



October 15, 2020

*Via E-mail and U.S. Priority Mail*

Honorable State Superintendent Tony Thurmond  
Local Agency Systems of Support Office  
California Department of Education  
1430 N Street  
Sacramento, CA 95814  
[superintendent@cde.gov](mailto:superintendent@cde.gov)

**RE: Appeal of San Bernardino County Superintendent of Schools' Response re: LCAP Uniform Complaint**

Dear Honorable Superintendent Thurmond,

We submit this appeal of the determination of the San Bernardino County Superintendent of Schools (“SBCSS”) with respect to the Uniform Complaint Procedure (“UCP”) complaint that Public Advocates, Inc. and the ACLU Foundation of Southern California filed on behalf of Congregations Organized for Prophetic Engagement and Inland Congregations United for Change (collectively “Complainants”), two prominent community-based organizations in San Bernardino that organize students and families of color and engage in school-based advocacy.

The Local Control Funding Formula (“LCFF”) reflects California’s commitment to education equity. “With a focus on equity, community engagement, and local control, the LCFF is designed to level the playing field for all students . . . [and] to close the achievement gap for historically underserved and underperforming student groups.”<sup>1</sup> However, the promise of LCFF is imperiled because county offices of education such as SBCSS are eroding the law’s basic accountability mechanisms by allowing districts to circumvent their obligations to increase and improve services to the students who need it most. Specifically, as discussed more fully in the underlying UCP complaint,<sup>2</sup> SBCSS has abdicated its statutory LCFF oversight duties by improperly approving Local Control Accountability Plans (“LCAPs”) from Local Education Agencies (“LEAs” or “districts”) that fail to prioritize equity and high-need students, lack transparency, and undermine meaningful community engagement and accountability. Specifically, SBCSS approved LCAPs that violated the LCFF regulations and template in the following ways:

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<sup>1</sup> Robin E. Melver-Brown, *The Influence of Administrators’ Allocations of the Local Control Funding Formula on African American Students’ Academic Achievement*, Ed.D. DISSERTATIONS IN LEADERSHIP FOR EDUCATIONAL JUSTICE 1 (Apr. 30, 2020), <https://inspire.redlands.edu/cgi/viewcontent.cgi?article=1109&context=eddissertations>.

<sup>2</sup> Complainants’ UCP Complaint Against SBCSS and San Bernardino Office of Education (June 30, 2020) (“Complaint”).

1. Failed to demonstrate how the LEA is meeting its Minimum Proportionality Percentage (“MPP”) obligation to increase or improve services for low-income students, English learners, and foster youth (collectively “high-need students”) in the LCAP;
2. Failed to ensure the LEA is actually increasing or improving services by the MPP for each fiscal year and making up any proportionally shortfalls in future years; and
3. Failed to identify and justify districtwide expenditures that are listed as contributing to the increased or improved services requirement, and, most egregiously, failed to justify law enforcement actions, which have been shown to harm the very students whom LCFF is designed to protect.

As discussed in detail below, in its response<sup>3</sup> to the Complaint, SBCSS disclaimed all liability and concluded that it complied with its statutory obligations and the LCFF regulations despite admissions that:

1. The approved LCAPs fail to demonstrate MPP in the LCAP, as required by 5 Cal. Code Regs. 15496(a) and the LCAP template and instructions;<sup>4</sup>
2. SBCSS does not ensure that the LEAs actually increase or improve services by the MPP for each fiscal year, as required by Educ. Code section 42238.07(a)(1) and 5 Cal. Code Regs. 15496(a);<sup>5</sup> and
3. The approved LCAPs include law enforcement actions listed as contributing to the increased or improved services requirement that LEAs have failed to identify or properly describe in the DIISUP as required by 5 Cal. Code Regs. 15496(b) and the LCAP template and instructions.<sup>6</sup>

SBCSS’s attempted defense of its improper LCAP approvals is troubling considering these admissions. Its arguments evince an erroneous interpretation of the LCFF requirements, which is reflected throughout its Response and in the training materials that it includes as exhibits. Specifically, SBCSS relies on documents outside the LCAP to assess proportionality,<sup>7</sup> has an overly narrow interpretation of the base program,<sup>8</sup> fails to apply the correct analysis to assess

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<sup>3</sup> SBCSS’s UCP Complaint Response (Sept. 15, 2020) (“Response”).

<sup>4</sup> See *infra* Part I; see also Ex. 2, Response at 17 (admitting that districts include “many [but not all] of the programs and services in the [Demonstration of Increased/Improved Services for Unduplicated Pupils (“DIISUP”)] section” and that SBCSS relies on documents outside the LCAP to determine if MPP has been met); *id.* at 23 (admitting that Hesperia Unified School District only identified \$27,083,161 of expenditures in the DIISUP section, which amounts to a 15% increase or improvement of services for high-need students—far less than the required 26.09%); Ex. 1, Complaint at Ex. 8 at 277 (2019-20, Victor Valley Union High School District LCAP) (“Currently the 2019-20 LCAP reflects \$7,637,490.00 of the district’s LCFSCG which is 26% of the total SCG.”).

<sup>5</sup> Ex. 2, Response at 27 (disclaiming any obligation to calculate proportionality shortfalls and require LEAs to address them).

<sup>6</sup> See *infra* Section III.

<sup>7</sup> See *infra* Section I & note 47.

<sup>8</sup> See *infra* note 97 and accompanying text.

whether an action is principally directed,<sup>9</sup> completely omits the required effectiveness analysis,<sup>10</sup> and inappropriately suggests that the percentage of across-the-board services benefitting high-need students can be counted towards the increased/improved services requirement.<sup>11</sup>

SBCSS's faulty interpretation of the relevant statute and regulations undermine the transparency, accountability, and equity imperatives of LCFF and will continue to lead to widespread misspending and opacity throughout San Bernardino County if it is not corrected. In its role as a technical assistance provider, SBCSS is spreading its baseless, watered-down version of LCFF requirements to every district in the county and potentially throughout the state, given its staff's role in statewide LCFF initiatives, to the potential detriment of millions of high-need students.

Accordingly, it is crucial that the State Superintendent of Public Instruction and the California Department of Education ("CDE") issue a decision (1) clarifying the law, (2) ordering SBCSS to correct the deficiencies and errors in its LCAP review and approval process and training materials, and (3) requiring SBCSS to review the 2019-20 LCAPs analyzed in the Complaint to identify material proportionality shortfalls that must be carried forward to future LCAP years to meet the statutory obligation to serve high-need students equitably.

### **I. SBCSS Must Ensure that Districts Demonstrate Proportionality in Their LCAPs**

Complainants' first allegation is based on the SBCSS's obligation to ensure that districts demonstrate proportionality in their LCAPs.<sup>12</sup> The allegation is not based on a failure to account for "dollar for dollar, every expense of S&C funds in its LCAP," nor is it based solely on a calculation of the actions in the Goals, Actions, and Services ("GAS") section of the LCAP, as SBCSS's Response inaccurately states.<sup>13</sup> In fact, Complainants' first claim is not about spending at all: it is about proportionality, which is the requirement to "increase or improve services for high-need students in proportion to the increase in funds the district receives on the basis of those students under LCFF."<sup>14</sup> Regardless of how much spending is accounted for in the LCAP, districts must demonstrate proportionality in their LCAPs.<sup>15</sup> SBCSS does not dispute this.

As explained in the Complaint, the operative 2019-20 LCAP template and instructions require LEAs to describe in the DIISUP section "how services provided for unduplicated pupils are

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<sup>9</sup> See *infra* Part I.B (improper analysis of Hesperia's DIISUP as demonstrating that identified actions are principally directed), III.A (improper analysis of Hesperia's law enforcement action as principally directed); see also Ex. 2, Response at Ex. 2 at 32 (training slide that appears to limit the principally directed analysis to whether unduplicated pupils are represented in the student groups that will be served by a districtwide or schoolwide action), 37 (training slide that concludes transportation can be funded by S&C funds merely because socio-economically disadvantaged students are served and transportation is not required by law).

<sup>10</sup> See *infra* note 58.

<sup>11</sup> See Ex. 2, Response at Ex. 2 at 28 (training slide for determination of whether S&C grant funds can be used to pay for proposed LCAP actions).

<sup>12</sup> See Ex. 1, Complaint at 5 ("The SBCOE approved multiple LCAPs with egregious proportionality deficiencies, undermining the fundamental LCFF requirements of equity, transparency, and community accountability, and denying high-need students the benefit of the increased and improved services needed to close opportunity gaps.")

<sup>13</sup> See Ex. 2, Response at 15.

<sup>14</sup> See CAL. EDUC. CODE § 42238.07.

<sup>15</sup> See CAL. CODE REGS. tit. 5 § 15496(a) ("An LEA shall provide evidence in its LCAP to demonstrate how funding apportioned on the basis of the number and concentration of unduplicated pupils . . . is used to support such pupils.").

increased or improved *by at least the percentage calculated* as compared to services provided for all students in the LCAP year.”<sup>16</sup> Although proportionality may be demonstrated qualitatively (growth in quality, *i.e.*, improvement in services) or quantitatively (growth in quantity, *i.e.*, increase in services), the demonstration must show how the cumulative increase and improvement in services meets a quantitative threshold, which is the MPP.<sup>17</sup> It is undisputed that SBCSS approved the San Bernardino City Unified School District (“SBCUSD”), Hesperia Unified School District (“HUSD” or “Hesperia”), and Victor Valley Union High School District (“VVUHSD”) LCAPs, which failed to provide the requisite demonstration of proportionality in the DIISUP.<sup>18</sup>

Instead, SBCSS claims that, “because each and every expense of S&C funds is not captured in the LCAP, SBCSS conducts a comprehensive review of district LCAPs alongside other budgetary documents provided by the districts to ensure that those programs and services referenced in the DIISUP section equal or exceed the district’s required MPP for the LCAP year.”<sup>19</sup> SBCSS’s method to ensure each district is meeting its proportionality obligation is contrary to LCFE regulations and LCFE template instructions, both of which require the demonstration to be made *in the LCAP*, and, as such, is unlawful. Additionally, relying on crosswalks and other budget documents to demonstrate proportionality is inadequate because these documents do not allow for any demonstration of how that action is principally directed and effective for high-need students.<sup>20</sup> SBCSS’s reliance on pure budgetary documents is based on the faulty premise that the increased and improved services requirement is a strict spending requirement, rather than an equitable services obligation.<sup>21</sup>

Further, districts undermine transparency when they share certain vital information only in the crosswalk at stakeholder engagement meetings as opposed to having that information in the LCAP, which is available in its entirety to the public for review and dialogue at several public board meetings. For example, although the SBCUSD crosswalk that included “School Police” may have been presented at a stakeholder meeting, most of the organizations that represent low-income students of color and their families in SBCUSD (including Complainants) were unaware that SBCUSD counted its school police budget towards its equity obligation. Thus, a clear

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<sup>16</sup> See Ex. 1, Complaint at Ex. 5 (2017-20 LCAP Template Instructions: Demonstration of Increased or Improved Services for Unduplicated Students) (emphasis added).

<sup>17</sup> SBCSS’s own training materials reflect this understanding. See Ex. 2, Response at Ex. 2 at 25 (SBCSS training slides).

