



**CALIFORNIA DEPARTMENT
OF EDUCATION**

TONY THURMOND
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

1430 N STREET, SACRAMENTO, CA 95814-5901 • 916-319-0800 • WWW.CDE.CA.GOV

February 13, 2019

Jim McQuillen, Education Director
Yurok Tribe Klamath Office
190 Klamath Blvd
P.O. Box 1027
Klamath, CA 95548

Erika Tracy, Executive Director
Hoopa Tribal Education Association
47 Orchard Street
P.O. Box 428
Hoopa, CA 95546

Linnea Nelson, Education Equity Staff Attorney
ACLU Foundation of Northern California
39 Drumm Street
San Francisco, CA 94111

Dear Mr. McQuillen, Ms. Tracy, Ms. Nelson:

Subject: Request for Appeal – Klamath-Trinity Joint Unified School District
Yurok Tribe, Hoopa Tribal Education Association, and American Civil
Liberties Union, Appellants

Case Number 2019-0009

The Local Agency Systems Support Office (LASSO) of the California Department of Education (CDE) is in receipt of your request for appeal received on December 12, 2018. You are appealing the Klamath-Trinity Joint Unified School District's (District's) Decision dated November 27, 2018, and the District's Decision dated November 30, 2018.

Background

The Local Control Funding Formula (LCFF) statute authorizes the filing of an administrative complaint pursuant to the Uniform Complaint Procedures (UCP) to

resolve allegations that a local educational agency (LEA)¹, such as a school district, failed to meet the requirements of Article 4.5. [Local Control and Accountability Plans and the Statewide System of Support [52059.5 – 52077] (*California Education Code (EC)* Section 52075; *California Code of Regulations*, Title 5 (5 *CCR*) Section 4600 et seq.). On September 28, 2018, the Yurok Tribe, Hoopa Tribal Education Association, and American Civil Liberties Union (Appellants) submitted a UCP Complaint (Complaint) to the District, alleging that the District's 2018-19 Local Control and Accountability Plan (LCAP) violates the LCFF statute.

The District issued its Decision in this matter on November 27, 2018. The Appellants submitted an Appeal to the CDE of the District's Decision on December 12, 2018. The CDE sent a notice of appeal letter, dated December 14, 2018, to the District requesting the investigation file and other applicable documentation as required by 5 *CCR* Section 4633. The CDE received the District's documentation on December 21, 2018.

The District issued a subsequent Decision, dated November 30, 2018, in response to an allegation made in a previous Appeal by the Appellants to the CDE, dated September 21, 2018. In this Appeal, it was alleged that the District failed to constitute a Parent Advisory Committee as required by *EC* Section 52062(a). This allegation was not made in the initial complaint. As required by 5 *CCR* Section 4632(d), in a letter dated October 1, 2018, the CDE referred this allegation back to the District for resolution as a new complaint. The District was required to complete an investigation of this allegation per its uniform complaint procedures and issue a decision to the Appellants within 60 days. The District issued its Decision regarding this particular allegation on November 30, 2018.

The Appeal, dated December 12, 2018, to which this report is responding, appeals both the District's Decision dated November 27, 2018, and the District's Decision dated November 30, 2018. These Decisions are referenced as either the November 27 Decision or the November 30 Decisions or, in the plural, as the Decisions.

Following receipt of this documentation from the District, the CDE reviewed all material received related to the Complaint, applicable laws, and the District's complaint procedures. Title 5 *CCR* 4633(d)(1) requires the CDE to include a finding that the LEA complied or did not comply with its complaint procedures. The CDE has reviewed the complaint procedures for the District and finds that the District fully complied with its complaint procedures in this matter.

After review of the Complaint, the District's Decisions, and the Appeal, the CDE determined that Allegation 4 in the Appeal raised a new allegation not contained in the Complaint. In the Appeal, Allegation 4 was expanded to include the allegation that the

¹ LEA means a school district, county office of education, or charter school (5 *CCR* 15495(d)).

District failed to post its LCAP prominently on its homepage as required by *EC* Section 52065(a). This specific allegation was not included in the initial Complaint. In a letter dated February 11, 2019, and consistent with 5 *CCR* Section 4632(d), the CDE referred this specific allegation in the Appeal back to the District for resolution as a new complaint under 5 *CCR* sections 4630 and 4631. The District is required to complete an investigation of this allegation per its uniform complaint procedures and issue a decision to the Appellants within 60 days. The CDE addresses the remaining allegations of the Complaint below.

Additionally, the CDE determined that the District's Decisions failed to address an issue raised in the Complaint, regarding alleged deficiencies in the LCAP adoption process. Specifically, the Complaint provides the following timeline for adoption of the 2018-19 LCAP:

- June 26, 2018, 5:00 p.m. LCAP Public Hearing;
- June 26, 2018, 6:17 p.m. District provided LCAP to stakeholders via email;
- June 27, 2018, 9:30 a.m. District adopts LCAP

Without additional information, such a timeline would be inconsistent with the requirements of *EC* Section 52062(b)(1), which requires an LEA to hold at least one public hearing and to provide public access to the LCAP at least 72 hours prior to this public hearing. Neither the District's Decision dated November 27, 2018, nor its Decision dated November 30, 2018, addressed this issue.

As required by 5 *CCR* Section 4632(e), and in a letter dated February 11, 2019, the CDE has referred this matter to the LEA to make the necessary findings and conclusions on the issue not addressed. The District must address the issue within 20 days from the date of the referral.

Summary of Complaint and District Decisions

The Complaint

The Complaint alleges the following:

Allegation 1: “The District fails to justify each schoolwide and districtwide S&C expenditure as ‘principally directed towards’ and ‘effective in meeting’ its goals for high-need students” (Complaint, p. 2).

