



**CALIFORNIA DEPARTMENT
OF EDUCATION**

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PUBLIC INSTRUCTION

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Subject: **Appeal of County Decision – SBCOE
Public Advocates, Inc. and ACLU Foundation of Southern California,
Appellants**

As Clarified on Reconsideration on June 18, 2021

Case #: 2020-0193

Dear Mr. Affeldt, Ms. Gon Ochi, Mr. Leung, and Ms. Rodriguez:

The Local Agency Systems Support Office (LASSO) of the California Department of Education (CDE) is in receipt of your request for appeal dated October 15, 2020. You are appealing the decision issued by the San Bernardino County Office of Education (SBCOE) and signed by the San Bernardino County Superintendent of Schools (SBCSS) dated September 15, 2020. (Hereafter collectively referred to as the SBCOE).

I. Background

The Local Control Funding Formula (LCFF) statute authorizes the filing of an administrative complaint pursuant to the Uniform Complaint Procedures (UCP) to resolve allegations that a local educational agency (LEA), such as a county office, failed to meet the requirements of Article 4.5. Local Control and Accountability Plans (LCAPs) and the Statewide System of Support (California *Education Code* [EC] sections 52059.5

– 52077, *California Code of Regulations*, Title 5 [5 CCR] Section 4600 et seq.).¹ On June 30, 2020, Public Advocates, Inc. and American Civil Liberties Union (Appellants) submitted a UCP complaint (Complaint) on behalf of Inland Congregations United for Change and Congregations Organized for Prophetic Engagement to the SBCOE, alleging that the SBCOE failed to ensure districts' LCAPs met the approval requirements in *EC* Section 52070(d).

The SBCOE issued a Decision responding to the Complaint on September 15, 2020. Appellants submitted an Appeal of the Decision on October 15, 2020. The CDE then notified the SBCOE of the Appeal in a letter dated November 2, 2020. The SBCOE responded to the notice of appeal on November 23, 2020. The CDE sent a letter to Appellants and the SBCOE, dated November 23, 2020, notifying both parties of the CDE's determination that exceptional circumstances warranted an extension of the 60-day timeline for issuing an appeal decision, pursuant to *EC* Section 33315(a)(4).

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

II. Summary of Complaint and County Decision

The Complaint

The Complaint alleges the following:

Allegation 1

“SBCOE Failed to Ensure 2019–20 District LCAPs Identify and Justify All S&C-Funded Actions, Violating LCFF’s Transparency Requirements and Undermining Meaningful Community Engagement and Accountability” (Complaint, p. 4).

The Complaint alleges that the SBCOE “approved multiple LCAPs with egregious proportionality deficiencies, undermining the fundamental LCFF requirements of equity, transparency, and community accountability, and denying high-need students the benefit of the increased and improved services needed to close opportunity gaps.” (Complaint, p. 5). In support of this allegation, the Complaint references the SBCOE-approved 2019–2020 LCAPs from San Bernardino City Unified School District (SBCUSD), Hesperia Unified School District (HUSD), and Victor Valley Union High School District (VVUHSD). The Complaint alleges that the SBCOE approved these districts' LCAPs despite their lack of demonstration, either qualitatively or quantitatively,

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

of how the districts met their Minimum Proportionality Percentage (MPP) as required by 5 CCR Section 15496(a).

According to the Complaint, none of the districts referenced provided a qualitative demonstration of their increased or improved services as a means of meeting their MPP requirement. In turn, the Complaint alleges that each district's quantitative demonstration of increased or improved services did not sufficiently address its MPP requirement, thus resulting in a collective proportionality shortfall of over \$150 million in funding intended for high-needs students.

As a result, the Complaint alleged, "SBCOE has failed to fulfill its LCFF oversight and accountability responsibilities when it approved 2019–20 LCAPs that violated LCFF statutory requirements, expenditure regulations, and the LCAP template and instructions" (Complaint, p. 8). Further, the Complaint asserts that SBCOE's failure to hold districts accountable to the LCFF requirements, it "undermines the legitimacy of the entire system [and] risks stakeholders losing faith in the engagement process" (Complaint, p. 9).

In summary, Allegation 1 alleges that the SBCOE approved the 2019-20 LCAPs for SBCUSD, HUSD, and VVUHSD despite the lack of demonstration, either qualitatively or quantitatively, of how the aforementioned districts met their Minimum Proportionality Percentage (MPP) requirement. As means of meeting the MPP requirement, LEAs are required to demonstrate within their LCAPs how services for low-income, English Learners (EL), and foster youth students are being increased or improved by the percentage required.

