

**APPEAL OF LACOE 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**

Appeal of LACOE's Decision Re: Uniform Complaint against LAUSD & LACOE

October 28, 2019



JOHN AFFELDT
ANGELICA JONGO
NICOLE GON OCHI
Public Advocates, Inc.
131 Steuart Street, Suite 300
San Francisco, CA 94105
Telephone: (415) 431-7430
Email: jaffeldt@publicadvocates.org

COVINGTON

LAURA E. MUSCHAMP
ROBERT ZHOU
Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067
Telephone: (424) 332-4775
Email: lmuschamp@cov.com

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October 28, 2019

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

Via E-Mail Only

RE: **Appeal of LACOE Decision re: Uniform Complaint
Ana Carrion and Elvira Velasco v. LAUSD & LACOE**

Dear Superintendent Thurmond,

We submit this appeal of the determination of the Los Angeles County Office of Education (“LACOE”) with respect to the Uniform Complaint Procedure (“UCP”) Complaint that Public Advocates and Covington Burling filed on behalf of Ana Carrion and Elvira Velasco, two community leaders and parents of LAUSD low-income elementary and middle school students.

As discussed more fully in the attached UCP Complaint (Ex. 21), LAUSD has violated its legal obligations under the Local Control Funding Formula by:

- 1) Ignoring the stakeholder engagement and public hearing and approval process for LCAPs, in violation of Cal. Educ. Code § 52062;
- 2) Bundling multiple and often unrelated actions and services into single “mega-actions,” which violates LCFF’s transparency requirements and makes it impossible to assess the nature, legality, and effectiveness of services funded by supplemental and concentration funds, in violation of its responsibility to describe specific actions and associated expenditures and to identify and justify districtwide and school wide uses of supplemental and concentration funds pursuant to 5 Cal. Code Regs. § 15496, Cal. Educ. Code §§ 52061(a)(2)-(3); 52062(A)(3)-(5); 52064(b)(2), (b)(7), (j);
- 3) Allocating hundreds of millions of dollars in supplemental and concentration funds to individual school sites without identifying the specific schools that receive funding or describing and justifying each school’s use of its allocations, or analyzing the effectiveness of the action at the school site, in violation of Cal. Educ. Code § 52060(c), 52061, and 5 Cal. Code Regs. § 15496;

- 4) Failing to demonstrate that services for high need students are being increased or improved by 32 percent above the level of services provided to all students, in violation of Cal. Educ. Code § 42238.07 and 5 Cal. Code Regs. § 15496(a);
- 5) Failing to justify the use of supplemental and concentration funds to support individual districtwide or school wide actions, in violation of Cal. Educ. Code § 42238.07 and 5 Cal. Code Regs. § 15496(b); and
- 6) Inappropriately rolling forward to the present LCAP \$340 million of unidentified, unjustified, and unnoticed supplemental and concentration expenditures dating back to the 2016-17 annual update in the 2017-18 LCAP, in violation of Cal. Educ. Code § 52064(b)(2), (b)(7), (j); § 52062; § 52061(a)(2)-(3); and 5 Cal. Code Regs. § 15496.

LACOE is complicit in these violations because it continues to approve LAUSD LCAPs that do not adhere to the LCAP requirements or expenditure regulations (5 Cal. Code Reg. § 15496), in derogation of its duty to hold districts accountable for spending its LCFE dollars transparently and equitably.¹ *See* Cal. Educ. Code § 52070 (d); 5 Cal. Code Reg. § 15497.

Accordingly, Complainants requested through a UCP complaint (“Complaint”) filed on July 11, 2019 that LAUSD adopt a new LCAP that fixes the fundamental errors identified in the Complaint and follow all the community engagement provisions set forth in Cal. Educ. Code § 52062. Complainants requested direct state intervention given the futility of previous requests to the District and LACOE for intervention on prior LCAPs, and the irreparable harm that results when funds are dissipated, educational opportunities are lost, and the public is denied the notice and consultation opportunity that LCFE provides. On July 22, 2019, CDE denied Complainant’s request for direct state intervention because the 2019-20 LCAP was still under review by LACOE and the statutory time limits had not yet elapsed. *See* Ex. 23. Accordingly, CDE referred the Complaint to LAUSD and LACOE for independent investigations. *See* Ex. 24.

On July 29, 2019, several weeks after the Complaint was filed, LACOE sent a clarification letter to LAUSD, identifying a plethora of deficiencies with the LCAP, including many of those identified in the July 11, 2019 Complaint. *See* Ex. 44 (LACOE clarification

¹ For example, Public Advocates sent a letter to LACOE on August 13, 2018 outlining several concerns from the 2017-18 LCAP that continued in the 2018-19 LCAP that had been approved by the LAUSD Board but was still under consideration by LACOE. *See* Ex. 13. Although LACOE worked with LAUSD to clarify some aspects of its 2018-19 LCAP, it ultimately approved an LCAP that did not adhere to the template or regulations, as discussed in the Complaint. *See* Ex. 21 at pp. 16-17. After it approved LAUSD’s 2018-19 LCAP, LACOE staff raised some concerns about the appropriateness of using supplemental and concentration funds for Saturday School, but did not appear to do anything about this ongoing potential legal violation. *See* Ex. 50 (10/17/18 LACOE email).

letter). On August 21, 2019, LACOE sent an identical letter recommending several amendments to the LCAP. *See* Ex. 41 (LACOE amendments letter).

On September 12, 2019 (“9/12 LCAP”) LAUSD issued a revised LCAP, which improved upon the previously adopted LCAP, but still contained many deficiencies (Ex. 26). LAUSD provided a 5-day window for the public to provide online feedback on the 274-page document but did not seek input from the PAC or DELAC or hold a public hearing on its revised LCAP. After receiving comments critical of many aspects of the 9/12 LCAP from Complainants, Ex. 27, on September 23, 2019, LAUSD postponed Board consideration of the revised LCAP from September 24th to October 1st. On September 23, 2019, LAUSD posted a further revised LCAP on its website (labeled “9/20 LCAP”), which made significant, unexplained changes that undermined the integrity of the document. *See* Ex. 25. LAUSD did not present this final version of its 2019-20 LCAP to the PAC or DELAC for review and feedback, nor did it invite further public comment beyond the limited number of speakers and minutes permitted at its October 1st adoption hearing. On October 1, 2019, the LAUSD Board voted to approve the revised LCAP by a 6-1 vote; therefore, the operative LCAP is the 9/20 LCAP that was posted on 9/23 and adopted on October 1st.

On October 11, 2019, Complainants’ counsel received the attached determination and report of findings from LACOE.² *See* Ex. 42 (LACOE Decision). In its decision, LACOE found that the Complaint was premature because it was filed before LAUSD had a chance to properly review the 2019-20 LCAP and is now moot because it has since been superseded. *Id.* at p. 4. The Decision also found that all substantive concerns were addressed by the revised LCAP adopted on October 1st. *Id.* at pp. 4-6. On October 15, 2019, LACOE issued an addendum to its October 11th decision, recognizing for the first time that the Complaint identified deficiencies with the 2018-19 LCAP in addition to the 2019-20 LCAP. *See* Ex. 43 (addendum to LACOE decision). The addendum concludes that the allegations related to the 2018-19 LCAP are somehow resolved by the improved (but still inadequate) Demonstration of Increased/Improved Services for Unduplicated Pupils (DIISUP) Section in the revised 2019-20 LCAP. *Id.* at p. 1.

LACOE’s decision is erroneous. As discussed in detail below, the Complaint is not moot as the revised LCAP contains the same material deficiencies raised in the Complaint regarding the 6/18 LCAP and the corrective action requested in the Complaint has not been realized. Accordingly, Complainants Carrion and Velasco now appeal LACOE’s erroneous legal determinations to the Superintendent of Public Instruction and request that the Superintendent and the California Department of Education (“CDE”) issue a decision to clarify the law and order LAUSD to correct the deficiencies in its LCAP that LACOE overlooked.

² LAUSD issued its Decision on September 20, 2019, which Complainants appealed on October 4th. *See* Ex. 52 (LAUSD appeal). Since that decision and this decision arise out of the same set of facts, we request that these appeals be joined for adjudication.

I. The Complaint was not premature and is not moot.

A. LACOE erroneously found that the Complaint was premature.

As an initial matter, LACOE improperly found that the Complaint was premature. LAUSD's 2019-20 LCAP is not the only LCAP at issue. The Complainants also raised substantial concerns about LAUSD's 2018-19 LCAP, which had already been approved by LACOE at the time of the Complaint. The Complaint certainly was not premature with respect to the 2018-19 LCAP. Moreover, there is and was a high likelihood that the problems from the 2018-19 LCAP would repeat themselves in the 2019-20 LCAP if LACOE did not intervene and set clear guidelines. This concern was well-founded by what in fact has happened; despite LACOE's letter requesting clarification dated July 29, 2019, the revised LCAP for 2019-20 remains deficient in the fundamental ways identified in the original Complaint. Therefore, this UCP Complaint was not, and is not, premature.

