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March 28, 2016

Sent via email & Priority Mail

State Superintendent Tom Torlakson
c/o Local Agency Systems Support Office
California Department of Education
1430 N Street
Sacramento, CA 95814-5901
lcff@cde.ca.gov

RE: UCP COMPLAINT REQUESTING DIRECT STATE INTERVENTION WITHIN TEN DAYS TO ADDRESS IRREPARABLE HARM RESULTING FROM WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT'S FAILURE TO ACCOUNT FOR \$30.1 MILLION IN LCFF SPENDING IN ITS LCAP

Dear Superintendent Torlakson:

Mayer Brown LLP and Public Advocates Inc. present this Uniform Complaint Procedure ("UCP") complaint on behalf of Isabel Cruz, Mabel Doe and Julia Doe* requesting Direct State Intervention pursuant to 5 CCR § 4650(a)(6). The West Contra Costa Unified School District ("WCCUSD" or the "district") has acted in direct conflict with Local Control Funding Formula ("LCFF") law and regulations by expending millions of LCFF dollars in an *ultra vires* manner outside of its Local Control Accountability Plan ("LCAP"). *See* Educ. Code § 52060 *et. seq.*; 5 CCR § 15494 *et seq.* Unless the California Department of Education ("CDE") grants immediate relief to require compliance with state law, complainants will be permanently denied a voice in the district's allocation of millions in LCFF funds. Unless CDE, **within ten days**, orders that the district adhere to the mandatory statutory duty of identifying and, where appropriate, justifying its expenditure of \$30.1 million in LCFF funds in its LCAP, complainants will be forced to seek judicial relief in order to prevent the irreparable loss of their rights under the law.

On February 10, 2016, the district unlawfully allocated \$30.1 million in LCFF funds.¹ The district approved these expenditures without adherence to the community engagement,

*Complainants Mabel Doe and Julia Doe use pseudonyms to remain anonymous for fear of retaliation from the district.

¹ Though the district has not disclosed the source(s) of all the funds, we believe all \$30.1 million are state LCFF funds. Some \$4.3 million is undisputedly LCFF supplemental and concentration

transparency, accountability and equitable funding requirements of LCFF. The majority of this sum (\$25.8 million) was allocated to be paid as part of a collective bargaining agreement reached between the district and the United Teachers of Richmond (“UTR”). The remaining \$4.3 million were supplemental and concentration (“S&C”) funds, which the district must spend to increase or improve services for high-need students during the 2015-2016 school year—but only after it has obtained approval for that spending in a county-approved LCAP. Unless CDE provides the requested relief within the next ten (10) days, Isabel Cruz, Mabel Doe and Julia Doe will have no choice but to pursue legal action to enforce LCFF and prevent irreparable harm to the WCCUSD community’s ability to participate in and affect district spending decisions.

Complainants in this case are parents of low-income and English learner students who have a demonstrated commitment to improving the educational opportunities in their community. Some serve as members of the District LCAP Committee which by law has the right to substantively review and comment on all proposed LCAP actions and expenditures. As members of this committee, complainants expected the opportunity to review and comment on any LCAP amendments, particularly multi-year commitments such as the CBA and the expenditure of S&C funds. Some complainants are also members of ad hoc parent committees and have a deep knowledge of the needs of high-need students in their communities. Had they been given their statutory right to review and comment on a revised LCAP, they would have advocated for different actions/services, such as quality tutoring provided to all high-need students, cultural competency training for school staff, art and music classes, and trainings to remedy dysfunctional school site councils. Complainants are very concerned that simply adding funds to the district’s pre-existing plan is not sufficiently responsive to the dismal standardized test scores at the district’s neediest schools and the widespread culture of disrespect and low expectations that permeates district-community and staff-student relations. They seek immediate information on the impact of the CBA and the now-released use of \$4.3 million in S&C funding on the district’s educational program, and demand for themselves and the broader WCCUSD community the opportunity to participate in public discussions regarding these major new expenditures and their effect on the district’s LCAP spending plans for the next three years.