Allegation 2

"SBCOE Failed to Ensure that 2019–20 District LCAPs Address Material Proportionality Shortfalls from Prior Years, Violating LCFF's Fundamental Equity Requirement"
(Complaint, p. 9).

The Complaint alleges, "SBCOE failed to hold districts responsible for materially meeting their proportionality obligation in the years the obligations were incurred and improperly allowed them to carry the obligations forward into subsequent years without limitation" (Complaint, p. 10). According to the Complaint, the SBCOE approved LCAPs for SBCUSD, HUSD, and VVUHSD despite the fact that these districts allegedly provided less than half of the required increased or improved services for their high-needs students during the 2018–19 school year, as evidenced by the amount of supplemental and concentration (S&C) grant funds that allegedly went unspent. The Complaint includes a table demonstrating the alleged amount of S&C funds that were

not spent by each district, and states the allegedly unspent S&C funds resulted in a proportionality shortfall within each district.²

The Complaint asserts, “A proportionality shortfall occurs when an LEA fails to meet its proportionality obligation because it did not actually increase or improve services by the required percentage— as evidenced by substantial S&C ‘carryover’ funds or by otherwise failing to qualitatively demonstrate the LEA’s MPP level of promised services” (Complaint, p. 9). Because the aforementioned districts allegedly did not address their proportionality shortfalls from 2018–19 in their planned actions and services for 2019–2020, the Complaint suggests that the districts did not spend the remaining 2018–19 S&C funds, illustrated in the table on page 11 of the Complaint, to support high-needs students.

The Complaint reiterates, “Because County Superintendents must ensure that LEAs’ LCAPs adheres [sic] to the proportionality requirement in the expenditure regulations, they must also be vigilant about material proportionality shortfalls” (Complaint, p. 9). Therefore, according to the Complaint, the SBCOE is in violation of the law for not identifying the material proportionality shortfalls for the aforementioned districts, and approving these districts’ LCAPs despite the districts not accounting for and redressing the prior year shortfalls they incurred.

In summary, Allegation 2 alleges that the SBCOE approved the 2019-20 LCAPs for SBCUSD, HUSD, and VVUHSD despite the fact the districts did not address the alleged unspent S&C funds from 2018–19 within the planned actions and services in their 2019–2020 LCAPs.

Allegation 3

“SBCOE Improperly Allowed Districts to Count Law Enforcement Expenditures Towards Their Proportionality Requirement, Harming the Very Students Whom LCFF is Designed to Support Rather than Actually Increasing or Improving Services for Them” (Complaint, p. 14).

Primarily, the Complaint alleges, “SBCOE failed to review LEAs’ descriptions of districtwide or schoolwide services in their LCAPs and enforce the regulations’ ‘principally directed’ and ‘effective’ standards for districtwide and schoolwide services” (Complaint, p. 15). The Complaint states, “County Superintendents are responsible for reviewing these descriptions to ensure that LEAs have fully demonstrated that they will increase or improve services for high-need students” (Complaint, p. 14). By allegedly not properly reviewing these districts’ descriptions, the SBCOE allowed LEAs to

² Supplemental and concentration funds are funds apportioned to the LEA on the basis of the number and concentration of unduplicated pupils (low income, foster youth and English learners), pursuant to *EC* sections 42238.01, 42238.02, 42238.07.

attribute millions of dollars toward their MPP requirements on services that did not actually increase or improve the education of high-needs students.

Secondarily, the Complaint alleges, “SBCOE approved multiple LCAPs that improperly counted across-the-board law enforcement expenditures as contributing to the increased or improved services requirement. These expenditures on law enforcement and school police departments are not tailored to the particular needs, conditions, or circumstances of high-need students and, as research and data consistently demonstrate, are not effective in improving school climate or students’ sense of safety” (Complaint, p. 15). The Complaint uses the LCAPs from HUSD, Chaffey Joint Union High School District (CJUHSD), and Apple Valley Unified School District (AVUSD) to specifically illustrate the SBCOE’s violation. Additionally, the Complaint includes citations for various research to support the claim that law enforcement and school police departments “are not effective in improving school climate or students’ sense of safety” (Complaint, p. 15).

