



Los Angeles County Office of Education

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Debra Duardo, M.S.W., Ed.D.
Superintendent

September 22, 2017

Los Angeles County
Board of Education

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Subject: Response to Uniform Complaint against Los Angeles County Office of Education re: Long Beach Unified School District's LCAP

Dear Ms. Jongco and Ms. Almanza:

Enclosed please find the Los Angeles County Office of Education's (LACOE) investigative determination responsive to your clients' Uniform Complaint Procedures complaint, which was received by LACOE on April 4, 2017.

The complaint was to be treated confidentially, with information provided only to those persons within LACOE with a need to know. You are advised that the County prohibits retaliation against you or anyone who files a complaint, against anyone who requests an appeal or anyone who participates in any complaint investigation process. You are advised that civil remedies may be available to you.

If you disagree with this determination, you have the right to appeal this decision as indicated below.

Appeal Information:

If you believe the decision is incorrect as a matter of fact or law, you have the right to file a written appeal to the California Department of Education within 15 calendar days of receipt of the letter. Such an appeal should specify the reason for appealing the decision. A copy of the original complaint and a copy of this report should be included. Appeals related to Local Control and Accountability Plans must be submitted to:

**California Department of Education
Local Agency Systems Support Office (LASSO)
1430 N Street
Sacramento, CA 95214**

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If you have questions or need more information, please feel free to call me at (562) 922-6124.

Sincerely,



Patricia A. Smith
Interim Chief Financial Officer

cc: Debra Duardo, M.S.W., Ed.D., Superintendent, LACOE
Arturo Valdez, Chief Academic Officer, LACOE
Dina Wilson, Director of Accountability, Support and Monitoring, LACOE

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**Los Angeles County Office of Education Uniform Complaint Determination Regarding
Public Advocates' Dispute of Long Beach Unified School District LCAP**

Background

Pursuant to Cal. Ed. Code § 52070, the Los Angeles County Superintendent of Schools is responsible for the review and approval of Local Control and Accountability Plans (LCAP) and budgets for the 80 public school districts located in Los Angeles County. After reviewing the 2016-2019 LCAP submitted by Long Beach Unified School District (LBUSD or District), and following discussions with District staff, LACOE sent a letter to the LBUSD board president on August 12, 2016, pursuant to Cal. Ed. Code § 52070(b), requesting clarification regarding how funding apportioned on the basis of unduplicated pupils was used to support such pupils as defined in 5 C.C.R. § 15496(a), and why the District's 2016-17 Annual Update did not include all information from the prior year's LCAP, as required by the State Board Approved Template pursuant to Cal. Ed. Code § 52070(d)(1). Our office received a response from the District dated August 26, 2016, providing some clarifying information, and they also submitted a revised LCAP which included the previously missing information from the Annual Update and addressed some of the concerns regarding the use of supplemental and concentration (S&C) funds for districtwide actions and services. Since the revisions and clarifications did not fully address all the concerns outlined in the letter, LACOE followed up with a second letter on September 9, 2016, as required by Cal. Ed. Code § 52070(c), recommending amendments to the LCAP prior to granting approval. Specifically, the letter recommended amendments to demonstrate that \$17,020,000 in S&C expenditures for Common Core aligned textbooks and materials, and \$21,400,000 for increased costs for teacher salary and benefits, attributed to S&C funds, were principally directed toward unduplicated pupils. The District submitted a revised LCAP on September 19, 2017, which reflected a change in budgeted expenditures to address the concerns in the amendment letter. LACOE subsequently approved the District LCAP.

Following the receipt of the Complaint, LBUSD indicated its intention to amend its 2016 LCAP.

Summary of Complaint

The Los Angeles County Superintendent of Schools received a Complaint, dated April 4, 2017, from Public Advocates, on behalf of Children's Defense Fund-California, Latinos In Action-California, and parents Marina Roman Sanchez and Guadalupe Luna (collectively, Complainants), alleging that LACOE fell short of its obligations under the California Education Code by refusing to reject LBUSD's 2016-17 LCAP for failing to comply with LCFF expenditure regulations. This was based on the allegation that, despite the revisions made, the LBUSD LCAP did not properly justify over \$40 million in S&C grant funds spent districtwide on salaries, benefits, textbooks, and

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technology, and failed to explain how the funds increased or improved services and were principally directed toward and effective in meeting the District's goals for "high need" students.