I. Factual Background

On June 10, 2015, the WCCUSD Board of Education (“board”) approved Resolution 80-1415, designating \$4.3 million in S&C funds to General Fund Reserves instead of allocating it for expenditure during the 2015-2016 school year. (See Exh. A & B.) This action took place two agenda items after the public hearing on the 2015-2018 LCAP and was not mentioned in the LCAP template itself. The allocation of the S&C funds was not discussed during the LCAP public hearing and was only a footnote at the end of the district’s LCAP Executive Summary.²

allocations for the 2015-16 year; \$25.8 million are ongoing teacher salary expenditures over the next three years.

² The footnote in the WCCUSD 2015-2018 LCAP Executive Summary posted for the June 10, 2015 board meeting reads: “\$4,344,883 of Supplemental and Concentration funds will be prioritized for allocation by the Board of Education in 2015-2016.” (See Exh. F.) The LCAP Executive Summary is not part of the mandatory LCAP template or subject to mandatory county

Public Advocates and Public Counsel presented oral and written objection to the board's resolution, urging the board to allocate the funds for expenditure during the 2015-2016 school year with community input as the law requires. (See Exh. C.) The district ignored these requests and ultimately approved an LCAP without mention of the \$4.3 million. (See Exh. F.)

Public Advocates and Public Counsel again raised the issue to the district and the Contra Costa County Office of Education ("CCCOE") on July 16, 2015, supported by the Healthy Richmond Steering Committee and community group Alive and Free. (See Exh. D & E.) The district responded orally only that the funds would be allocated during the 2015-2016 school year. The county issued a one page letter concluding that the district's LCAP complied with legal standards but offered no mention or substantive analysis regarding the \$4.3 million in S&C spending not included in the LCAP. (See Exh. G.) The CCCOE subsequently approved the district's June-adopted LCAP. In September, the district proposed the board ratify a collective bargaining agreement ("CBA") which would use the \$4.3 million in S&C funds to increase teacher salaries, asserting that "[t]hese dollars meet the DLCAP committee goals of attracting and retaining high quality teachers," but without amending the LCAP to include the allocation of S&C funds. (See Exh. H.) Public Counsel and Public Advocates warned the board that implementing a ratification with LCFF funds without the process and justifications required by LCFF was improper. (See Exh. I.) The district did not respond. Ultimately, however, the UTR membership failed to ratify the agreement, so the matter did not come before the board.

In January, the district and UTR agreed to a second CBA. Public Advocates and Public Counsel again asked the district to comply with LCFF by amending its LCAP, holding a public hearing, and resubmitting its LCAP to the county office of education for approval. (See Exh. O & P.) Instead, on February 10th, the board ratified the \$25.8 million agreement (\$3.3 million of which will be spent during the 2015-2016 school year and are, on information and belief, LCFF base grant funds). (See Exh. J.) One of the WCCUSD Board members publicly acknowledged at the time that, in order to afford the \$25.8 million salary increase, the district is going to have "to make some cuts." (See Exh. Q.) At the same time, the district also released the \$4.3 million in S&C funds from reserves. (See Exh. K & L.) The district then allocated—as a budgetary authorization—the \$4.3 million in S&C funds to carry out certain actions already identified and paid for in the current 2015-16 LCAP. (See Exh. M & N.) The district's budgetary allocations of \$30.1 million in LCFF dollars was all done without revising the LCAP to reflect the increases or any cuts needed to accommodate the CBA; without engaging the community, holding public hearings or resubmitting the LCAP for county approval; and without describing how the new S&C expenditures will "increase or improve services" for high need students.

On multiple occasions, Public Advocates and Public Counsel wrote to and testified before the board cautioning it against ratifying the second CBA or releasing the \$4.3 million from reserve without amending the LCAP, conducting the required stakeholder engagement process and public hearings, and re-submitting the district's LCAP to the county. Despite repeated requests, the district took none of these legally required actions. Without state intervention, the district will proceed to spend \$7.6 million in 2015-16 and lock in \$22.5 million

review nor was it in fact part of the LCAP reviewed and approved by the county office of education and posted on the county's website.

of LCFF spending over 2016-2018 without the transparency, engagement, public hearing, and county approval process required to ensure equity and accountability for LCFF funds.

II. WCCUSD’s Disregard of LCFF Law and Regulations is Causing Immediate and Irreparable Harm to Complainants

A. WCCUSD has Violated LCFF (1) Public Participation and Approval Processes and (2) High Need Student Spending Requirements.

