

**REQUEST FOR RECONSIDERATION OF CDE DECISION ON UCP COMPLAINT
STATE SUPERINTENDENT TONY THURMOND
c/o Local Agency Systems Support Office
California Department of Education
1430 N Street
Sacramento, CA 95814-5901
lcff@cde.ca.gov**

Ana Carrion and Elvira Velasco

v.

**Los Angeles Unified School District and
Los Angeles County Office of Education**

*Request for Reconsideration of CDE's Decision in Case #: 2019-0333 & 2019-0354
Uniform Complaint against LAUSD & LACOE*

August 31, 2020



COVINGTON

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August 31, 2020

State Superintendent Tony Thurmond
Local Agency Systems Support Office
California Department of Education
1430 N Street
Sacramento, CA 95814

Via E-Mail Only

RE: **Request for Reconsideration of CDE Decision re: Uniform Complaint
Ana Carrion and Elvira Velasco v. LAUSD & LACOE (Case #: 2019-0333)**

Dear Superintendent Thurmond,

We submit this request for reconsideration of the California Department of Education (“CDE”) decision with respect to the Uniform Complaint Procedure (“UCP”) Complaint that Public Advocates and Covington Burling filed against Los Angeles Unified School District (“LAUSD”) and Los Angeles County Office of Education (“LACOE”) on behalf of Ana Carrion and Elvira Velasco, two community leaders and parents of LAUSD low-income elementary and middle school students. We are seeking reconsideration of CDE’s corrective actions, which do not provide a sufficient remedy to all affected pupils, parents, and guardians, as well as clarification for complainants and the field on CDE’s interpretation of the increased and improved services requirement as an “outcomes requirement.”

I. The Corrective Actions Fail to Provide a Proper Remedy to All Affected Pupils, Parents, and Guardians

Pursuant to 5 Cal. Code Regs. tit. 5, § 4665(a)(4), we are seeking reconsideration on the basis that CDE’s corrective actions for Allegations 2, 3, 5, and 6 fail to provide a proper remedy. All corrective actions apply to the 2021-22 LCAP and do not provide any relief for the deficiencies in the 2018-19 and 2019-20 LCAPs, which are the basis of the complaint.¹ An appeal decision issued by CDE must include “[c]orrective actions . . . including a remedy to the all affected pupils, parents, and guardians.” *See* Cal. Code Regs. tit. 5, § 4663(g)(3). Courts have routinely required agencies to remedy past unlawful actions by remediating the effects of their past violations as well as ordering reasonable steps to prevent future violations. *See, e.g., Lockyer v. City and County of San Francisco*, 33 Cal. 4th 1055, 1113 (2004) (not only ordering city officials to comply with applicable statutes in the future, but also to “direct the officials to take all necessary steps to remedy the continuing effect of their past unlawful actions”); *cf. Unions of American Physicians & Dentists v. Kizer*, 223 Cal. App. 3d 490, 502-04 (1990) (remedies owed as to effects of past unlawful regulations in addition to issuance of new valid regulation); *Jane Doe I v. Nielsen*, 357 F. Supp. 3d 972, 1003-1004 (N.D. Cal. 2018) (equitable relief sought by

¹ *See* Ex. 1 at 30-31 (7/30/2020 CDE Decision).

the plaintiff, including setting aside unlawful already-issued notices as well as future compliance, is proper). Here, the corrective actions ordered by CDE only afford aggrieved students, parents, and guardians a half-remedy by taking reasonable steps to prevent future violations but do nothing to remediate the continuing effects of past violations caused by the illegal 2018-19 and 2019-20 LCAPs.