<sup>18</sup> SBCSS acknowledges that the DIISUP is the place to include services related to the proportionality requirement, but then admits that not all services that are counted towards the proportionality obligation are included in the DIISUP, which is further evidence that SBCUSD, Hesperia, and VVUHSD have not demonstrated proportionality in their LCAPs. Compare Ex. 2, Response at 15 (“Complainants fail to consider the additional programs and services identified in the Districts’ DIISUPs, which is the section that correlates directly to the MPP obligation, not the GAS section.”), with Ex. 2, Response at 17 (“[D]istricts . . . include *many* [not all] of the programs and services in the DIISUP section.”) (emphasis added).

<sup>19</sup> See Ex. 2, Response at 17.

<sup>20</sup> For example, the \$4 million in Professional Development identified in the San Bernardino crosswalk is not justified as principally directed and effective in the DIISUP, and therefore, cannot be properly counted as contributing to MPP. See *id.* at Ex. 3 at 2.

<sup>21</sup> While both parties agree that MPP is not a dollar-for-dollar obligation, we nonetheless also seem to agree that calculating expenditures is one appropriate way to measure proportionality. In other words, SBCSS’s reliance on crosswalks to account for S&C funds acknowledges that adding up the value of services that contribute to the MPP is one way to determine whether an LEA satisfied its equity obligations. See Ex.2, Response at 15-25.

transparency violation occurred that could have been cured if SBCSS had held SBCUSD accountable to the requirement that all actions contributing towards the increased and improved services requirement be included in the LCAP.

SBCSS incorrectly asserts that Complainants relied exclusively on the actions included in the GAS section to analyze proportionality. In fact, Complainants only turned to the GAS section after it became apparent that the DIISUP section failed to demonstrate that proportionality had been met.<sup>22</sup>

SBCSS is also incorrect that “[a]ll programs and services described in the DIISUP section do not have to correlate to actions and services listed under the GAS section of the LCAP.”<sup>23</sup> In its decision about Merced City School District (“Merced”), CDE held: “The actions/services included as contributing to the increased or improved services requirement must be indicated as such in the [GAS] section of the LCAP. As a result, the description of actions and services in the [DIISUP] section must be aligned with those actions and services that are included in the [GAS] section as contributing to meeting the increased or improved services requirement.”<sup>24</sup> More fundamentally, actions identified in the DIISUP as increasing or improving services for high-need students must be included in the GAS section so that the District and stakeholders are “able to track implementation and address effectiveness of the action over time, as required by the annual update process.”<sup>25</sup> Only actions listed in the GAS section are subject to the Annual Update process, so all actions that are contributing to the increased or improved services requirement must be included in that section. This requirement is also consistent with the clarifications added to the LCAP template prior to the pandemic. On January 8, 2020, SBE approved the 2020-23 LCAP template and instructions, which included instructions that “[a]n LEA’s description in [the Increased or Improved Services for Foster Youth, English Learners, and Low-Income Students] section must align with the actions included in the Goals and Actions section as contributing.”<sup>26</sup>

Complainants agree with SBCSS that the LCAP should be a functional and accessible document that encourages transparency and understanding. However, Complainants disagree with SBCSS that withholding crucial information from the school community about how the district is meeting its equity obligation is an acceptable way to achieve this goal. To increase usability, the 2020-23 LCAP template adopted by SBE requires LEAs to fill out expenditure tables, which clearly document in one place all the actions (regardless of funding source) contributing to the increased and improved services requirement.<sup>27</sup> SBCSS points out that “districts may receive ‘credit’ towards their MPP for expenditures of funds other than S&C grants . . . .”<sup>28</sup> Although this is generally true, some non-LCFF funds carry restrictions that would prevent double

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<sup>22</sup> See, e.g., Ex. 1, Complaint at 6-7 (noting that SBCUSD DIISUP never describes how the actions described qualitatively or quantitatively amount to the MPP and then pointing out that the contributing expenditures in the GAS section also amount to less than the MPP obligation, when expressed quantitatively).

<sup>23</sup> Ex. 2, Response at 16.

<sup>24</sup> Ex. 3 at 6 (Apr. 26, 2019, CDE Decision – Merced City); see also Ex. 4 at 7 (Nov. 2, 2018, CDE Decision – Klamath-Trinity Joint Unified) (same).

<sup>25</sup> See Ex. 5 at 21 (Jul. 30, 2020, CDE Decision – Los Angeles Unified).

<sup>26</sup> See Ex. 8 at 16 (2020-23 LCAP Template and Instructions).

<sup>27</sup> *Id.* at 19-24 (2020-23 LCAP Template and Instructions).

<sup>28</sup> See Ex. 2, Response at 19.

counting.<sup>29</sup> Regardless of the source of the funds, that “credit” is obtained by listing an action as contributing to the increased or improved services requirement in the GAS section.

Thus, the solution to improve LCAP usability is to organize the information in a more user-friendly manner, as opposed to omitting actions that the LEA is counting towards its proportionality obligation, which is the practice that SBCSS is attempting to justify.<sup>30</sup> In fact, drawing SBCSS’s interpretation to its logical conclusion could result in a bare—or entirely empty—GAS section that fails to provide any fiscal transparency or information necessary for community accountability. In fact, the SBE-approved instructions to the 2020-23 LCAP template clarify that “[s]ervices are increased or improved by those actions in the LCAP that are included in the Goals and Actions section as contributing to the increased or improved services requirement. This description must address how these action(s) are expected to result in the required proportional increase or improvement in services for unduplicated pupils as compared to the services the LEA provides to all students for the relevant LCAP year.”<sup>31</sup>

In summary, LCFE regulations and the LCAP template require that proportionality be demonstrated in the LCAP itself and that all actions claimed as part of MPP in the DIISUP must also be included in the GAS section as contributing to the increased or improved services requirement. As discussed in more detail below, applying its flawed understandings, SBCSS approved multiple LCAPs in 2019-20 that fell egregiously short of demonstrating their MPP in violation of the county’s oversight and accountability responsibilities.

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<sup>29</sup> See 20 U.S.C. §§ 6314, 6321 (Title I); 20 U.S.C. § 6691 (Title II); 20 U.S.C. § 6825(g) (Title III); 34 CFR 300.164(a) (Individuals with Disabilities Act). Federal funding, like Title I, contains conditions limiting the way in which these funding streams can be used. See *Bennett v. Kentucky Dep’t of Educ.*, 470 U.S. 656, 670-71 (1985) (holding that defendant Department of Education violated the Title I “supplement, not supplant” provision because Title I funding was used to pay “substantially all the costs” for readiness classes that were supported by state and local funds). Thus, the use of federal funding, like Title I funds, to fully or partially meet an LEA’s MPP requirement under LCFE supplants the state’s use of LCFE funds to increase or improve services. See *Dept. of Educ., State of Hawaii v. Bell*, 770 F.2d 1409, 1413 (9th Cir. 1985) (“Title I contemplated that state and local funds be allocated first, with Title I funds ‘layered on top, thereby concentrating the available educational assistance on those needing it the most.’”). The only authority that SBCSS cites in support of its argument to the contrary is the October 5, 2018 Mojave Unified School District (“MUSD”) CDE Decision. However, the MUSD decision further supports Plaintiffs’ arguments that the “supplement, not supplant” condition to most federal funding does not allow districts to count actions funded by these sources towards their MPP requirement. There, CDE found that certain actions listed in MUSD’s LCAP did not contribute to the increased/improved services requirement because the actions were funded solely by Title I funds. See Ex. 1, Complaint at Ex. 13 at 12 (Oct. 5, 2016, CDE Decision – Mojave Unified). Similarly, SBCSS approved at least one district’s LCAP that contains the same issue around Title I funding. See *id.* at Ex. 8 at 122-24 (2019-20, VVUHSD LCAP) (Action 1.2 is listed as contributing to the increased/improved services requirement even though it is solely funded by Title I funding). Additionally, this incorrectly listed MPP-contributing action was funded by LCFE funds in previous years, which is another indicator that the “no-supplant” condition for Title I funding was violated for the current year. See *id.* at 124; see also *New York v. U.S. Dep’t of Educ.*, 903 F.2d 930, 934-35 (2d Cir. 1990) (considering the state’s history of using state and local funds in the absence of federal funds); *Kentucky Dep’t of Educ.*, 470 U.S. 656, 663 (finding that the government is entitled to recover school funds spent contrary to “supplement, not supplant” assurances made as a condition of receiving federal funds).

<sup>30</sup> See Ex. 2, Response at 17 (arguing that identifying all actions contributing towards the MPP in the GAS section “actually does a disservice to the districts and their stakeholder engagement process”).

<sup>31</sup> See Ex. 8 at 19 (2020-23 LCAP Template and Instructions).

A. SBCSS Approved the 2019-20 SBCUSD LCAP Even Though It Failed to Demonstrate Proportionality by the Required MPP

There is no dispute that SBCUSD had an obligation to increase or improve services for high-need students by 35.78% compared to the services that it provided to all students.<sup>32</sup> As discussed above, this demonstration must be made in the LCAP. SBCSS claims that “[a] review of the SBCUSD Crosswalk for 2019-20 confirms that all of the programs and services referenced in the DIISUP, as well as the GAS section, meet the 35.78% required MPP, as expenditures on these items amount to \$132,199,565.”<sup>33</sup> SBCSS is incorrect for several reasons.

First, even if all the actions listed in the GAS and DIISUP sections satisfy the requirements for an action to be counted as an increased or improved service, \$132,199,565 in contributing expenditures amounts only to a 33.71% increase or improvement of services,<sup>34</sup> which falls short of the 35.78% MPP.<sup>35</sup>

Second, SBCUSD identifies and describes only a handful of actions in its DIISUP. A district may only count districtwide and schoolwide services towards their proportionality obligation if they are identified and justified as principally directed and effective in the DIISUP.<sup>36</sup> SBCSS does not appear to dispute this legal requirement.<sup>37</sup> However, as demonstrated in the table below, the expenditures for the actions identified in the DIISUP amount, at most, only to \$27.6 million, which is a 7% demonstration of increased or improved services—far short of the required 35.78% MPP.

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<sup>32</sup> See Ex. 2, Response at 21 (noting “the 35.78% required MPP”).

<sup>33</sup> See *id.*

<sup>34</sup> The percentage of increased or improved services is calculated by dividing the contributing expenditures (\$132,199,565) by base program allocations (\$392,162,976). See Ex. 1, Complaint at 6. This approach is similar to SBCSS’s process to determine the percentage of increased or improved services. See Ex. 2, Response at Ex. 2 at 33 (calculating increased or improved services percentage by dividing S&C expenditures by base expenditures).

<sup>35</sup> SBCSS points out that \$9,426,588 for the “CAPS” after-school program also contributes to the MPP, bringing the total expenditures for increased and improved services to \$141,616,653. See Ex. 2, Response at 21. However, this program is identified in the GAS section as *not* contributing to the increased or improved services requirement and is not identified or described in the DIISUP section. See Ex. 1, Complaint at Ex. 6 at 79 (2019-20, SBCUSD LCAP) (CAPS program include in Action 1.1 and listed as an action/service *not included* as contributing to the Increased or Improved Services Requirement), 118 (no mention of CAPS in the 2019-20 DIISUP, other than in relation to foster youth, who receive immediate access to the program). The budget for the action that includes CAPS in the LCAP is \$2,125,000 (*id.* at 81) and \$2,000,000 in the crosswalk (Ex. 2, Response at Ex. 3 at 1), which is less than a quarter of the purported budget for the program in SBCSS’s Response (\$9,426,588). In fact, the only document that lists \$9,426,588 in expenditures for after school programming is the Restricted General Fund Programs document, which doesn’t even mention CAPS. See Ex. 2, Response at Ex. 3 at 12 (SBCUSD 2019-20 Restricted General Fund Programs – After School Education & Safety line item). Therefore, SBCUSD cannot claim this expenditure towards its proportionality obligation.