1. *WCCUSD Failed to Comply with the LCFF Statute’s Required Process for Amending its LCAP, Consulting with Stakeholders and Seeking County Approval for the Over \$30.1 million in Funds it Committed to Spend on February 10, 2016.*

The principles of “local control” and “accountability” are critical to ensuring that LCFF creates equitable opportunity for low-income, English learner and foster youth (“high-need”) students. To ensure the local community is well-informed and able to contribute their expertise to the district educational program, LCFF requires districts to create LCAPs that reflect the district’s entire educational program and associated spending.³ In developing the LCAP, the district must consult with a wide range of stakeholders, including parents and students, on its goals for all students, and the actions/services and expenditures to accomplish these goals.⁴ WCCUSD did not follow the proper procedures, as set forth below, to revise its LCAP to reflect this additional significant spending. Additionally, the district did not comply with the required engagement process when it allocated \$30.1 million in LCFF funds in the middle of the 2015-2016 school year.

California Education Code details the rigorous process districts must follow to develop and revise their LCAP. This process includes presenting the LCAP to a parent advisory

³ Educ. Code § 52060(a). The LCAP is a plan for the district’s entire educational program for all students. The Education Code requires the LCAP include a “description of the annual goals, for *all* pupils, and each subgroup of pupils identified pursuant to Section 52052, to be achieved for each of the state priorities.” (*Id.*, emphasis added.) The LCAP must identify all district *goals* that serve the eight state priorities, Educ. Code § 52060(c)(1), all the specific *actions* the district will take to achieve those goals during each year of the LCAP, Educ. Code § 52060(c)(2), and all the *expenditures* implementing the specific actions in the LCAP, Educ. Code § 52064(b)(1) (emphasis added). The LCAP Template, as contained in 5 CCR § 15497.5, also states the LCAP is “intended to be a comprehensive planning tool.” (LCAP Template at 1). Especially for high-need students—as for all pupils—the district must “identify all annual actions to be performed and services provided to meet the described goal” in the LCAP (LCAP Template, Section 2, at 13.)

⁴ Educ. Code § 52060(g): “The governing board of a school district shall consult with teachers, principals, administrators, other school personnel, local bargaining units of the school district, parents, and pupils in developing a local control accountability plan.”

committee (“PAC”) and to an English learner parent advisory committee (“ELPAC”), with a required written response by the superintendent to any comments, and notifying members of the public of the opportunity to submit written comments on the LCAP.⁵ In addition to these consultation provisions, the school board must hold at least one public hearing to solicit comments on the LCAP prior to approval at a second separate public hearing.⁶ Finally, a school board “may adopt revisions to a local control accountability plan during the period the local control accountability plan is in effect. A governing board of a school district *may only adopt a revision to the local control accountability plan if it follows the process to adopt a local control accountability plan pursuant to this section* and the revisions are adopted in a public meeting.”⁷

Not only are districts required to include their entire educational program and associated spending in the LCAP, every year a district drafts a new LCAP it must complete an “Annual Update to “assess[] the effectiveness of the actions and services provided” during the prior year.⁸ If actions are not included in the prior year’s LCAP, the district and broader community cannot ensure the funds will be spent as planned and were effective in meeting the district’s goals. Without including the expenditures in the prior year’s LCAP, the district will escape public oversight of ineffective programs and any resulting pressure to change those actions and expenditures going forward.

The majority of the \$30.1 million WCCUSD allocated outside its LCAP was the result of the CBA with the United Teachers of Richmond. Although collective bargaining is a confidential bilateral process between the union and the district, how the agreement is funded is subject to the public LCAP process. Education Code requires only that LCAP actions adhere to previously *existing* CBA’s (the “specific actions [of the LCAP] shall not supersede the provisions of *existing* local collective bargaining agreements within the jurisdiction of the school district.”)⁹

⁵ Educ. Code § 52062(a).

⁶ Educ. Code § 52062(b).

⁷ Educ. Code § 52062(c) (emphasis added).

⁸ LCAP Template, Section 2 at 11-12, 5 CCR § 15475.5 and Educ. Code § 52061. *See also* LCAP Template, Section 1 at 10-11 (for requirements regarding stakeholder input into the Annual Update).