As CDE recognized in its decision, “[m]eaningful engagement of parents, students, and other stakeholders, including those representing the student groups identified by LCFF, is critical to the development of the LCAP and the budget process. An LEA promotes meaningful stakeholder engagement in part by providing information about planned goals and actions in its LCAP”.² In its decision, CDE determined that many of the actions in LAUSD’s 2019-20 LCAP did not adequately describe what it planned to do, which deprives stakeholders from knowing how the district is using its LCFF funds and the ability to “address the overall implementation and effectiveness of the actions.”³ In short, LAUSD’s inadequate and illegal 2019-20 LCAP deprived parents, students, and guardians of the ability to meaningfully engage in crucial decisions about the budget and the district’s plans to meet its goals for all students and to close opportunity gaps for high-need students. It also deprived parents, students, and guardians of the ability to track how programs and services are implemented and whether they are working. These are not marginal violations which can be corrected at some future date when the LCAP is reset; they are ongoing violations that go to the very heart of the Local Control Funding Formula (“LCFF”), which relies on community accountability to function and which must be remedied *now* to enable Complainants and other LAUSD families to participate fully in the current context and the next LCAP cycle. When the public review processes depend on the transparent and accurate disclosure of information by agencies, denying the public that information is an injury deserving a remedy. *See, e.g., Fed. Election Comm’n v. Akins*, 524 U.S. 11, 22 (1998) (it is an injury-in-fact where plaintiff denied “information which must be publicly disclosed pursuant to a statute”); *Trustees for Alaska v. Hodel*, 806 F.2d 1378 (9th Cir. 1986) (affirming injunction prohibiting agency from submitting a report to Congress until it complied with statute); *Ctr. for Biological Diversity v. Brennan*, 571 F. Supp. 2d 1105, 1136-37 (N.D. Cal. 2007) (similar).

Therefore, a current and immediate remedy to address the continuing impact of LAUSD’s prior, illegal LCAP actions, is necessary. Complainants and their fellow families and students have earned the right to know *now* how LAUSD has been using its \$1.1 billion in supplemental and concentration funds and have earned the right to engage with their district *now* to hold it accountable for those actions and their ongoing effects.

Requiring LAUSD to amend its 2019-20 LCAP and requiring LACOE to review and, as appropriate, approve that LCAP will promote meaningful community engagement and accountability in at least three ways:

² See Ex. 1 at 14 (7/30/2020 CDE Decision).

³ See Ex. 1 at 18 (7/30/2020 CDE Decision).

1. **Transparency**: First, a proper 2019-20 LCAP will clarify what LAUSD actually planned to do in 2019-20 so parents, students, and other stakeholders can know what actually was planned in 2019-20 and can meaningfully weigh into the Annual Update, which will be included in the 21-22 LCAP.⁴ If LAUSD’s 2019-20 planned actions remain bundled and opaque, it will be impossible to know what specific actions were undertaken and to evaluate how those actions were implemented and whether they have been effective. The recent trailer bill⁵ only further solidifies this point in making clear that implementation and effectiveness of 2019-20 LCAP actions and expenditures are to be evaluated in the 2021-22 LCAP (alongside 2020-21 Learning Continuity Plan actions and expenditures). For LAUSD to comply with this requirement, it must first provide Complainants and the school community with a proper, transparent 2019-20 LCAP.
2. **Engagement and Accountability**: An accurate 2019-20 LCAP will enable Complainants and the school community to engage with the district and to hold it accountable for what it has done in the past, for what it is doing in the current 2020-21 school year⁶ and to be able to use that information in the next LCAP cycle.
3. **Proportionality**: An amended LCAP is necessary to determine whether LAUSD met its increased and improved services requirement for 2018-19 and 2019-20. As CDE recognized, it is not possible to assess whether proportionality has been achieved when actions are not adequately identified and described.⁷ Moreover, CDE found that many entity-wide actions did not sufficiently explain how they were principally directed towards high-need students.⁸ Complainants have earned the right to know if LAUSD met its minimum proportionality obligation or not.

⁴ See S.B. 820, 2019-2020 Leg., Reg. Sess. § 57(95)(a) (Cal. 2020) (“For purposes of the annual update to the local control and accountability plan for the 2021-22 school year . . . the school district . . . shall include the actions and expenditures included in the learning continuity and attendance plan . . . and the local control and accountability plan adopted for the 2019-20 school year.”); Assemb. B., 2019-2020 Leg., Reg. Sess., 1865 § 57(95)(a) (Cal. 2020) (same).