B. LACOE erroneously determined that the Complaint is moot.

Contrary to LACOE's decision, the Complaint is not moot. Pursuant to the UCP regulations, the County here was required to take whatever corrective action was legally warranted by the instant Complaint, *see* 5 Cal. Code Regs. § 4631(e)(5). LACOE suggests that since LAUSD has since released a new version of the LCAP for 2019-20, the current Complaint is moot. That is not so.

First, the Complaint is obviously not moot with respect to LAUSD's 2018-19 LCAP. *Second*, the relief sought in the Complaint for the 2019-20 LCAP remains at issue. While the Complaint pled relief that the June 18, 2019 version of the LCAP be deemed deficient, that is not the only relief sought. Complainants expressly pled relief that LAUSD adopt and LACOE only approve a revised 2019-20 LCAP that corrects all the bundling, school-level transparency, DIISUP, etc. errors identified in the Complaint (Ex. 21).

Third, Courts have held that appeals are not moot even if the underlying challenged action had been superseded, when "a material portion of the statute or regulation is re-enacted." Here, as discussed in more details below, because LAUSD's revised LCAP, with its inadequate corrective actions, contains the same material deficiencies raised in the Complaint, this appeal is not moot, and it is entirely appropriate for CDE to review the revised LCAP, particularly where there are disputes of law, rather than fact. *Californians for Political Reform Found. v. Fair Political Practices Comm'n*, 61 Cal. App. 4th 472, 480 (Cal. Ct. App. 1998).

Fourth, public policy counsels against establishing a rule that enables LEAs to so easily evade appellate review by the CDE. If a complainant were forced to submit a new Complaint

every time a district imperfectly modified its LCAP and the county approved the deficient LCAP, CDE would never review the legal issues until well into or even after the LCAP year—if ever. Such a result would only invite districts to adopt slightly modified LCAPs to evade review.³

The instant Complaint easily meets the standards. The compliance of LCFF’s transparency, equity, and accountability requirements are of significant concern to the public. As evidenced by the District’s repeated failure to comply with such requirements, if CDE did not intervene at this time, the dispute likely would arise again. With this appeal, CDE would have the opportunity to clarify the LCFF requirements and provide clear guidelines to the District and the County concerning the proper form and content of the LAUSD LCAP.

Moreover, as the Complainants explained in great detail in their Complaint, without CDE’s intervention, high need students in this District would continue to suffer immediate and irreparable injury. *See* Ex. 21 (Complaint) at pp. 37–39. Such harm is compounded by the sheer size of LAUSD and the amount of funds it receives each year. The issues implicated in this appeal are not limited to the Complainants here, rather, the rights of hundreds of thousands of high-need students in the District are implicated. Furthermore, the Complainants are two parents who have children in elementary and middle schools. Accordingly, resolution of the action is likely to affect the Complainants’ future access to equitable investments that they are entitled to. Finally, a significant portion of the Complaint, namely the deficiencies of the 2018-19 LCAP and the remaining deficiencies of the revised 2019-20 LCAP, are still at issue and await resolution. Accordingly, the instant Complaint is far from moot, as LACOE argues.⁴

II. LACOE should be directed to formally acknowledge the 6/28 LCAP was void and to direct LAUSD to refrain from representing in the future any unilaterally modified LCAPs that have not been subject to community input, board and county approval as its official LCAP.

On or around July 12, 2019, LAUSD submitted the 6/28 LCAP to LACOE for approval without following the community engagement and public hearing approval processes required by law. *See* Ex. 21 (Complaint) at p. 4-7; Ex. 52 (CDE Appeal of LAUSD decision) at pp. 4-5;

³ Indeed, courts have long held that if a dispute (1) relates to a matter of public interest, (2) there is a “great likelihood that the matter will arise again in the future, and [3] the public interest issues involved are of immediate concern to individuals not directly involved in the instant proceedings; [(4)] resolution of the action is likely to affect the future rights of the parties before the court; and [(5)] significant issues remain requiring resolution,” such a dispute is not moot. *City of Monterey v. Cal. Coastal Comm’n*, 120 Cal. App. 3d 799, 805–806 (Cal. Ct. App. 1981).

⁴ Alternatively, we request that CDE treat this appeal as a request for direct intervention pursuant to 5 Cal. Code Regs. § 4650(a)(6) for the same reasons stated in the underlying Complaint together with the new evidence presented by this appeal of the futility of the County’s efforts to resolve the issues raised here on its own investigation.

Ex. 40 (7/12/19 LACOE email with 6/28/19 LCAP version attached). In its decision, LACOE does not address this serious procedural violation nor does it acknowledge the broader allegations in the Complaint that LAUSD has a pattern of making unilateral changes to its LCAP.⁵ Instead, it merely notes that “[t]he LCAP posted on June 28th was not reviewed as it was not the official LCAP approved by LAUSD’s board.” Ex. 42 (LACOE decision) at p. 4. However, given LACOE’s track record of approving LAUSD LCAPs that have been unilaterally changed after Board approval, it is not at all clear that LACOE would have recognized the June 28th LCAP as improper if the Complaint had not raised the issue.

The Complaint explicitly seeks relief from CDE that LAUSD be ordered henceforth not to modify board and/or county-approved LCAPs unilaterally and represent those modified versions as the official District LCAPs and that instead, any material proposed LCAP modifications be subjected to the statutorily required community input, public hearing and approval processes before those LCAPs can be treated as the District’s official version. Ex. 21 at p. 41, IX.4. Accordingly, Complainants respectfully request that the CDE issue a determination that declares the 6/28/19 LCAP version null and void and grants the foregoing relief to avoid a repetition of such harms in the future.

III. The revised LCAP continues to bundle multiple, distinct programs and services into “mega actions” that violate LCFF’s transparency requirements and thwart any meaningful exercise of local engagement and accountability.

At the heart of LCFF is the requirement that districts be fully transparent about how they are spending their money so that community stakeholders can hold them accountable for using funding equitably and effectively. *See generally* Ex. 55. To operationalize this goal, the LCAP template and instructions require LEAs to “include a description of the *specific planned actions*

⁵ The Complaint identifies three such instances of unilateral modification by LAUSD:

- As noted, the board-approved 6/18/19 LCAP was unilaterally modified by staff and transmitted to LACOE as the final version without public input or board approval. *See* Ex. 21 at pp. 4-7.
- The official, LACOE-approved 2018-19 LCAP was substituted on the District’s website with the prior version of the 2018-19 LCAP that the Board had approved but LACOE had rejected. *See* Ex. 21 at p. 17, n. 60.
- Staff unilaterally modified and substituted the 2017-18 LCAP with a new version at some point well after the conclusion of the 2017-18 school year, again without community review or board or county approval. *See* Ex. 21 at p. 36, n. 137; *see also* Exs. 2 and 16.

Most recently, LAUSD failed again to comply with the community engagement requirements of Cal. Educ. Code § 52062 for its revised LCAP, by failing to garner the required community input on the numerous material changes between the 6/18 LCAP and the 9/20 version. *See infra* at Part VI. LACOE’s inaction has condoned this oversight again and warrants, on remand, a specific call for a full and proper engagement of community stakeholders in the materially revised 2019-20 LAUSD LCAP. *See* Ex. 28 (9/11/19 LAUSD letter) at pp. 1-2.

an LEA will take to meet the identified goals, and a description of the expenditures required to implement the *specific action*.” See Ex. 17 (LCAP template instructions) (emphasis added). The template instructions provide the following parameters for defining “specific actions”:

- A specific action either increases/improves services for high need students or it serves all pupils generally; it cannot do both;⁶
- A specific action that increases/ improves services can be limited to Unduplicated Student Groups or be provided on a districtwide or school wide basis; not both;⁷
- A specific action that increases/ improves services is either provided to all schools, or specific grade spans, or specific schools that are identified; and
- A specific action that is provided on a “wide” basis must be distinctive enough in nature to be justified as both principally directed and effective.⁸

Id. For each distinctive, population-specific, and location-bound action, a district must list and describe budgeted expenditures for each year to implement these actions. *Id.* LAUSD accomplishes this for some actions. For example, Action 6.5 (Expanded Access to Meals), which is not at issue in the Complaint, is a discrete LEA-wide program that is clearly designed to address the food insecurity faced by low-income students and is supported by research about the connection between healthy meal access and student performance. See Ex. 25 (9/20 LCAP) at pp. 251, 261.

LAUSD’s revised LCAP provides significantly more detail than the June 18th LCAP, but its corrective action still falls far short of the transparent accounting of specific actions and expenditures that is required by the LCAP template, instructions, and spending regulations. As discussed in more detail below, the revised LCAP does not provide *any* disaggregated

⁶ For example, basic nursing services provided as a core service to all students should be a separate action from nursing services targeted to high-need schools to address additional specific needs of unduplicated pupils in those schools; the former *does not* contribute to the increased/improved services requirement while the latter *does*.

⁷ For example, it would be improper to combine in one action services that are limited to unduplicated pupils (i.e. a tutoring program only available to students who are low-income, English Learners, or foster youth) and services that are provided on a “wide” basis.