⁹ Educ. Code § 52060(c)(2) (emphasis added). This section of the code was added after LCFF was signed in July 2013. In September 2013, the California Teachers Association (CTA) pressed for broad language to override LCAP commitments that were inconsistent with any and all CBAs, whenever enacted. *See* AB 103 (Committee on Budget) and SB 97 (Committee on Budget and Fiscal Review) (both containing the same language: the “specific [LCAP] actions shall be consistent with local collective bargaining agreements”). Public Advocates and others pushed back against this language, and won the current provision, which only ensures that LCAP adoptions will not abridge prior district contractual commitments. As a practical matter, since the LCAP is a rolling three-year plan adopted anew every June, every new CBA adopted post-LCFF enactment will inevitably impact an existing LCAP. Either the CBA will need to be negotiated in a way that its terms are consistent with the existing LCAP spending plan or the LCAP will need

Thus, *new* collective bargaining agreements do not supersede *existing* LCAPs. Should a district wish to alter its LCAP’s promised goals, actions, services and expenditures to accommodate a new CBA or any other major new alternative investment of LCFF dollars, the law requires the district to publicly amend its LCAP. Here, WCCUSD’s new \$25.8 million CBA obligation is subject to LCAP transparency, accountability and public process requirements required by the LCFF statute.

In addition to funds allocated according to the new CBA, the remainder of the \$30.1 million includes \$4.3 million in S&C funds subject to LCFF regulations. However, WCCUSD did not include the \$4.3 million of S&C funds in a revised LCAP template that justifies its use, did not notice a revision of its LCAP, did not hold two public hearings on the revision, and did not obtain county approval. The district did not present a revised LCAP to the PAC or DELAC and did not invite written commentary or input from the PAC, the DELAC or the broader set of stakeholders, including students and parents across the district.

Thus, the district failed to comply with each of the LCAP revision requirements of § 52062. Indeed, the LCAP currently posted on the County and State websites does not account for any of the \$30.1 million allocated on February 10. Without immediate intervention, the portion of these funds allocated for the 2015-2016 school year—totaling \$7.6 million in base as well as S&C funds—will be spent without the required transparency or process, making it impossible to hold the district accountable now or in the future for these allocations.

2. *WCCUSD Failed to Justify the Allocation of \$4.3 million in Supplemental and Concentration Funds in Accordance with LCFF Regulations.*

At its meeting on February 10th, the WCCUSD board released and allocated \$4.3 million in S&C funds from its reserves without complying with the LCFF spending regulations. (See Exh. K, L, M & N.) In enacting LCFF, the Legislature required and the State Board of Education adopted these regulations to ensure S&C funds would increase or improve services for the high-need students who generate them. LCFF regulations require WCCUSD to justify the use of S&C funds for services delivered district-wide or school-wide (*i.e.*, services not solely targeted to reach only high need students) as “principally directed towards” and as “effective in meeting the district’s goals for [high-need] pupils.”¹⁰ In addition, the LCAP Template—itsself incorporated into the regulations—requires the district to provide these justifications.¹¹ The district must also identify the annual measurable outcomes associated with these services, to prove the expenditure’s effectiveness over time.¹² In contradiction to these legal requirements, WCCUSD did not revise its LCAP to provide any such explanation, justification, or measurable outcomes for the \$4.3 million in S&C funds it allocated on February 10th.

to be publicly and transparently amended in a way that reflects the impact of the CBA on the district’s spending plan.

¹⁰ 5 CCR § 15496(b)(2)(B).

¹¹ LCAP Template, Section 3A.

¹² *Id.* at Section 2.

The LCFF regulations and LCAP Template also require the district to explain how the use of S&C funds will increase or improve services for high-need students as compared to the services provide to all students.¹³ WCCUSD has not revised its LCAP to provide any such explanation. Absent this explanation, the district can easily engage in a shell game to shift funds around without genuinely increasing or improving services for high-need students. In other words, the district may be using-S&C funds to pay for pre-existing actions that would have been covered with base funds, in order to cover the cost of the CBA’s salary increase with freed-up base funds.