In summary, Allegation 3 alleges that the SBCOE approved the 2019-20 LCAPs for HUSD, CJUHSD, and AVUSD despite the lack of justification for how the actions provided on an LEA-wide and schoolwide basis were principally directed and effective in meeting the needs of the LEAs’ high-needs students.

Requested Remedy

The Complaint requested that the SBCOE find merit in the UCP complaint and immediately pursue technical assistance from the CDE to develop and implement an LCAP review and approval process for the next regular three-year LCAP cycle to assist the SBCOE in identifying and correcting the deficiencies discussed above prior to approving any LCAP. The Complaint requests that this review and approval process be extended to any Learning Continuity and Attendance Plan for the 2020–21 school year, as applicable.

The Complaint requests the review and approval process include, but not be limited to:

1. Verification that the LEA’s MPP is demonstrated qualitatively or quantitatively in the increased or improved services section of the LCAP.
2. Verification that the actions and services listed as contributing meet the LEA’s required MPP in totality.
3. Identification of any “material proportionality shortfall” in the LEA’s Annual Update.
4. Verification that the LEA is rectifying any “material proportionality shortfalls” in the planned actions and services of its current year LCAP, in addition to the current year MPP requirement.
5. Verification that each wide action listed as contributing to meeting MPP is “justified as principally directed and effective, with particular scrutiny on law

enforcement actions that presumptively fail both the ‘principally directed’ and ‘effectiveness’ requirements” (Complaint, p. 19).

The Complaint has requested that the SBCOE review, at a minimum, the five 2019–2020 LCAPs analyzed within the Complaint to clarify the deficiencies addressed. Additionally, the Complaint requests the SBCOE require the aforementioned districts to remove all actions where law enforcement actions or other districtwide and schoolwide services are not principally directed and effective, and calculate any proportionality shortfalls. Once the proportionality shortfalls have been identified, the Complaint requests the SBCOE ensure the aforementioned districts are rectifying all “material identified proportionality shortfalls...and that these districts carry the obligation shortfall forward to the next regular, three-year LCAP in addition to fulfilling the current fiscal year’s proportionality obligation” (Complaint, p. 19).

County’s Decision

In its Decision, the SBCOE determined each district identified in the Complaint met its statutory requirements “within the four corners of the LCAPs and Annual Updates adopted by the five school districts named in the Complaint, and approved by SBCSS for the 2019-2020 school year”, therefore finding that each of the allegations in the Complaint lacked merit (Decision, p. 12).

Allegation 1

The SBCOE found that each district identified in the Complaint “met their 2019-20 required MPP, and SBCSS properly approved the Districts’ Annual Updates to their LCAPs in accordance with its oversight obligations” (Decision, p. 16). According to the Decision, the MPP calculations cited in the Complaint for Allegation 1 omitted “various expenditures which contribute towards the identified districts’ MPPs” and “fail[ed] to consider the additional programs and services identified in the Districts’ Demonstration of Increased or Improved Services for Unduplicated Pupils section (DIISUP), which is the section that correlates directly to the MPP obligation” (Decision, p. 16).

Additionally, the Decision disagreed with the assertion that “a district must include, dollar for dollar, every expense of S&C funds in its LCAP, and, more specifically, in its DIISUP section” as it “is not required under statute or regulations” (Decision, p. 16). The Decision further found, “All programs and services described in the DIISUP section do not have to correlate to actions and services listed under the Goals, Actions and Services (GAS) section of the LCAP. Districts are not required to, and generally do not, include each expense of S&C funds in their LCAP. Rather, they only include expenditures on those programs and services that are directly related to the Goals and Actions specified in the LCAP” (Decision, p. 17). As such, the Decision concluded, “Districts are simply required to *demonstrate*—not *enumerate*—in the DIISUP section that the MPP is met.” (Decision, p. 20), further supporting the SBCOE’s determination that each District identified in the Complaint “met their 2019-20 required MPP” as stated above.

Allegation 2

The SBCOE concluded that “LEAs are not required to revisit their MPP obligations from prior LCAP years and account for, or carryover, “shortfalls” to the current year. As such, SBCSS has no obligation to require this accounting year over year based on budgeted or actual expenditures” (Decision, p. 26). Therefore, the Decision states, “SBCSS would have no authority to refuse to approve an LCAP on this basis”, thus making Allegation 2 outside the scope of the SBCOE’s statutory requirements (Decision, p. 27).