⁸ In its LCFF Frequently Asked Questions, CDE has clarified that the “principally directed and effective” requirement in the expenditure regulations (5 Cal. Code Reg. § 15496(b)(1)) requires districts to consider how the action: (a) considers the needs, conditions, or circumstances of its unduplicated pupils; (b) the service (including its design, contents, methods, or location) is based on these considerations; and (c) the action is intended to help achieve an expected measurable outcome of the associated goal. See Ex. 51 (CDE LCFF Frequently Asked Questions). Therefore, an action should not include multiple services designed to achieve *different* AMOs or services that are delivered in a different manner or with different content to address different needs.

expenditures for the specific actions embedded within Actions 1.9, 2.9, and 3.2, and its attempt to describe specific actions and disaggregate expenditures within Action 1.5 (School Autonomy) is better, but still insufficient. Because LACOE improperly approved LAUSD’s revised LCAP, CDE should reverse LACOE’s determination that “the LAUSD LCAP descriptions of actions and services . . . met the approval criteria.” *See* Ex. 42 (LACOE decision).

A. LAUSD’s revised LCAP does not even attempt to unbundle Actions 1.9, 2.9, or 3.2 or provide disaggregated expenditures therein.

The Complaint specifically identified Actions 1.5 (School Autonomy), 1.9 (A-G Immediate Intervention Plan), 2.9 (English Learner Supports), and 3.2 (Targeted Supports to Increase Student Engagement at Campuses of Highest Need) as “mega-actions” that must be unbundled into individual specific actions with disaggregated budgeted expenditures. *See* Ex. 21 (Complaint) at p. 40. In its revised LCAP, LAUSD attempted, albeit insufficiently, to identify specific actions and expenditures within Action 1.5, but made no such attempt for any other mega-action. These mega-actions remain improperly bundled.

- **Action 1.9 (A-G Immediate Intervention Plan):** The description for action 1.9 in the GAS section did not change at all.⁹ The revised LCAP added some additional detail for each of the sub-actions in the Annual Update section, but does not address the fundamental problem alleged in the Complaint: this action combines distinct services with different goals (*i.e.*, some of which are designed to help students recover credits, while others are designed to promote participation in Advanced Placement classes), different locations (*i.e.*, credit recovery and AP support are provided exclusively at the high school level, whereas Middle School coaches and intervention programs are provided exclusively at the elementary and middle school levels, and still others are limited to specific schools); and different targeted populations (*i.e.*, workshops targeted toward parents, professional development targeted towards teachers, and intervention supports and credit recovery pathways targeted towards students are all part of the same specific action). As discussed in detail in the Complaint, specific actions that cover different grade spans, with different scopes of service, and different target populations should not be bundled together into a single action with a single expenditure line item. *See* Ex. 21 (Complaint) at pp. 11-14. At minimum, this action should be unbundled so that each service that has a distinctive nature, is targeted to a specific population, and/or is provided at a particular location (or set of locations) is described separately, and each service that is measured by a different AMAO is identified and described as an independent specific action.¹⁰

⁹ Compare Ex. 5 (6/18 LCAP) at pp. 65-66, and Ex. 25 (9/20 LCAP) at pp. 164-66.

¹⁰ For example, the Middle School Intervention STAR 8 program, should be a separate action from all the high school interventions (different grade span) and also from the Middle School College and Career Coaches, which are provided only at specific middle schools (Title I middle schools) and not all middle schools. *See* Ex. 25 (9/20

- **Action 2.9 (English Learner Supports):** LAUSD modified the description for action 2.9 in the GAS section of the revised LCAP, taking out Central Office/ Local District Supports for school-site school climate program implementation and general fellowships and professional development. *See* Ex. 25 (9/20 LCAP) at pp. 196-200. However, these modifications do not address the core bundling problem with this action. This action combines various services limited to English Learners (i.e. implementation of EL Master Plan, EL/SEL Instructional coaches) with services that are provided on a LEA-wide basis to all students (i.e. improved literacy interventions, device carts, and LCAP administrative support), and programs limited to specific grade spans (i.e. Pre-School for All/ Pre-school Collaborative) with programs provided at all schools. *Id.* This action should be unbundled into separate actions to account for these distinctions and to provide the required transparency around expenditures.
- **Action 3.2 (Targeted Student Supports):** The description for action 3.2 in the GAS section did not change at all and continues to refer to “[r]esources provided to school sites . . . utilizing the District’s school equity index.” *See* Ex. 25 (9/20 LCAP) at p. 216. The Annual Update section was modified to include specific information about the resources purchased and the services they provided (PSA counselors and PSWs) and continues to include several distinct programs: (1) Foster Youth Leadership Council (limited to foster youth at specific schools); (2) Caregiver and Community Trainings and Resource Fairs (LEA-wide action for all students). *Id.* at pp. 95-96. The fact that this single item includes multiple distinct actions, with some programs that are limited to unduplicated pupils and others that are provided on an LEA-wide basis demonstrates that it should be split into multiple specific actions.¹¹

LCAP) at pp. 43-44. The parent engagement services, such as the College Palooza, College Café, and Quaglia Institute should be a separate action from the student interventions because effectiveness is most likely measured by an AMO under Goal 4 (Parent, Community, and Student Engagement) – i.e. percentage of parents who state: “My school provides resources to help me support my child’s education.” *Id.* at pp. 102 (Annual Update describing parent engagement actions under Action 1.9); p. 102 (Goal 4 AMAOs). The DIISUP provides a decent justification for how multiple credit recovery opportunities are principally directed to address the needs of unduplicated pupils to recover credits and graduate (i.e. “Past district high school data on English learners, foster youth, and low income students indicate that these students often do not have space in their schedules to retake courses that they’ve failed during the school year.”). *Id.* at 257. However, this justification is not connected to the other, unrelated services in this single action, such as elementary and middle school interventions, SAT practice, concurrent enrollment in community college, expository reading and writing courses, an AP readiness program, and professional development for teachers related to AP classes and STEAM, etc.. *Id.* at pp. 35-44. Therefore, bundling makes it very difficult to determine if each sub-action or service is justified and effective and completely forecloses budget transparency.

¹¹ For example, the Foster Youth Leadership Council, which is limited to foster youth, is clearly a separate program than the PSA and PSW resource allocations. Similarly, the caregiver and community trainings and resource fairs, along with any associated expenditures, such as custodial support, should be separated into its own action because it has a distinctive purpose, scope, and location.

In sum, LAUSD did not make any attempt to unbundle the multiple actions and expenditures combined under mega-actions 1.9, 2.9, and 3.2. LACOE's failure to address these glaring departures from the LCAP template, instructions, and expenditure regulations is a clear abdication of its statutory duty to hold LAUSD accountable to LCFF requirements.

B. LAUSD's attempt to identify specific actions and expenditures within Action 1.5 is a step in the right direction but fails to comply with the LCAP template and regulations.

The revised LCAP makes substantial changes to Action 1.5 (School Autonomy) by breaking down the action in several different ways; while an improvement, none of them provide the requisite transparency.

First, the action is broken down into several categories and sub-categories (*e.g.*, Academic Intervention and Achievement, Student Social-Emotional, Physical and Mental Health, Teacher Quality, etc.), but these categories have no associated expenditures and do not correlate with the line item expenditures for each initiative in the next section. *See Ex. 25 (9/20 LCAP)* at pp. 144-46. Moreover, these categories are not comprehensive. For example, class size reduction teachers and librarians, which is listed as a \$34.9 million initiative is not included in any of these categories. *Id.* In addition, many of these categories demonstrate that they should not be included in a single specific action because they are provided at different locations (*i.e.*, school autonomy for specific identified schools versus library aides to support literacy learning across schools), for different populations (*i.e.*, Advanced Placement exam expenses for low-income students is a service limited to unduplicated pupils, whereas Central Office and Local District staff to support professional development is a districtwide initiative); and are designed to achieve different outcomes (*i.e.*, pupil services and attendance counselors are intended to improve student attendance and family engagement, whereas the bilingual differential is intended to support English Learners outcomes).

Second, the action is disaggregated by expenditure according to "initiative" line items. *Id.* at pp. 146-47. However, these line items do not qualify as "description[s] of the specific planned actions an LEA will take to meet the identified goals" because they offer no explanation beyond a couple of words. Ex. 17. For example, "Local District – Salaries/Benefits/OE" (\$24.5 million); "Local District Support To Schools" (\$7.5 million); and "Local District Allocations to Schools" (\$3.1 million) are all listed as initiatives with no further explanation about the actions/services that will be provided by these initiatives. Ex. 25. at p. 147. Moreover, these initiatives are so different in nature and scope that they do not belong together. For example, PreSchool for All Expansion is a completely different action than Transition Services for Targeted Student Populations, with different target populations, locations, and intended outcomes. In short, the School Autonomy action must be separated into individual actions with

descriptions, associated expenditures, and justifications for how each entity-wide action contributes to the increased and improved services requirement.