3. *Conclusion*

Immediate action is necessary to address two irreparable harms. First, WCCUSD failed to engage the community and account for how it plans to allocate \$30.1 million over the next three years, including \$7.6 million to be spent in the next three months. Second, \$4.3 million of the latter sum are S&C funds; the district has shirked its regulatory obligation to ensure these funds, being spent this year, benefit high-need students. State intervention is required to ensure the WCCUSD community is not denied a voice in the LCAP process and high need students benefit from the increased or improved services LCFF is designed to provide.

B. The CDE Must Intervene to Protect Complainants from Immediate and Irreparable Harm

Direct State Intervention regarding unlawful LCFF/LCAP implementation is appropriate when “complainant alleges and the CDE verifies that he or she would suffer immediate and irreparable harm as a result of an application of a district-wide policy that is in conflict with state or federal law covered by this Chapter, and that filing a complaint with the LEA would be futile.”¹⁴ As discussed above, WCCUSD violated state law covered by the UCP, which encompasses LCFF/LCAP requirements. As a result of that violation, (1) complainants will suffer immediate and irreparable harm without immediate action from CDE and (2) filing a complaint with WCCUSD would be futile.

1. *Complaintants will Suffer Immediate and Irreparable Harm*

The requirement of “immediate and irreparable harm” is analogous to the well-established standard for issuance of a preliminary injunction, which requires proof of plaintiff’s “irreparable harm” if the injunction is not granted.¹⁵ Courts have found irreparable harm where a governmental body’s failure to follow required public procedures creates a harm that cannot later

¹³ 5 CCR § 15496(a).

¹⁴ 5 CCR § 4650(a)(6).

¹⁵ Code Civ. Proc. § 526(a)(2), *see also People ex rel. Gow v. Mitchell Brothers' Santa Ana Theater*, 118 Cal.App. 3d 863, 870-871 (1981) (preliminary injunction appropriate to prevent “irreparable harm,” i.e. a harm that cannot later be repaired).

be repaired. Where a statute mandates public participation in a government decision, a decision made without the required public input constitutes irreparable harm.¹⁶ In fact, the mere denial of timely information that would allow an individual to participate in a public deliberation process may constitute irreparable harm.¹⁷ WCCUSD's Board acted without following the required procedures to ensure public participation, and has not provided the public with the required information on expenditures necessary for the public deliberative process. Allowing the Board to continue without the required public involvement constitutes irreparable harm for which a court would grant a preliminary injunction.

Here, if the district pursues the proper public participation and county approval processes, entirely different actions and expenditures for the \$7.6 million could result. Any difference means that students across WCCUSD are currently being denied the educational opportunities to which they are entitled. Had WCCUSD followed the required procedures, the public could have played its intended role in assuring that funding allocations provide for essential educational opportunities. The loss of educational opportunities, even for only a few months, can also constitute irreparable harm in itself.¹⁸

¹⁶ See e.g. *Ft. Funston Dog Walkers v. Babbitt*, 96 F.Supp. 2d 1021, 1022 (N.D. Cal. 2000) (irreparable harm warranted an injunction where Park Service closed a portion of public land to dog access without the public hearing required by regulation); *Keith v. Volpe*, 352 F.Supp. 1324, 1338 (C.D. Cal. 1972) (granting injunction to stop construction of highway until officials complied with procedural requirements of California and federal environmental laws, including providing for a public hearing).

¹⁷ See *Elec. Frontier Found. v. Office of the Dir. of Nat. Intelligence*, 542 F. Supp. 2d 1181, 1187 (N.D. Cal. 2008) (“Irreparable harm exists where Congress is considering legislation ... and the records [being sought in the FOIA request] may enable the public to participate meaningfully in the debate over such pending legislation.”); *Leadership Conference on Civil Rights v. Gonzales*, 404 F.Supp.2d 246, 260 (D.D.C. 2005) (“FOIA requests could have a vital impact on development of the substantive record in favor of reauthorizing or making permanent the special voting provisions of the Voting Rights Act”); *ACLU v. Department of Justice*, 321 F.Supp.2d 24, 30 (D.D.C. 2004) (irreparable harm found where “[principal] aim of plaintiff’s FOIA request is to provide information for the ongoing national debate about whether Congress should renew Section 215 and other Patriot Act surveillance provisions before they expire”).

