



COVINGTON

July 1, 2016

State Superintendent Tom Torlakson
c/o Local Agency Systems Support Office
California Department of Education
1430 N Street
Sacramento, CA 95814
lcff@cde.ca.gov

Re: Appellants Community Coalition’s and Reyna Frias’s Opposition to LAUSD Request for Reconsideration & Request for Reconsideration

Dear Superintendent Torlakson,

On May 27, 2016, the California Department of Education (“CDE”) issued its Investigation Report in this matter agreeing with Community Coalition and Ms. Reyna Frias (collectively “Appellants”) on the merits and ordering corrective action beginning with the 2016-17 LCAP and going forward. Specifically, the CDE ordered LAUSD to “revise its calculation practice of ‘prior year expenditures’ as set forth in 5 CCR Section 15496(b)(2) to exclude [\$450 million of] special education expenditures which are not for expenditures for special education services provided for unduplicated pupils that are in addition to expenditures on services for all special education pupils, and ensure its [minimum proportionality percentage] is consistent with its estimate of ‘prior year expenditures’.” CDE Investigative Report at 17 (May 27, 2016). This letter brief responds to LAUSD’s June 13, 2016 Request for Reconsideration and, further, respectfully requests reconsideration of CDE’s May 27th corrective action insofar as it operates prospectively only and fails to order complete relief. The CDE corrective action falls short by failing to direct LAUSD to increase or improve services by an additional approximate \$422 million, which is the proportional quantity of supplemental and concentration services unduplicated pupils were shortchanged in 2014-15 and 2015-16 by LAUSD’s miscalculation – which CDE has determined is unlawful.

I. Response to Torlakson Letter to Superintendent King dated June 14, 2016

As an initial matter, Appellants take note of a personal correspondence issued from Superintendent Torlakson to LAUSD Superintendent Michelle King on June 14, 2016, responding to correspondence sent by Superintendent King to Superintendent Torlakson earlier the same day. The Torlakson letter purports to clarify the CDE’s May 27th determination and—although it confirms the determination’s legal holding—potentially redefines the scope of relief ordered therein. Both the underlying King letter and Torlakson response were sent *ex parte* without notifying or cc’ing Appellants, much less offering Appellants an opportunity to respond

as due process would accord were the communications part of this UCP proceeding. As such, the Torlakson communication was issued *ultra vires*, is outside the scope of this UCP appeal, and is without legal force and effect.

The letter is further inappropriate because it opines that LAUSD may be able to justify “a significant portion” of the \$450 million ordered removed from the District’s proportionality calculation without any review of LAUSD’s special education budget and, even more so, because it offers to permit LAUSD to violate the law for another full year, until 2017-18, before fully enforcing the CDE’s decision. The Superintendent of Public Instruction (SPI) has no discretion in this matter to do anything other than immediately enforce the mandatory legal obligations that arise from the LCFF statutes and regulations and to make the unduplicated pupils of LAUSD whole dating back to the beginning of the District’s unlawful actions, starting with the 2014-15 school year.

The SPI’s willingness to engage in *ex parte* determinations without providing Appellants an opportunity to be heard; to opine, without investigation, on the extent to which the District may be able to avoid significantly increasing or improving services for high need students under LCFF; and to further allow a district that has been blatantly violating the law for two years an unjustified “pass” for another year all call into question the impartiality of the UCP reconsideration process.

The Torlakson letter also references conversations and a planned meeting between LAUSD and the CDE to address the issues raised by Appellants’ meritorious UCP complaint. Appellants insist they be included in all discussions between CDE and LAUSD going forward about any potential resolution of the matters raised by their UCP complaint and their ongoing Superior Court litigation. The District has until LACOE’s final LCAP approval on October 8th to determine how it will comply with LCFF beginning in 2016-17. Meaningful three-way discussions to attempt to amend LAUSD’s defective LCAP should begin immediately.

II. Response to LAUSD Request for Reconsideration

The SPI and the CDE should affirm its original decision, reject LAUSD’s reconsideration request, and refuse to modify or delay its May 27th order as requested. LAUSD’s Request exhibits a surprising lack of comprehension of the LCFF expenditure regulations. Its arguments for why the CDE determination is wrong are utterly without merit, and its “parade of horrors” that must come to pass if the District complies with CDE’s order is wildly off-base, premised as it is on erroneous assumptions. LAUSD commits the following fundamental errors:

- A. LAUSD erroneously conflates the description of actions taken by districts and which populations those actions serve in Section 2 of the LCAP template with the wholly distinct obligation to increase or improve services for unduplicated pupils in 5 CCR § 15496(a) and Section 3 of the LCAP.