<sup>36</sup> See 5 CAL. CODE REGS. § 15496(b)(1); see also Ex. 1, Complaint at Ex. 5 (2017-20 LCAP Template Instructions: Demonstration of Increased or Improved Services for Unduplicated Students) (“If the overall increased or improved services include any actions/services being funded and provided on a schoolwide or districtwide basis, identify each action/service and include the required descriptions . . .”).

<sup>37</sup> See Ex. 2, Response at 21 (“[T]he district has provided detailed explanations of how [programs listed in the DIISUP] constitute an increase or improvement beyond those services provided to all students, and how such programs/services are principally directed and effective in meeting the District’s goals for its high need pupils.”)

DIISUP Description <sup>38</sup>	Goal/Action <sup>39</sup>	Crosswalk Description <sup>40</sup>	Budget <sup>41</sup>
\$21.6 million to school sites based upon the concentration of low-income, English Learners, and Foster Youth/ Homeless students enrolled at each site	1.5 (listed as contributing)	School Site LCAP Allocations	\$20,900,250
Over \$11 million for English Learners, African American Student Achievement, Latino Student Achievement, and Gifted Students	1.3 (listed as contributing)  1.4 (not listed as contributing)	English Learners Support Program	\$758,544
		Latino Student Achievement	\$1,651,760
		African American Student Achievement	\$500,000
		English Learners/ Reclassify	\$1,700,000
		Gifted	\$232,000
		Bilingual Support	\$132,474
		Advanced Learners, Gifted and Talented Students	\$500,665
		<b>Total:</b> \$5,475,443	
AVID Program	1.4 (not listed as contributing)	AVID	\$1,000,000
Services for students in foster care	1.2 (listed as contributing)	Other Services (Foster Youth/ Homeless)	\$256,000
<b>TOTAL</b>			\$27,631,693

Third, several of the actions SBCUSD identified in the DIISUP are not properly described or justified and therefore should not properly be counted against its MPP. For example, Action 1.5 (School Site LCAP Allocations) lacks any description of the actual actions planned to meet the

<sup>38</sup> See Ex. 1, Complaint at Ex. 6 at 117-18 (2019-20, SBCUSD LCAP).

<sup>39</sup> Based on the GAS section of SBCUSD's 2019-20 LCAP.

<sup>40</sup> These descriptions are taken from the SBCUSD LCAP crosswalk. See Ex. 2, Response at Ex 3.

<sup>41</sup> The budget information is taken from the SBCUSD LCAP crosswalk. See *id.*



LCAP goal and, therefore, cannot be counted towards the proportionality requirement.<sup>42</sup> In addition, the DIISUP fails to describe how the two programs for Gifted Students are principally directed and effective for high-need students. In fact, Gifted programs have been used to track students by race and tend to benefit more privileged, more white, and more non-low-income students.<sup>43</sup> At a minimum, the effort on its face is one designed for all students, not students principally directed towards their unduplicated status. Therefore, the overall expenditures for Gifted Students—which are greater than the expenditures allocated for African American Student Achievement—cannot be counted towards the proportionality obligation.<sup>44</sup> When the school site allocation action and the two Gifted Students actions are not included in SBCUSD’s demonstration of increased or improved services, the quantitative demonstration of proportionality drops to 1.5%,<sup>45</sup> which falls grossly short of the required 35.78% MPP.

More fundamentally, there is a complete lack of alignment between the GAS section, the DIISUP section, and the crosswalk, which makes it nearly impossible for stakeholders to understand what SBCUSD is doing, why they are doing it, and whether its actions are effective. For example, the DIISUP states that SBCUSD provides more than \$11 million in “centralized supplemental support to schools . . . for English Learners, African American Student Achievement, Latino Student Achievement, and Gifted Students.”<sup>46</sup> SBCSS claims that these services and programs were properly counted towards the District’s MPP even though SBCUSD did not attempt to describe the specific actions that it would provide and failed to demonstrate effectiveness or align its description with anything in the GAS section or the crosswalk. In fact, aggregating the line items in the crosswalk that reference English Learners, African American Student Achievement, Latino Student Achievement, and Gifted Students amounts to \$5.5 million, which is roughly half of the amount of supplemental supports that the district claims it is providing to the enumerated student sub-groups in the LCAP’s DIISUP. The lack of coherence between the crosswalk and the LCAP undermines the transparency that SBCSS claims is provided by the crosswalk<sup>47</sup> and is further evidence that SBCSS is failing to fulfill its LCFE accountability and oversight responsibilities.

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<sup>42</sup> See Ex. 5 at 20, 24 (Jul. 30, 2020, CDE Decision – Los Angeles Unified) (holding that school site allocations that do not describe specific actions planned to meet the LCAP goal do not provide sufficient information for stakeholders to monitor overall implementation and effectiveness, and therefore, cannot be counted towards the increased or improved services requirement).

<sup>43</sup> Whitney Pirtle, *The Other Segregation*, THE ATLANTIC (Apr. 23, 2019), <https://www.theatlantic.com/education/archive/2019/04/gifted-and-talented-programs-separate-students-race/587614/>.

<sup>44</sup> According to the SBCUSD crosswalk, SBCUSD budgeted \$500,000 for African American Student Achievement, but \$500,665 for Advanced Learners, Gifted and Talented Students, and an additional \$232,020 for the Gifted program. See Ex. 2, Response at Ex. 3 at 1.

<sup>45</sup> Eliminating the school site allocation action and two Gifted student line items results in only a \$5,998,778 demonstration of increased and improved services in the DIISUP, which is equivalent to a 1.5% proportionality increase.

<sup>46</sup> See Ex. 1, Complaint at Ex. 6 at 117 (2019-20, SBCUSD LCAP).

<sup>47</sup> SBCSS relies heavily on its crosswalk to defend against its transparency violations. The crosswalk is a helpful document, but it cannot excuse a district from complying with LCFE regulations and the SBE-adopted LCAP template, which require LEAs to demonstrate proportionality *in the LCAP*, to align the actions contributing towards the proportionality requirement in the GAS and the DIISUP, and to describe how all districtwide and schoolwide contributing actions are principally directed and effective.

B. SBCSS Approved the 2019-20 HUSD LCAP Even Though it Failed to Demonstrate Proportionality by the Required MPP

There is no dispute that HUSD had an obligation to increase or improve services for high-need students by 26.09% compared to the services that it provided to all students.<sup>48</sup> As discussed above, this demonstration must be made in the LCAP. SBCSS does not argue that HUSD made any qualitative demonstration of increased or improved services, relying exclusively on a quantitative demonstration. Moreover, SBCSS admits that HUSD identified only \$27,083,161 of expenditures in the DIISUP section, which amounts to a 15% increase or improvement of services for high-need students—far less than the required 26.09%.<sup>49</sup>

SBCSS contends that the \$11.2 million for smaller class sizes and the \$13,715,814 in “additional services” referenced in the DIISUP as “[e]xpenditures not specifically listed in the LCAP” should be counted towards HUSD’s proportionality obligation.<sup>50</sup> As discussed above, the LCFF regulations and the LCAP template require that proportionality be demonstrated in the LCAP itself. SBCSS disputes this claim, arguing that proportionality can be demonstrated using documents outside the LCAP, such as crosswalks, which are purportedly shown to stakeholders and used by SBCSS staff to review and approve LCAPs. In fact, SBCSS defends HUSD, stating that it left these expenditures “out of the LCAP purposefully to make the LCAP shorter to increase transparency and accessibility to their stakeholders.”<sup>51</sup> Yet, SBCSS admits that the \$13,715,814 in “additional services”—which accounts for nearly 30% of HUSD’s demonstration of increased or improved services—is not included in the crosswalk, negating its own theory of transparency.<sup>52</sup> In fact, SBCSS does not even know how the \$13,715,814 is used or whether it is actually increasing or improving services for high-need students, yet permits HUSD to count this towards its proportionality obligation.<sup>53</sup>

Additionally, HUSD fails to describe how *each* of the identified services are principally directed towards, and effective in, meeting the district’s goals for its unduplicated pupils, as required by the operative LCAP template.<sup>54</sup> In fact, almost none of the actions identified in the DIISUP are justified as principally directed and effective. Although SBCSS claims that HUSD describes each of the programs and services identified in the DIISUP and how they are targeted to high-need student groups, the only example provided does not even meet the legal test for principally directed. SBCSS asserts that the laundry list of actions enumerated under “Academic Intervention/Support” are principally directed merely because a couple of those actions refer to

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<sup>48</sup> See Ex. 2, Response at 22 (noting “HUSD met its MPP of 26.09% for the 2019-20 LCAP cycle”).

<sup>49</sup> See *id.* at 23.

<sup>50</sup> *Id.* at 24.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*, n. 41.

<sup>53</sup> The LCAP only states that “[e]xpenditures not specifically listed in the LCAP are: Salaries & benefits to maintain smaller class sizes (resource 0701: \$11,209,963) and additional services (resource 000: \$13,715, 814).” See Ex. 1, Complaint at Ex. 7 at 103 (2019-20, Hesperia Unified LCAP). These descriptions do not describe the actions sufficiently to determine if they are an increased or improved service much less if they are principally directed and effective. For example, if smaller class sizes refer to those already mandated by law, they cannot be considered an increase or improvement of services specifically for high-need students. Moreover, “additional services” is so broad that it is impossible to even ascertain on what HUSD is spending \$13.7 million.

<sup>54</sup> See Ex. 1, Complaint at Ex. 5 (2017-20 LCAP Template and Instructions).

English learners.<sup>55</sup> However, bundling actions for English learners with actions for all students, like summer school, preschool, and academic supports, does not automatically convert those other actions into increased or improved services without individual justifications for how they are principally directed and effective at meeting the district’s goals for high-need students . SBCSS also improperly accepts HUSD’s conclusory and blanket statement that “the LCAP expenditures are the best use of funds to make an impact upon all students to maintain or increase all students’ level of academic proficiency and effect change in the identified goals.”<sup>56</sup> The CDE has held that conclusory statements of effectiveness without identifying a specific outcome that is explicitly connected to the action is not sufficient.<sup>57</sup> Even more troubling is SBCSS’s complete omission of the effectiveness prong from its analysis of a districtwide action counts as an increased or improved service.<sup>58</sup> Therefore, this action cannot be counted towards HUSD’s proportionality obligation. Ultimately, it is unnecessary to quibble with the justification (or lack thereof) for each and every action because SBCSS admits that it approved HUSD’s LCAP even though HUSD failed to demonstrate proportionality in its LCAP.

C. SBCSS Approved the 2019-20 VVUHSD LCAP Even Though it Failed to Demonstrate Proportionality by the Required MPP

There is no dispute that VVUHSD had an obligation to increase or improve services for high-need students by 31.78% compared to the services that it provided to all students and that it reflected only 26% of this obligation in its LCAP.<sup>59</sup> The primary dispute with respect to SBCSS’s approval of the VVUHSD 2019-20 LCAP is whether programs identified in the DIISUP, but not included as an action in the LCAP, can be counted towards the MPP. As discussed above, CDE has held that “[t]he actions/services included as contributing to meeting the increased or improved services requirement must be indicated as such in the [GAS] section of the LCAP.”<sup>60</sup> Moreover, the structure and purpose of the LCAP necessitate that LEAs include all increased and improved services as actions in the GAS section so that implementation and effectiveness can be tracked over time.<sup>61</sup> Therefore, it was improper for SBCSS to approve VVUHSD’s 2019-20 LCAP when it failed to demonstrate its required MPP in the LCAP itself.