Specifically, the Complaint alleges the following:

- 1) The District fails to adequately justify \$19.5 million in districtwide textbook and technology S&C expenditures, the sum of which included \$17,020,000 for Common Core aligned textbooks and \$2.5 million for technology infrastructure;
- 2) The District fails to adequately justify \$21.4 million in S&C spending on districtwide classified and certificated salaries and benefits as increased or improved services for high-need students;

Findings of Fact

The UCP investigation by LACOE revealed that LACOE staff identified and addressed the same \$17.02 million in budgeted expenditures of S&C funds for Common Core aligned textbooks and instructional materials and the \$21.4 million in S&C funds budgeted for salaries and benefits as was raised by the complainants regarding 5 CCR § 15496(a) requiring local educational agencies to demonstrate in their LCAPs how funding apportioned on the basis of the number and concentration of unduplicated pupils is used to support such pupils. LACOE staff identified and questioned the expenditures described in the Complaint as well as other issues not addressed in the Complaint that were resolved through the approval process. The investigation also found that LACOE staff took appropriate steps to ensure resolution of these issues prior to approval of the District LCAP. These steps included discussions with District staff and the District superintendent in addition to the process described in Cal. Ed. Code § 52070, requiring a formal written request for clarification followed by a formal written request to amend the plan prior to approval, if questions are not adequately clarified subsequent to the initial letter. In this case, each of these steps resulted in improvements to the LBUSD LCAP that better reflected adherence to applicable laws and regulations. The District LCAP originally identified \$7 million for salaries and \$14.4 million for benefits from S&C funds. These amounts were included in an action titled "General Administration," which described support to schools in delivering Common Core Standards and "overall compensation which includes career increments and benefit contributions...." LACOE staff questioned the use of these funds because the District provided no explanation of how they supported actions that would increase or improve services to unduplicated pupils.

LBUSD responded with a revised action that included the following language: "Reaching unduplicated pupils requires staffing capacity to focus on their unique needs. After the severe staffing contractions during the budget crisis, the LCAP permitted the District to increase its

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capacity to focus more on unduplicated students by permitting the hiring of teachers which created the bandwidth necessary to focus on the initiatives and programs that helped unduplicated students best.” The revision went on to describe at length California’s teacher shortage. LACOE did not find that this additional language provided an adequate description of how the use of these funds would increase or improve services to unduplicated pupils. LACOE also questioned why costs allocated from S&C funds for benefits exceeded those allocated for salaries, and on September 9, 2016, sent a letter to the District requesting amendments to address this action. The District responded by submitting a revised LCAP that eliminated the \$14,200,000 in benefit costs attributed to S&C funds and maintaining \$7,140,000 in certificated salary costs attributed to S&C funds and adding the following language:

“This steady foundation directly enhances the services provided at high-need schools like Barton, Dooley, Mann, Webster, Hoover, Jefferson, Cabrillo, and Jordan where teachers have, on average, 18 years of experience. Academic reforms are able to take root, helping to narrow the achievement gap over time, as noted by the Broad Prize and other external evaluations.”

LACOE approved this revision based on the District’s identification of high need schools and elimination of excess benefit costs.

In reference to the \$17,020,000 originally allocated from S&C funds for Common Core aligned textbooks, LACOE staff initially questioned this budgeted expenditure because the description indicated the funds were to “Adopt, replace, and/or provide sufficient textbooks and instructional materials that align with Common Core.” The action went on to say:

“These materials (including supplementary resources) play a vital role in advancing college and career readiness efforts, as well as closing achievement gaps. For example, with the rapid expansion of the Advanced Placement program, principally Hispanic, African Americans, low-income, and other students, there is a substantial need for LBUSD to address instructional materials effectively.”

LACOE staff did not find that this description demonstrated how the funds would be used to increase or improve services to unduplicated pupils as compared to services for all students, particularly because there were no base funds included to support this action. In conversation with the District, LACOE was assured that the District made significant investments in instructional materials from base funds and that this would be reflected in a revised LCAP. On September 9, 2016, LACOE sent a letter requesting amendments to the District LCAP to address both the salaries and benefits and textbook costs. In response, the District added language to the LCAP describing the value of Common Core materials in supporting the needs of unduplicated pupils

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and moved \$5,253,000 in base funds to support this action. LACOE accepted the inclusion of the base funds in the action along with revised language describing the value of Common Core materials to support “disadvantaged students in the unduplicated population” as evidence of increased/improved services.