Allegation 3

First, the SBCOE’s decision refers to its training and support services, including its methods of coaching districts to explain how their contributing expenditures are “principally directed towards” and “effective in” meeting goals for high-need students. The Decision includes the SBCOE’s approach, stating, “Districts write their LCAPs in a way that is understandable and consistent with the language used by the stakeholders. the SBCOE is required to approve a district’s LCAP if it meets the requirements set forth in *Education Code* section 52070, subdivision (d), and may not decline to approve an LCAP on the basis that the exact terms ‘principally directed towards’ and ‘effective in’ are not utilized, so long as the district has conveyed the same message through the use of similar illustrative language” (Decision, p. 31).

Second, the SBCOE disagreed that the use of S&C funds towards law enforcement or security measures is prohibited. Instead, the Decision noted “expenditures of S&C funds on law enforcement and security are appropriate so long as a district describes in its LCAP how those services are ‘principally directed towards’ and ‘effective in’ meeting the district’s goals for its high-need students in the state and any local priority areas” (Decision, p. 30).

The Decision further explains “expenditures are determined through feedback received from stakeholder groups at the local district level. That is, SBCSS does not determine expenditures for school districts. It only reviews the districts’ LCAPs to determine that the requirements set forth above have been met where a district utilizes S&C funds on a school-wide or district-wide basis” (Decision, p. 31). Therefore, the Decision concludes the method by which an LEA and its stakeholders determines how to spend the LEA’s S&C funds is beyond the scope of the SBCOE’s statutory requirements.

III. Appeal

The Appeal reiterates the allegations in the Complaint and Appellants reject the Decision’s findings for all allegations in this matter.

Allegation 1

The Appeal disputes the SBCOE’s claim that “because each and every expense of S&C funds is not captured in the LCAP, SBCSS conducts a comprehensive review of district

LCAPs alongside other budgetary documents provided by the districts to ensure that those programs and services referenced in the DIISUP section equal or exceed the district's required MPP for the LCAP year" (Appeal, p. 4). The Appeal argues that this is an unlawful interpretation of the LCFF regulations and LCAP template instructions as both require that the LEA demonstrate that it met its MPP obligation. The Appeal states that using outside documentation is "inadequate because these documents do not allow for any demonstration of how that action is principally directed and effective for high-need students" (Appeal, p. 4). Further, by using outside documentation to demonstrate MPP, "districts undermine transparency when they share certain vital information only in the crosswalk at stakeholder engagement meetings as opposed to having that information in the LCAP, which is available in its entirety to the public for review and dialogue at several public board meetings" (Appeal, p. 4). As such, the Appeal reiterates the assertion that the SBCOE approved multiple LCAPs in 2019–2020 that fell short of MPP demonstration, violating the SBCOE's responsibilities of oversight and accountability, and disputes the SBCOE's interpretation of LCFF regulations and the LCAP template and instructions that the demonstration of MPP completely within the LCAP is not required.

Allegation 2

The Appeal asserts that "LEAs must fulfill the equity mandate and actually increase or improve services for high-need students by the requisite MPP for each fiscal year supplemental and concentration funds are received" (Appeal, p. 12). The Appeal reiterates that failure to fulfill the equity mandate within the fiscal year "results in a proportionality shortfall that must be made up in future years to satisfy this mandatory duty" (Appeal, p. 12). To support its argument, the Appeal mentions that the LCFF spending regulations refer to the "fiscal year" for calculating an annual MPP. Therefore, the Appeal argues, even if the LEA does not actually increase or improve services for high-need students by the requisite MPP in the particular fiscal year in question, this does not eliminate an LEA's duty to actually meet that annual MPP and to make up for any shortfall in future years if it fails to do so in the previous fiscal year (Appeal, p. 13). As such, the Appeal restates its desired remedy that the CDE "require SBCSS to calculate prior shortfalls and ensure they are redeemed in subsequent-year LCAPs" (Appeal, p. 17).