SBCSS claims that VVUHSD “provides detailed descriptions of how programs and services funded outside of the LCAP constitute an increase or improvement in services for its

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<sup>55</sup> See Ex. 2, Response at 23.

<sup>56</sup> *Id.*

<sup>57</sup> See California State Auditor, *K-12 Local Control Funding, Rep. 2019-101*, at 23 (Nov. 5 2019), <http://www.auditor.ca.gov/pdfs/reports/2019-101.pdf>; see also Ex. 6 at 8 (March 2019, CDE Decision – Del Norte Unified) (holding that district failed to meet effectiveness prong for class size reduction expenditure because there is no clear connection between reducing class sizes and outcomes related to academic achievement and graduation rates).

<sup>58</sup> See, e.g., Ex. 2, Response at Ex. 2 at 28 (training slide that limits the increased/improved services justification to whether a service is principally directed for concentrated districts and schools), 37-42 (training slides on identifying base v. S/C that omit effectiveness as a relevant question in the analysis).

<sup>59</sup> See Ex. 1, Complaint at Ex. 8 at 277 (2019-20, VVUHSD LCAP) (“Currently the 2019-20 LCAP reflects \$7,637,490.00 of the district’s LCFSCG which is 26% of the total SCG.”); Ex. 2, Response at 11 (acknowledging that the relevant facts are contained within the four corners of the LCAPs).

<sup>60</sup> See Ex. 4 at 7 (Nov. 2, 2018, CDE Decision – Klamath-Trinity Joint Unified).

<sup>61</sup> Cf Ex. 5 at 21 (Jul. 30, 2020, CDE Decision – Los Angeles Unified) (failure to identify actions specifically in the LCAP deprive the stakeholder of the information necessary “to adequately address the overall implementation and effectiveness of the actions as required by the annual update process”).

unduplicated pupils.”<sup>62</sup> Although the DIISUP provides descriptions for many of the programs and services outside the LCAP that suggest they are increased or improved services, failure to include them in the LCAP denies stakeholders the opportunity to track implementation and effectiveness over time in the Annual Update. Therefore, instead of approving VVUHSD’s deficient 2019-20 LCAP, SBCSS should have coached VVUHSD to include these programs and services as actions *in the LCAP*. It is also worth noting that a number of the districtwide actions identified in the DIISUP do not properly describe how they are principally directed and effective. For example, VVUHSD counts more than \$7.3 million in expenditures for schools of choice towards its MPP (which is more than 25% of the required increase or improvement in services, when expressed quantitatively) without identifying how schools of choice meet an identified need, circumstance, or condition of high-need students in the district.<sup>63</sup> Nor does the description identify how these schools of choice are designed to achieve one or more measurable goals for high-need students.<sup>64</sup>

Ultimately, SBCSS’s failure to ensure that districts in San Bernardino County provide transparent LCAPs deprived Complainants and other parents, students, and community stakeholders the tools necessary to provide meaningful input and hold their districts accountable. Moreover, SBCSS’s failure to ensure that districts meet MPP deprived tens of thousands of high-need students of the increased and improved services that they desperately need and are entitled to receive under state law.

## **II. SBCSS Must Ensure Districts Actually Increase or Improve Services by the Required MPP Each Fiscal Year**

For LCFF to serve California students effectively, LEAs must *fulfill* the equity mandate and actually increase or improve services for high-need students by the requisite MPP for each fiscal year supplemental and concentration funds are received. Failure to do so results in a proportionality shortfall that must be made up in future years to satisfy this mandatory duty. Any alternative would undermine the purpose of the law and render its equity promise meaningless.

### **A. LEAs’ Mandatory Duty to Increase or Improve Services by the MPP Does Not Disappear After the Fiscal Year Ends**

LEAs’ equity obligations are required by statute and regulations. Educ. Code section 42238.07(a)(1) unambiguously states that the regulations must “[r]equire 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.”<sup>65</sup> The regulations similarly provide that 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 fund apportioned on the basis of the number and concentration of

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<sup>62</sup> See Ex. 2, Response at 25.

<sup>63</sup> See Ex. 1, Complaint at Ex. 8 at 280-81 (2019-20, VVUHS LCAP).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

unduplicated pupils.”<sup>66</sup> Neither the statute nor regulations permit LEAs to shirk their proportionality obligation, which is a condition of funding, nor does that obligation disappear after the fiscal year ends.

SBCSS disagrees, arguing that “LEAs are not required to revisit their MPP obligations from prior LCAP years and account for, or carryover, “shortfalls” to the current year.”<sup>67</sup> However, SBCSS does not cite any authority for its position. The fact that the regulations refer to the “fiscal year” for calculating an annual MPP does not eliminate an LEA’s duty to actually meet that annual MPP and to make up for any shortfall in future years if it fails to do so in a particular fiscal year.<sup>68</sup> In other words, these two mandatory duties coexist—the duty to calculate MPP annually and the duty to actually increase and improve services by that MPP, even if it does not happen (whether intentionally or unintentionally) in the appropriate fiscal year. Similarly, the LCAP template appropriately requires LEAs to describe how they are meeting their annual MPP for the present LCAP year, but that does not extinguish LEA’s mandatory duty to further increase or improve services by the requisite MPP shortfall from prior years if it failed to do so in those fiscal years. Although a clear mechanism for tracking proportionality shortfall is not in place, that does not extinguish the statutory and regulatory duty to increase or improve services. The silence on process may mean that LEAs have some discretion and flexibility in how they demonstrate fulfillment of the MPP obligation, but it does not extinguish the obligation. If it did, the regulations and template would be permitting what the statute prohibits—the receipt of a proportional increase in funds generated by high-need students without a corresponding increase or improvement in services directed towards them.

#### B. County Offices of Education Are Required to Hold LEAs Accountable for Actually Increasing or Improving Services by the Required MPP

SBCSS concedes that it is “responsible for ensuring its programs and employees are in compliance with all applicable state and federal laws, including the County Superintendent’s statutory oversight obligations with respect to school districts within the County.”<sup>69</sup> Thus, it is responsible for ensuring that LEAs fulfill their mandatory duty to increase or improve services by the MPP. Yet, SBCSS attempts to evade its accountability duties by arguing that it has “no statutory or regulatory obligation to calculate and require [LEAs] to carryover unspent S&C funds from 2018-19 and include those funds as part of the MPP for 2019-20.”<sup>70</sup> In fact, SBCSS argues that it has “no authority to refuse to approve an LCAP on this basis [year to year accounting of proportionality shortfalls]” because it is required to approve a district’s LCAP if the three conditions enumerated in Education Code section 52070(d) are met.<sup>71</sup> However, SBCSS ignores the third condition, which requires that the plan adhere to “the expenditure requirements adopted pursuant to Section 42238.07 for funds apportioned on the basis of the

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<sup>66</sup> CAL. CODE REGS. tit. 5 § 15496(a).

<sup>67</sup> Ex. 2, Response at 25.

<sup>68</sup> See CAL. CODE REGS. tit. 5 § 15496(a) (mandating that funding apportioned on the basis of the number and concentration of unduplicated pupils “shall be used to increase or improve services for unduplicated pupils” and that the MPP shall be determined each fiscal year).

<sup>69</sup> Ex. 2, Response at 5.

<sup>70</sup> *Id.* at 27-28.

<sup>71</sup> See *id.* at 25-26.

number and concentration of unduplicated pupils[.]”<sup>72</sup> As discussed, section 42238.07 and its accompanying regulations make clear that LEAs must increase and improve services for high-need students by the MPP, without exception, and where material MPP shortfalls exist, the *only* way to fulfill the increase/improve mandate is for the LEA to make up for proportionality shortfalls in future years. Just as LEAs must ultimately meet the level of increase or improvement linked to their receipt of supplemental and concentration funds, it follows that the County Office of Education’s oversight responsibility extends to ensure LEAs address proportionality shortfalls.<sup>73</sup> And similarly, merely because the LCAP template does not provide a clear place to track proportionality shortfalls, does not mean counties have no duty to ensure fulfillment of the annual MPP obligation; it only provides a measure of flexibility in how they might ensure it.

C. LEAs Must Either Fulfill the Obligation to Proportionally Increase or Improve Services for High-Need Students or Return the Funds that Attach to the Obligation

As the Complaint establishes, where a government conditions the use of funds on the fulfillment of certain obligations, the recipient must either fulfill those obligations or return the funds.<sup>74</sup> SBCSS’s attempt to dismiss the cited cases as inapposite because they involve federal categorical funds is wholly unavailing. The general principle on which Complainants rely concerns *any* type of condition that runs with governmental disbursement of funds. A categorical requirement to spend funds in a certain way, *e.g.*, on a specific type of educational program or for a specific student population is only one such example. There are many other types of conditions that governmental funds might impose on the recipient. Indeed, one of Complainants’ cited cases involved a dispute not over whether the funds had been used for the proper target population or purpose but, instead, that the recipient had violated the separate and concurrent non-discrimination obligation that runs with all federal funds.<sup>75</sup> Other types of obligations—such as the requirement that federal highway funds obligate states to impose a minimum drinking age of 21 years<sup>76</sup> or that federal funds, even if otherwise used properly, not supplant local funds<sup>77</sup>—routinely fall on top of the obligation to use the funds for a specific purpose such as road-maintenance or educating low-income students. Thus, whether one can characterize LCFF’s proportionality obligation as a “categorical” is completely irrelevant. The obligation to increase or improve services for high-need students at the level of S&C funds received is undeniably a condition imposed on LEA fund recipients. It either must be met or the awarded funds must be returned to extinguish the obligation.<sup>78</sup>

Thus, the particulars of the conditions imposed on the allocated funds in the caselaw are not

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<sup>72</sup> EDUC. CODE § 52070(d)(3).

<sup>73</sup> Ex. 2, Response at 5 (conceding that SBCSS is responsible for ensuring districts comply with all state and federal laws).

<sup>74</sup> Ex. 1, Complaint at 10.

<sup>75</sup> *U.S. v. Marion Cty. Sch. Dist.*, 625 F.2d 607, 609 (5th Cir. 1980).

<sup>76</sup> See *South Dakota v. Dole*, 483 U.S. 203, 206-09 (1987).

<sup>77</sup> *Kentucky Dep’t of Educ.*, 470 U.S. at 664, 667.

<sup>78</sup> *People v. Bradley*, 208 Cal. App. 4th 64, 77-78 (2012) (“When a public entity entrusts public funds to a public official, he or she is authorized to hold the funds only so long as necessary for the purposes required. Any funds unused for the intended purpose must be promptly returned to the public entity that has entrusted the funds.”).

pertinent here. Whether the conditions are tight, as in a narrow categorical,<sup>79</sup> or loose, as with federal Title I funds that, like LCFF, allow LEAs wide flexibility and even schoolwide uses,<sup>80</sup> or generic and not actually linked to the funds' specific purpose as with non-discrimination assurances, the general principle remains. The condition must be fulfilled—if not within the promised timeframe, then subsequently<sup>81</sup>—or the funds must be returned.<sup>82</sup>

Accordingly, while LCFF affords school districts with some measure of local control, as discussed, it nonetheless has important conditions, namely, the obligation to increase or improve services by the MPP. Like Title I funds, if a school district fails to satisfy the conditions that run with the funding to support high-need students, it must return them. It is telling that SBCSS can point to no language in the statute, regulations, or caselaw to support its untenable position that school districts' obligation to meet proportionality in a given fiscal year is extinguished if the district fails to satisfy its obligation. Such a reading undermines the settled principles of statutory interpretation. When interpreting a statute or regulations, courts must “adopt the construction that best effectuates the purpose of the law” and may not read them in a way that “would result in absurd consequences which the Legislature did not intend.”<sup>83</sup> As discussed, it is beyond dispute that the primary mechanism to promote equity through LCFF is actually increasing and improving services for high-need students by the requisite MPP. Under SBCSS's interpretation of the statute, school districts are able—and indeed would have an incentive—to avoid their equity obligation because there is absolutely no accountability if the duty simply disappears at the end of the fiscal year. In fact, if all LEAs and county offices adopted SBCSS's interpretation and failed to hold districts accountable for meeting their MPP, high-need students across California would receive no increases or improvements in services. This conclusion obviously eviscerates the purpose underlying LCFF and leads to an absurd scenario. In contrast, if districts were required to account for actual proportionality shortfalls and carry those forward to subsequent years, they would have no perverse incentives to evade their equity obligations and high-need students would, on balance, receive the equitable proportion of services to which they are entitled.