As part of the review, LACOE staff determined that the District’s \$2.5 million in technology S&C expenditures were targeted expenditures aimed at improving educational services to high-need students. Complainants dropped this sum from their August 23, 2017, Appeal to the California Department of Education (CDE) of the District’s August 8, 2017, rejection of their UCP Complaint, and we assume they agree with this assessment.

Throughout August 2017, LACOE staff sought clarification from District staff as to District S&P expenditures on Common Core aligned materials, and the District’s \$7,000,000 expenditure on certificated staff, as well as other portions of the District’s LCAP. The District engaged with LACOE and provided some clarifications. During the process, LACOE staff made clear the additional information provided by the District in response to LACOE inquiries could lead to changes to the District’s proportionality calculation based on the pending response to the Uniform Complaint Complainants submitted by Public Advocates as to LACOE.

The investigation also revealed that the authority of the county office of education in approval of district LCAPs is limited to the criteria in Cal. Ed. Code § 52070(d), which states that “The county superintendent of schools shall approve a local control and accountability plan or annual update.....on or before October 8, if he or she determines all of the following:

- (1) The local control and accountability plan or annual update to the local control and accountability plan adheres to the template adopted by the state board pursuant to Section 52064.
- (2) The budget for the applicable fiscal year adopted by the governing board of the school district includes expenditures sufficient to implement the specific actions and strategies included in the local control and accountability plan adopted by the governing board of the school district, based on the projections of the costs included in the plan.
- (3) The local control and accountability plan or annual update to the local control and accountability plan adheres to the expenditure requirements adopted pursuant to Section 42238.07 for funds apportioned on the basis of the number and concentration of unduplicated pupils pursuant to Sections 42238.02 and 42238.03.

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The investigation revealed many ambiguities within this authority which require clarification through guidance or through the uniform complaint process or other legal opinions. At the time of the approval process for 2016-2019 LCAP, it appeared that the changes made by LBUSD were in keeping with the legal requirement to ensure that unduplicated pupil populations receive increased and improved services compared to that of all students, and when those services are provided on a district or schoolwide basis, they are principally directed toward and effective in meeting the District's goals for unduplicated pupils, while maintaining local control and flexibility for the District in designing program services.

Conclusions of Law, Disposition, and Rationale

Subsequent to the 2016-19 approval process, CDE provided additional clarification regarding the criteria expected for approval of LCAPs in meeting the "increased and improved" services and ensuring those services are principally directed towards unduplicated pupils. Most significant, for this purpose, is a May 5, 2017, determination made by the CDE in its response to an appeal by the American Civil Liberties Union (ACLU) of a Fresno Unified School District Uniform Complaint (CDE Fresno Letter). That Uniform Complaint questioned the explanations provided by the District for the use of S&C funds for several districtwide actions and services. The CDE Fresno Letter states:

"In order to provide the required justification for services provided on a 'wide' basis, an LEA must distinguish between services directed toward unduplicated pupils based on that status and services available to all students pupils without regard to their status as unduplicated pupils or not. An LEA describes how a service is principally directed to meeting the LEA's goals for unduplicated pupils when it explains in its LCAP how it considered factors such as the needs, conditions, or circumstances of its unduplicated pupils, and how the service takes these factors into consideration (such as, for example, by the services design, content methods, or location). In addition, the description must explain how the LEA expects the services to support the LEA's conclusion that the service will be *effective* to meet the LCAP goals for its unduplicated pupils. When properly explained in the LCAP, it will be apparent how the LEA is acting to increase or improve services for unduplicated pupils, and why it has determined the services identified will be effective to achieve its goals for unduplicated pupils."

Based on our investigation, if LACOE had access to this level of detail from the CDE at the time of the approval of the LBUSD 2016-19 LCAP, LACOE staff may have found it within their authority to have rejected the District's proffered explanation regarding the expenditures in question, in keeping with the criteria outlined in the CDE Fresno Letter. Specifically, neither the

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additional language identifying the use of funds for salaries at high need schools nor the changes in the action related to Common Core materials would meet the standards in the CDE finding. Neither of these actions described how the District considered factors such as the needs, conditions or circumstances of its unduplicated pupils in designing the services as noted in the CDE Fresno Letter. The descriptions also do not demonstrate how the service takes factors such as design, content methods, or location into consideration.

The District could not provide a satisfactory explanation for its 2016-2017 expenditures for Common Core aligned textbooks and materials totaling \$17,020,000. Despite LACOE's efforts to seek clarification from the District on these expenditures, it remains unclear how these Common Core materials offer targeted benefits that are beyond the standards-aligned instructional materials required through *Williams* legislation.

