared to the services provided to all students). To the extent that high-need students are mentioned in the above paragraph, it appears to describe comments that the District received during the stakeholder engagement process about how “at-risk students” perceive the schools, rather than demonstrating how expenditures on building maintenance were principally directed toward meeting its goals for high-need students. In Petitioners’ view, it is difficult to summon a legally sufficient justification for spending S&C funds on a districtwide building maintenance program that equally benefits all students in the district, let alone for putting over \$300,000 of those dollars, generated by and for the benefit of high-need students, in reserves for future unspecified expenditures.

The purported justifications presented in the District’s Response for its expenditures of S&C dollars for “class size reduction” and “transportation” are similarly unavailing. The District claims to justify districtwide “class size reduction” by noting that “English learners and low income students who came from homes with language deficits needed additional one-on-one, small group, and additional supports to achieve commensurate with their peers.” Response at 9. Yet the expenditure at issue is for overall class size reduction, not for a program that provides one-on-one, small group, and additional supports for English learner or low-income students. Even if “the Board of Trustees felt strongly that having smaller class sizes and eliminating combination classes to the greatest extent possible would benefit low income and EL students,” *id.*, nothing in the LCAP indicates that class size reduction is principally directed and effective at meeting the District’s goals for its high-need students as compared to the benefit conferred to all students in the District. Similarly, the District’s own description of “transportation” services in its LCAP – on which over \$1 million in S&C funds was spent – specifically notes that the services is “for all students.” LCAP at 14, 53.

## **2. The District failed to adequately justify districtwide actions and services in its Annual Update.**

Petitioners’ Complaint more fully describes the legal deficiencies in the District’s Annual Update. The District acknowledged in its Response that the metrics in the Annual Update “are vague and need to be revised in future LCAP planning and iterations and to be tied to action items.” Petitioners appreciate the District’s candor on this issue but are unclear, in concrete terms, what corrective action the District has taken or plans to take to remedy the problem.

## **Conclusion**

For the reasons stated above and in the Complaint, the District must revise its 2018-2019 LCAP and Annual Update to identify and properly justify all S&C funds allocated on a districtwide and schoolwide basis; reallocate all S&C funds toward services principally directed to meet its goals

for high-need students; and conduct a meaningful analysis in its Annual Update to determine whether its previous actions and services were effective in meeting its goals for high-need students.

We request that CDE investigate and issue a ruling to require the District to revise its 2018-2019 LCAP with clear and detailed instructions for corrective action. We look forward to CDE's initial response within 14 days of receipt. Please contact Linnea Nelson at [lnelson@aclunc.org](mailto:lnelson@aclunc.org) if you have any additional questions or require any additional information to adjudicate the appeal.

Sincerely,



Linnea Nelson, ACLU Foundation of Northern California  
Theodora Simon, ACLU Foundation of Northern California  
Sylvia Torres-Guillén, ACLU Foundations of California

cc: Jeff Harris, Superintendent, Del Norte County Unified School District  
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Encl.: Exhibit 1: UCP Complaint from ACLU Foundations of California to Del Norte County Unified School District Superintendent Jeff Harris (November 16, 2018)

Exhibit 2: Del Norte County Unified School District's Response to UCP Complaint from ACLU Foundations of California (January 15, 2019)