#### D. AB 1835 Has No Bearing on LEAs' Obligations to Meet Their Proportional Increase/Improve Obligation Towards High-Need Students

On August 31, 2020, the California legislature passed Assembly Bill 1835 (“AB 1835”), which would have clarified existing law that “[u]nspent [S&C] funds . . . shall continue to be required to be expended to increase and improve services for unduplicated pupils, and each local

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<sup>79</sup> *Butt v. State of California*, 4 Cal. 4th 668, 701 (1992) (Greater Avenues for Independence (“GAIN”) funds, which school districts received to provide employment, adult education, and job training to recipients of public assistance could not be redirected to spend on general elementary and secondary education expenditures; the “appropriation was expressly designated for that program alone and was not intended to fund the needs of non-GAIN students.”).

<sup>80</sup> *Kentucky Dep't of Educ.*, 470 U.S. at 664, 667 (Title I funds to provide “compensatory education for disadvantaged children, but [the legislature] expressly left the selection and development of particular projects to local control.”).

<sup>81</sup> *Marion Cty. Sch. Dist.*, 625 F.2d at 609; *California Med. Ass'n. v. Brown*, 193 Cal. App. 4th 1449, 1456 (2011) (state “funds may not be permanently diverted from their specific purposes”).

<sup>82</sup> *Kentucky Dep't of Educ.*, 470 U.S. at 673-74; *State of Cal., Dep't of Educ. v. Bennett*, 833 F.2d 827, 829, 831-32 (9th Cir. 1987); see also *O'Connell v. Super. Ct.*, 141 Cal. App. 4th 1452, 1475 (2006) (affirming the prohibition on “diverting unspent funds from money that the Legislature had previously appropriated for specific purposes”).

<sup>83</sup> *Miklosy v. Regents of Univ. of California*, 44 Cal. 4th 876, 888, 897 (2008).

educational agency shall report the amounts of unspent funds identified pursuant to subdivision (a) in its local control and accountability plan.” On September 30, 2020, Governor Newsom vetoed AB 1835, making clear in his signing statement that he “deeply support[s] the underlying goal of this bill—to ensure that unspent [S&C] funds are expended on services for our most vulnerable students[.]”<sup>84</sup> He explained that he vetoed the bill because he was “concerned that it cannot be implemented in a manner that is smooth or timely.”<sup>85</sup> Specifically, Governor Newsom was concerned that AB 1835 would require modifications to the LCFF regulations, which may take two years to implement, and committed to accomplishing the objectives of AB 1835 more quickly in his January budget.

SBCSS attempts to rely on AB 1835 to suggest that current law does not require LEAs to proportionally increase or improve services for high-need students by the MPP so long as LEAs withhold spending for one year. However, AB 1835 merely clarified existing law that districts’ proportionality obligations must be met—in whichever year an LEA meets them—and sought to provide a standardized mechanism by which the state, counties, and LEAs could track the increase/improve obligation. As Governor Newsom noted, he did not disagree with the notion that S&C funds must be expended on services for high-need students and that that obligation continues beyond the year in which the S&C funds are allocated. Rather, his concerns centered on how to implement a systemic solution to ensure that counties and LEAs account for carried-over S&C funds and properly use them to meet goals for high-need students. As discussed, the current statute and regulations require SBCSS to employ some reasonable process to hold LEAs accountable, even while the Governor and legislature develop a more uniform solution.

#### E. CCSESA Guidance Does Not Control

SBCSS also cites to a document entitled “*Guide for County Superintendents—Support, Review and Approval of Local Control and Accountability Plans* (June 2017 Ed.),” issued by the California County Superintendents Educational Services Association (“CCSESA”) that purportedly claims that “unspent S&C funds become unrestricted funds in the following year.”<sup>86</sup> Complainants reviewed CCSESA’s LCAP guides for 2016-17, 2017-18, 2018-19 and were unable to locate the quote or identify similar language.<sup>87</sup> Even if CCSESA ever took that position, SBCSS is unable to cite any current CCSESA guidance to that effect. More to the point, CCSESA is not a legal authority and, any such non-binding assertion is incorrect and

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<sup>84</sup> Letter from Gavin Newsom, Governor of Cal., to Members of the Cal. State Assemb. (Sept. 30, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/09/AB-1835.pdf>.

<sup>85</sup> *Id.*

<sup>86</sup> Ex. 2, Response at 27.

<sup>87</sup> Given that SBCSS cites the June 2017 version of the manual, it is likely that the guidance was published to address the 2016-17 academic year. LCFF did not achieve the target funding level until 2018-19, which means that the guidance applied to the ramp-up period to full LCFF funding. See Cal. Dep’t of Educ., *Local Control Funding Formula Overview* (Jan. 3, 2020), <https://www.cde.ca.gov/fg/aa/lc/lcffoverview.asp>. The only rationale for conversion of S&C funds to base funds ever advanced by any entity of which Complainants are aware surfaced in a School Services, Inc. guidance to districts in which it was posited that the MPP obligation did not fully materialize until LCFF was fully funded and that, in the interim, unused S&C funds could be rolled over into base funds for general purposes in a subsequent year. Complainants strongly disagree. Consistent with the analysis set forth above, LEAs were obligated to meet their lower, interim MPP targets during the ramp-up period and to carryover their MPP shortfalls then as well. Nonetheless, any such argument for overlooking MPP shortfalls during the ramp-up period evaporated once LCFF achieved full funding implementation in 2018-19 and for the years relevant to this Complaint.



misconstrues the law for the reasons discussed. Further, disseminating such an interpretation would be irresponsible and would *encourage* LEAs to withhold spending, undermining the central tenets of LCFF and sound budgeting. While we believe the law is clear, this confusion underscores the immediate need for CDE to remove any doubt that LEAs are obligated to carryover funds, even in advance of the impending clarification from the Governor or legislature which may well not take effect until the 2022-23 school year or later. CDE must ensure that all districts and COEs understand that annual proportionality obligations must be met on a yearly basis and that any shortfalls must be carried over and used as intended to increase and improve services in support of high-need students. This equity obligation is more important in the upcoming LCAP cycle than ever, given the dire needs of low-income students, foster youth, and English learners during the pandemic.

Finally, SBCSS does not dispute that the three LEAs Complainants identified—SBCUSD, HUSD, and VVUHSD—failed to meet their proportionality obligations in previous years and did not make them up in future years. SBCSS only contests that it is required to provide oversight and to intervene to correct these shortfalls. As discussed, SBCSS has an obligation to ensure that those LEAs comply with the law and regulations, which require them to fulfill the equity mandate to actually increase and improve services for high-need students. CDE must decide in Complainants’ favor and require SBCSS to calculate prior shortfalls and ensure they are redeemed in subsequent-year LCAPs.

### **III. SBCSS Must Disapprove Spending on Services that Are Not Principally Directed and Effective in Meeting Goals for High-Need Students, Including Law Enforcement Expenditures**

The central premise of LCFF is that, to promote equity, eradicate systemic barriers, and address historic under-investments, LEAs must increase and improve services for California’s high-need students by their MPP, which is calculated by dividing their S&C funding by their base funding. While LEAs are empowered to make local decisions about how to meet this equity obligation to support their high-need students, any action or service identified as contributing to this obligation must be crafted to meet goals for its high-need students. LEAs cannot credit themselves for actions or services that are not actually designed to, and which do not effectively meet, an identified and particular need of low-income students, English Learners, and foster youth. In other words, to accomplish LCFF’s objectives, LEAs bear a high responsibility to be thoughtful and prudent about the actions and services they count towards their equity obligation to close opportunity and discipline gaps for their high-need students most effectively.

SBCSS overstates Complainants’ third claim; Complainants do not argue that LEAs may never spend S&C funding on law enforcement.<sup>88</sup> Rather, Complainants argue only that: (1) LEAs may only count law enforcement actions towards their proportionality requirement if they justify this action as being both principally directed and effective in supporting high-need students, and (2) SBCSS has an obligation to approve LCAPs only when LEAs have transparently and sufficiently described how they have met MPP in accord with these requirements. SBCSS does not dispute

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<sup>88</sup> Compare Ex. 2, Response at 37, with Ex. 1, Complaint at 14-15.

these two points.<sup>89</sup> To ensure accountability, it follows that the more controversial the contributing action is, the more important it is for the reviewing entity to review the action and justification through a critical and skeptical lens.

As discussed in the Complaint,<sup>90</sup> the prevailing research demonstrates that law enforcement does not generally help—and in fact actively harms—high-need students, including low-income students of color. Such expenditures tend not to increase safety but serve instead to harm school climate. For example, the most recent 2020 study on school policing analyzed 33 schools that increased SRO staffing and found that they had higher rates of “drug- and weapon-related offenses and exclusionary disciplinary actions for treatment schools relative to comparison schools.”<sup>91</sup> The study concluded “that increasing SROs does not improve school safety and that by increasing exclusionary responses to school discipline incidents it increases the criminalization of school discipline.”<sup>92</sup> Similarly, a 2020 study of Los Angeles schools found that increased funding for school police correlated with decreased feelings of school safety, particularly for Black and Latinx students.<sup>93</sup> The study also found that “Black students comprise 8% of the student body in LAUSD, yet account for 25% of arrests, citations, and diversions.”<sup>94</sup> Finally, another 2020 study analyzing policing in Florida schools found that “[t]he presence of law enforcement in schools was related to a greater frequency of school arrests (40-82% more at the school-level)” and that “[t]here was little consistent evidence that the presence of law enforcement decreased the number of behavioral incidents occurring, indicating that school-based law enforcement were not necessarily making schools safer.”<sup>95</sup>

Accordingly, LEAs should face a high bar when attempting to count law enforcement actions towards its increased and improved services requirement. COEs must review such actions with scrutiny, requiring LEAs to explain in detail how law enforcement is principally directed and effective in meeting goals for high-need students and providing analyses of whether previous law enforcement actions actually accomplished those goals. Disturbingly, SBCSS lists police as a “Sample Supplemental/Concentration-Type Program” in its trainings,<sup>96</sup> revealing a fundamental lack of understanding of what constitutes an increased or improved service; a lack of familiarity with the extensive research on this topic, particularly as it concerns the ineffectiveness of school policing; and a troubling disconnect with students and families of color who are harmed by law

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<sup>89</sup> See Ex. 2, Response at 29 (“[E]xpenditures of S&C funds on law enforcement and security are appropriate so long as a district describes in its LCAP how those services are “principally directed towards” and “effective in” meeting the district’s goals for its high-need students in the state and any local priority areas.”); see also *id.* at 26 (“SBCSS is required to ensure that school districts within the County meet their specified MPP in each LCAP year, and may not approve a district’s LCAP if this requirement is not met.”).

