



August 2, 2017

Sent via Electronic-Mail Only

Dear County Superintendents:

As organizations committed to strengthening our public school system to provide all children a meaningful opportunity to learn, we have been working over the past three years to ensure that the foundational principles of the Local Control Funding Formula (LCFF) are reflected in the Local Control and Accountability Plans (LCAPs) that local educational agencies (LEAs) are developing.

We appreciate the hard work that has gone into implementing the significant changes that LCFF made to our system of school finance and governance. We remain hopeful that the law will effectively serve California's students and improve education equity and are committed to serving as a resource to assist LEAs and stakeholders in taking advantage of this opportunity to improve educational outcomes and community engagement in our schools.

We write to emphasize important legal requirements related to LCAP development, particularly several requirements that we believe merit closer attention based on our review of LCAPs and support of the engagement process from the past three years and various drafts from this year. We also write, as we did in June 2016, to advise you of reports and resources that we and our partners have created to assist parents, students, community members, and LEA staff and boards in developing their LCAPs to conform to minimum legal standards and best practices. Those resources can be accessed [here](#).¹

Legal Requirements that County Superintendents Should Consider as They Review Draft Annual Updates and LCAPs for 2017-20

We understand that LCAPs released in 2014-2015 evolved in real-time as the State Board of Education finalized both the emergency regulations and the LCAP template that govern application of the new law. LEAs have now been through the process three times and have had nearly three calendar years to familiarize themselves with LCFF's requirements. With more than three years of experience with the statute and greater familiarity with the permanent regulations and LCAP development process, we expect some issues that we observed in prior LCAPs to be corrected this year. At the same time, the introduction of the revised LCAP template and the California School Dashboard may lead to new questions while hopefully helping LEAs share their stories and goals more efficiently and effectively. As LEAs and stakeholders use these new tools to engage in the cycle of continuous improvement, we reiterate that the underlying legal obligations at the heart of the school funding law remain unchanged.

We hope that this letter will serve as a reference tool for you and your team as you work with your LEAs to ensure that their LCAPs and Annual Updates meet the legal requirements discussed below. Notably, the recently enacted education budget trailer bill (AB 99) reinforces the authority and obligation

¹ Please visit http://bit.ly/PA_LCFF_Resources to access a list of key LCFF resources.

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of county superintendents to ensure their districts are complying with these requirements.² Education Code Section 52075(e) now provides that if the State Superintendent finds merit in an appeal of a complaint filed against a school district related to a LCAP approved by a county superintendent of schools or finds merit in an appeal against a county superintendent of schools related to the approval of a school district's LCAP, the Superintendent shall provide technical assistance to the county superintendent of schools focused on improving the county superintendent of schools' review and approval of LCAPs.

- **Legal requirements for stakeholder engagement apply each year.** LCFF's [minimum legal requirements for community and stakeholder engagement](#) apply each year. Thus, every year LEAs *must* "consult with teachers, principals, administrators, other school personnel, local bargaining units of the school district, parents, and pupils" in developing their LCAP. Educ. Code § 52060(g). In addition, LEAs *must* provide an opportunity for members of the public to provide written comments regarding the specific actions and expenditures proposed by the district in the LCAP or annual update, Educ. Code § 52062(a)(3), and hold both a public hearing on the LCAP and Annual Update as well as a separate meeting for adoption. Educ. Code § 52062(b).

As we have seen in prior years, we are concerned that again many LEAs are failing to provide community stakeholders sufficient time to review the draft LCAP and Annual Update. Too often, LEAs are releasing the draft LCAP and Annual Update mere days before public hearing. While technically compliant with the law, such late release of the district's plan undermines the spirit of the reform, as it provides minimal time to make meaningful assessments of and recommendations on actions and spending.

We also continue to see districts that do not have a distinct Parent Advisory Committee that includes parents as a majority of the members, as required under LCFF regulations. 5 CCR § 15495(f).³

We also observed that LEAs have struggled to provide appropriate language interpretation and translation throughout the LCAP development process. Many did not translate their final adopted LCAPs from last year or offer a translated summary of the LCAP, which limits the ability of non-English speaking parents to meaningfully participate in the LCAP process.⁴

Finally, despite the clear legal requirement, some districts are not engaging students in LCAP development. The requirement to "consult" with pupils "means a process to enable pupils, including unduplicated pupils and other numerically significant pupil subgroups, to review and comment on the development of the LCAP. This process may include surveys of pupils, forums with pupils, pupil advisory committees, or meetings with pupil government bodies or other groups representing pupils." 5 CCR § 15495(a). We especially commend those districts that

² The relevant language from AB 99 is in paragraph 25, which can be accessed [here](#).

³ See LCAP Template Addendum Instructions at p.4 of 13 ("Describe the process used to consult with the Parent Advisory Committee....")