LAUSD wastes a great deal of energy discussing Section 2 of the LCAP template, which is irrelevant to the proportionality issue here. Section 2 satisfies the LCFF statutory and regulatory obligation for districts to describe all the actions and services local educational

agencies (LEAs) provide to address their LCAP goals and the eight state priorities. The template is to serve as “a comprehensive planning tool” which reflects not just supplemental and concentration spending but also “the services and related expenses for [the LEA’s] basic instructional program in relationship to the state priorities.” 5 CCR § 15497.5 at page 1. As such, this comprehensive picture of a district’s program must also address the many different sub-populations served by various LEA actions. The template itself places no restrictions on what actions LEAs may provide or how they want to deliver and describe those actions. Districts may undertake actions that serve one or more sub-populations, all sub-populations, only unduplicated pupils, unduplicated pupils in combinations with other populations, etc.

Nothing in Section 2’s directions for displaying district actions, however, has anything to do with defining *which* of those actions taken can be supported with supplemental and concentration dollars. The answer to that question lies exclusively in 5 CCR § 15496, which is operationalized in the template in Section 3. As set forth in Appellants’ Complaint, Appeal, and the CDE decision, that provision and the seven-step formula defining the District’s obligation to increase or improve services for high need students precludes LAUSD from counting its “unduplicated pupil share” of its special education encroachment as a proper supplemental and concentration expenditure.

- B. LAUSD conflates the standard for determining a pre-LCFF “prior year expenditure” that can be counted toward an LEA’s supplemental and concentration expenditure obligation with the standard for determining what can count as a “principally directed and effective” supplemental and concentration expenditure post-LCFF enactment.

What constitutes a proper “prior year expenditure” for contributing towards an LEA’s minimum proportionality percentage (MPP) is defined at Step 2 in the seven-step formula at 5 CCR § 15496(a)(2). What constitutes a proper use of supplemental and concentration funds on an increased or improved service post LCFF-enactment is defined at 5 CCR § 15496(b) (*i.e.*, the “principally directed and effective” standard as concerns LAUSD districtwide actions). Of particular relevance here is that Step 2 in the formula establishes the basis by which a district can take credit for some amount of its pre-LCFF educational program that it is continuing as long as the spending has been focused on providing “services for unduplicated pupils” that are “in addition to . . . services provided for all pupils.” 5 CCR § 15496(a)(2).

LCFF’s concept of proportionality (as set forth in *Educ. Code* § 42238.07 and the expenditure regulations promulgated thereunder) establishes a new “third way” of spending between the two poles of complete discretion with unrestricted general funds and the tight constraints of programmatic categoricals—but proportionality only applies to post-LCFF expenditure decisions. In the pre-LCFF, pre-proportionality world, expenditures were classified as funded either by a categorical or by unrestricted general fund revenues. In that world, the only type of expenditures that can possibly qualify as spending on “services for unduplicated pupils” that were “in addition . . . to services provided for all pupils” are categorical funds, like Economic Impact Aid, that were focused on serving low-income students, English Learners or foster youth or general fund spending similarly targeted at these students. In either case, the qualifying expenditures, as CDE’s ruling correctly determines, must be for “services directed to

unduplicated pupils based on that status” and not simply “services available for all pupils, without regard to their status as unduplicated pupils or not.” CDE Investigative Report at 15.¹

LAUSD repeatedly attempts to apply the *post*-LCFF proportionality standard to its pre-LCFF prior year special education spending. *See, e.g.*, LAUSD Req. for Reconsideration at 6-9. This interpretation is incorrect for a number of independent reasons:

- (1) As noted, pre-LCFF expenditures are governed by a separate section in the regulations, not the “principally directed . . . and effective” test; as such, there is no authority for applying the latter standard to pre-LCFF retrospective expenditures.
- (2) Because proportionality, LCFF, and the expenditure regulations did not exist at the time those pre-LCFF spending decisions were made, those expenditures were not subject to LCFF’s proportionality justifications and its substantial public engagement and public accountability requirements. As the CDE noted in its decision, “the requirement to articulate in the LCAP how districtwide expenditures are ‘. . . principally directed towards and effective in . . .’ meeting goals for unduplicated pupils is a critical step that should reflect the culmination of the significant stakeholder engagement called for by the LCFF . . .” CDE Investigative Report at 15-16. The more flexible proportional spending standard simply cannot apply to expenditure determinations made prior to LCFF because districts never designed nor justified them in accord with LCFF standards (*i.e.*, as principally directed and effective in meeting specific high need student goals), nor did districts have to survive running its spending justifications through the LCAP public gauntlet and accountability measures. Those latter measures include public hearing requirements, stakeholder engagement requirements, public comment and response requirements, and evaluation requirements regarding the effectiveness of spending actions through the annual update and evaluation rubrics processes.²
- (3) LAUSD cannot qualify these longstanding special education services which pre-date LCFF as *new* increased or improved services originating post-LCFF. The regulations make clear that increased or improved districtwide services qualifying for support with supplemental and concentration funds under the proportionality standard must be services that represent a “grow[th]” “in quality” or “quantity.” 5 CCR § 15495(k)-(l). Merely continuing the same, general special education services addressing student