“The District fails to justify each schoolwide and districtwide S&C expenditure as ‘principally directed towards’ and ‘effective in meeting’ its goals for high-needs students” (Complaint, p. 2). The Complaint also alleges, as part of Allegation 1, that the District fails to identify all uses of supplemental and concentration funds in the LCAP. The Complaint references four specific actions (Goal 1, Actions 2, 4, 7, 21) as examples of

Allegation 1. Goal 1, Actions 2 and 4 support teacher salaries and class size reduction; Action 7 supports technology spending; Action 21 supports “Indian Land Tenure utilizing the Indian Education Department” (KTJUSD 2018-19 LCAP, p. 76).

Allegation 2: “The District fails to account for all S&C funds in its estimated actual spending and reallocated significant amounts of S&C funds after the LCAP approval process” (Complaint, p. 6).

“The District fails to account for all S&C funds in its estimated actual spending and reallocated significant amounts of S&C funds after the LCAP approval process” (Complaint, p. 6). Specifically, the District fails to account for \$1,072,583 of its supplemental and concentration grant funds for the 2017-18 LCAP year. The District did not spend \$85,515 of \$97,298 budgeted for a school counselor; spent \$42,329 less than budgeted on outreach consultants; spent \$108,504 less than budgeted on instructional aides and monitors. Additionally, the District failed to report whether \$103,649 budgeted for highly qualified teachers for 2017-18 was spent. The Complaint states that the District does not offer any justification for these differences, nor does the District explain how it engaged stakeholders in the decision to reallocate the funds in question.

Allegation 3: “The District fails to adequately describe the actions/services implemented and how these are effective in meeting the District’s goals in its Annual Update” (Complaint, p. 7).

In addition to alleging that the District fails to describe the actual actions/services in the Annual Update, Allegation 3 alleges that the District provides inadequate responses to the first, second, and fourth prompts of the Analysis part of each goal in the Annual Update. Also alleged is that the District fails to offer data specific to 2017-18 for comparison. The Complaint claims that there are only two annual measurable outcomes in the entire LCAP that cite comparable data from the 2017-18 LCAP year. As an example, the Complaint states that the high school graduation rate from 2014-15 and the dropout rates from 2015-16 are used in Goal 2.

Allegation 4: “The District must strengthen its LCAP stakeholder engagement process” (Complaint, p. 10).

According to the Complaint, the District failed to meet stakeholder engagement requirements pertaining to the Parent Advisory Committee (PAC). Specifically, the Complaint alleges that the District utilizes individual School Site Councils (SSC) in place of a districtwide PAC. The Complaint claims that at the September 11, 2018 Board of Trustees meeting, the District acknowledged that it has not constituted a PAC.

Additionally, the Complaint alleges that the District made substantial changes to its LCAP between June 2018 and September 2018 without engaging in any stakeholder engagement process.

District's Decisions

In both the November 27 Decision and the November 30 Decision, the District found itself to be in compliance with respect to each of the relevant allegations.

Allegation 1:

In its November 27 Decision, the District claims that it is in compliance with the requirement to describe LEA-wide and schoolwide services as principally directed toward, and effective in meeting, the LEA's goals for its unduplicated students. The District states that the expenditure of teacher salaries is related to state priority 1 and that supplemental and concentration grant funds support small class sizes, which "will positively impact unduplicated pupils" (November 27 Decision, p. 9). The technology spending in question, according to the District, "relates to the LCAP Goal 1 and is appropriately included within the defined scope of 'services' for unduplicated pupils" (November 27 Decision, p. 9). Goal 1, Action 21² is justified, according to the District, because the "action directly relates to the LCAP Goal 1 and is appropriately included within the defined scope of services for unduplicated pupils" (November 27 Decision, p. 10).

Regarding the District's requirement to increase or improves services for unduplicated students, generally speaking, the District asserts that "The District adequately justified the District-wide use of such funds based on impacting the learning environment at the school, which would in turn, positively impact unduplicated pupils, especially considering the District's nearly 90% unduplicated pupil count" (November 27 Decision, p. 10). In the Decision's findings of fact, the District provides the following five reasons why services provided on a districtwide basis "are the most effective use of funds" (November 27 Decision, p. 6).

- "The resource/Response to Instruction and Intervention ("Rti") specialists will identify and allocate resources to students targeting foster youth, students with disabilities, and/or students who are Native America, and/or Socio-Economically Disadvantaged.
- All students will be enrolled in classes with a lower teacher to student ratio and will not be in combination grade classes.

² The description provided for Goal 1, Action 21 in the 2018-19 LCAP year states: "Director provides direct services to all district students implementing Indian Land Tenure utilizing the Indian Education Department" (KTJUSD 2018-19 LCAP, p. 76 of 109).

- Students will participate in Restorative Justice Practices, Behavioral Intervention and Support, Common Core State Standards, College and Career readiness programs, and After School Education and Safety.
- There will be a focus on attendance, Advanced Placement, A-G enrollment, CAASPP proficiency, parent involvement, and graduation/promotion rates in the identified sub-groups, as well as decreased dropout rates, and lower suspension and expulsion rates.
- Staff training for emotional-social well-being, trauma informed care, resiliency, and students in poverty that will be especially targeted for Foster Youth and Low Socio-Economic students” (November 27 Decision, p. 6).

Allegation 2:

In its November 27 Decision, the District concludes that it adequately accounted for supplemental and concentration funds and did not inappropriately reallocate such funds after the LCAP approval process. The District also states that it identified and explained all material differences between budgeted and actual estimated expenditures.

Allegation 3:

In its November 27 Decision, the District concludes that the annual update section of the 2018-19 LCAP, which reviews goals, actions, and services implemented in the 2017-18 LCAP year, adequately describes actual actions and services and how such actions and services were effective in meeting the District’s goals. In the November 27 Decision’s relevant findings of fact, the District states that for each goal in the Annual Update, it reports specific data on multiple expected annual measurable outcomes and whether or not each action was implemented as written or otherwise.

Allegation 4:

In its Decision, the District states that Allegation 4 in the Complaint does not identify a specific legal requirement that the District allegedly violated. Furthermore, “the District concludes that it complied with the legal requirements applicable to reviewing, updating, and adopting the LCAP, including the stakeholder engagement process” (November 27 Decision, p. 11).