In summary, the bundling that is still present in the revised LCAP obscures how and why funding is allocated, undermines accountability, and impedes engagement. As discussed in the Complaint, bundling makes it impossible to determine whether the District is double-counting expenditures as meeting its minimum proportionality percentage and undermines the requirement to justify each entity-wide action. *See* Ex. 21 (Complaint) at pp. 19-20. In fact, at least 21 actions/services embedded within the mega-actions are *not identified or justified at all in the DIISUP section*,¹² which is a clear violation of established law. *See* Ex. 45 (Merced CDE decision) at p. 6 (“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 Goals, Actions, and Services section as contributing to meeting this requirement.”). LAUSD can and must do better, and it is LACOE’s responsibility to ensure that it does. Appellants are entitled to corrective action on this allegation.

IV. The revised LCAP continues to violate LCFF’s transparency and accountability provisions by allocating unspecified amounts of supplemental and concentration funds to unspecified school sites for unspecified actions.

At its core, LCFF is designed to promote equity by allocating more money to a district for each student that is low income, an English learner, or a foster youth, in exchange for the district’s commitment to increase or improve services for these students proportionately. *See* Cal. Educ. Code § 42238.07(a)(1); 5 Cal. Code Reg. § 15496(a). In exchange for the former categorical “bean-counting” compliance, districts must now provide stakeholders and the broader

¹² The following specific actions are not identified or justified at all within the DIISUP: (1) Action 1.5 - Transition Services for Targeted Populations (\$6.2 million); (2) Action 1.5 - Local District Allocations for Schools (\$3.1 million); (3) Action 1.5 - Dual Language Supports (\$580,000); (4) Action 1.5 - Special Assignment Non-Classroom Teachers (\$43.6 million); (5) Action 1.5 - General Supplies (\$7.6 million); (6) Action 1.5 - Non-instructional Contracts (\$2.8 million); (7) Action 1.5 -Contracts for Instructional Services (\$2.5 million); (8) Action 1.5 - Building and Grounds Workers (\$1.7 million); (9) Action 1.5 - Microcomputer Support Assistant (\$1.4 million); (10) Action 1.5 - Software License Maintenance (\$1.4 million); (11) Action 1.9 - Pre-AP/AP Summer Institute; (12) Action 1.9 - AP Readiness Program; (13) Action 1.9 - AB 288 Concurrent Enrollment; (14) Action 1.9 - Expository Reading and Writing Course; (15) Action 1.9 - SAT Practice All in Challenge: Local District Khan Academy Workshops; (16) Action 1.9 - Middle School Intervention STAR; (17) Action 1.9 - Middle School Intervention PASS; (18) Action 1.9 - Edgenuity Intervention Programs for grades K-8; (19) Action 1.9 - Middle School College and Career Coaches; (20) Action 2.9 - Universal Reading Assessment; (21) Action 3.2 - Foster Youth Leadership Council. *Compare* Ex. 25 (9/20 LCAP) at pp. 146-49 (specific actions embedded in Action 1.5), pp. 32-34 (specific actions embedded in Action 1.9 Annual Update), p. 160 (noting that Action 1.9 is unchanged for 2019-20), p. 198 (Universal Reading Assessment embedded in Action 2.9), p. 96 (Foster Youth Leadership Council embedded in Annual Update for Action 3.2), p. 216 (noting that Action 3.2 is unchanged for 2019-20); *with* 253-261 (DIISUP section fails to reference any of the specific actions noted above).

community with information about how it is spending its money, how its investment of equity dollars is designed to address the particular needs of students who are low-income, English learners, or foster youth, and whether these investments are actually improving outcomes and closing the achievement gap for these students. *See* Ex. 54. When LAUSD sends millions of dollars to school sites without explaining which schools are receiving the money, how much they are receiving, and how they are spending the money, there can be no accountability to ensure that the equity dollars are used for the intended purpose of increasing and improving services to students who need it the most. Increasing school autonomy is a smart policy choice, but it must be accompanied by accountability.

In its decision, LACOE determined that the revised LCAP met the approval criteria because it was “much more robust in its descriptions including a web-link to specific schools targeted, programs were described in relation to how a goal would be met, and how goals were met in different ways depending on the school level of each site.” *See* Ex. 42 (LACOE decision) at p. 5. Complainants agree that the revised LCAP is more robust and are pleased that LAUSD adopted our suggestion to provide a web-link to the “School Allocations for Targeted Student Population” spreadsheet. However, these steps in the right direction do not fulfill LAUSD’s legal obligation, and LACOE erred in approving the revised LCAP.

First, most of the school site allocations do not describe any actual actions. An action is a distinctive, population-specific, and location-bound service or program that is designed to achieve a specific outcome. *See supra* Part III. The premise of discretionary school funds is that each school has different needs, conditions, and circumstances, as LAUSD itself recognizes in its LCAP. *See* Ex. 25 (9/20 LCAP) at p. 256. Therefore, it is not possible to identify and justify discretionary school expenditures as “principally directed and effective” on an aggregate basis because each school should be investing in different services and programs to respond to its unique context. Instead, it is necessary to identify how each school is spending its discretionary supplemental and concentration funds, how those investments address the needs, conditions, and circumstances of high need students at that particular school, and how that particular school is measuring the effectiveness of those specific actions.¹³ However, the largest school discretionary actions, such as SENI (Action 1.5 - \$271 million); School Innovation Funds

¹³ We recognize that it may be cumbersome to include this level of detail in the LCAP itself, but LAUSD could easily reference and incorporate school site plans that provide these school-level justifications and/or attach the plans as an appendix or addendum. The revised LCAP references school TSP plans, but these plans do not provide the space to engage in this analysis, as we identified in our Complaint (Ex. 21 (Complaint at p. 23, n. 87) and subsequent meet and confer letters. (Ex. 32 at p. 3.) During meet and confer, we provided suggestions on how to modify the TSP template to comply with LCFE transparency and accountability requirements, but those suggestions were rejected. *See* Ex. 31. We applaud LAUSD for its equitable funding schemes, such as SENI, the Arts Equity Index, and the School Innovation Funds, but those investments must be justified by school site, with increased clarity for the public in the LCAP about how that money is being used.

(Action 1.10 - \$50.4 million); and Pilot Schools (Action 1.5 - \$41.9 million) do not provide these site-specific justifications; instead, the LCAP aggregates school expenditures into categories that do not qualify as actions and are meaningless without the local context.¹⁴ See Ex. 25 (9/20 LCAP) at pp. 49-52, 147-49, 164. Moreover, some school site allocations do not mention how the money is spent at all – *i.e.*, “Local District Allocations to Schools,” which is embedded in Action 1.5 and Action 2.12 – Arts Program. See Ex. 25 (9/20 LCAP) at pp 147, 207-08. Although the revised LCAP provides a lengthy explanation of the Arts Equity Index under Action 2.12, it fails to disclose which actions are happening as a result of this distributional scheme. See Ex. 25 (9/20 LCAP) at pp. 87-89. LAUSD’s failure to identify any actual actions or strategies is the same problem that CDE identified as illegal in *Klamath-Trinity II*. See Ex. 20 at p. 16 (holding that the District failed to provide adequate descriptions of actions/services implemented when it referred to a school plan without identifying any specific action or service).

Second, the expenditures associated with each school-site action is missing. The “web-link” referenced in the LACOE decision provides aggregate expenditures under various programs, including SENI (Action 1.5), Per Pupil (an allocation that encompasses Pilot Schools, but is broader than Pilot Schools, which is embedded in Action 1.5), and Arts Equity (Action 2.12), but does not capture School Innovation Funds (Action 1.10) or Local District Allocations to Schools (Action 1.5).¹⁵ The TSP templates, which are school-level plans for use of supplemental and concentration funds, only cover SENI and Per Pupil allocations, so there is no document that captures the expenditures associated with school-site spending on arts or other actions’ site delegations. See Ex. 31; Ex. 36 (School Budgeting Handbook) at p. 10. Moreover, the 2019-20 TSP plans are not publicly available at the link referenced in the LCAP (only the 2018-19 TSP plans), so there are no specific actions described or associated expenditures for SENI funds in the GAS section, which violates the LCAP template instructions. See Ex. 17 (Goals, Actions, and Services section “shall include a description of the specific planned actions an LEA will take to meet the identified goals, and a description of the expenditures required to implement the specific actions.”) The TSP template should be revised to capture the justification for supplemental and concentration funding expenditures and modified to capture specific actions and expenditures for Arts Equity, School Innovation Funds, Local District Allocations to Schools, and any other site-level delegations as soon as possible. See *supra* note 10; Ex. 31.

¹⁴ Site-specific descriptions and justifications are necessary, but aggregate line items could be helpful to demonstrate LAUSD’s investment in community priorities that have been rolled into SENI, such as parent engagement and restorative justice. Notably, neither of these programs have specific line items under SENI in the revised LCAP. See Ex. 25 (9/20 LCAP) at pp. 147-49.

¹⁵ The Annual Update section for Action 1.10 references schoolwide plans for the School Innovation Funds, but these plans are for the 2017-18 school year, not the 2018-19 school year, which is the subject of the Annual Update. Ex. 25 (9/20 LCAP) at p. 50. There is also no School Innovation Fund plan for 19-20 that provides budgeted expenditures by action. See, *e.g.*, Foshay Learning Center 2017-19 School Innovation Funds Plan, *available at* <https://spsa.lausd.net/SchoolInnovation/SchoolInnovationDoc.aspx?Costcenter=1813201&SchoolYear=2017> (signed November 13, 2017).