¹ CDE’s determination is consistent with state and federal disability law which prohibits making students eligible for special education services if their learning issues result from limited English proficiency or economic or environmental disadvantage. *Educ. Code* § 56026(e); 34 C.F.R. §§ 300.306(b)(1), 300.8(c)(10)(ii). LAUSD is in conflict with both LCFF and these laws in using funds generated for helping unduplicated students address precisely those barriers to pay for general special education services.

² After the initial LCAP year of 2014-15, of course, previously and properly approved supplemental and concentration LCAP expenditures which have satisfied the regulations’ standards for publicly justifying supplemental and concentration expenditures as “principally directed towards, and effective in” addressing *unduplicated pupil goals* and which can be demonstrated as effective in addressing those goals through the annual update and evaluation rubrics processes properly qualify going forward as prior year services “for unduplicated pupils” under 5 CCR § 15496(a)(2).

IEPs as per federal and state obligations would not satisfy LCFF's requirement that the services are being increased or improved for high need students.

C. As CDE recognizes, LAUSD's reading of "all pupils" is in fatal conflict with the 7-Step Formula.

LAUSD reasons that because not "All" (*i.e.*, 100%) of students in the District receive special education services, it is somehow authorized to fund the unduplicated pupil share of special education services not covered by state and federal categoricals with supplemental and concentration grant funds. A close examination of how the proportionality formula works demonstrates that LAUSD's approach is wholly inconsistent with the regulations.

The fundamental LCFF proportionality formula, set forth in the opening paragraph of 5 C.C.R. § 15496(a), requires LEAs to: "increase or improve services for unduplicated pupils as compared to the services provided to all pupils".

This ratio is realized as the MPP in § 15496(a)(7):
$$\frac{\text{Total Supp. \& Conc.}}{\text{Total LCFF} - \text{Total Supp. \& Conc.}}$$

As such, the numerator in the formula represents "services for unduplicated pupils" and the denominator represents "services provided to all pupils," also defined by LCFF and the expenditure regulations (and common parlance) as "base" funds.

As defined in § 15496(a)(6), the denominator of "services provided to all pupils" includes all LCFF funds that are not supplemental and concentration funds. No other exclusions apply (except for Home to School and Transportation categorical funds, not relevant here). By definition, the denominator includes expenditures on services provided to 100% of the LEA population (such as for utilities) and on services provided to less than 100% of students (such as for summer school, remedial classes, and special education). As the opening paragraph of § 15496(a) and subparagraphs (a)(6)-(a)(7) illustrate, the universe of expenditure types under the regulatory formula is binary: (1) services for unduplicated pupils and (2) services provided to all pupils (*i.e.*, non-unduplicated and unduplicated). For purposes of determining proportionality, an LCFF expenditure must be one or the other.

LAUSD relies on language in the inapplicable Section 2 of the LCAP template to create a new 3rd unique category of "special education services provided to pupils who are less than 100% of pupils" and allocates the unduplicated proportional share to the numerator, that is, "services provided for unduplicated pupils" (S+C Total). However, *there is NO PLACE in the formula for the non-unduplicated special education pupils in LAUSD's new 3rd category of expenditures, i.e., the expenditures on the 21% of LAUSD special education students who are not low-income, an English Learner or a foster youth.* These expenditures do not fit in the numerator because the pupils are not unduplicated; they do not fit in the denominator because LAUSD has defined them out of "services provided to all pupils" because, according to its argument, not "All" students actually receive special education services. Yet, the formula allocates all LCFF funds in either the numerator or the denominator (except TIIG and Home-to-School Transportation). Accordingly, LAUSD's untenable and internally inconsistent reading of

the regulations must be rejected. *See* CDE Investigative Report at 14 (concluding LAUSD’s misreading of “all” produces a “strained construction” that is “not consistent with the LCFF statute and regulations”).