In the November 27 Decision’s relevant findings of fact, the District states that, prior to approval of the LCAP, it published a draft of the LCAP and included a notice in the local newspaper that the draft LCAP is available at the District office for review. The District states that it “held a public hearing to solicit recommendations and comments from the community on the proposed 2018-19 LCAP and District budget” (November 27 Decision, p. 2). The LCAP was approved by the District’s local governing board on June

27, 2018, and then submitted to the Humboldt County Office of Education (HCOE) for review and approval. The District received feedback from the HCOE on July 11, 2018, identifying required changes to the LCAP prior to approval by the HCOE. On September 11, 2018, the District's local governing board approved a revised LCAP to meet the changes required by the HCOE.

Regarding the LCAP stakeholder engagement process, in the relevant findings of fact provided in the November 27 Decision and the November 30 Decision, the District provided the following information. Stakeholders were invited to monthly school site council meetings and to at least two Community Input Nights at which stakeholders could provide feedback on the relevant School Plan and LCAP. The "Action Plans" in each School Plan served as the starting point for the development of the 2018-19 LCAP. The District also engaged stakeholders through its Indian Policies and Procedures Task Force (IPP Task Force), which is composed of 17 members and includes standing positions for the Chairperson and Education Director of the Karuk, Yurok, and Hoopa Valley Tribes as well as representatives from the Tsnungwe Tribe. The IPP Task Force also includes one District board member, five District staff members, and 11 parents/guardians of District students, including at least two parents/guardians of foster youth students. The District's Board Policy 0410.1 states that the District will merge the IPP Task Force recommendations with the District's LCAP. As part of the LCAP process, the IPP Task Force reviews the School Plans prior to development of the LCAP.

Appeal

Allegation 1: "The District fails to explain how the majority of its S&C funds will be 'principally directed towards, and effective in,' meeting the District's goals for its high-need students" (Appeal, p. 3).

The Appellants appeal the District's November 27 Decision regarding Allegation 1 on the grounds that the District's Decision fails to adequately explain how its districtwide uses of supplemental and concentration funds will be principally directed towards, and effective in, meeting the District's goals for its unduplicated students. Appellants allege that the District's 2018-19 LCAP does not identify all districtwide and schoolwide use of supplemental and concentration funds, that most of the Demonstration of Increased or Improved Services section of the LCAP describes services intended for all students, and that the District does not explain in its LCAP how it considered factors such as the needs, conditions, or circumstances of its high-need students relative to districtwide expenditures of supplemental and concentration grant funds.

Allegation 2: "The District failed to account for all S&C funds in its estimate actual spending and, as reflected in the Annual Update, reallocated significant

amounts of S&C funds after the LCAP approval process without undergoing the requisite stakeholder engagement process” (Appeal, p. 3).

Appellants appeal the District’s November 27 Decision regarding Allegation 3 on the grounds that the District’s Decision fails to adequately address the lack of accounting for \$1,072,583 of supplemental and concentration funds for 2017-18 and is incorrect to treat \$236,348 of unspent supplemental and concentration grant funds budgeted for 2017-18 as not being material. Specifically, the District spent \$11,783 of \$97,298 budgeted for a psychologist/counselor, a difference of \$85,515 (Annual Update Goal 3, Action 2). The District spent \$193,272 of \$235,601 budgeted for outreach consultants, a difference of \$42,329 (Annual Update, Goal 2, Action 3). The District spent \$115,761 of \$224,265 budgeted for instructional aides and monitors, a difference of \$108,504 (Annual Update, Goal 1, Action 11). The sum total of these three differences equals \$236,348.

Allegation 3: “The District fails to provide in its Annual Update adequate description of the actions/services implemented and how these are effective in meeting the District’s goals” (Appeal, p. 5).

The Appellants appeal the District’s November 27 Decision regarding Allegation 3 on the grounds that the District’s Decision is conclusory in its response to Allegation 3 and that the District is incorrect to state that the relevant responses to the prompts in the Analysis part of each Annual Update Goal is adequate.

Allegation 4: “The District has failed to meet basic legal requirements for the LCAP stakeholder engagement process” (Appeal, p. 6).

The Appellants appeal both the November 27 Decision and the November 30 Decision regarding Allegation 4 on the grounds that the District is incorrect to state that it has met the legal requirements for the LCAP stakeholder engagement process and reiterate Allegation 4 from the Complaint, including the allegation that the District has failed to meet stakeholder engagement requirements pertaining to the Parent Advisory Committee (PAC) and that the use of the IPP Task Force does not meet statutory requirements for the PAC.

Legal Authorities

California *Education Code* sections 44238.01, 42238.02, 42238.07, 52059.5 – 52077
California *Code of Regulations* sections 15494 – 15497

CDE Findings of Fact and Conclusions of Law

Allegation 1

The Appellants allege that the District fails to provide the required justification for each of its LEA-wide actions/services in the LCAP and fails to identify all such actions/services in the “Demonstration of Increased or Improved Services for Unduplicated Pupils” (Demonstration) section.

The LCFF apportions additional funds to LEAs on the basis of the number and concentration of unduplicated students (low-income, English learner, and foster youth) (*EC* sections 42238.02, 42238.07.) These funds are commonly referred to as “supplemental and concentration grant funds”. LEAs are required to increase or improve services for unduplicated students as compared to the services provided to all students in the fiscal year in proportion to the additional funding provided (*EC* Section 42238.07; 5 *CCR* 15496). “To improve services” means to “grow services in quality,” and “to increase services” means to “grow services in quantity” (5 *CCR* Section 15495(k) and (l)).

As such, there is no spending requirement; rather, an LEA must demonstrate in its LCAP how the services provided will meet the requirement to increase or improve services for unduplicated students over services provided for all students in the LCAP year. Regulations provide the formula for calculating the percentage by which services must be proportionally increased or improved for unduplicated students above services provided to all students in the fiscal year (5 *CCR* 15496(a)(1)–(8)).

The collective set of services described by an LEA that will contribute to meeting the required proportional increase or improvement in services for unduplicated students over services provided to all students may include two categories of services:

- Services that are limited to serving one or more unduplicated student group, and
- Services that upgrade the entire educational program of an LEA or a school site(s).