<sup>90</sup> Ex. 1, Complaint at 15 n.82.

<sup>91</sup> Denise C. Gottfredson, et al. *Effects of School Resource Officers on School Crime and Responses to School Crime*, CRIMINOLOGY & PUB. POL’Y, 1 (Jul. 1, 2020) <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9133.12512>.

<sup>92</sup> *Id.*

<sup>93</sup> Elianny C. Edwards, et al., *Keeping Students Safe in Los Angeles, An Analysis of LAUSD School Incident Reports & Funding*, UCLA EDUC. & INFO. STUD. BLACK MALE INST., 3 (2020), <http://blackmaleinstitute.org/wp-content/uploads/2020/06/Keeping-Students-Safe-in-Los-Angeles-Final-Version.pdf>.

<sup>94</sup> *Id.* at 4.

<sup>95</sup> F. Chris Curran, *The Expanding Presence of Law Enforcement in Florida Schools*, UNIV. OF FLORIDA RSCH. CTR., 2 (2020), [https://www.aclufi.org/sites/default/files/curran\\_-\\_the\\_expanding\\_presence\\_of\\_law\\_enforcement\\_in\\_florida\\_schools.pdf](https://www.aclufi.org/sites/default/files/curran_-_the_expanding_presence_of_law_enforcement_in_florida_schools.pdf).

<sup>96</sup> See Ex. 2, Response at Ex. 2 at 36.

enforcement. SBCSS's response and training materials also reveal an erroneous understanding of how to determine the base program, which contributes to its faulty analysis of which services constitute an increased or improved service. SBCSS defines the base program as "things that are either required by law or absolutely necessary to open school regardless of the pupil's status (examples are textbooks, a certain number of teachers, etc.)."<sup>97</sup> The base program is more than the bare legal requirements; it is everything that it wants all students to have, such as norm-allocated librarians that are not required by law, but assigned to all students on an equal basis, irrespective of need.<sup>98</sup>

SBCSS argues that it has minimal obligation to review descriptions for any actions identified as contributing to the increased or improved services requirement, let alone actions that are presumptively dubious. It argues that, so long as an LEA engaged in the stakeholder engagement process, SBCSS *must* approve an LEA's LCAP, regardless of whether the actions described therein are designed to meet the specific and particular needs of students who generate those funds, and no matter how ineffective they are in supporting high-need students.<sup>99</sup> In other words, SBCSS attempts to reduce its role in LCFF's accountability system to assessing whether an LEA conducted stakeholder engagement. Such an interpretation undermines LCFF's core accountability structure and represents an abdication of its duty to ensure LEAs fulfill their equity obligation (represented by MPP) and make progress towards their goals for high-need students. Stakeholder engagement is but one factor COEs must consider when reviewing LCAPs.

The Complaint identified three LCAPs that included grossly insufficient attempts to describe and justify their law enforcement actions as contributing to their increased and improved services requirement. Tellingly, SBCSS now defends its improper approval of those LCAPs by attempting to draw inferences from materials outside the LCAPs and by arguing that some of the expenditures did not contribute to the LEAs' proportionality obligations (despite the LEAs listing them as such). SBCSS's attempt to justify the spending after-the-fact demonstrates that it failed to provide the requisite oversight and technical assistance during the LCAP process in the

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<sup>97</sup> See Ex. 2, Response at 30; *id.* at Ex. 2 at 29 (SBCSS-produced training slides that direct LEAs to define their core program).

<sup>98</sup> See, e.g., Ex. 7 at 9 (Jan. 17, 2019, CDE Decision - Sacramento City Unified) (rejecting district librarians as an increased or improved service). The LCFF regulations also make clear that the base program are the services provided to all students and does not make a distinction based on what is legally required or "absolutely necessary to open school." See 5 CAL. CODE REGS. § 15496(a) ("This funding 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.") (emphasis added).

<sup>99</sup> Ex. 2, Response at 30-31 ("Accordingly, where a district utilizes S&C funds for law enforcement and/or other security measures, SBCSS may not automatically disallow that expenditure. Instead, SBCSS must review the LCAP to determine that the district engaged its stakeholders and determined through that process that improving school climate (one of the eight 'state priority areas' that must be addressed under the LCAP) with security measures and/or law enforcement was something they felt was necessary and qualified as a S&C expenditure."). SBCSS further contends that it may not decline to approve an LCAP on the basis that the exact terms "principally directed towards" and "effective in" are not utilized, yet Complainants never argued that magic words are required. *Id.* at 30. Rather, Complainants argued that SBCSS abdicated its oversight duties by approving "multiple LCAPs that improperly counted across-the-board law enforcement expenditures as contributing to the increased or improved services requirement [even though these actions are] not tailored to the particular needs, conditions, or circumstances of high-need students and, as research and data consistently demonstrate, are not effective in improving school climate or students' sense of safety." See Ex. 1, Complaint at 15.

first instance.

#### A. SBCSS Improperly Approved Law Enforcement Actions in Hesperia’s LCAP

As discussed in the Complaint, Hesperia’s 2019-20 LCAP included millions of dollars in districtwide spending on school police officers and campus assistants as contributing to the increased and improved services requirement, which Hesperia justified with only the terse statement in its DIISUP that the officers purportedly “provide greater securing [sic] to *all students*[.]”<sup>100</sup> Hesperia did not attempt to explain how the officers were principally directed towards serving low-income students, foster youth, or English learner (which indeed is the opposite of the justification it put forward), nor did it attempt to demonstrate the effectiveness of law enforcement.<sup>101</sup>

Incredibly, SBCSS attempts to make the case that HUSD provided the requisite demonstration by pointing to three passages, none of which demonstrate how law enforcement is an increased or improved service for high-need students. First, it argues that Hesperia properly justified its spending because it included an additional reference to school police in its 2019-20 DIISUP, stating: “Psychologists for small group support and Social Police to help ensure safety on campus.”<sup>102</sup> However, the statement is wholly conclusory<sup>103</sup> and provides no additional insights into how the law enforcement is principally directed or effective in supporting high-need students. Indeed, Hesperia provided no definition for the cryptic term “Social Police,” raising more questions about the nature of the program and its supposed benefits on high-need students.

Second, SBCSS argues that Hesperia properly demonstrated that all of its contributing district-wide actions are principally directed towards high-need students through the following “leading paragraph”:

Because our population of unduplicated students is in excess of 55% district wide, many of the services and related expenditures, which align with the goals and actions mentioned above [in the GAS section], although targeted for identified sub groups, are offered to all students. The LCAP expenditures are the best use of funds to make an impact upon all students to maintain or increase all students’ level of academic proficiency and effect change in the identified goals. Expenditures are planned on a district-wide and school-wide basis due to our unduplicated pupil count percentage being 75.56% . . . .<sup>104</sup>

It is unclear why SBCSS presents this passage as a justification for law enforcement as an increased or improved service when it does not mention law enforcement at all. If SBCSS is

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<sup>100</sup> Ex. 1, Complaint at Ex.7 at 101 (2019-20, Hesperia Unified LCAP); *see id.* at Ex. 11 at 13 (May 5, 2017, CDE Decision – Fresno Unified) (holding that Fresno’s school site security expenditure did not contribute to the increased/improved services requirement because it was not clear how security investments were directed towards meeting the needs of unduplicated pupils, as opposed to all students).

<sup>101</sup> Ex. 1, Complaint at 15-16.

<sup>102</sup> Ex. 2, Response at 31.

<sup>103</sup> *See, e.g.*, Ex. 3 at 8 (Apr. 26, 2019, CDE Decision – Merced City) (“Conclusory statements that an action/service will help achieve an expected outcome for the goal, without an explicit connection or further explanation as to how, are not sufficient.”).

<sup>104</sup> Ex. 2, Response at 31-32 (ellipses in original).

suggesting that Hesperia may count any districtwide action as contributing to the increased and improved services requirement because it serves a high proportion of high-need students, that argument has been rejected consistently by the CDE.<sup>105</sup> Alternatively, SBCSS may be suggesting that its conclusory statement that “many of the services and related expenditures . . . , although targeted for identified sub groups, are offered to all students” suffices to satisfy LEAs’ obligations to explain how contributing actions are principally directed. However, this interpretation is contrary to the operative LCAP instructions that require LEAs to “identify *each action/service* (provided on a schoolwide or districtwide basis) and include the required descriptions supporting *each action/service*.”<sup>106</sup> Indeed, only such an individualized approach to entity-wide S&C supported actions can suffice to describe how a given action is meeting an identified need, is specifically designed to address that need and is being effective in doing so. As SBCSS acknowledges, it is statutorily required to ensure that LEAs adhere to the LCAP template and instructions before approving a district LCAP.<sup>107</sup> In fact, this leading paragraph seems to acknowledge that the services in the DIISUP are not principally directed because they are designed to “make an impact upon all students to maintain or increase all students’ level of academic proficiency,”<sup>108</sup> instead of being targeted to meet the goals of high-need students specifically.

Third, SBCSS quotes a paragraph from Hesperia’s LCAP stating that “[r]esearch has demonstrated that adopting prevention-based practices to address student behaviors can reduce problem behavior, improve academic achievement, and contribute to the establishment of a safe environment for staff and students. . . . The focus will help with expulsions/suspension in all students, truancy, violence, bullying, anxiety, vandalism, substance abuse, and students dropping out of school.”<sup>109</sup> However, the passage identifies only Positive Behavior Interventions and Supports and social-emotional learning as accomplishing these goals, conspicuously omitting any mention of law enforcement,<sup>110</sup> which only bolsters Complainants’ argument that LEAs should focus on supports that are evidence-based and proven to reduce exclusionary discipline rather than demonstrably counterproductive actions such as law enforcement. Again, it is unclear why SBCSS cites to a passage about unrelated actions to support its approval of improper spending on law enforcement.

Finally, SBCSS claims that it was proper for it to approve the LCAP because the law enforcement action was supposedly vetted through Hesperia’s stakeholder engagement process. To reiterate, stakeholder engagement is only one factor that SBCSS should review and is not dispositive. SBCSS must also review the underlying justification for the action to ensure that it

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<sup>105</sup> See Ex. 1, Complaint at Ex. 11 at 7, 13-14 (May 5, 2017, CDE Decision – Fresno Unified) (finding that the district’s reference to its high unduplicated pupil population was not an adequate justification for including a school site security action as an increased or improved service that is principally directed and effective towards meeting the district’s goals for its high-need student population); see also *id.* at Ex. 13 at 23 (Oct. 5, 2018, CDE Decision – Mojave Unified) (rejecting the district’s argument that “because of its high percentage of unduplicated students, actions and services are [] invariably principally directed towards and effective in meeting the goals for its unduplicated pupils”) (internal quotations omitted); *id.* at Ex. 12 at 16-17 (Aug. 5, 2016, CDE Decision – Los Angeles Unified).

<sup>106</sup> *Id.* at Ex. 5 (2017-20 LCAP Template and Instructions) (emphasis added).

<sup>107</sup> See CAL. EDUC. CODE § 52070(d)(1).

<sup>108</sup> Ex. 2, Response at 23.

<sup>109</sup> Ex. 1, Complaint at Ex. 7 at 76 (2019-20, Hesperia Unified LCAP).