In addition, 2019-20 TSP plans (using this revised template) should be uploaded to *School Directory*, LAUSD, <https://schooldirectory.lausd.net/schooldirectory/> (last visited Oct. 28, 2019) as soon as possible.

Third, the revised LCAP inaccurately lists the location of Actions 3.2 and 6.4 as “All Schools” when they are provided to specific schools only, in violation of the LCAP Template instructions. *See* Ex. 17 (“If the services are provided to specific schools within the LEA . . . only, the LEA must mark ‘Specific Schools’ [and] [i]dentify the individual school or a subset of schools . . .”).

- Action 3.2 is titled “Targeted Supports to Increase Student Engagement at campuses of high need,” which suggests that it is available only at particular schools. Moreover, the DISSUP section states that “[t]hese resources are provided at the request of schools based on their plans describing their use of Student Equity Needs Index funds.” *See* Ex. 25 at p. 259. If schools request these services based on their SENI plans (presumably their TSP plans), then it is a program that is only provided to specific schools that request it. The location should be changed to “Specific Schools” and these schools should be identified.
- Action 6.4 is titled “On-going Major Maintenance” and listed as an action that is provided at “All Schools.” Ex. 25 at p. 248. However, this action is described as “[t]argeted maintenance to school sites with greatest need” by “utilizing our school equity index.” *Id.* The DIISUP section justifies this action as increasing or improving services for high need students by stating that the expansion of Strike Teams “will be directed toward schools with high percentages of unduplicated pupils in order to improve their school environments which should support improvements in attendance and academic outcomes.” *Id.* at 261. Therefore, this action appears to be targeted at a sub-set of schools that should be identified. Alternatively, if this is ongoing maintenance for all schools, it should not be counted toward the requirement to increase and improve services.

In summary, LACOE erred in approving LAUSD’s revised LCAP and finding all school-site level allocation issues resolved. Although the revised LCAP is an improvement because it identifies specific schools for most actions and provides references to external documents that provide greater transparency around school-level allocations, it does not fulfill LCFF requirements. With few exceptions, the school site allocations do not identify, describe, or justify the planned actions at each school site. As a result, the associated expenditures are also missing. One way for LAUSD to satisfy LCFF here would be to modify the TSP plans to include all school-level allocations, to provide space to justify each specific action, and to upload the plans as soon as possible to the LAUSD website to provide transparency to families and other stakeholders about their school budgets. In addition, the LCAP mis-categorizes Actions 3.2 and

6.4 as actions provided at “All Schools,” when in fact, they are provided at specific schools. This should be corrected, and the specific schools should be identified or, if the services are generic and general, they should not be counted toward LAUSD’s proportionality obligation.

V. The revised LCAP fails to demonstrate how the District is meeting its obligation to increase and improve services for high need students each year by 32 percent above the level of service provided to all pupils.

The primary mechanism for enforcing LCFF’s equity promise is the identification of how an LEA is meeting the minimum proportionality percentage (MPP) requirement as codified in Cal. Educ. Code § 42238.07 and 5 Cal. Code. Reg. § 15496(a) and addressed in the DIISUP section. Instead of satisfying hundreds of different requirements for more than 50 separate categorical programs under the pre-LCFF regime, districts now are only required to demonstrate how the funding generated by low-income students, English Learners, and foster youth (supplemental and concentration funds) are used to proportionately “increase and improve services for [those students] as compared to the services provided to all pupils.” 5 Cal. Code. Reg. § 15496(a). The MPP is 32 percent for LAUSD because its supplemental and concentration funding allocation is 32 percent of its overall LCFF allocation.¹⁶ To satisfy the MPP, a district like LAUSD that has 55 percent or more concentration of unduplicated pupils can either: (1) directly increase or improve services for one or more of the high need student populations that generate additional funding (*i.e.*, foster youth support program); or (2) upgrade the entire educational program of a school site or school district, provided those “wide” services are identified as such in the LCAP and justified as principally directed and effective in meeting the district’s goals for the target student population (*i.e.*, students who are low-income, English Learners, and/or foster youth).

The Complaint alleged three independent claims related to the MPP. First, the Complaint alleged that LAUSD failed to analyze, beyond a conclusory statement, how high need students will receive 32 percent in more or better services than all students. *See* Ex. 21 (Complaint) at pp. 25-27. Second, the Complaint alleged that the sub-set of services provided on a “wide” basis (which are most of the services funded by supplemental and concentration funds in LAUSD) were not properly justified as principally directed and effective. *Id.* at pp. 29-22. Third, the Complaint alleged that \$340 million of claimed effort (on a districtwide upgrade basis) had not been identified, justified, or publicly vetted. *Id.* at pp. 33-36. LACOE’s decision completely ignores the first and third claims, focusing only on whether “actions for unduplicated pupils provided on a district wide basis are principally directed towards and effective in meeting goals for ‘high need’ students.” Ex. 42 (LACOE Decision) at p. 6.

¹⁶ 5 Cal. Code Regs., § 15496(a)(8).

- A. The revised LCAP still fails to demonstrate how the District is meeting its obligation overall to increase and improve services for high need students each year by 32 percent about the level of service provided to all students.

LACOE found the District's response to the DIISUP Minimum Proportionality Prompt (MPP) prompt inadequate during its review process. Ex. 41 at 3. However, it failed to address this allegation in its response and largely repeated the same response that LACOE had found wanting. Instead, LACOE should not have approved the revised LCAP because LAUSD's overall MPP analysis continues to focus almost entirely on its general education program, instead of increased and improved services for high need students. *See* Ex. 25 at p. 253 (only 3 out of 11 bullet points focus on high need students as opposed to all students).

Though the 9/20 LCAP provides some additional detail in the DIISUP on specific individual S&C supported actions, the District still fails to respond, in most instances, to the key question: how do services for unduplicated pupils *in comparison to* the services provided for all students exceed the latter quantitatively or qualitatively?

For example, the DIISUP in the revised LCAP states that district initiatives will increase services for unduplicated pupils by “[d]eveloping personalized pathways for English learners, foster youth and low-income students.” Ex. 25 at p. 253. This is an improvement over the 6/18 LCAP, which stated that “all students” would be prepared for success by developing personalized pathways for all students. Ex. 5 at p. 103. However, there is no analysis to understand how high need students are getting *more or better* personalized pathway services than all students. What is the value-add that supplemental and concentration funds provide for high need students? Is it a lower counselor-to-student ratio at schools with high concentrations of high need students? Are there investments in tailored pathway programs to support high need subpopulations that experience opportunity disparities, such as English Learners, Foster Youth, and Homeless students?

Similarly, the revised LCAP states that LAUSD will build the capacity of school leaders to serve high need students. Ex. 25 at p. 253. Again, this is an improvement over the 6/18 LCAP, which only mentioned “[b]uilding the capacity of school leaders.” Ex. 5 at p. 103. However, there is no explanation or analysis in this conclusory statement of how school leaders will be trained or supported in serving high need students better. Is it through specialized professional development? Increased administrative staff at high need school sites? This comparative analysis is at the heart of LCFF's equitable funding formula and is required by statute and regulation, in addition to the LCAP template prompt. *See* Cal. Educ. Code § 42238.07 and 5 Cal. Code Regs. § 15496(a).

In short, LACOE erred in approving LAUSD’s revised LCAP as having demonstrated its MPP was met overall. Conclusory statements about its dedication to increasing and improving services fails to adhere to the LCAP Template instructions and the statutory and regulatory mandates discussed above. Although LAUSD’s revised LCAP is an improvement in some respects, it still fails to offer an overall quantitative or qualitative analysis that demonstrates how it is meeting its MPP and corrective action is needed.

B. The revised LCAP does not justify all “wide” actions funded by supplemental and concentration funds as principally directed towards, and effective, in meeting its goals for high need students.

As to this second claim related to MPP, which LACOE sought to address, LACOE determined that “the revised LCAP includes descriptions for how *each* action and service identified as contributing to the increased or improved services requirements is principally directed toward meeting the district’s goals for low-income students, English learners and foster youth and how those services are effective.” Ex. 42 at p. 6 (emphasis added). The decision goes on to discuss how the justification for two bundled actions had improved (Action 2.9 – English Learner Supports and Action 1.9 – A-G Immediate Intervention Plan) and concludes that the approval criteria has been satisfied. *Id.* at pp. 6-7. While LAUSD’s justifications for many of its entity-wide actions have significantly improved, the following problems remain: (1) many entity-wide actions are not identified—much less justified—in the DIISUP section, as required by law; (2) at least 7 actions are not justified as principally directed; and (3) at least 4 actions are not supported by a sufficient effectiveness analysis. Accordingly, LAUSD is not meeting its proportionality requirement.