State Superintendent Tom Torlakson, in an April 13, 2015, letter to Fresno County Office of Education Superintendent Jim Yovino, articulated a strict standard under which, in "some limited circumstances," a district "with demonstrably low salaries, in comparison to other districts in its labor market, may be able to document in its LCAP that low salaries result in difficulties in recruiting, hiring and retaining staff to such extent the quality of the district's educational program is adversely affected, particularly for unduplicated pupils." In explaining its \$7,140,000 S&C expenditure on certificated personnel costs, the District did not meet this burden, and LACOE staff remains dubious that it could meet this burden given available salary and teacher retention data indicating the District's strong position relative to other surrounding districts.¹

The District also failed to provide any information that would suggest that the Common Core aligned materials purportedly selected by the District to provide targeted instruction to high need students was any more expensive than baseline instructional materials. Without such information, LACOE staff could not consider, much less approve, the use of S&C funds to pay for a portion of the District's Common Core expenditures.

The District's \$14.5 million S&P expenditure on classified staffing qualifies as an increased service to unduplicated pupils. In its August 8, 2017, UCP response to Complainants, the District clarified that these funds pay for differentiated services and supplemental educational supports for unduplicated pupils. These additional supports include Instructional Aids "to work with teachers in classrooms where the achievement gap is the hardest to close." The District also clarified that

¹ See <https://www.ed-data.org/district/Los-Angeles/Long-Beach-Unified>, accessed September 22, 2017. Teacher employment at Long Beach Unified School District has remained consistently between 3,200 and 3,300 during the three most-recent years, 2012-13 to 2014-15, for which data is available. Teacher Average Teaching Experience has remained well above the Countywide level during the last four years for which data is available.

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“none of the assignments for S&C funded Instructional Aides were made out of a requirement to satisfy an IEP or 504 plan requirement to provide 1-to-1 aides,” but were independently “assigned to the classrooms with greater numbers of struggling unduplicated pupils.” The District’s description of the districtwide role of the S&C funded Instructional Aides appears consistent with the language included in the District’s final 2017-2020 LCAP.

Corrective Actions

Given the similarities in the issues addressed in the May 5, 2017, CDE Fresno determination and the issues addressed in this Complaint, it would appear that similar remedies would be appropriate.

In its 2017-2018 LCAP year, the District did not continue to claim the \$7,000,000 in certificated salary costs as an S&C expenditure. Complainants also dropped the matter from their Appeal to CDE of the District’s response to their Uniform Complaint. We agree that the District acted appropriately in removing this certificated salary costs from its claimed S&C expenditures in its 2017-2018 LCAP year.

We find that the \$7,000,000 in certificated costs should not have been included in the 2016-2017 LCAP year as S&C expenditures that increase or improve services for unduplicated pupils. The District shall not include those expenditures in its estimate of prior year expenditures for unduplicated pupils that were in addition to what was expended for all pupils when it calculates the minimum proportion by which it must increase or improve services for unduplicated pupils in the 2017-2018 LCAP year. 5 CCR § 15496(a)(2). This sum should be removed from the District’s 2017-2018 proportionality calculation.

Similarly, the District’s 2016-2017 expenditures for Common Core aligned textbooks and materials, totaling \$17,020,000, are not justifiable as S&C expenditures that increase or improve services for unduplicated pupils. As such, this sum should be excluded from the District’s expenditures in its estimate of prior year expenditures for unduplicated pupils that were in addition to what was expended for all pupils when it calculates the minimum proportion by which it must increase or improve services for unduplicated pupils in the 2017-2018 LCAP year. This sum should be removed from the District’s 2017-2018 proportionality calculation.

LACOE fiscal staff, as needed, will work with District staff to make the required adjustments to the District’s 2017-2018 proportionality calculation.

In addition, LACOE will align its LCAP approval criteria with that set forth in the May 5, 2017, CDE Fresno determination letter when approving district LCAPs for 2017-18 through 2019-20.

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Lastly, on August 23, 2017, Complainants filed an Appeal to the UCP Complaint concerning the District's compliance with the legal requirements pertaining to LCAP. This Appeal remains pending with State Superintendent Torlakson. We understand that CDE's response to this Appeal may align, alter, or supersede our decisions reached herein. As a result, we recommend that the District implement the Corrective Actions described above simultaneous, as appropriate, with CDE's decision on Complainant's Appeal.