¹⁸ *Am. Indian Model Sch. v. Oakland Unified Sch. Dist.*, 227 Cal.App. 4th 258, 273 (2014) (finding that denial of educational access to the charter school’s students without proper procedures constitutes irreparable harm); see also *Larry P. v. Riles*, 343 F. Supp. 1306, 1308 (N.D. Cal. 1972), *aff’d* 502 F.2d 963 (9th Cir. 1974) (irreparable educational harm could occur from the improper placement of a student in an inferior educational setting for just a single month); *Van Scoy v. San Luis Coastal Unified Sch. Dist.*, 353 F. Supp. 2d 1083 (C.D. Cal. 2005) (likelihood of irreparable educational harm shown where “every school day that passes and [plaintiff] is not provided [special education services], it is likely that he is falling further and further behind on his educational goals”); *K.D. v. Oakley Union Elem. Sch. Dist.*, 2008 U.S. Dist. LEXIS 9559, at *33 (N.D. Cal. 2008) (“deprivation of educational services can constitute irreparable harm”).

The irreparable harm resulting from the failure to follow required public deliberation processes requires immediate state intervention. Statutes such as the LCFF law are intended “to facilitate public participation in all phases of local government decision making and to curb misuse of the democratic process by secret legislation of public bodies.”¹⁹ Because “statutory procedures and protections of public involvement cannot be ignored,” the implementation of public decisions after ignoring the protections for public involvement constitutes irreparable harm that supports immediate relief.²⁰ Further, the dissipation of improperly allocated funds irreparably harms the students of the district, since once paid out the funds cannot be recovered.²¹ Immediate state intervention is necessary to prevent the irreparable harm because the ongoing dissipation of the funds makes any delayed relief futile.

Without immediate state intervention, complainants and other community stakeholders will not be able to understand or influence the \$7.6 million the district allocated last month for the 2015-2016 school year, or the metrics used to measure whether these expenditures will meet the district’s goals for all students. Additionally, complainant parents of low-income and English learner students will not be able to weigh in on the expenditure of \$4.3 million in S&C funds to ensure the district’s allocations are “principally directed” and “effective in” meeting the district’s services for high-need students. Like fruit spoiling at the docks while the parties litigate, complainants’ public participation rights for the current school year will become worthless if complainants must wait for months until normal administrative or court processes can conclude.

It is for these same reasons that we must pursue other legal action if the CDE is unable or unwilling to intervene within ten days. Adherence to the regulatory timeline of 60 days for a

¹⁹ *Epstein v. Hollywood Entertainment Dist. II Business Improvement Dist.*, 87 Cal.App.4th 862, 868 (2001) (irreparable harm warranted an injunction where a public body spent public funds without holding a public hearing as required by California’s open meeting law).

²⁰ *See. e.g. Trancas Property Owners Assn. v. City of Malibu*, 138 Cal.App.4th 172, 187 (2006) (writ of mandate should issue where decision of public body violated public meeting requirements of various laws); *Ft. Funston Dog Walkers v. Babbitt*, 96 F. Supp.2d at 1022 (irreparable harm to close portion of public land without required public hearing); *Keith v. Volpe*, 352 F. Supp. at 1338 (irreparable harm to continue construction on highway where public agency approved project without public participation required under relevant environmental laws).

²¹ Courts have found irreparable harm justified preliminary injunctive relief based on the risk of the dissipation of specific funds that would otherwise be lost. *See e.g. Heckmann v. Ahmanson* (1985) 168 Cal.App.3d 119, 136 (“An injunction against disposing of property is proper if disposal would render the final judgment ineffectual.”); *Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1364 (9th Cir. 1988) (“A court has the power to issue a preliminary injunction to prevent a defendant from dissipating assets in order to preserve the possibility of equitable remedies.”); *Hendricks v. Bank of America, N.A.* (9th Cir. 2005) 408 F.3d 1127, 1141 (Plaintiffs “would face a significant threat of irreparable injury if a preliminary injunction did not issue to prevent” the defendant bank from honoring a draw on funds where defendant was shown to be insolvent, because without an injunction the funds would likely have been dissipated if forced to wait until the end of litigation).

decision (plus the extra investigatory time the CDE typically grants itself) would mean that the \$7.6 million in LCFF funds will likely be spent and dissipated and the school year will end before CDE ever issues a determination. That mooted of complainants' rights must be avoided by an expeditious CDE investigation. The facts are neither complicated nor in dispute. The violation is serious and irreparable. The CDE should order within ten days that the district adhere to the mandatory statutory duty of identifying and justifying its expenditure of \$30.1 million in LCFF funds in its LCAP.