Allegation 3

The Appeal reiterates the SBCOE's statutory responsibility to approve contributing actions/services in LCAPs only if the LEA adequately justifies that said actions/services are "principally directed" and "effective" in meeting the needs of the LEA's high-needs students. The Appeal cites the inclusion of law enforcement expenditures in the HUSD, CJUHSD, and AUSD 2019–2020 LCAPs as an example of a contributing action/service that was not properly justified as being "principally directed" and "effective" in meeting the high-needs students served in those districts. The Appeal further states, "To ensure accountability, it follows that the more controversial the contributing action is, the more important it is for the reviewing entity to review the action and justification through a critical and skeptical lens" (Appeal, p. 18). As such, the Appeal re-asserts that the three

identified LCAPs were not properly approved, and concludes that the SBCOE failed to hold the LEAs accountable when it approved LCAPs that included actions/services that were not fully justified as “principally directed” and “effective” in meeting the needs of the aforementioned LEAs’ high-needs students.

IV. Legal Authorities

California *Education Code* sections 44238.01, 42238.02, 42238.07, 52059.5 – 52077

California Code of Regulations sections 15494 – 15497

V. CDE Findings of Fact and Conclusions of Law

County offices of education, such as the SBCOE, hold the responsibility to ensure district LCAPs meet the applicable statutory requirements of *EC* sections 52059.5 – 52077. Specifically, *EC* Section 52070(d) requires county superintendents to review district LCAPs to determine:

- (1) The LCAP or annual update to the LCAP adheres to the template adopted by the state board pursuant to *EC* Section 52064 and follows any instructions or directions for completing the template that are adopted by the state board.
- (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 LCAP adopted by the governing board of the school district, based on the projections of the costs included in the plan.
- (3) The LCAP or annual update to the LCAP adheres to the expenditure requirements adopted pursuant to *EC* Section 42238.07 for funds apportioned on the basis of the number and concentration of unduplicated pupils pursuant to *EC* sections 42238.02 and 42238.03.

The Complaint alleged that the SBCOE did not fulfill the statutory obligations in *EC* Section 52070(d), and approved district LCAPs that were out of compliance with applicable laws. The Complaint established three separate allegations asserting this violation, and cited five school districts’ 2019–2020 LCAPs as evidence to support the identified allegations.

Allegation 1

“SBCOE Failed to Ensure 2019–20 District LCAPs Identify and Justify All S&C-Funded Actions, Violating LCFF’s Transparency Requirements and Undermining Meaningful Community Engagement and Accountability” (Complaint, p. 4).

Background

The LCFF apportions additional funds to LEAs on the basis of the number and concentration of unduplicated students (low-income, English learner, and foster youth) (*EC* sections 42238.02, 42238.07). These funds are commonly referred to as “supplemental and concentration grant funds.” LEAs are required to increase or improve services for unduplicated students as compared to the services provided to all students in the fiscal year in proportion to the additional funding provided (*EC* Section 42238.07; 5 *CCR* 15496). LEAs are required to provide evidence in their LCAP to demonstrate how these services support the unique needs of their unduplicated students (5 *CCR* 15496[a]).

Regulations provide the formula for calculating the percentage by which services must be proportionally increased or improved for unduplicated students above services provided to all students in the fiscal year (5 *CCR* 15496). To “improve services” means to “grow services in quality,” and to “increase services” means to “grow services in quantity” (5 *CCR* Section 15495[k] and [l]).

An LEA is required to follow the LCAP Template approved by the State Board of Education (SBE) (*EC* sections 52064, 52070). The DIISUP section of the 2017–2020 LCAP Template requires an LEA to identify the amount of its LCFF funds in the LCAP year calculated on the basis of the number and concentration of unduplicated students, and to identify the percentage by which it must increase or improve services for unduplicated students as compared to all students. This section also requires an LEA to describe how the services provided for unduplicated students are increased or improved by at least this percentage, either quantitatively or qualitatively, as compared to services provided for all students in the LCAP year (*EC* Section 42238.07; 5 *CCR* 15496).

As such, there is no spending requirement; rather, an LEA must demonstrate in its LCAP how the services provided will meet the requirement to increase or improve services for unduplicated students as compared to services provided for all students in the LCAP year. An LEA does not meet its obligation to increase or improve services by describing planned expenditures. Likewise, the increase or improvement provided by an action or service in the LCAP is not measured in terms of the expenditures that support it. The increase or improvement in services are described in terms of the planned results or outcomes that will occur as a result of an LEA making the associated expenditures. As such, LEAs are required to describe in the LCAP the required increase or improvement of services provided in terms of those services that are increased or improved and not in terms of the amount of expenditures associated with the actions.

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

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

Services of the latter category are referred to as either a schoolwide or an LEA-wide (i.e., districtwide, countywide, or charterwide) service.