⁴ LEA obligations regarding translation and interpretation are drawn from both state and federal law. Under the Education Code, school districts have a duty to provide translation of important notices, reports, statements and records in languages that 15% or more of their students speak at home. Educ. Code § 48985. In addition, California Education Code provides Limited English Proficient (LEP) parents with the right to be informed and engaged by school districts in their home language, Educ. Code § 51101.1, and all parents, including guardians whose primary language is not English, "the opportunity to work together in a mutually supportive and respectful partnership with schools, and to help their children succeed in school," Educ. Code § 51101(b). Finally, Title VI of the federal law guarantees that LEP parents be provided with "meaningful access" to the same communications and participation opportunities as similarly situated English-speaking parents.

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have supported student voice by instituting and supporting formal LCAP student advisory committees. A resource on community engagement requirements can be accessed [here](#).⁵

- **LCAP Annual Updates should serve as a meaningful tool for local accountability and continuous improvement.** The LCAP Annual Update is intended to encourage LEAs to monitor progress towards expected outcomes and measure what progress remains. It should also include an assessment of specific actions and be data driven. The update not only helps LEAs monitor and assess progress, but it serves as a communication tool to help stakeholders assess effectiveness of chosen strategies and hold LEAs accountable to continuous improvement. Educ. Code § 52061. With the Annual Update as its first section, the new LCAP Template emphasizes the importance of the Annual Update process in laying the groundwork for planning for the next three years.

We have seen a broad range in how LEAs approach the Annual Update process: some simply cut and paste from their LCAP without further analysis, while others focus on only one or two specific outcomes. Too often, Annual Updates fail to assess the impact of chosen strategies on measurable outcomes and progress towards goals. As CCSESA emphasizes, “[t]he recap must include an assessment of the effectiveness of the specific actions and a description of any changes to the actions or goal the district will make as a result of the review.”⁶

We have urged LEAs to pay careful attention to the Annual Update instructions, which state that the LEAs must for each planned action, “[i]dentify the **actual** action[] implemented to meet the described goal and the estimated actual annual expenditures to implement the action[.]” This includes “identify[ing] any changes to the students ... served, or to the planned location of the action ...” LCAP Template, Addendum Instructions at p.3 of 13. In addition, districts must provide meaningful analysis of each goal area, and “[d]escribe the overall implementation of the actions/services to achieve the articulated goal”; “[d]escribe the overall effectiveness of the actions/services to achieve the articulated goal as measured by the LEA”; “[e]xplain material differences between Budgeted Expenditures and Estimated Actual Expenditures”; and “[d]escribe 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 LCFF Evaluation Rubrics, as applicable. Identify where those changes can be found in the LCAP.” LCAP Template, at p. 4-5; *see also* Educ. Code § 52061.

- **Annual updates must explain material differences between budgeted expenditures and estimated actual expenditures, especially of supplemental and concentration dollars.** When it comes to explaining “material differences between Budgeted Expenditures and Estimated Actual Expenditures,” we continue to observe numerous Annual Updates where little or no explanation is provided for multi-million dollar differences. Numerous LCAP Annual Updates have actual implemented actions and estimated expenditures that differ significantly from planned actions and expenditures. Often these discrepancies go unexplained. Where supplemental and concentration expenditures are at issue, in most cases LEAs do not remedy their failure to meet their minimum annual proportionality obligation by carrying forward the unexpended obligation to the following fiscal year.

⁵ Please also see the [California County Superintendents Educational Services Association \(CCSESA\) Guide for County Superintendents](#), at p.16-19, for additional guidance on Stakeholder Engagement.

⁶ *See* [CCSESA LCAP Approval Manual](#), 2017-18, at p.15.

This is especially concerning because we have observed numerous districts in past years that did not appear to spend significant portions of the supplemental and concentration funds that had been allocated, without explanation. This practice raises serious concerns about whether those districts are in fact meeting their annual minimum proportionality obligation to increase and improve services for high-need students in proportion to the dollars they generate. The LCFF regulations clearly state that “an LEA *shall* determine the percentage by which services for [high-need students] *must* be increased or improved above services provided to all pupils *in the fiscal year...*” 5 CCR § 15496(a) (emphasis added). In other words, LEAs cannot merely attempt to meet or postpone to a future year their proportionality obligations. The minimum proportionality obligation is one that must be met in each fiscal year.⁷