In contrast, Appellants’ and CDE’s reading squares perfectly with the formula. Expenditures for special education services that are uniquely targeted to unduplicated special education students because of their unduplicated status belong in the numerator; expenditures for general special education services available to all students belong in the denominator. As CDE recognized, LAUSD has provided absolutely no indication that the \$450 million of special education expenditures were provided to unduplicated students because of their unduplicated status (because they were not), and thus those funds should properly be included in the denominator of the proportionality calculation. Accordingly, as CDE held, LAUSD must immediately revise its LCAP to ensure its MPP is consistent with the law. *See* CDE Investigative Report at 17.

D. LAUSD Can Implement Corrective Action in an Orderly Manner

LAUSD manufactures a “parade of horrors” purportedly necessitating a layoff of some 2,000 teachers in order to comply with the CDE’s corrective action. Its reasoning is based on flawed assumptions flowing from the District’s misunderstanding of LCFF and the proportionality regulations. Contrary to its assertion, removing teachers and resources from some subset of less concentrated schools to invest in another subset of more concentrated schools is not the sole option available to LAUSD. Rather, the District may target resources to one or more types of unduplicated pupils, may undertake schoolwide services as it suggests, or may undertake districtwide services.

Should it determine that the best way to assist high need students is by employing districtwide services, it may be possible for LAUSD to identify some current actions that are in fact targeted for one or more of the unduplicated pupil populations but which the District is not currently taking credit for as a service “for unduplicated pupils.” More likely, the District may be able to repurpose certain districtwide actions and expenditures that are currently general in nature (*e.g.*, a generic high school counseling program) but which, if genuinely reimaged (in actual practice, of course, and not just on paper) to be principally directed toward high need pupil goals (*e.g.*, a counseling program focused principally on increasing unduplicated pupils’ graduation and college-going rates), could qualify as an increase or improvement in services for high need students. Such repurposing would more authentically focus services on high need pupil populations, as LCFF intends, and, in doing so, could justify shifting support for these actions from base funds to supplemental and concentration funds. Such practices could both increase services for LAUSD’s high need students and be accomplished without laying off anyone.

Finally, it must be acknowledged that LAUSD very likely will need to increase or improve services for high need students with new actions and personnel that will incur additional costs for the district. How large this potential bucket of targeted, schoolwide, or districtwide services will need to be in 2016-17 and beyond will depend on how many of the other strategies above it can honestly and effectively employ. That the District will actually have to

proportionally expand its spending on high need students is exactly what LCFF demands. And it can hardly be doubted that the District has the resources to accomplish substantial increases or improvements. As a U.C. Berkeley report recently noted, the District has significantly more funds to serve fewer students than it did before the Great Recession, having seen its per pupil revenues rise from \$9,361 per pupil in 2006-07 to \$12,144 in 2015-16.³ Moreover, as further noted in the same report and elsewhere, LAUSD has undertaken a number of discretionary actions that are not mandatory and which cost the District hundreds of millions of dollars including:

- a. Returning to a pre-LCFF 2007-08 status quo staffing pattern districtwide rather than a more explicit equity focused staffing strategy. This strategy has returned, for example, assistant principals and librarians to less-concentrated, less needy schools.
- b. Adopting a 10% pay hike and a very significant benefit deal for District staff (*e.g.*, lifetime medical benefits) which only a handful of other districts have adopted and over which the District's own superintendent and the L.A. county office have voiced doubts as to the District's ability to afford.
- c. Pursuing a failed \$1.3 billion program to provide iPads to LAUSD students in 2013⁴ and now investigating a \$311 million to purchase laptops for every student.⁵

In short, LAUSD has options. LAUSD's compliance with the law will not necessarily require massive layoffs, but it will require—as LCFF intends—the District to refocus and ramp up its equity-based services for its neediest students.

III. LAUSD is not entitled to, and the CDE and SPI are not empowered to, delay LAUSD's compliance with the law.

LAUSD seeks a delay and a dispensation from having to comply with its obligations under LCFF to proportionally increase or improve services for unduplicated pupils, despite having been on notice for two years of its unlawful conduct.

The CDE and the SPI are not courts in equity. They have the mandatory duty, just as LAUSD does, to ensure compliance with LCFF. Section 42238.07 and the expenditure regulations are clear that the District must annually increase or improve services in proportion to the supplemental and concentration funds received that year. There is no room to ignore this mandate. Section 15496(a) unambiguously requires that supplemental and concentration funds “*shall be used to increase or improve services for unduplicated pupils*” and that the MPP is “the percentage by which services for unduplicated pupils *must be increased or improved* above services provided to all pupils *in the fiscal year*.” 5 CCR § 15496(a)(emphasis added). Neither the CDE nor the SPI have the authority to grant LAUSD any delay from satisfying these imperatives.