Services of the latter category are referred to as either a schoolwide or an LEA-wide (i.e., districtwide, countywide, or charterwide) service. An LEA is required to follow the LCAP Template approved by the State Board of Education (SBE) (*EC* Sections 52064, 52070). The Demonstration section requires an LEA to identify the amount of its LCFF funds in the LCAP year calculated on the basis of the number and concentration of unduplicated students, and to identify the percentage by which it must increase or improve services for unduplicated students over all students. Also in this section, the LEA must describe how the services provided for unduplicated students are increased or improved by at least this percentage, either quantitatively or qualitatively, as

compared to services provided for all students in the LCAP year (*EC* Section 42238.07; 5 *CCR* 15496). The actions/services included as contributing to meeting the increased or improved services requirement must be indicated as such in the Goals, Actions, and Services section of the LCAP. As such, the description of actions and services in the Demonstration section must align with the actions and services that are included in the Goals, Actions, and Services section as contributing to meeting the increased or improves services requirement. 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.

Description of Increased or Improved Services

The District's 2018-19 LCAP contains 13 actions over four Goals that are included as contributing to meeting the increased or improved services requirement for the 2018-19 LCAP year (Goal 1, Actions 4, 6, 7, 9-13, 21; Goal 2, Actions 3, 4; Goal 3, Action 2; Goal 4, Action 1). Of these 13 actions, some of them are addressed in some manner by the description of increased or improved services provided in the Demonstration section. The other actions/services do not appear to fall within the scope of the description provided in the Demonstration section. For example, the description provided in the Goals, Actions, and Services section for Goal 2, Action 3 states, "Maintain 3 Outreach Consultants" (2018-19 KTJUSD LCAP, p. 82 of 109). The description of increased or improved services in the Demonstration section references "parent involvement through Outreach Consultants," which appears to provide additional information about the purpose of Goal 2, Action 3 (2018-19 KTJUSD LCAP, p. 109 of 109).

However, for most of the actions/services included in the Goals, Actions, and Services section as contributing to meeting the increased or improved services requirement, inclusion within the description of increased or improved services provided in the Demonstration section is not as readily forthcoming as it is for Goal 2, Action 3. For example, consider Goal 1, Action 7, described in the Goals, Actions, and Services section as such: "Information Technology department. Aides in the implementation of digital curriculum and all of student technology needs" (2018-19 KTJUSD LCAP, p. 55 of 109). There is no mention of digital curriculum or the technology needs of students, nor is there anything that would suggest as much, within the description of increased or improved services in the Demonstration section. Provided the District intends to include this action as contributing to meeting the increased or improved services requirement, it must be included within the description of increased or improved services in the Demonstration section. If the District does not intend to include this action 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 this action.

Consider Goal 4, Action 1, described in the Goals, Actions, and Services section as such: “Maintain Music Teacher” (2018-19 KTJUSD LCAP, p. 105 of 109). There is no mention of a music teacher or music instruction, nor is there anything that would suggest as much, within the description of increased or improved services in the Demonstration section. Provided the District intends to include this action as contributing to meeting the increased or improved services requirement, it must be included within the description of increased or improved services in the Demonstration section. If the District does not intend to include this action 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 this action.

Due to this demonstrated insufficiency of the description of increased or improved services provided in the Demonstration section, the District fails to sufficiently describe how the District plans to meet its increased or improved services requirement for the 2018-19 LCAP year.

Required Justification for LEA-Wide and Schoolwide Actions/Services

The template also requires an LEA to identify each action/service contributing to the increased or improved services requirement that is funded and provided on a schoolwide or LEA-wide manner, and to include the required description supporting each schoolwide or LEA-wide action/service. An LEA such as KTJUSD, which has an unduplicated student enrollment greater than 55%, must describe in its LCAP how the actions/services are “*principally directed towards*” and “*effective in*” meeting its goals for unduplicated students in the state and any local priority areas³ (EC Section 42238.07, 5 CCR 15496(b)).

To provide the required justification for services provided on a “wide” basis, an LEA must distinguish between services directed toward unduplicated students based on that status, and services available to all students without regard to their status as unduplicated students or not. An LEA describes how a service is principally directed to meeting the LEA’s goals for unduplicated students in any state or local priorities when it explains in its LCAP how it considered factors such as the needs, conditions, or circumstances of its unduplicated students, and how the service takes these factors into consideration (such as, for example, by the service’s design, content, methods, or location).

³ Schoolwide services at a district school with enrollment of unduplicated pupils that is 40 percent or more of its total enrollment must be supported by the same description. Schoolwide services at a school district school with less than 40 percent unduplicated pupil enrollment must be supported by the additional description of how the schoolwide use of funds is the *most effective* use of the funds to meet the LEA’s goals for its unduplicated pupils. This tripartite explanation is also required for action/services provided on LEA-wide basis in an LEA with unduplicated pupil enrollment of less than 55%. (5 CCR 15496(b)).

In addition, the description must explain how the service will be *effective* in meeting the LCAP goals for its unduplicated students. An LEA meets this requirement by providing in the LCAP an explanation of how it believes the action/service will help achieve one or more of the expected outcomes for the goal. Conclusory statements that an action/service will help achieve an expected outcome for the goal, without further explanation as to how, are not sufficient.

When an LCAP contains the necessary descriptions as described above for actions/services provided on a wide basis, it will be apparent how the LEA is acting to increase or improve services for unduplicated students, and why it has determined the services identified will be effective to achieve its goals for unduplicated students. Simply stating that an LEA has a high percentage of unduplicated student enrollment does not meet this standard because serving students is not the same as enrolling students.