<sup>110</sup> *Id.*

actually increases and improves services for high-need students. Although stakeholder engagement is vital to LCAP development, it does not replace the equity analysis required by the LCFF regulations, particularly when there is no way to assess if high-need students and families are proportionally represented in stakeholder engagement spaces.

Further, Hesperia’s LCAP stakeholder engagement section does not mention law enforcement even once. In contrast, it states that parents expressed “the need for additional counselors to help students deal with bullying issues”<sup>111</sup> and that stakeholder surveys showed the “need for more counseling support especially in the area of social emotional learning and mental health support.”<sup>112</sup> The stakeholders seem to be interested in prioritizing positive supports, while SBCSS appears to have wholly invented the input that purportedly supported the law enforcement expenditures. Indeed, given the absence of support in Hesperia’s LCAP, SBCSS independently references two school shooting incidents,<sup>113</sup> claiming without evidence that stakeholders were concerned about them.<sup>114</sup> However, SBCSS’s assertion is belied by the LCAP itself, which suggests that stakeholders were concerned about the prevalence of bullying and the availability of mental health supports—omitting any recommendation or even discussion about law enforcement on campus.<sup>115</sup>

#### B. SBCSS Improperly Approved Law Enforcement Actions in Chaffey Joint Union School District’s LCAP

Chaffey Joint Union High School District (“Chaffey”) counted more than \$6 million in campus security resources, including contracts with local law enforcement agencies, as contributing to the increased or improved services requirement.<sup>116</sup> SBCSS approved the LCAP, despite the fact that Chaffey completely omits this action from its DIISUP and does not provide any explanation for how these services are either principally directed or effective at meeting its goals for high-need students.

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<sup>111</sup> *Id.* at 47.

<sup>112</sup> *Id.* at 49.

<sup>113</sup> Ex. 2, Response at 33.

<sup>114</sup> Specifically, SBCSS identifies a school shooting in San Bernardino and a shooting in Parkland, Florida.

Assuming *arguendo* that stakeholders considered these two incidents, it is unclear why either incident justifies investment of education resources in law enforcement at all—let alone specifically to support low-income students, foster youth, and English learners. Law enforcement officers arrived on scene within moments in San Bernardino and the Parkland school actually had a permanent school resource officer, who infamously fled the scene, neither preventing nor stopping the shooting. See Tracy Bloom, et al., *San Bernardino School Shooting: Man Kills Wife Then Himself; 1 of 2 Students Wounded Has Died*, KTLA5 (Apr. 10, 2017), <https://ktla.com/news/local-news/multiple-gunshot-victims-at-elementary-school-in-san-bernardino-amid-report-of-active-shooter-officials-say/>; Audra Burch, et al., *Parkland Officer Who Stayed Outside During Shootings Face Criminal Charges*, NEW YORK TIMES (Jun. 4, 2019), <https://www.nytimes.com/2019/06/04/us/parkland-scot-peterson.html>. Indeed, a Washington Post study found that school police officers were largely ineffective in preventing school shootings, and in many cases caused more harm. Of the 68 school shooting incidents that occurred in a school with a permanent officer, the study found that, “[i]n all but a few of those incidents, the shootings ended before law enforcement of any kind interceded” and that school police were present in four of the five largest shootings but did not prevent the violence. John Woodrow Cox, et al., *Scarred by School Shootings*, WASHINGTON POST (Mar. 25, 2018), <https://www.washingtonpost.com/graphics/2018/local/us-school-shootings-history/>.

<sup>115</sup> See Ex. 1, Complaint at Ex. 7 at 46-49 (2019-20, Hesperia Unified LCAP).

<sup>116</sup> See *id.* at Ex. 9 at 142-44 (Action 3.12—\$5.4 million in law enforcement contracts and other campus security resources), 145-46 (Action 3.14—\$692,500 in security cameras and LobbyGuard).

SBCSS attempts to defend its improper approval first by noting that Chaffey used a mix of both S&C funds and base funds on the security expenditures, citing to its crosswalk.<sup>117</sup> However, the LCAP itself contains no such distinction, so the public lacks the ability to discern the source of funding for each expenditure, particularly in light of Chaffey’s incorrect identification, as discussed below.<sup>118</sup> Further, the crosswalk suggests that Chaffey did not use S&C funds for the law enforcement expenditures (Action 3.12) but did use such funding for the “Lobby Guard” and surveillance spending (Action 3.14). The relevant excerpt of the Chaffey crosswalk is pasted below. Chaffey does not attempt to justify either of those expenditures in the DIISUP, so they are improper.<sup>119</sup>

		S&C %	S&C \$
3.1	Home to School Transportation	2,075,771	1 2,075,771
3.2	Provide extended year/day intervention	-	-
3.3	Homeless Support	230,000	-
3.4	Outreach staff member FOSTER YOUTH	97,833	1.00 97,833
3.5	Site Admin support with APA's	2,386,751	1.00 2,386,751
3.6	3 Psychothrpst + 1 /10 MFT's + 2 new (20)	1,052,425	-
	Behavior intern	59,538	-
	2 behavior intern assts NEW 19/20	136,354	-
	Translation Services/ & Interpret for IEP	184,717	-
	1 school psychologist (Arce) + 2 (in 20)	725,467	1.0000 725,467
	Community Health Education PRG (Loma Linda	25,000	1.00 25,000
			2,183,501
3.7	Counseling Support (406/ 408) ADDL AT 406 /000	994,466	1.0000 994,466
	3 new counselors for 19/20		
3.8	Program Support (4762)	457,326	1.000 457,326
3.9	Foster Youth Leadership Dev (CA Youth Connection)	40,000	1.00 40,000
3.10	Continue to maintain or Improve facilities 0030	-	-
3.10	Continue to maintain or Improve facilities 8150	9,241,125	- -
			9,241,125
3.11	Reduce Teacher Caseload size	2,299,759	1.000 2,299,759
3.11		-	-
3.12	School Resource Officer Each Site	653,152	-
3.12	Director of Campus Safety	213,854	-
3.12	9 campus officers/ Interquest 2.5 for 19-20	4,549,885	-
			5,416,891
3.13	Pos Behvr Intrvn. RestJustice & Cultural Profic Train	89,000	1 89,000
3.13	ANTI DEFAMATION TRAINING/Generation Ready	25,000	1 25,000
3.13	Trauma Informed Schools	105,000	1 105,000
			219,000
3.14	Lobby Guard /lic renewal	4,500	0.6182 2,782
3.14	Security Camera Upgrade	688,000	0.6182 425,322
			692,500

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SBCSS further argues that Chaffey identified programs totaling \$37,738,818 in its DIISUP, which exceeded its obligation to increase or improve services by 15.77%, or \$34,600,124,

<sup>117</sup> See Ex. 2, Response at 34.

<sup>118</sup> See Ex. 1, Complaint at Ex. 9 at 143 (2019-20, Chaffey Unified LCAP).

<sup>119</sup> See Ex. 3 at 6 (Apr. 26, 2019, CDE Decision – Merced City) (“An adequate description of how a District will meet its increased or improved services requirement must address in some manner the actions/services included in the [GAS] section as contributing to meeting this requirement.”)

<sup>120</sup> Ex. 2, Response at Ex. 7 at 5 (Chaffey crosswalk)



without the need to count the security spending.<sup>121</sup> In fact, many programs and services identified as contributing towards the increased or improved services requirement are either not mentioned or not properly justified in the DIISUP, including, but not limited to: \$1 million to maintain librarians at every site and update library materials at every site (Actions 1.5 and 1.10), (\$7.4 million in CTE teachers (Action 1.12), \$4.1 million in “BVROP” (Action 1.14), more than \$2 million in across-the-board technology support and materials (Actions 2.9-2.12), \$2.1 million in home to school transportation (Action 3.1), and \$2.3 million in reduced teacher caseload size (Action 3.11).<sup>122</sup> Removing these unidentified and/or unjustified actions from the proportionality calculation puts Chaffey at \$30,043,951 in contributing programs, which is equivalent to a 13.7% increase or improvement in service, less than the required MPP.

Moreover, SBCSS does not acknowledge that Chaffey’s LCAP explicitly states that the law enforcement expenditures should be considered as contributing to the increased and improved services requirement.<sup>123</sup> As such, the LCAP does not comply with the template because it either: (1) fails to justify in its DIISUP an action contributing to its proportionality requirement or (2) improperly identifies an action as contributing to the increased or improved services requirement. In its Merced decision, CDE determined that the district failed to meet its MPP because the DIISUP did not identify and describe multiple actions included as contributing to the increased/improved services requirement.<sup>124</sup> CDE unequivocally held that all actions intended to contribute to the increased and improved services requirement “must be addressed within the description of increased or improved services in the Demonstration section . . . [i]f the District does not intend to include these actions as contributing to meeting the increased or improved services requirement, the District must indicate as such in the Goals, Actions, and Services section by appropriately completing the LCAP Template for these actions.”<sup>125</sup> As such, SBCSS should have provided technical assistance and either required Chaffey to characterize the law enforcement action differently or justify it in its DIISUP. Better yet, Chaffey should have listened to its stakeholders who prioritized mental health supports and invested substantially more in those actions, instead of increasing campus security resources by \$4.1 million when these resources were not even prioritized by the community.<sup>126</sup> SBCSS did none of these things

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<sup>121</sup> SBCSS acknowledges that adding up the value of services that contribute to the MPP is the appropriate way to determine whether an LEA satisfied its obligations.

<sup>122</sup> See Ex. 1, Complaint at Ex. 9 (2019-20, Chaffey LCAP).

<sup>123</sup> *Id.* at 142-43 (2019-20, Chaffey LCAP).

<sup>124</sup> See Ex. 3 at 7-8 (Apr. 26, 2019, CDE Decision – Merced City).

<sup>125</sup> *Id.* at 7; see also Ex. 4 at 7 (Nov. 2, 2018, CDE Decision – Klamath-Trinity Joint Unified) (same).

<sup>126</sup> See Ex. 1, Complaint at Ex. 9 at 73 (2019-20, Chaffey LCAP) (noting community prioritization of mental health and safety and safe and caring learning environments). Although Chaffey increased mental health supports in 2019-20, those were only a fraction of the increase of the additional security and law enforcement investments. For example, Chaffey increased investments in mental health support personnel by \$938,654 (Action 3.6) and PBIS and restorative justice by \$114,000 (Action 3.13), but increased law enforcement and security by \$4.1 million (Action 3.12). Consistent with listening to stakeholders, SBCSS should have advised Chaffey of the propriety of investing their additional funds in even more mental health supports, which are proven to improve student engagement, academic achievement, and feelings of safety at school. See Nicole Gon Ochi, et al., *Our Right to Resources: School Districts Are Cheating Students to Fund Law Enforcement*, ACLU OF SOUTHERN CALIFORNIA 34-36 (Feb. 25, 2020), <https://www.aclusocal.org/en/publications/right-to-resources>. If Chaffey had invested its funds differently, it could have gotten much closer to the recommended 250:1 ratio for students and counselors and hired an initial team of social workers. According to the most recent publicly available data, the student to counselor ratio in Chaffey is 426:1 and there are no social workers. See Dataquest, 2018-19 Pupil Services by Type.



and approved the faulty LCAP without modification.<sup>127</sup>

Although SBCSS claims that it did not count Chaffey’s law enforcement expenditures as contributing to its proportionality requirement, it nonetheless delves into Chaffey’s suspension rates, noting that it has improved for some subgroups and declined for others.<sup>128</sup> SBCSS also argues that suspension data is irrelevant to the evaluation of the effectiveness of law enforcement because suspensions and expulsions are issued by school staff and not law enforcement.<sup>129</sup> SBCSS’s independent analysis is revealing. First, it shows that SBCSS is capable of reviewing contributing actions through a critical lens and providing opinions on the effectiveness of certain services. Second, it is a reminder that Chaffey failed to perform and publish such an analysis in its LCAP. Third, it shows that there are critical data gaps that impede LEAs and COEs from comprehensively evaluating law enforcement effectiveness. Complainants agree that student discipline data is not the most direct way to evaluate the impact of law enforcement, but Chaffey and most other districts refuse to publish data on arrests, citations, or referrals to law enforcement. We urge SBCSS to request such information in the future whenever LEAs attempt to justify S&C funding on law enforcement to assess whether the LEA is in fact meeting its goals for high-need students.