⁵ *Id.*

⁶ As concerns the relevance to the current school year, the Learning Continuity Plan, by itself, does not provide a comprehensive picture of the district’s strategies to meet its goals and close opportunity gaps. Thus, in the absence of a 2020-21 LCAP, the combination of a proper 2019-20 LCAP and a well-written Learning Continuity Plan will help students, parents, and guardians to hold LAUSD accountable for its 2020-21 goals, actions, and services.

⁷ See Ex. 1 at 24 (7/30/2020 CDE Decision).

⁸ See Ex. 1 at 27-28 (“[S]pecific needs, conditions, or circumstances attributed to unduplicated students are referenced for only a few actions. . . The descriptions of many of the actions in the Demonstration section do explicitly reference unduplicated students. However, there is no clear indication of the needs, conditions, or circumstances of those unduplicated students that are being addressed by the actions. Stating that a service is provided to a school with a high percentage of unduplicated students is not in itself an adequate justification for how the action is principally directed towards, and effective in, meeting goals for unduplicated students.”)

For all the reasons discussed above, we request that CDE amend its decision to require LAUSD to adopt a 2019-20 LCAP that complies with the legal requirements articulated in the decision and for LACOE to fulfill its statutory duty to approve the LCAP only after it meets all of these requirements. Specifically:

- Ensure that actions adhere to the LCAP Template and do not include separate actions for which the information required by the LCAP Template for each action does not equally apply;
- Ensure descriptions of actions provide sufficient information to identify an action in order that the LEA and its stakeholders are able to track implementation and to address the effectiveness of the action over time, as required by the annual update process; and
- Ensure that the identification of actions included as contributing to meeting the increased or improved services requirement sufficiently supports the District’s explanation of how the actions are principally directed towards, and are effective in, meeting goals for the District’s unduplicated students.

Properly expanding the relief afforded by this appeal to include a revised 2019-20 LCAP will provide students, parents, and guardians an opportunity to meaningfully engage with LAUSD this year and to meaningfully participate in the 2021-22 LCAP and budget development process with the information they are legally entitled to hold heading into the next LCAP cycle.

II. Clarification of CDE’s Interpretation of the Increased or Improved Services Requirement is Needed

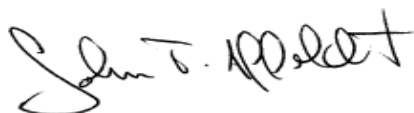
We also urge the Superintendent to take this opportunity to clarify for Complainants and the field CDE’s interpretation of the increased or improved services requirement as “an outcomes requirement.”⁹ It is not entirely clear to what outcome or outcomes the CDE interpretation is referring. To the extent the “outcome” referred to is the required increased or improved level of service provision, such use would be consistent with LCFF’s statutory and regulatory requirements.¹⁰ However, some may read the decision to mean that LEAs are required to increase or improve student and school “outcomes”—*i.e.*, in the more typical sense of the word in the education context—by the required Minimum Proportionality Percentage. Not only would such a reading sow confusion in the field, it finds no basis in the statute or regulations. Further, such a reading was decidedly rejected during the LCFF regulatory process. The option to demonstrate increased or improved services through an “Achieve More” approach was specifically deleted from the regulations after the State Board of Education received

⁹ See Ex. 1 at 22, 23, 29 (7/30/2020 CDE Decision).

¹⁰ Cal. Educ. Code § 44238.07(a); Cal. Code Regs. tit. 5, § 15496.

overwhelming stakeholder input that this option is legally flawed, rife with accountability loopholes and lacking any meaningful standard for measuring expenditures.¹¹ Accordingly, we request that CDE clarify for Complainants and the field what it means when it states that the increased or improved services requirement is “not a spending requirement; it is an outcomes requirement.”¹²

Respectfully submitted this 31st day of August 2020 by,



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¹¹ See Ex. 2 at 1-2 (State Board of Education Agenda for January 2014, Item 20, Attachment 1, Local Control Funding Formula Spending Regulations Comparison and Feedback Response Chart.).

¹² See Ex. 1 at 22, 23 (7/30/2020 CDE Decision).