As stated above, the District's 2018-19 LCAP contains 13 actions over four Goals that are included as contributing to meeting the increased or improved services requirement for the 2018-19 LCAP year (Goal 1, Actions 4, 6, 7, 9-13, 21; Goal 2, Actions 3, 4; Goal 3, Action 2; Goal 4, Action 1). Each of these actions is either LEA-wide or schoolwide. In the description of increased or improved services provided in the Demonstration section, the District references some of the actions/services being implemented to increase or improve services for unduplicated students. The District states that it will use the amount of supplemental and concentration funds to "offer a variety of programs and supports specifically for low income students and foster youth" (2018-19 KTJUSD LCAP, p. 126). The District provides the following in the Demonstration section as justification for the districtwide and schoolwide services:

"The justification for the district-wide implementation of these practices is the importance of making an impact on the learning environment and the climate of the schools as a whole which will have a positive impact on the targeted subgroups" (2018-19 KTJUSD LCAP, p. 108 of 109).

The District does not explain either in the Demonstration section or elsewhere in the LCAP how it considered factors such as the needs, conditions, or circumstances of its unduplicated student, nor how the actions/services takes these factors into consideration. As a result, the District has failed to describe how districtwide and schoolwide actions/services included as contributing to meeting the increased or improved services requirement are principally directed to meeting the LEA's goals for unduplicated students in any state or local priorities.

While the District describes in its LCAP actions and services that are provided to all students and unduplicated students, the LCAP does not include any consideration of the needs, conditions, or circumstances of the District's unduplicated students, whether in the Demonstration section specifically or in other sections of the LCAP. As a result, there is no possible way to describe how the districtwide or schoolwide actions/services

included as contributing to meeting the increased or improved services requirement are principally directed towards, and effective in, meeting goals for the District's unduplicated students. As a result, the District has failed to provide the necessary justification for districtwide and schoolwide actions/services included as contributing to meeting the increased or improved services requirement.

The CDE finds that the District failed to adequately describe how it plans to meet its increased or improved services requirement because its LCAP fails to provide a description in the Demonstration section that applies to all actions/services included in the Goals, Actions, and Services section as contributing to meeting the increased or improved services requirement. The CDE also finds that the District failed to adequately describe how it plans to meet its increased or improved services requirement because its LCAP fails to provide the necessary justification for all districtwide and schoolwide actions/services included in the Goals, Actions, and Services section as contributing to meeting the increased or improved services requirement.

The appeal of the District's November 27 Decision regarding Allegation 1 has merit.

Allegation 2

Appellants appeal the District's November 27 Decision regarding Allegation 2 on the grounds that the District's Decision fails to adequately address the lack of accounting for \$1,072,583 of supplemental and concentration funds for 2017-18 and is incorrect to treat \$236,348 of unspent supplemental and concentration grant funds budgeted for 2017-18 as not being material. Specifically, the District spent \$11,783 of \$97,298 budgeted for a psychologist/counselor, a difference of \$85,515 (Annual Update Goal 3, Action 2). The District spent \$193,272 of \$235,601 budgeted for outreach consultants, a difference of \$42,329 (Annual Update, Goal 2, Action 3). The District spent \$115,761 of \$224,265 budgeted for instructional aides and monitors, a difference of \$108,504 (Annual Update, Goal 1, Action 11). The sum total of these three differences equals \$236,348.

First, there is no requirement to distinguish between supplemental and concentration funds and other LCFF funds in the LCAP. However, an action or service included as contributing to meeting the increased or improved services requirement must be supported by at least one expenditure of LCFF funds. These LCFF funds may be identified by the LEA as either base or supplemental and concentration funds or simply as LCFF funds or otherwise indicated as unrestricted. Whether an LEA distinguishes between LCFF base and LCFF supplemental and concentration funds in an LCAP is a decision to be made at the local level in consultation with stakeholders.

Regarding material differences, the Annual Update includes a prompt for each goal that requires an LEA to "explain material differences between budgeted expenditures and estimated actual expenditures" (LCAP Template, Annual Update, Analysis section). In

responding to this prompt, a school district should review the absolute amount by which expenditures projected when the LCAP was adopted differ from estimated actual expenditures, as well as any resulting impacts on implementation of the related actions or services. Applying the results of this review, an LEA must make a reasonable judgment regarding which of the differences are material, and explain, in the annual update, the reasons for the differences in these expenditures.

What is considered a material difference is not only a function of either the absolute or relative size of the expenditure difference, but is also determined in part by those differences that cause meaningful changes in the implementation of actions or services that support a goal. Small amounts are more likely to be material when purchasing textbooks while larger amounts pertaining to personnel costs may not be material. For example, the cost of providing a full-time teacher may range in cost to an LEA from \$60,000 to \$110,000. On the other hand, in the context of textbook costs, a difference of \$1,000 could indicate that a substantial number of textbooks were not purchased. As a result, a determination of “materiality” based solely on the application of a blanket rule (for example, 20% variance) may not be sufficient, depending on the circumstances applicable to the particular goal, action, or service.

In making a judgment as to “materiality” and in writing related explanations as part of the LCAP annual update and development process, the LEA should be aware that determining material differences and explaining them in the LCAP is critically important to meaningful stakeholder engagement. This knowledge informs stakeholders how resources have been deployed (or not) in support of goals, and can assist both stakeholders and the LEA in deciding whether or not goals, actions, or services should be eliminated or modified to enhance student achievement.

Allegation 2 specifically references three actions, as described above (Annual Update, Goal 1, Action 11; Goal 2, Action 3; Goal 3, Action 2). To address the difference between budgeted and estimated actual expenditure amounts for Goal 1, Action 11 in the Annual Update, the District states specifically with respect to Action 11, “The District experienced several vacancies throughout the entire year” (2018-19 KTJUSD LCAP, p. 18 of 109). Such an explanation, while brief, provides sufficient information to account for such an expenditure difference. If the District is unable to fill vacancies for which expenditures have been included in the LCAP, the actual amounts of the expenditures will be lower than expected.

To address the difference between budgeted and estimated actual expenditure amounts for Goal 2, Action 3 in the Annual Update, the District states specifically with respect to Action 3, “We did not fill the position at Captain John as the School Site Council determined the position was not needed” (2018-19 KTJUSD LCAP, p. 27 of 109). Such an explanation, while brief, provides sufficient information to account for such an expenditure difference.