The actions included as contributing to meeting the increased or improved services requirement must be indicated as such in the GAS section of the LCAP. As a result, the description of actions and services in the DIISUP section must be aligned with those actions that are included in the GAS section as contributing to meeting the increased or improved services requirement. An adequate description of how an LEA will meet its increased or improved services requirement must address in some manner the actions included in the GAS section as contributing to meeting this requirement.

Findings

The CDE reviewed the 2019–2020 LCAPs for the three identified districts brought forth by the Appellants in the Complaint to determine whether the SBCOE approved these districts' LCAPs despite their lack of demonstration, either qualitatively or quantitatively, of how the districts increased or improved services for their unduplicated students as compared to services provided for all students in proportion to the increase in funding generated by the number and concentration of their unduplicated students, as required by 5 CCR 15496(a).

SBCUSD

The 2019–2020 LCAP for SBCUSD contains three contributing actions in the GAS section to demonstrate how it planned to increase or improve services for its unduplicated students as compared to services provided for all students (Goal 1, Actions 2, 3, and 5).

In the DIISUP, the District attempts to describe how the services provided in Actions 2 and 5 were increased or improved to meet the needs of its unduplicated students as compared to services being provided for all students, but there is no mention of Action 3. Additionally, the district explains that it “continues to provide centralized supplemental support to schools throughout the District total over \$11 million for English Learners, African American Student Achievement, Latino Student Achievement, and Gifted Students” (2019–2020 SBCUSD LCAP, p. 117). However, it is unclear if these supplemental supports are reflected in the GAS section and how these services increased or improved services for its unduplicated students as compared to services provided for all students. Lastly, the District describes its Advancement Via Individual Determination (AVID) program as “principally directed to support the academic achievement of low achieving, low income students,” but there are no actions in the GAS section related to the AVID program that are marked as contributing to meet the increased or improved services requirement (2019–2020 SBCUSD LCAP, p. 117).

HUSD

The 2019–2020 LCAP for HUSD contains 14 contributing actions in the GAS section to demonstrate how it planned to increase or improve services for its unduplicated

students as compared to services provided for all students (Goal 1, Actions 1-9; Goal 2, Actions 2-5; and Goal 3, Action 1).

In the DIISUP, the District listed the services that were identified in its contributing actions; however, the District did not provide an explanation for how those services were increased or improved to meet the needs of the District's unduplicated students as compared to services being provided for all students. Additionally, the District provided a list of expenditures that were not tied to actions in the GAS section. As described above, an LEA does not meet its obligation to increase or improve services by describing planned expenditures. It is unclear how these expenditures demonstrate increased or improved services for the District's unduplicated students as compared to services provided for all students as they were not tied to any actions in the GAS section of the District's 2019–2020 LCAP.

VVUHSD

The 2019–2020 LCAP for VVUHSD contains 29 contributing actions in the GAS section to demonstrate how it planned to increase or improve services for its unduplicated students as compared to services provided for all students (Goal 1, Actions 1, 2, 5, 6, 7, 8, 9, 10, 11, 13, 14, 18, 20, 23, 25, 26, and 27; Goal 2, Actions 1, 5, 6, 7, 10, 11, and 12; Goal 4, Action 3; Goal 5, Actions 2, 5, 6, and 8).

In the DIISUP and throughout some of the action descriptions, the District attempts to describe how the services provided in its contributing actions were increased or improved for the District's unduplicated students as compared to services being provided for all students. However, at the end of the District's DIISUP section, it states, "Additional information which is directly impacting the supplementary and concentration grant funding includes action and programs not directly listed as action/services in the 2019-2020 LCAP" (2019–2020 VVUHSD LCAP, p. 279). This is inconsistent with the statutory requirements in 5 CCR 15496(a), which require an LEA to demonstrate in its LCAP how it planned to increase or improve services for its unduplicated students as compared to services provided for all students.

Conclusion for Allegation 1

A review of the identified districts' 2019–2020 LCAPs found that the districts' 2019–2020 LCAPs did not meet the requirement to demonstrate increased or improved services for their unduplicated pupils as compared to the services provided to all pupils in proportion to the increase in funds apportioned on the basis of the number and concentration of unduplicated pupils within their LCAPs (5 CCR 15496[a]).