- **LEAs must check under each action whether it meets the increased or improved services requirement and explain how they are meeting their minimum proportionality obligation to increase or improve services for high-need pupils each year.**
- **LCAPs must list *all* actions to meet each goal for the eight state priority areas and should account for nearly all of the LCFF funds received, including base funding and supplemental and concentration funding.** According to the LCAP Template, “The LCAP is intended to be a comprehensive planning tool” LCAP Template, Budget Summary at p.3. As the new template emphasizes, “the LCAP must describe, for the school district and each school... goals and specific actions to achieve those goals *for all students and each student group* identified by ... LCFF (ethnic, socioeconomically disadvantaged, English Learners, foster youth, pupils with disabilities and homeless youth) for each of the state priorities and any locally identified priorities.” LCAP Template Addendum at p.1; Educ. Code § 52060(c)(1). For each action in the LCAP, the district must list the budgeted expenditure amount, source and budget reference. **In other words, LCAPs must list *all* actions to meet *each* goal for the eight state priority areas (which cover nearly every aspect of an education program), and thus should account for all, or nearly all, of the LCFF funds received, including base funding and supplemental and concentration funding.** If a majority of an LEA’s education program, including supplemental and concentration funding, is not reflected in the LCAP, the document cannot serve as a comprehensive planning tool or enable meaningful stakeholder engagement.

Yet, a number of 2017-18 LCAPs still only account for less than half of the district’s general fund spending, and in some cases less than 10%. Many LEAs continue to reflect just supplemental and concentration funds. Some LCAPs claim each and every service as an increase or improved one for unduplicated pupils. Furthermore, in a review of fifteen districts with less than 55% unduplicated pupils, one third of the districts omitted tens of millions of dollars in supplemental funds from their 2015-16 LCAPs. Moreover, even when districts accounted for all of their supplemental funds, many LCAPs still lacked sufficient detail in the explanation of how that money is being spent. As a result, the majority of LCAPs we have reviewed over the years provide only vague descriptions of services and actions and little explanation of whether the supplemental and concentrating funding was meaningfully spent.⁸

⁷ Some have opined that unspent supplemental and concentration funds, regardless of the amount, technically become unrestricted in the following budget year. We view that position as legally incorrect.

⁸ These clarifications codify State Board guidance from 2014 that “[t]he state priorities broadly cover an LEA’s work to support its students and achieve outcomes; therefore, almost all LEA expenditures will likely be

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The Budget Summary section of the new template further underscores the importance of the LCAP as a comprehensive planning tool and requires LEAs to describe any General Fund Budget Expenditures not included in the LCAP. We urge County Offices of Education to scrutinize these explanations to ensure that funds that are being used towards LCAP goals are not being inadvertently omitted from local control and accountability.

- **LEAs must identify *each* LEA-wide and schoolwide use of supplemental and concentration funding in the LCAP.** Under the Demonstration of Increased and Improved Services section of the revised LCAP template, LEAs must “[i]dentify *each* action/service being funded and provided on a schoolwide or LEA-wide basis” and “[i]nclude the required descriptions supporting *each* schoolwide or LEA-wide use of funds.” (Emphases added.) Each different use necessitates a different description. This required information is essential to ensure transparency and a meaningful opportunity for stakeholder input on critical decisions related to how LEAs expend funds they receive to increase or improve services for high-need students. Our review of 2017-18 LCAPs thus far reveals that many LEAs continue to provide a general description of expenditures in this section, rather than a separate identification of each LEA-wide or schoolwide use with the proper corresponding justification as set forth below. Verifying whether this instruction is being followed should be easier under the new template as each LEA must identify in the Goals, Actions and Services section the specific expenditures it claims contribute towards the increased and improved services for high need students and whether that expenditure is districtwide or schoolwide.
- **For each identified schoolwide and districtwide use of supplemental and concentration funding, LEAs must justify that use based on the appropriate regulatory standard.** The permanent regulations provide that the justification must explain how the proposed use is “principally directed towards, and effective in, meeting the district’s goals for its unduplicated pupils in the state priority areas.” 5 CCR § 15496(b)(1)(B). This legal requirement applies to all LEAs, including those with high concentrations of unduplicated pupils. For districts with 55% or less unduplicated pupil enrollment or schools below 40%, the justification must also explain why the proposed use is the “most effective use of funds” to meet unduplicated pupil’s goals, including alternatives considered and the basis for that determination in theory, research or experience.⁹ Our review of LCAPs reveals that LEAs above and below the 55% concentration level routinely fail to justify their supplemental and concentration spending according to regulatory standards. Unfortunately, [our review last year](#) of non-concentrated districts below the 55% threshold revealed that many are spending the majority of their supplemental funds districtwide and are failing to provide the required “most effective use of funds” rationale. Guiding questions on this issue can be found [here](#).¹⁰

listed and described [in the LCAP] as a consequence of being tied to the actions that support an LEA’s goals for each of the state priorities.” See http://lcff.wested.org/wp-content/uploads/2014/04/Developing-a-Quality-LCAP-Chat-questions_Webinar-Part-II_final.pdf. This approach is also consistent with CCSESA’s guidance that “LEAs should include all LCFF funds and other fund sources (e.g. Title I, II, III, etc.) when they are being used to accomplish a goal or action and services in the LCAP. This aligns with the idea of transparency and telling a comprehensive story to the community.” [CCSESA Guide for County Superintendents](#), at p.12.