To address the difference between budgeted and estimated actual expenditure amounts for Goal 3, Action 2 in the Annual Update, the District states specifically with respect to Action 2, “unfilled vacancy[,] We did a contract at the end of the year with an outside vendor to provide Psychological services” (2018-19 KTJUSD LCAP, p. 33 of 109). Such an explanation, while brief, provides sufficient information to account for such an expenditure difference.

The appeal of the District’s November 27 Decision regarding Allegation 2 is denied.

Allegation 3

Allegation 3 is comprised of four separate sub-allegations:

- 3a: The District fails to provide adequate descriptions of the actions/services implemented;
- 3b: The response to the first prompt of the Analysis part of the Annual Update section, regarding implementation, is insufficient for each goal in the Annual Update;
- 3c: The response to the second prompt of the Analysis part of the Annual Update section, regarding the effectiveness of actions and services, is insufficient for each goal in the Annual Update;
- 3d: The response to the fourth prompt of the Analysis part of the Annual Update section, regarding changes made to the goal, is insufficient for each goal in the Annual Update.

3a: *The District fails to provide adequate descriptions of the actions/services implemented.*

The LCAP directions state:

“Identify the planned Actions/Services and the budgeted expenditures to implement these actions toward achieving the described goal. Identify the actual actions/services implemented to meet the described goal and the estimated actual annual expenditures to implement the actions/services. As applicable, identify any changes to the students or student groups served, or to the planned location of the actions/services provided.”

Per the LCAP template directions, the requirement is to identify the *actual* actions/services implemented to meet the described goal and to identify any changes to the students or student groups served, or to the *planned* actions/services provided, as applicable. An LEA transposes the *planned* actions/services from the prior LCAP year into the Annual Update for the relevant LCAP year. *Planned* actions/services are

entered into the left-hand column. In the right-hand column, next to each *planned* action/service, an LEA identifies the *actual* action/service that was implemented relative to what was planned. If all goes as planned for a *planned* action/service, the description of the *actual* action/service will be the same or very similar as that provided for the corresponding *planned* action/service. When not all goes as planned, the description of the *actual* action/service will be different than the description provided for the corresponding *planned* action/service.

The LCAP Template directions do not include specific requirements for what constitutes the identification of an *actual* action/service. The underlying question being addressed by a distinction between *planned* and *actual* actions/services seeks to clarify the extent to which a *planned* action/service was implemented. An LEA is addressing whether or not it carried out the action/service as planned or not, whether in whole or in part. As such, what constitutes a sufficient identification of an *actual* action/service will depend on the relative complexity of the action/service or the level of specificity provided by the description of the corresponding *planned* action/service.

The Appellants do not reference in the Complaint or the Appeal a specific example of an insufficient description of an actual action in the Annual Update section. A review of the Annual Update section of the 2018-19 LCAP finds that the District has not provided adequate descriptions of the actual actions and services. For example, the descriptions provided for the actual actions and services for Goal 2, Actions 5 – 10 in the Annual Update all refer back to Goal 1 (“See Goal 1”). The descriptions provided in Goal 1 of the Annual Update for actual actions and services do not make clear what actual actions or services are being described. For example, for the planned action for Goal 1, Action 15 states, “As defined in the TVES 021 Title I Allocation SPSA” (2018-19 KTJUSD LCAP, p. 14 of 109). The description provided for the corresponding actual action and services states,

“Trinity Valley Elementary School followed the Site Council/Board approved school site plan that outlined the use of Title I funding” (2018-19 KTJUSD LCAP, p. 14 of 109).

The requirement is to “identify the actual actions/services implemented to meet the described goal” (LCAP Template Directions). This description provided does not identify any specific actions or services. Rather, it identifies a school plan without identifying the actions or strategies being referred to as included in that plan.

As a result, the CDE finds that the District fails to adhere to the LCAP template directions pertaining to the identification of the *actual* actions/services in the Annual Update.

The Appeal of the District’s November 27 Decision regarding Allegation 3a has merit.

3b: *The response to the first prompt of the Analysis part of the Annual Update section, regarding implementation, is insufficient for each goal in the Annual Update.*

The LCAP template directions provided for the Analysis part of the Annual Update state:

“Using actual annual measurable outcome data, including data from the LCFF Evaluation Rubrics, analyze whether the planned actions/services were effective in achieving the goal. Respond to the prompts as instructed” (LCAP Template Directions).

LCAP template directions specific to the first prompt state:

“Describe the overall implementation of the actions/services to achieve the articulated goal. Include a discussion of relevant challenges and successes experienced with the implementation process” (LCAP Template Directions).

For the four goals in the Annual Update, the District provides the following responses to this prompt:

Goal 1: “Although faced with multiple challenges, the overall implementation was successful. The area that still needs to be addressed is staffing shortages” (2018-19 KTJUSD LCAP, p. 18).

Goal 2: “As stated in Goal 1, although faced with multiple challenges, the overall implementation was successful. The area that still needs to be addressed is staffing shortages. Due to the staffing shortages, more outreach to community members has been tasked to our school staff” (2018-19 KTJUSD LCAP, p. 27).

Goal 3: “As stated in Goal 1, although faced with multiple challenges, the overall implementation was successful. We continue to increase the expectations to increase the overall effectiveness of the plan” (2018-19 KTJUSD LCAP, p. 33).

Goal 4: “As stated in Goal 1, although faced with multiple challenges, the overall implementation was successful” (2018-19 KTJUSD LCAP, p. 37).

The responses provided for Goals 1 and 2 do reference a challenge presented by staffing shortages and, with respect to Goal 2, states that school staff is taking on more outreach responsibilities as a result. However, the requirement, as provided in the LCAP Template directions is to “include a discussion of *relevant* challenges and successes...” Neither response for Goal 1 or 2 is relevant. Goal 1 in the LCAP addresses “high quality instruction” and “Common Core Standards”. Goal 2 states, “All students will have the opportunity to learn in a culturally responsive, socially, emotionally and physically safe environment” (2018-19 KTJUSD LCAP, p. 77). Neither the expected measurable outcomes nor the actions/services for either Goal 1 or Goal 2 make a reference to staffing shortages. While staffing shortages may impact many

aspects of a program, the District does not describe or otherwise make clear such a relationship in the LCAP. As such, the responses provided to the first prompt of the Analysis part for Goal 1 and Goal 2 in the Annual Update section does not meet the stated requirements as provided in the LCAP Template.