1. The DIISUP section in the revised LCAP fails to identify and justify all districtwide and schoolwide expenditures.

Contrary to LACOE’s finding that each action identified as contributing to the increased or improved services requirement is properly justified, at least 22 actions/services listed as contributing towards the increased/improved services requirement are not identified or justified in the DIISUP section. These include:

1. Transition Services for Targeted Populations (Action 1.5 - \$6.2 million);
2. Local District Allocations for Schools (Action 1.5 - \$3.1 million);
3. Dual Language Supports (Action 1.5 - \$580,000);
4. Special Assignment Non-Classroom Teachers (Action 1.5 - \$43.6 million);
5. General Supplies (Action 1.5 - \$7.6 million)
6. Non-instructional Contracts (Action 1.5 - \$2.8 million);
7. Contracts for Instructional Services (Action 1.5 - \$2.5 million);

8. Building and Grounds Workers (Action 1.5 - \$1.7 million);
9. Microcomputer Support Assistant (Action 1.5 - \$1.4 million);
10. Software License Maintenance (Action 1.5 - \$1.4 million);
11. Pre-AP/AP Summer Institute (Action 1.9 – bundling obscures expenditures)
12. AP Readiness Program (Action 1.9 – bundling obscures expenditures)
13. AB 288 Concurrent Enrollment (Action 1.9 – bundling obscures expenditures)
14. Expository Reading and Writing Course (Action 1.9 – bundling obscures expenditures)
15. SAT Practice All in Challenge: Local District Khan Academy Workshops (Action 1.9 – bundling obscures expenditures);
16. Middle School Intervention STAR (Action 1.9 – bundling obscures expenditures)
17. Middle School Intervention PASS (Action 1.9 – bundling obscures expenditures)
18. Edgenuity Intervention Programs for grades K-8 (Action 1.9 – bundling obscures expenditures);
19. Middle School College and Career Coaches (Action 1.9 – bundling obscures expenditures)
20. Universal Reading Assessment (Action 2.9 – bundling obscures expenditures);
21. Foster Youth Leadership Council (Action 3.2 – bundling obscures expenditures)
22. Nurses (Action 3.2 – bundling obscures expenditures).

See Ex. 25 (9/20 LCAP) at pp. 253-261. In its recent *Merced* decision, CDE determined that the district failed meet its MPP because the DIISUP failed to address multiple actions included as contributing to the increased/improved services requirement. *See* Ex. 45 at pp. 7-8. 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.” *Id.* at p. 7; *see also* Ex. 20 (Klamath Trinity II CDE Decision) at pp. 10-11 (same). CDE should make the same determination here.

2. *The DIISUP section in the revised LCAP fails to demonstrate how all actions are principally directed to meet the goals for high need students*

A district may only use supplemental and concentration funds to upgrade the entire program of a district or school if the action is principally directed towards meeting its goals for students who are low-income, English learners, and/or foster youth. 5 Cal. Code Reg. §15496(b)(1)(B). To demonstrate that an action is principally directed, the district must “explain() in its LCAP how it considered factors such as the needs, conditions, or circumstances of its unduplicated students, and how the service takes these factors into consideration (such as,

for example, by the service’s design, content, methods, or location.)” Ex. 46 (Del Norte CDE Decision) at pp. 6-7. Services that benefit all students on an equal basis are not principally directed. *See, e.g.*, Ex 47 (Sac City CDE Decision) at pp. 11-12 (holding that Assistant Principals above formula to assist sites in developing and maintaining safe school plans is not principally directed because school safety plans address the needs of the whole school site and benefit all students on an equal basis); Ex. 48 (San Joaquin County Office of Education CDE Decision) at p. 12 (holding that campus security technicians to improve site safety is not principally directed because they are focused on improving school site safety generally); Ex. 49 (Mojave CDE Decision) at pp. 15-17 (holding that improved instructional components, such as monitoring the district’s early literacy plan, weekly collaboration with an emphasis on data analysis, librarians and multimedia clerks, intervention supports, and differentiated instruction to advanced students, are not principally directed towards high need students because the specific needs, conditions, and circumstances of its unduplicated pupils is not discussed and these actions apply equally to all students).

In its decision, LACOE analyzes a single action (Action 1.9 – A-G Immediate Intervention Plan) that accounts for less than 1 percent¹⁷ of LAUSD’s total supplemental and concentration funds to draw the conclusion that “each action and service identified as contributing to the increased or improved services requirements is principally directed toward meeting the district’s goals for low-income students, English learners and foster youth” Ex. 42 (LACOE Decision) at p. 6-7. Even if this action were principally directed,¹⁸ the fact that one districtwide

¹⁷ LAUSD’s estimated supplemental and concentration grant funds are \$1.137 billion. The budgeted expenditures for Action 1.9 are \$10.3 million, which is 0.9 percent of all supplemental and concentration funds. *See* Ex. 25 (9/20 LCAP at pp. 161-62, p. 253).

¹⁸ LACOE’s analysis of Action 1.9 is incomplete. As discussed above, Action 1.9 is a bundled action that includes many distinct sub-actions, including credit recovery programs, A-G interventions and support, parent engagement, professional development on college readiness and A-G curriculum, Advanced Placement support, SAT preparation, college readiness programs, and elementary and middle school interventions. Appellants agree that the credit recovery aspect of Action 1.9 is principally directed towards high need students because the multiple options for credit recovery (i.e. online, before or after school, etc.) is designed to address the circumstances that these students find themselves in – i.e. insufficient space in their schedules to re-take classes that they failed during the school year. It is less clear whether A-G intervention, training, and tutoring programs, which are also embedded in this action, are principally directed. The DIISUP states that English learners, foster youth, and low-income students perform at lower rates than other student groups on academic achievement levels, but does not clarify how academic achievement is measured – *i.e.*, SBAC scores, grades, *etc.*. The DIISUP also states that “[o]verall data on graduation progress for English learners, foster youth, and low-income students also indicates specific courses with higher failure rates may be courses where additional interventions during and after school day may prevent students from failing courses.” Ex. 25 (9/20 LCAP) at p. 257. However, the DIISUP does not specify which courses are frequently failed or make any explicit connection between the need for support on specific (but unspecified) courses and the various A-G intervention program (i.e. Tiered interventions for A-G ELA Coursework, Tiered interventions for A-G Math Coursework, Tutorial Services for A-G Coursework). *See* Ex. 46 (Del Norte CDE Decision) at p. 8 (holding that districtwide class size reduction efforts were not principally directed because there was no explanation for how a reduction in class sizes would address unduplicated pupils’ need for additional learning time and intensity). Moreover, the DIISUP does not mention some of the actions embedded in Action 1.9 at all, such as SAT preparation, Advancement Placement support, college readiness support in math, and middle school and elementary

action may be principally directed does not mean that every other districtwide action is also principally directed. In fact, as discussed in Appellants' appeal of LAUSD's decision, many services that LAUSD claims are contributing to its increased and improved services requirement are, in fact, districtwide expenditures that benefit all students on an equal basis and cannot be counted in full towards LAUSD's proportionality requirement. *See* Ex. 52 (Appeal of LAUSD Decision) at pp. 16-21.

In particular, the following actions do not appear to be principally directed to unduplicated pupils:

- **Action 1.5 (School Autonomy):** The School Autonomy action is an amalgamation of many diverse district initiatives. *See supra* Part IV (bundling). The DIISUP explains that this \$768 million action “provides unduplicated students with additional resources above and beyond District-normed resources” that are designed to address the opportunity gap (as measured by graduation rate and performance on Smarter Balanced assessments) between unduplicated students and other student groups. *See* Ex. 25 (9/20 LCAP) at p. 255. As discussed in Appellants' appeal of LAUSD's decision in this action, this statement is false because Action 1.5 includes *both* norm-based resource allocations *and* allocations beyond District-normed resources through SENI. *See* Ex. 52 (Appeal of LAUSD Decision) at pp. 18-19. There is no attempt to justify (and no plausible way to justify) these norm-based allocations of resources as increasing and improving services to high-need students. *See* Ex. 47 (Sacramento City CDE Decision) at pp. 9, 11-12 (holding that district librarians and Assistant Principals cannot be included as an increase or improvement in services because all students are expected to have these resources and benefit all students on an equal basis). Therefore, at a minimum, these sub-actions (i.e. norm-based allocations of teachers, nurses, high school counselors, class size reduction teachers, librarians, and assistant principals) and the sub-actions that are not even mentioned in the DIISUP are not properly justified. In total, more than \$500 million of this mega-action is not principally directed.¹⁹
- **Action 2.9 (English Learner Support):** As an initial matter, this action is improperly listed as a limited action. *See* Ex. 25 (9/20 LCAP) at p. 196. Although some of the sub-

school interventions. Therefore, although certain sub-actions are principally directed, LAUSD has not demonstrated that every sub-action considers the needs, conditions, and circumstances of unduplicated pupils in Action 1.9.