⁹ These requirements are also explained in the Instructions of the LCAP Template Addendum.

¹⁰ In our extensive reviews of LCAPs over the past three years, our organizations have found that many LEAs have been confused by the sections of the LCAP focused on explaining increased and improved services for

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The California Department of Education recently provided [helpful guidance](#) on this matter in a response to a UCP appeal filed by the ACLU. The CDE explains that “[i]n order to provide the required justification for services on a ‘wide’ basis, an LEA must distinguish between services directed toward unduplicated pupils based on that status and services available to all pupils without regard to their status as unduplicated pupils or not.” 5/5/17 CDE Ruling at 6. An LEA describes how a service is principally directed “when it explains in its LCAP how it considered factors such as the needs, conditions or circumstances of its unduplicated pupils and how the services takes these factors into consideration (such as, for example, by the service’s design, content, methods, or location).” *Id.* The CDE clarifies that “a high unduplicated pupil percentage ... by itself ... does not provide a sufficient explanation of how such services are principally directed towards unduplicated pupils.” *Id.* at 7. “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.” *Id.* at 6.¹¹

Critically, the CDE recognized that the LEA shall not include expenditures that cannot be properly justified in its “estimate of prior year expenditures for unduplicated pupils ... when it calculates its minimum proportion by which it must increase or improve services for unduplicated pupils in the 2017-18 LCAP year.” *Id.* at 14.

- **Supplemental and concentration funding generally cannot be used for across-the-board salary increases.** Adequately compensating teachers for their critical work is important and the use of base funds for across-the-board salary increases is a statutorily acceptable way to provide additional compensation. However, the use of supplemental and concentration funds for this purpose is generally inappropriate. Across-the-board salary increases, by themselves do not “increase or improve” the services for students or otherwise “upgrade” the entire educational program in the district, as the LCFF statute and regulations require. Educ. Code § 42238.07; 5 CCR §§ 15495(k) & (l); 5 CCR § 15496(a). That is, paying more for the same level of service does not satisfy the statutory and regulatory standard for an increase or improvement in services. A detailed analysis of this issue, including a discussion of the exceedingly narrow set of circumstances in which an LEA above 55% concentration could theoretically make a sufficient showing in its LCAP to meet the relevant standard for district-wide uses of supplemental and concentration funding, can be found [here](#).¹²
- **Uses of supplemental and concentration funding set aside for schools to spend must be reflected in the LCAP and Annual Update.** Many LEAs have adopted LCAPs that “push down” a portion of supplemental and concentration funding to schools. Letting school sites decide how to spend supplemental and concentration funding is consistent with LCFF’s principles. But LEAs that use this strategy must ensure that schools use the funds appropriately either by targeting them to unduplicated pupils or by satisfying the “principally directed” and

unduplicated pupils (formerly Section 3). In 2016, Public Advocates teamed up with the Sacramento County Office of Education to provide training and best practices on the proper uses and reporting of supplemental and concentration funds at a joint gathering of more than 40 counties across the state. For your information, those training materials are available at http://bit.ly/PA_Sec3Training and the Sacramento County Office of Education website at <https://www.scoe.net/lcap/training/Pages/default.aspx>.

¹¹ The CDE Ruling can be accessed here: <https://assets.documentcloud.org/documents/3711100/LCAP.pdf>.

¹² As described in the linked resources, LEAs have a burden to demonstrate they are suffering from a teacher quality problem that will be effectively addressed by a salary/benefit increase and must show over time that the increase has, in fact, effected an increase or improvement.

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“effective”/“most effective” standards. 5 CCR § 15496(b). LEAs must also reflect the various school level uses of these funds in their LCAPs and annual updates.¹³ We have observed that LEAs could benefit from support in how to resource the school site planning process in a way that will ensure that site plans align with the LCAP and appropriately invest and report on the uses of supplemental and concentration funds.

As Annual Updates and revised LCAPs are reviewed by you and your teams, we encourage you to be particularly conscious of the issues that we have outlined. Because the LCAP has transitioned to a static three-year plan, it is especially important that we work together to ensure that LEAs move forward in year one with comprehensive plans that will guide their implementation and accountability for the next three years. We are assessing how the fourth year of LCFF implementation unfolds at the local level and whether the standards embodied in the regulations and LCAP template are being met. We look forward to working with LEAs and County Offices of Education to ensure that implementation of LCFF results in improved educational outcomes for all of our children. If you have any questions, please do not hesitate to contact us.

Sincerely,



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cc:
All District Superintendents

¹³ A best practice we have observed with schoolsite distributions is to include an appendix spreadsheet or table that lists supplemental and concentration expenditures by school, although rarely are LEAs providing the regulatory justification for schoolwide spending.