Unlike the responses provided for Goals 1 and 2, the responses provided for Goals 3 and 4 do not reference a specific challenge or success. Rather, the descriptions provide the conclusory statement that the District was “faced with multiple challenges.” This does not meet the requirement to include a discussion of challenges and successes.

The CDE finds that the District’s response to the first prompt for Goals 1, 2, 3, and 4 do not adhere to the LCAP template directions for the first prompt of the Analysis part of the Annual Update.

The Appeal of the District’s November 27 Decision regarding Allegation 3b has merit.

3c: *The response to the second prompt of the Analysis part of the Annual Update section, regarding the effectiveness of actions and services, is insufficient for each goal in the Annual Update.*

The LCAP template directions specific to the second prompt state:

“Describe the overall effectiveness of the actions/services to achieve the articulated goal as measured by the LEA” (LCAP Template Directions).

The District’s responses to the second prompt in the Analysis part of the Annual Update for each goal are as follows:

Goal 1: “Goals were clear but individual school plans still lacked the clarity to accomplish the goals. However, after multiple drafts and resubmissions, plans are becoming more complete and transparent” (2018-19 KTJUSD LCAP, p. 18).

Goal 2: “Goals were clear and schools (and their individual communities) were able to communicate a[nd] successfully obtain their goals” (2018-19 KTJUSD LCAP, p. 27).

Goal 3: “Actions and services were clear and schools (and their individual communities) were able to communicate the plan to obtain their goals. We anticipate even better results as complete implementation is expected by the end of 2018-19” (2018-19 KTJUSD LCAP, p. 33).

Goal 4: “All students are participating in PE activit[i]es – but teachers, students, and community have asked for more options within the PE program. We have a music program on our campuses once a week and teachers are also doing music in their classrooms. Teachers in 6-8 continue to use things they learned through

Arts Integration; they have all worked with special presenters and teachers. The schools have also attended multiple field trips this year that are a part of the VAPA space. Science is being taught in classes. Additionally, one of our community events was focused on science and those in attendance enjoyed having fun with hands on science activities. Teachers are instruction the Land Tenure curriculum and adding to it as well” (2018-19 KTJUSD LCAP, p. 37).

The directions for this prompt require an LEA to relate the overall effectiveness of the actions/services, as measured by the LEA, with the relevant LCAP goal.

Goal 1 in the Annual Update included in the 2017-18 LCAP is stated as follows:

“All students will receive high quality instruction, aligned to Common Core Standards, which will engage them as 21st Century learners and prepare them for college and careers” (2018-19 KTJUSD LCAP, p. 4).

The response provided to the second prompt in the Analysis part of the Annual Update for goal 1 does not reference anything of substance from the goal 1 statement nor does further examination of the measurable outcomes or actions and services provide clarification. The response to the prompt states that the goals were clear and the school plans still lack clarity but are becoming more complete and transparent. The LCAP template directions for the relevant prompt require an LEA to relate overall effectiveness of the actions/services, as measured by the LEA, with the relevant LCAP goal. The District’s response to the second prompt of the Analysis part for goal 1 of the Annual Update does not adhere to these directions.

The same is true for Goal 2 and 3 of the Annual Update. The response provided to the second prompt for Goal 4 is considered very adequate and serves as a good example of the kind of response that should be elicited by the second prompt.

As a result, the CDE finds that the District does not adhere to the LCAP template directions provided for the second prompt of the Analysis part of the Annual Update for all Goals 1, 2, and 3.

The Appeal of the District’s November 27 Decision regarding Allegation 3c has merit.

3d: *The response to the fourth prompt of the Analysis part of the Annual Update section, regarding changes made to the goal, is insufficient for each goal in the Annual Update.*

The LCAP template directions specific to the fourth prompt state:

“Describe any changes made to this goal, expected outcomes, metrics, or actions and services to achieve this goal as a result of this analysis and analysis

of the data provided in the LCFF Evaluation Rubrics, as applicable. Identify where those changes can be found in the LCAP” (LCAP Template Directions).

The District’s provides the same response to the fourth prompt in the Analysis part of the Annual Update for each goal as follows:

“Instead of seeking part-time positions, extra efforts were made to make as many positions fulltime, with benefits to encourage more applicants and fill more vacancies. Several actions have been removed due to stakeholder input and duplication in order to make the LCAP more user friendly” (2018-19 KTJUSD LCAP, pp. 19, 27, 33, 37).

Goals 1 – 4 in the Goals, Actions, and Services section of KTJUSD’s 2018-19 LCAP do not contain any action that addresses a shift from hiring part-time employees to hiring full-time employees with benefits or any other action that appears intended to encourage more applicants. As the District’s response to this prompt does not appear to address the goals, actions, or services planned for the 2018-19 LCAP year, the District fails to adequately respond to this prompt. As a result, the CDE finds that the District does not adhere to the LCAP template directions provided for the fourth prompt of the Analysis part of the Annual Update for all four goals.

The Appeal of the District’s November 27 Decision regarding Allegation 3d has merit.

Allegation 4:

Allegation 4 is comprised of the following two sub-allegations:

- 4a: The District failed to meet stakeholder engagement requirements pertaining to the Parent Advisory Committee;
- 4b: The District made substantial changes to its LCAP between June 2018 and September 2018 without engaging in any stakeholder engagement process.

4a: *The District failed to meet stakeholder engagement requirements pertaining to the Parent Advisory Committee.*

As provided in *EC* Section 52062, and as part of the stakeholder consultation process, a district superintendent is required to present the LCAP to the parent advisory committee (PAC) and the English learner parent advisory committee (ELPAC) for review and comment and to respond, in writing, to comments received from both groups. Meetings of a PAC are subject to the meeting requirements specified in *EC* Section 35147(b), commonly known as the Greene Act. These committees are not subject to the Brown Act requirements.