¹⁹ The specific actions that are not identified or justified in the DIISUP at all exceed \$70 million in supplemental and concentration funding. *See supra* Part V.B.1; *see also* Ex. 52 (Appeal of LAUSD decision) at pp. 15. In addition, \$238 million in across-the-board teacher salary increases, \$80 million in norm-allocated Assistant Principal positions, \$63.7 million in norm-allocated nurses/high school counselors, \$35 million in norm-allocated class size reduction teachers/librarians, and \$25 million in unjustified Local District salaries and benefits are all improperly included as increasing and improving services for high need students. These unjustified expenditures total more than \$511 million alone.

actions are limited to English Learners, such as EL instructional coaches and implementation of the English Learner Master Plan, many of the actions are provided on a districtwide (or schoolwide) basis, including the literacy interventions, device carts, and LCAP administrative support. *Id.* at 199-200. Therefore, these sub-actions must be justified as principally directed and effective. According to the DIISUP section, English learners and low-income students have a need for targeted literacy and graduation supports. There is a plausible connection between better literacy assessments and interventions and the particularized need of English learners to receive targeted literacy supports, but there is no plausible connection between the stated need and LCAP administrative support. As such, at a minimum, this sub-action is not principally directed.

- **Action 2.10 (Instructional Technology Support):** This action provides school sites with “support to enhance and utilize technology available at their site as well as provide PD to teachers on utilizing tools to enhance instruction.” Ex. 25 (9/20 LCAP) at p. 202. The DIISUP explains that this action increases and improves services to high need students by “implementing one-on-one devices in schools in order to bridge the digital divide that exists between these student groups and other student groups.” *Id.* at p. 259. Although the device component of this action is clearly connected to the need to close the digital divide, there is no clear connection with other components of the action, such as professional development and lesson planning for teachers. *Id.* at pp. 83-84. As such, these sub-actions are not principally directed.
- **Action 2.11 (Targeted Instructional Support):** This action reduces class sizes and provides additional opportunities for enrichment electives by providing 1 FTE teacher position to every comprehensive middle, high school, and several grades 4 through 6. *See* Ex. 25 (9/20 LCAP) at p. 85, pp. 204-05. This action also includes the Early Language and Literacy Program (ELLP) model, which is implemented at elementary schools and includes professional development and differentiated instruction using data from the Dynamic Indicators of Basic Literacy Skills (DIBELS). *Id.* at pp. 86-87, p. 205. It appears that both sub-actions benefit all students on an equal basis, and therefore are not principally directed. *See supra.* The class size reduction teachers are not allocated based on concentration of high need students, even though the DIISUP identifies that low income, English learner and foster youth students are *more likely* to be performing below grade-level standards. Similarly, the ELLP implementation appears to benefit all students equally because it is provided on the same basis to all students throughout the district. The DIISUP does not document any particular early literacy needs, conditions, or circumstances that would demonstrate that unduplicated students benefit from this program to a greater degree than all students. As such, this action is not principally directed.

- **Action 2.12 (Arts Program):** This action funds arts for all schools according to an equitable formula under which schools with higher percentages of English learners, foster youth, and low-income students receive more funds. Ex. 25 (9/20 LCAP) at p. 259. The DIISUP identifies that these students had less access to enriched arts education programs beyond the minimum state requirements. *Id.* Therefore, providing greater allocations to schools with higher concentrations of unduplicated pupils would be designed to address this access disparity. However, all schools receive an arts allocation and the programming at low-need schools does not appear to be targeted to high need students in any particular way, so the “base allocation” that all schools receive should not be counted towards the proportionality requirement, whereas anything above that can be considered principally directed.
- **Action 3.4 (Districtwide Student Engagement Plan):** This action funds the School Enrollment Placement and Assessment (SEPA) Center, which provides support to “all families, and more specifically, newly arriving families to assist with the school enrollment process, access to medical and mental health services and referrals, housing, linkages to legal services and other district and community resources.” *See* Ex. 25 (9/20 LCAP) at pp. 98-99 (Annual Update description), pp. 220-21 (unchanged action for 2019-20). In addition, it funds the Student Involvement, Development, and Empowerment Unit, which promotes student voice, provides leadership training, and selects and supports the student member on the Board of Education. *Id.* To justify this districtwide action as principally directed, the DIISUP section states that “English learner, foster youth, and low-income students often participate less in school leadership roles and have fewer opportunities to engage in extracurricular activities.” *Id.* at p. 260. First, this need is unrelated to the activities of the SEPA Center, which focuses on newly arriving families. Second, it is not clear how high-need student voice is targeted or prioritized by the Student Involvement, Development, and Empowerment Unit. Although the DIISUP states that this action will “increase opportunities to provide student voice and participation from high need students,” there is nothing in the GAS or Annual Update sections to suggest that any actual targeting is happening, in other words, that the service is being designed in some way to benefit high-need student voice. In fact, the revised LCAP indicates the contrary. *See, e.g., id.* at p. 221 (“Create a process that allows *all* students to review and comment on the implementation of school plans, budgets and programs, and develop a process that allows students to review and provide input on Local and Central District initiatives, programs, policies, budgets, and goals.” (emphasis added)); *see also* pp. 99-100 (Annual Update section describes activities for this action in general student voice terms that do not address the student leadership opportunity gap that has been identified for unduplicated pupils). As such, this action is not principally directed.

- **Action 6.4 (Ongoing Major Maintenance):** The DIISUP section identifies that “[t]he communities in which English learner, foster youth and low-income students reside often have less green spaces and may not have as many available community spaces for access to resources.” Ex. 25 (9/20 LCAP) at p. 261. However, the action, which is described as “targeted maintenance to school sites with greatest need,” *id.* at pp. 248-49, does not clearly identify a connection between maintenance and green space or access to resources and does not generally demonstrate how it is targeted at all. *See supra* at p. 15. *See* Ex. 49 (Mojave CDE Decision) at p. 13 (finding that districtwide actions are not principally directed because there is no explanation of how those actions will address the stated needs of unduplicated pupils). Many LAUSD schools do not have green space and are not necessarily equipped with resources for the community. As such, this action is not principally directed.

If an action is not principally directed to meet the needs of English learners, foster youth, and low-income students, then it cannot be counted towards the district’s proportionality requirement.

3. The DIISUP section in the revised LCAP fails to demonstrate how all actions are effective in meeting the goals for high need students.

An action provided on a “wide” basis may only be credited as an increased or improved service if it is both principally directed (discussed above) and effective in meeting the district’s goals for its unduplicated pupils in the state priority areas, that is, that the action or service is reasonably likely to yield effective results.²⁰ The California Department of Education has determined that: “[a]n LEA meets this requirement by providing in the LCAP an explanation of how it believes the action/service will help achieve one or more of the expected outcomes for the goal. *Conclusory statements that an action/service will help achieve an expected outcome for the goal, without further explanation as to how, are insufficient.*” Ex. 19 (Klamath I CDE decision) at p. 8 (emphasis added).

In its decision, LACOE commented that LAUSD provided “a much more detailed section on outcomes concerning unduplicated pupils in its final, revised LCAP.” Ex. 42 (LACOE Decision) at p. 6. However, the law requires more than outcomes; it requires an explanation of how the action in question will reasonably result in achieving one or more of the AMOs. Although

²⁰ 5 Cal. Code Regs. § 15496(b)(1)(B); Ex. 53 (Letter from Superintendent of Public Instruction Tom Torlakson, “Use of Supplemental and Concentration Funds).

LAUSD improved its effectiveness evaluation for many actions,²¹ other actions lack a proper effectiveness evaluation.

For example, Action 2.10 - Instructional Technology Support does not explain “how it believes the action/service will help achieve one or more of the expected outcomes for the goal” as the law requires. Ex. 45 at p. 8. According to the DIISUP section, this action is designed to “close the digital divide” that disadvantages unduplicated student groups compared to other student groups. However, there is no AMO related to student access to technology and the DIISUP does not relate the action to any of the AMOs for Goal 2, such as SBAC scores, early literacy benchmarks, or English learner progress or reclassification rates. If the description of an action does not provide a clear connection with an AMO, the effectiveness requirement has not been satisfied. *See, e.g.*, Ex. 48 (San Joaquin COE CDE Decision) at pp. 13-16 (holding that actions designed to promote community partnerships and enrollment/learning plans do not meet the effectiveness requirement because they do not address the AMOs for the goal, which are all

²¹ For example, we commend the District for revising some of its goals and actions to demonstrate their effectiveness in meeting the goals of its high-need students. For example, in Goal 5, Action 1—School Climate and Restorative Justice—the district links the planned actions (restorative justice implementation) with disaggregated suspension and expulsion rates, which are AMOs under Goal 5. The District demonstrates the likelihood that this action will reduce suspensions and expulsion rates for low-income students, foster youth, and English learners by noting the proven effectiveness of these actions (*i.e.*, suspension rates for unduplicated groups are in the blue or green level on the California Dashboard). This action also demonstrates the likely effectiveness of continuing this action by referencing research by WestEd to support the correlation between Restorative Justice programs and positive “school climate, student behavior and relationships between students and with staff.” Ex. 25 (9/20 LCAP) at pp. 260-61. Additionally, in Goal 1, Action 3—Adult and Career Education for Targeted Youth—the district explains how the Division of Adult and Career Education (DACE) AC2T program particularly helps high-need students “[who] continue to lag behind other student groups” in graduation rates and A-G progress, which are AMOs for Goal 1. *Id.* at pp. 254-55. The DIISUP demonstrates the likelihood that the DACE AC2T will improve graduation rates and A-G completion for high need students by pointing to data that “high numbers of low income, foster youth and English learner students” recovered credits and accelerated their paths toward meeting graduation requirements as a result of the program. *Id.* at p. 255.

related to parent involvement). Similar deficiencies exist in the DIISUP analysis for Actions 1.5 (School Autonomy),²² 2.12 (Arts Program),²³ and 3.4 (Districtwide Student Engagement Plan).²⁴

If an action is not connected to improving an AMO for high need students, it cannot be used to meet the proportionality requirement, which means that LAUSD must reassess how it is measuring progress (for example, whether access to technology and arts is a goal) and/or how its actions are connected to the AMOs that it has already committed to tracking (*e.g.*, academic performance and attendance).