IV. Appellants Request for Reconsideration

³ <http://www.latimes.com/local/lanow/la-me-edu-groups-fault-laUSD-spending-20160613-snap-story.html>

⁴ <http://laschooltransf.wpengine.com/la-unified-moving-slowly-toward-goals-of-technology-in-the-classroom/>

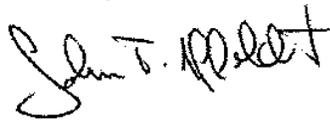
⁵ <http://laschoolreport.com/a-computer-for-every-la-unified-student-would-cost-311-million/>

For the same reason that the CDE and SPI cannot delay LAUSD's impending obligation to increase or improve services fully in 2016-17 set forth above, the corrective action required of LAUSD should be amended to order the District to fulfill its obligations from 2014-15 and 2015-16 for increasing or improving services. The corrective action ordered was prospective only, beginning in 2016-17. The District should be required to recalculate its MPP for previous fiscal years as well, absent the unlawful \$450 million in special education expenditures counted as a prior year expenditure, and should add to its present obligation the additional amount of increased or improved services occasioned thereby. Appellants estimate that additional obligation to be approximately \$126 million from 2014-15 and \$296 million from 2015-16.

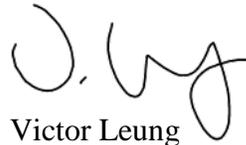
Conclusion

For the foregoing reasons, Appellants Community Coalition of South Los Angeles and Reyna Frias respectfully request that the CDE and SPI reject LAUSD's request for reconsideration in its entirety and, instead, order further corrective action as set forth above.

Sincerely,



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Enclosures

Attachment 1: June 14, 2016 Letter from Supt. Torlakson to Supt. King

cc:

Jeff Breshears, California Department of Education

Marsha Bedwell, California Department of Education

Gregory Luke, Strumwasser & Woocher

David Holmquist, Los Angeles Unified School District

Greg McNair, Los Angeles Unified School District

Vibiana Andrade, Los Angeles County Office of Education

ATTACHMENT 1



CALIFORNIA
DEPARTMENT OF
EDUCATION

TOM TORLAKSON
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

June 14, 2016

Dear Superintendent King and School Board President Zimmer:

I received Superintendent King's letter dated June 14, 2016, and am currently reviewing it with my staff. As representatives from the California Department of Education (CDE) and I have said in phone meetings with you, we stand ready to work through all of these fiscal issues very carefully. Our staffs are scheduled to meet on June 16, 2016, to discuss ways in which the Los Angeles Unified School District (LAUSD) can comply with the Department's May 27, 2016, decision in the appeal filed by Reyna Frias and to do so in a way that minimizes any budget disruptions.

Unfortunately, there has been considerable misunderstanding of the decision. I hope this letter can provide clarity. Respectfully, the CDE decision does not require LAUSD to identify \$1 billion in programmatic cuts.

Furthermore, some media reports were not accurate. It was not the finding of CDE that LAUSD inappropriately expended \$450 million or that it "shortchanged" unduplicated students. Instead, CDE reviewed the complaint and concluded that LAUSD did not provide an adequate explanation of how \$450 million in special education funds met the proportional spending requirements for services for unduplicated students in Local Control and Accountability Plans.

Districts receive extra funds for unduplicated students – foster youth, low income students, and English learners – and are required to demonstrate how the extra funds increase or improve services to these students.

It is our understanding that LAUSD may be able to justify counting a significant portion of the \$450 million or it may be able to identify in its LCAP other expenditures that are principally directed towards unduplicated students.

In doing so, LAUSD would be able to minimize disruption to its budget. Alternatively, it could redirect spending in its budget toward services that principally benefit unduplicated students, or it could take some combination of both actions.

In discussions with LAUSD staff, it has become clear that in 2016-17, the maximum amount of additional funds that LAUSD would have to identify as going towards unduplicated students or redirect in spending toward unduplicated students is \$245 million. But in order to allow LAUSD to make thoughtful adjustments to its LCAP and budget, CDE will not require LAUSD to make any significant spending adjustments until the 2017-18 fiscal year.

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CDE staff looks forward to discussing these issues in more detail with LAUSD and helping staff implement the decision in a way that is fair and complies with the law and avoids disruptions to students and faculty.

Sincerely,

A handwritten signature in black ink that reads "Tom Torlakson". The signature is written in a cursive style with a prominent horizontal stroke at the beginning.

Tom Torlakson

TT:ba