As provided for in 5 CCR 15495(f), a PAC shall be composed of a majority of parents of students and shall include parents of unduplicated students. A school district is not required to establish a new PAC if a previously established committee meets these requirements.

The district must also consult with, teachers, principals, administrators, other school personnel, local bargaining units, parents and pupils in developing the LCAP in accordance with *EC* sections 52060(g) and 52066(g).

In its Decision, dated November 30, 2018, the District indicates that its Indian Policies and Procedures Task Force (IPP Task Force) serves as its PAC. The District states that membership of the IPP Task Force includes 11 parents out of a total of 17 members and at least two of these members are parents of foster youth students, who meet the definition of unduplicated students.

The District also references its Board Policy 0410.1, which states that the District will merge the IPP Task Force recommendations with the District's LCAP. In its description of the role played by the IPP Task Force in the LCAP development process, the District states that this task force "reviews all of the School Plans and provides comments prior to consideration and adoption of the School Plans and the creation of the LCAP" (November 30 Decision, p. 4). The task force also "reviews the Annual Impact Aid Report to Tribes and Community" (November 30 Decision, p. 3). **The District does not, however, claim that the superintendent presented the LCAP to this task force for review and comment or that the superintendent responded in writing to comments received from the task force as required by *EC* Section 52062(a)(1).**

Although the District's IPP Task Force may meet the compositional requirements for the PAC, there is no evidence to suggest that the District adhered to the requirements of *EC* Section 52062(a)(1).

The Appeal of the District's Decision regarding Allegation 4a has merit.

4b: The District made substantial changes to its LCAP between June 2018 and September 2018 without engaging in any stakeholder engagement process.

The local governing board of a school district shall adopt an LCAP in a public meeting on or before July 1 of each year (*EC* Section 52061). As provided for in *EC* Section 52062(c), the local governing board of a school district may adopt revisions to an LCAP during the period the LCAP is in effect. Should revisions be made to the LCAP during the period it is in effect, the local governing board must follow the process to adopt an LCAP pursuant to *EC* Section 52062, and adopt the revisions in a public meeting.

The process by which a county superintendent of schools reviews and approves a school district's LCAP is provided in *EC* Section 52070. The local governing board of a

school district submits its LCAP to the county superintendent of schools no later than five days after the LCAP is adopted by the local governing board. On or before August 15 of each year, the county superintendent may seek clarification, in writing, from the local governing board about the LCAP. The local governing board must respond in writing to the county superintendent's requests for clarification within 15 days.

Within 15 days of receiving the local governing board's response, the county superintendent may submit recommendations, in writing, for amendments to the LCAP. The local governing board must consider the recommendations submitted by the county superintendent in a public meeting within 15 days of receiving the recommendations. The county superintendent shall approve a school district's LCAP by October 8 of each year only if the LCAP meets the three approval criteria provided in *EC* Section 52070(d)(1-3).

After the local governing board submits its LCAP to the county superintendent and before the county superintendent approves the LCAP, the local governing board may make amendments to its LCAP in response to the county superintendent's written recommendations. Such amendments may be necessary in order for the LCAP to meet the required approval criteria. Provided the process of making such amendments adheres to *EC* Section 52070 and such amendments are considered during a public meeting of the local governing board, such amendments do not trigger the stakeholder engagement process described in *EC* Section 52062.

The Complaint references "substantial changes to [the District's] LCAP between June 2018 and September 2018" and does not reference any specific change. This date range falls within the timeline provided for the review and approval process.

The Appeal of the District's Decision regarding Allegation 4b is denied.

Conclusions

The CDE finds the Appeal of Allegations 1, 3a through d, and 4a, have merit. The CDE denies the Appeal of Allegations 2 and 4b.

The CDE has referred the allegation that the District failed to post its LCAP prominently on its homepage back to the District to be processed as a new complaint consistent with 5 *CCR* Section 4632(d). The District must issue a decision regarding this allegation within 60 days from the date of the referral.

The CDE has referred the allegation that the District failed to adhere to *EC* Section 52062(b)(1), by not providing public access to the LCAP at least 72 hours prior to the public hearing, back to the District consistent with 5 *CCR* Section 4632(e). The District must make the necessary findings and conclusions on this issue within 20 days of the date of the referral.

Corrective Actions

With respect to the 2017-20 LCAP adopted for the 2018-19 LCAP year considered in its entirety, the District is required to work with the Humboldt County Office of Education, with the support of the California Department of Education, to ensure that the 2018-19 LCAP meets the requirements of the LCAP template, specifically with respect to the findings included in this report. Should conforming revisions to the 2018-19 LCAP be necessary in order to comply with these corrective actions, the District must adhere to the LCAP and annual update adoption process, including the stakeholder engagement requirements as described in *EC* Section 52062 and the LCAP must be adopted in a public meeting no later than April 15, 2019.

Additionally, the District is required to work with the Humboldt County Office of Education, with the support of the California Department of Education, to ensure that the District adheres to the requirements of *EC* Section 52062(b)(1).

As described in 5 *CCR* 4665, within 35 days of receipt of this report, either party may request reconsideration by the Superintendent. The request for reconsideration shall designate the finding(s), conclusion(s), or corrective action(s) in the Department's report to be reconsidered and state the specific basis for reconsidering the designated finding(s), conclusion(s), or corrective action(s). The request for reconsideration shall also state whether the findings of fact are incorrect and/or the law is misapplied.

I may be reached in the Local Agency Systems Support Office by phone at 916-319-0809 or by email at jbreshears@cde.ca.gov.

Sincerely,



Jeff Breshears, Director
Local Agency Systems Support Office

JB:jf

cc: Jon Ray, Superintendent, Klamath-Trinity Joint Unified School District
Sylvia Torres-Guillén, Director of Education Equity, ACLU Foundation of Northern California
Theodora Simon, Investigator, ACLU of Northern California
Jennifer Fairbanks, LCAP Coordinator, Humboldt County Office of Education