In summary, the justifications for “wide” actions in the revised LCAP is a meaningful improvement over the initial LCAP and its shallow, summary “descriptions,” but it still fails to properly identify and justify every action that is claimed as an increased or improved service. In fact, at least \$500 million in specific actions are not properly justified and cannot be counted towards LAUSD’s MPP at this time.

C. LACOE repeatedly turns a blind eye to the \$340 million in base expenditures that LAUSD retroactively reclassified as contributing to increased and improved services in its 2016-17 Annual Update without proper identification or justification.

The Complaint explained that LAUSD more than doubled its planned expenditures in Action 1.5 (School Autonomy) from \$255 million to \$595 million in its 2016-17 Annual Update without identifying or justifying the specific actions funded by this \$340 million material change. *See* Ex. 21 (Complaint) at pp. 33-36. LACOE approved the 2017-18 LCAP without requiring

²² The AMOs for Goal 1 are graduation rates, dropout rates, EAP college readiness standards, AP passage rate, and percent graduating with A-G completion with a C or better. *See* Ex. 25 (9/20 LCAP) at pp. 127-29. As discussed *supra*, Action 1.5 combines multiple, unrelated services and programs. Some of these programs and services are clearly related to one of these AMOs (*i.e.*, additional counseling resources for college and career guidance), while others are clearly not related (*i.e.*, “Operations Support for Targeted Schools,” “General Supplies,” “Office Technician,” “Day to Day Substitutes,” “Building & Grounds Workers”). *Id.* at pp. 146-49. Other actions are connected to AMOs in a conclusory fashion, such as the Central Office and Local District salaries to build the capacity of school leaders to engage stakeholders and facilitate school site teams to monitor the progress of implementation. *Id.* at 256. Without more information about these supports, the connection between administrative support and graduation/college readiness outcomes is too attenuated.

²³ The DIISUP section states “[t]his is a confirmed effective use of funds for high need students . . . with a comparison of the AEI [Arts Equity Index] for the years 2015-16 and 2017-18 showing improvement in schools moving from one AEI quartile to another, especially for those schools in the underserved and development quartiles.” *See* Ex. 25 (9/20 LCAP) at p. 259. These results are promising, but they are not connected to any AMO for Goal 2, which focuses on SBAC scores, early literacy benchmarks, and English learner reclassification and progress indicators. *Id.* at pp. 166-71. To count this towards its increased and improved services requirement, LAUSD should have created an AMO for arts access and/or demonstrated the relationship of arts access to one of its existing indicators.

²⁴ Student voice initiatives are very important programs, but there is no explicit connection between these actions and the AMOs for Goal 3, which are all related to student attendance. *See* Ex. 25 (9/20 LCAP) at p. 260.

LAUSD to identify and justify these expenditures. These funds are rolled over each year as contributions to the increased and improved services requirement without any justification, and each year, LACOE blindly approves the LCAP as satisfying the MPP requirement.

After we filed the Complaint, LAUSD disclosed for the first time a complete list of expenditures under Action 1.5 in its revised LCAP. *See* Ex. 25 (9/20 LCAP) at pp. 146-47. This disclosure revealed several expenditures that had never been identified or justified, such as \$238 million in across-the-board teacher salary increases, \$41.9 million in Pilot School expenditures, \$24.5 million in Local District Salaries and benefits, among others. *Id.* Many of these newly disclosed expenditures have not been sufficiently described to identify which actions they fund (i.e. it is completely unclear what specific actions will be accomplished by Local District salaries), and there has been no attempt to identify, much less justify, many of these expenditures. Therefore, LACOE erred in approving the revised LCAP and its failure to demonstrate that LAUSD is meeting its MPP.

VI. On Remand, LAUSD and LACOE should be directed to ensure there is a full review of the material changes to the District's 2019-20 LCAP with community stakeholders.

As part of the relief directing LAUSD and LACOE to properly revise and approve a 2019-20 LCAP that corrects the existing fundamental errors addressed in this appeal, CDE should take care to direct the Respondents to fully vet the new LCAP with community stakeholders and the Board in accord with Cal. Educ. Code § 52060. Because the material changes from the last fully vetted version, *i.e.*, the 6/18 version, are so substantial, numerous and meaningful, nothing less than treatment as an initial adoption would be appropriate. This means that the changes need to be run through community stakeholders, including the PAC and DELAC, written concerns from the latter need to be addressed in writing by the Superintendent, and two public hearings need to be held before the Board.

Indeed, just in the current 9/20 LCAP version and without even considering the additional material changes that should be occasioned by this appeal, numerous substantial material changes exist which have never been run by the full set of community stakeholders and never presented to the PAC and DELAC. For example, the 9/20 LCAP revealed more than \$300 million in actions (or more than 25 percent of LAUSD's total supplemental and concentration spending) that had never been identified before, such as \$238 million in across-the-board teacher salary increases, tens of millions of dollars in norm-allocated positions, and over \$25 million in Local District salaries and benefits were all financed using supplemental and concentration funds. The public and community stakeholders were only given a few days to be aware of these very meaningful spending proposals by the LAUSD and provided limited slots of 2-minute public comment at a single board meeting to weigh in. These very substantial spending

proposals should have been initially disclosed as part of the original 2019-20 LCAP development process and, on remand, should be run by the community for input, in addition to any additional material changes that result from this appeal. Accordingly, we respectfully request that CDE specify that in further revising LAUSD's LCAP, the District and LACOE ensure Cal. Educ. Code § 52060 is fully followed in accord with the procedures for an initial LCAP.²⁵

VII. Conclusion

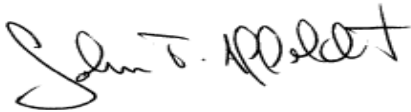
For all the reasons stated here and in the attached Complaint, LACOE erroneously deemed the Complaint moot, improperly approved the revised LCAP, and failed to order corrective action when warranted. As a result, the Superintendent should overturn LACOE's determinations and require LACOE to direct the District to correct its actions as follows:

1. Treat its 6/28/19 LCAP as null and void and, further, cease henceforth from unilaterally materially modifying any board and/or county-approved LCAP and representing those modified versions as the official District LCAP unless and until such materially modified LCAP has been subjected to the statutorily required community input, public hearing and approval processes set forth in Cal. Educ. Code § 52060.
2. Deem LAUSD's September 20, 2019 Board-approved revised LCAP fundamentally deficient and order LAUSD to further revise its 2019-20 LCAP by doing the following:
 - a. Cease bundling specific actions together and instead identify each specific action the district will take to meet its state and local goals together with their budgeted expenditures, including, but not limited to Actions 1.5 (including specific actions for parent engagement and restorative justice), 1.9, 2.9, and 3.2;
 - b. For discretionary school level allocations of LCFF supplemental and concentration funds, including but not limited to SENI allocations (1.5), Pilot School allocations (1.5), Local District Allocations to Schools (1.5), School Innovation Funds (1.10), and Arts Program (2.12), identify and justify each specific action and the expenditure amounts for each such action by school; further annually evaluate the effectiveness and any material changes in budget or nature of each such school-level action after implementation;
 - c. For districtwide programs provided at specific schools using LCFF supplemental and concentration funds, identify the specific schools, including, but not limited to Actions 3.2 and 6.4;

²⁵ Indeed, Cal. Educ. Code § 52060's language requires no less for post-county-approval LCAP amendments.

- d. Identify each entity-wide action or service funded with supplemental and concentration funds in the DIISUP and demonstrate for each of these services, how it is principally directed toward and effective in meeting high need pupil goals;
 - e. Remove and/or modify any expenditures improperly identified as contributing to increasing or improving services for high need students to properly demonstrate and justify how the District is meeting its overall proportionality obligation; and
3. In revising its deficient 2019-20 LCAP as ordered above, follow all the community engagement provisions of LCFE required of an annual initial adoption of an LCAP to ensure that all material changes and new disclosures are properly and publicly vetted.

Respectfully submitted this 28th day of October 2019 by,



JOHN AFFELDT
ANGELICA JONGO
NICOLE GON OCHI
Public Advocates, Inc.
131 Steuart Street, Suite 300
San Francisco, CA 94105
Telephone: (415) 431-7430
Email: jaffeldt@publicadvocates.org



LAURA E. MUSCHAMP
ROBERT ZHOU
Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067
Telephone: (424) 332-4775
Email: lmuschamp@cov.com