2. Filing a UCP with WCCUSD Would Be Futile

On four separate occasions over the past ten months, Public Advocates and Public Counsel have written to the district regarding the legal requirements of transparency, public engagement, public hearings and approval for the \$4.3 million in S&C funds set aside on June 10, 2015, as well as the use of LCFF funds for teacher salary increases. (See Exh. C, D, I, O & P.) Public Advocates and Public Counsel have consistently urged the district to include these funds in its 2015-2018 LCAP, to engage the community in how the \$4.3 million will be spent and how the district's recent CBA will be funded, to describe how any S&C expenditures will increase or improve services for high-need students, to hold a public hearing before adopting a revised LCAP, and to resubmit any revisions to the CCCOE.

The district has ignored these requests at every turn and did not take any of these legally required steps before it ratified its agreement with the United Teachers of Richmond, committed to spending \$25.8 million in LCFF funds outside of the LCAP, and approved the spending of the \$4.3 million in S&C funds at its meeting on February 10, 2016.

III. Relief Requested

COMPLAINANTS now request that the CDE order the following actions from the district:

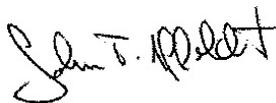
- (1) Immediately cease the spending of the \$3.3 million dedicated to teacher salary increases during the 2015-2016 year until Action (3) below is completed and that spending is authorized by an approved LCAP;
- (2) Immediately cease from using the \$4.3 million in supplemental and concentration funds at issue to enter into any new employment or consulting contract or agreement for the rendering of personal services that obligate the district beyond the time needed for Action (3) to be completed; and
- (3) Properly revise the 2015-2018 LCAP so that it reflects the required stakeholder engagement process and identifies and justifies, as appropriate, the foregoing \$7.6 million in allocated expenditures during 2015-2016 and the additional LCFF funds (estimated at \$22.5 million) committed in years two and three of the LCAP:
 - a. Fully reflect the \$30.1 million in funds impacted by the CBA in the current LCAP:

- i. Consult with stakeholders on the \$30.1 million in proposed expenditures, including the \$3.3 million in salary increases and the \$4.3 million in S&C funds for the 2015-2016 school year;
 - ii. Amend the LCAP to include the \$30.1 million in LCFF funds in Years 1, 2 & 3, including identifying what actions and services will be cut from any years in order to pay for the costs resulting from the new CBA;
 - iii. Hold a public hearing on the revised LCAP and a subsequent 2nd hearing for board adoption;
 - iv. Submit the revised board-adopted LCAP to the CCCOE and obtain its approval.
- b. Amend the LCAP to describe and justify the use of the \$4.3 million in S&C funds allocated for the 2015-2016 school year, including:
- i. How the \$4.3 million will increase or improve services for high-need students as compared to all students;
 - ii. Justify the expenditures as “principally directed towards... meeting the district’s goals for its unduplicated pupils”;
 - iii. Justify the expenditures as likely to be “effective in meeting the district’s goals for unduplicated pupils”;
 - iv. Identify the annual measurable outcomes associated with these expenditures.

Conclusion

Together with the submission of this letter, we are submitting a letter to the district allowing it seven (7) days to commit to providing the above-requested relief. Complainants request you order the above-requested relief within ten (10) days. If you are unable or unwilling to act, complainants will be required to proceed to court to protect themselves from further irreparable injury. We remain available to discuss how this relief can be achieved in an expeditious and appropriate manner.

Sincerely,



John T. Affeldt
 Managing Attorney
 Public Advocates Inc.



Rigel S. Massaro
 Staff Attorney
 Public Advocates Inc.



Andrew Z. Edelstein
 Mayer Brown LLP

cc: Amy Holloway, General Counsel, CDE
 Jeff Breshears, Division Director, Local Agency Systems Support Office, CDE
 Superintendent Bruce Harter, West Contra Costa Unified School District
 Superintendent Karen Sakata, Contra Costa County Office of Education

Enclosure: Exhibits A-Q