Finally, SBCSS independently introduces evidence from the Montclair and Ontario Police Departments’ websites and a news article to support the theory that law enforcement officers in Chaffey purportedly provide supportive services to students.<sup>130</sup> The new evidence is irrelevant and unconvincing because: (1) none of it is in Chaffey’s LCAP, (2) it is the LEA’s burden to justify its expenditures and not SBCSS’s responsibility to justify it after-the-fact, and (3) the crosswalks SBCSS reference suggest that it is the security and surveillance expenditures that Chaffey funded with S&C dollars, not law enforcement expenditures.<sup>131</sup> Ultimately, neither Chaffey nor SBCSS present any evidence showing that those school policing and security measures are principally directed or effective in meeting goals for high-need students.

### C. SBCSS Improperly Approved Law Enforcement Actions in Apple Valley Unified School District’s LCAP

Similar to Chaffey, Apple Valley Unified School District (“Apple Valley”) counted more than \$5 million in districtwide security measures, including law enforcement, as contributing to its increased and improved services requirement.<sup>132</sup> Apple Valley failed to describe how this action is either principally directed or effective in its DIISUP or elsewhere in its LCAP. Here, SBCSS claims that it did not consider law enforcement spending as contributing towards Apple Valley’s MPP obligation because the district did not attempt to justify it in its DIISUP and because the services identified there (26.64%, \$28,877,696) exceeded the district’s proportionality obligation

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<sup>127</sup> See CAL. EDUC. CODE § 52070(d)(1).

<sup>128</sup> Ex. 2, Response at 34-35.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at 36.

<sup>131</sup> Ex. 2, Response at Ex. 7 at 5 (Chaffey crosswalk, line items 3.14).

<sup>132</sup> Ex. 1, Complaint at Ex. 10 at 113 (2019-20, Apple Valley LCAP).

(23.54%, \$25,389,557).<sup>133</sup> Again, regardless of whether Apple Valley exceeded its obligation with other services, it expressly identified the law enforcement expenditure as contributing towards its obligation to increase or improve services for high-need students and thus either should have justified the expenditure in its DIISUP or re-categorized the expenditure as not contributing.<sup>134</sup>

SBCSS also argues that it properly approved the LCAP because the law enforcement spending was bundled with proctors, principals, and a co-administrator, and that only some of the expenditures were funded by S&C funds.<sup>135</sup> SBCSS points to Apple Valley’s crosswalk, which states that Apple Valley spent \$576,378 of S&C funds and \$4.4 million of base funds on the action item (Goal 4, Action 4).<sup>136</sup> But the crosswalk provides no meaningful information and does not identify which portions of the action were funded by S&C and which were funded by base, much less how the portion supported by S&C funds was principally directed and effective. There is no indication that the \$574,378 of S&C funds were not spent on law enforcement, which underscores the importance of LEAs unbundling its actions and making clear which contribute to the increased and improved services requirement and SBCSS intervening when this is unclear.

Goal 3, Action 6	\$567,629	\$900,000 Title I
Goal 3, Action 6	\$294,454	LCFF (S&C)
Goal 3, Action 7	\$187,845	\$862,083 Title I
Goal 3, Action 8	\$1,860,436	\$187,845 LCFF (S&C)
Goal 3, Action 8	\$97,299	LCFF (S&C)
Goal 3, Action 9	\$256,083	\$1,957,735 Title I
Goal 3, Action 9	\$153,398	LCFF (S&C)
Goal 3, Action 9	\$778,369	Title I
Goal 3, Action 10	\$532,572	\$1,187,850 ASES
Goal 3, Action 11	\$852,071	\$532,572 LCFF (S&C)
Goal 3, Action 11	\$72,512	LCFF (S&C)
Goal 3, Action 12	\$4,052,552	\$924,583 Title I
Goal 4, Action 1	\$262,254	\$4,052,552 LCFF (S&C)
Goal 4, Action 1	\$675,000	LCFF (S&C)
Goal 4, Action 2	\$500,000	\$937,254 Fund 14 - via LCFF (S&C) Xfer
Goal 4, Action 3	\$3,745,193	\$500,000 Fund 40
Goal 4, Action 4	\$574,378	\$3,745,193 LCFF (S&C)
Goal 4, Action 4	\$4,448,420	LCFF (S&C)
Goal 4, Action 4	\$53,781	LCFF base
Goal 5, Action 1	\$1,370,207	\$5,076,579 Unrestricted Lottery
Goal 5, Action 2	\$184,689	\$1,370,207 LCFF (S&C)
Goal 5, Action 2	\$90,737	LCFF (S&C)
Goal 5, Action 2	\$69,000	Title I
Goal 5, Action 3	\$162,869	\$344,426 Title III
Goal 5, Action 4	\$264,696	\$162,869 LCFF (S&C)
Goal 5, Action 5	\$70,000	\$264,696 LCFF (S&C)
		\$70,000 Title III
Total LCAP Budget:	\$35,659,419	\$35,659,419

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Relatedly, SBCSS argues that it properly approved Apple Valley’s LCAP because the action

<sup>133</sup> In fact, many of the actions identified in the DIISUP that Apple Valley counts towards its proportionality obligation are not properly justified and, therefore, cannot be counted towards MPP. For example, the \$3.9 million class size reduction item (Action 3.12), the \$3.4 million technology action (Action 2.1), and the \$2.8 million action related to increased staffing for Career and Technical pathways (Action 2.2) all lack effectiveness analyses in addition to offering weak discussions of how the proposed actions are designed to address unduplicated pupil needs. These failings alone reduce the MPP by at least \$10 million, putting Apple Valley far short of its required MPP.

<sup>134</sup> *Id.* at 112-13 (2019-20, Apple Valley LCAP).

<sup>135</sup> Ex. 2, Response at 37-38.

<sup>136</sup> Ex. 2, Response at Ex. 8 at 1 (Apple Valley crosswalk).

<sup>137</sup> *Id.*

“[i]ncludes police officers, deans, Campus Security, and Proctors[, and] . . . two elementary principles,”<sup>138</sup> suggesting that the action was properly characterized because many of those other positions undertook services that were increased or improved services for high-need students. However, the action item makes clear that Apple Valley improperly bundled several unrelated items together, some of which were paid for with base funds and some with S&C funds. CDE recently held that all information reported for a specific action must apply to the full scope of the action’s description because bundling actions with different attributes “compromises meaningful stakeholder engagement by rendering the LCAP less accessible to non-educators and the general public.”<sup>139</sup> Therefore, it was improper for SBCSS to approve an LCAP that combined contributing and non-contributing services in a single action and which did not separate the contributing action sufficiently to judge its validity as an increased or improved service and to track its effectiveness over time. Neither the Apple Valley LCAP nor the crosswalk identified the source of the expenditures, making it impossible for SBCSS to determine whether Apple Valley was attempting to count law enforcement or other expenditures towards its proportionality obligations. Ultimately, SBCSS should have provided technical assistance and required Apple Valley to disaggregate the action item and make clear that law enforcement will not be counted towards its increased and improved services requirement where it has not been properly justified. Moreover, it is unclear why Apple Valley felt the need to increase investment in security measures when the stakeholder engagement section never mentions a need for increased security.<sup>140</sup>

In sum, SBCSS failed to fulfill its responsibilities to provide accountability over the LEAs it oversees by approving multiple LCAPs with wholly unjustified law enforcement actions identified in the LCAPs as contributing to the increased or improved services requirement. As discussed, research demonstrates that law enforcement harms all students, particularly low-income students of color. Accordingly, SBCSS must scrutinize attempts to identify for law enforcement as an increased or improved service and reject such spending where it is not principally directed and effective in meeting goals for high-need students.

#### **IV. Conclusion**

In sum, SBCSS failed to perform its legal obligations to provide appropriate technical assistance and approve LCAPs only when they comply with the LCFF statutory and regulatory expenditure requirements. SBCSS’s Response to the complaint only further establishes the gross inadequacies in its review and approval process, and its fundamental misunderstanding of the spirit and requirements of LCFF. Given the crucial role of County Offices of Education in the LCFF accountability system and SBCSS’s purported statewide leadership on these issues, it is even more important that CDE clarify the law and ensure that SBCSS and other COEs throughout the state have an effective review and approval process that ensures LCFF is increasing and improving services for high-need students as intended. If not, there will be no accountability for the transparency, community accountability, and equity provisions at the heart of LCFF, and millions of high-need students will be deprived of the support they are entitled to

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<sup>138</sup> Ex. 2, Response at 37.

<sup>139</sup> See Ex. 5 at 15 (Jul. 30, 2020, CDE Decision – Los Angeles Unified).

<sup>140</sup> See Ex. 1, Complaint at Ex. 10 at 49-50 (2019-20, Apple Valley LCAP).

receive under LCFF and that is desperately needed to close opportunity gaps.

For all the reasons stated here and in the attached Complaint, the Superintendent should overturn SBCSS's determinations and require SBCSS to do the following:

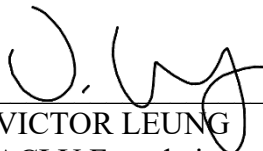
1. Seek technical assistance from CDE to update all SBCSS's internal and external training materials to comport with the LCFF laws and regulations and to develop and implement an LCAP review and approval process for the next three-year LCAP cycle that ensures SBCOE identifies and corrects the deficiencies discussed above prior to approving any LCAP. The review and approval process shall include, but not be limited to the following:
  - a. Verification that MPP is demonstrated qualitatively and/or quantitatively in the DIISUP section or its equivalent.
  - b. Verification that the actions listed in the DIISUP section or its equivalent as contributing toward the MPP are also listed in the GAS section and the appropriate expenditure tables in the operative LCAP Template.
  - c. Verification that the actions listed as contributing to the increased and improved services requirement meet the MPP when aggregated.
  - d. Identification of whether the LEA failed to meet the MPP in the past fiscal year in the Annual Update, and if so, by how much, as well as verification that the LEA is redressing that shortfall by providing additional increased and improved services for high-need students on top of the current year's MPP.
  - e. Verification that each districtwide or schoolwide action listed as contributing to the increased and improved services requirement is justified as both principally directed and effective, with particular scrutiny on across-the-board law enforcement actions that presumptively fail both the "principally directed" and "effectiveness" requirements.
2. Review, at a minimum, the five 2019-20 LCAPs analyzed herein to clarify the deficiencies outlined above. Where law enforcement actions or other districtwide and schoolwide services are not principally directed and effective and, therefore, are improperly counted towards the proportionality requirement, require the districts to remove these actions from its MPP calculation and calculate any proportionality shortfalls. For all material identified proportionality shortfalls, ensure that these districts carry the obligation shortfall forward to the next regular, three-year LCAP in addition to fulfilling the current fiscal year's proportionality obligation.

Respectfully submitted this 15th day of October 2020 by,



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