As such, the SBCOE did not fully uphold its statutory obligation, consistent with *EC* Section 52070(d), and approved the 2019–2020 LCAPs for SBCUSD, HUSD, and VVUHSD despite their lack of demonstration, either qualitatively or quantitatively, of how the districts increased or improved services for their unduplicated students as compared to services provided for all students in proportion to the increase in funding

generated by the number and concentration of their unduplicated students, as required by 5 CCR 15496(a). Therefore, the Appeal has merit.

Required Corrective Actions:

The SBCOE must ensure that identification of actions included as contributing to meeting the increased or improved services requirement in its districts' 2021–22 LCAPs sufficiently demonstrate, either qualitatively or quantitatively, how the districts increased or improved services for their unduplicated students as compared to services provided for all students in proportion to the increase in funding generated by the number and concentration of their unduplicated students, as required by 5 CCR 15496(a).

The SBCOE is required to consider the findings of the CDE's Investigation Report dated June 18, 2021, as it fulfills its statutory duty to review and approve the school district LCAPs in San Bernardino County consistent with the approval criteria provided in EC Section 52070.

Allegation 2

“SBCOE Failed to Ensure that 2019–20 District LCAPs Address Material Proportionality Shortfalls from Prior Years, Violating LCFF’s Fundamental Equity Requirement”
(Complaint, p. 9).

Background

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

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

Findings

The CDE reviewed 2019–2020 LCAPs for the three identified districts brought forth by the Appellants in the Complaint to determine whether the “SBCOE failed to hold the districts responsible for materially meeting their proportionality obligation in the years the obligations were incurred and improperly allowed them to carry the obligations forward into subsequent years without limitation” (Complaint, p. 10).

Because there is no spending requirement, there also is no requirement to “carry-over” unspent S&C funds. An LEA has discretion as to how it chooses to increase or improve services for its unduplicated students, irrespective of the cost. The increase or improvement provided by an action in the LCAP is not measured in terms of the expenditures that support it. Rather, the increase or improvement in services are described in terms of the planned results or outcomes that will occur as a result of an LEA making the associated expenditures. As such, LEAs are required to describe in the LCAP the required increase or improvement of services provided in terms of those services that are increased or improved and not in terms of the amount of expenditures associated with the actions. As long as an LEA demonstrates in its LCAP how the services provided will meet the requirement to increase or improve services for unduplicated students over services provided for all pupils in the LCAP year, the LEA has met its legal obligations.

Conclusion for Allegation 2

After a thorough review of the County’s investigation file, the Complaint, the County’s Decision, the Appeal, and documents provided by the Appellant, in accordance with 5 CCR Section 4633(g), the CDE finds that the Decision is supported by substantial evidence and its legal conclusions are not contrary to law. Therefore, the Appeal has no merit.

Although the CDE upholds the Decision by the SBCOE, it is anticipated that forthcoming changes to *EC* Section 42238.07, proposed in Assembly Bill 1200 Education Omnibus Trailer Bill, Section 13, if adopted into law, would require an LEA to reconcile its total budgeted expenditures and total planned improvements for the specific actions that contribute to increasing or improving services for unduplicated pupils with its total estimated actual expenditures and total actual improvements for the specific actions that contribute to increasing or improving services for unduplicated pupils, beginning with the 2022–23 LCAP. Depending on the results of the reconciliation of expenditures and quality improvements, an LEA may be required to expend unutilized funds in the subsequent year solely on implementing specific actions that satisfy the increased or improved services requirement, in addition to meeting its MPP for that school year.

Allegation 3

“SBCOE Improperly Allowed Districts to Count Law Enforcement Expenditures Towards Their Proportionality Requirement, Harming the Very Students Whom LCFF is Designed to Support Rather than Actually Increasing or Improving Services for Them” (Complaint, p. 14).

Background

The LCFF apportions additional funds to LEAs on the basis of the number and concentration of unduplicated students (*EC* sections 42238.02, 42238.07). These funds are commonly referred to as “supplemental and concentration grant funds.” LEAs are

required to increase or improve services for unduplicated students as compared to the services provided to all students in the fiscal year in proportion to the additional funding provided (*EC* Section 42238.07; 5 *CCR* 15496). LEAs are required to provide evidence in their LCAP to demonstrate how these services support their unduplicated students (5 *CCR* 15496[a]).

Regulations provide the formula for calculating the percentage by which services must be proportionally increased or improved for unduplicated students above services provided to all students in the fiscal year (5 *CCR* 15496). To “improve services” means to “grow services in quality,” and to “increase services” means to “grow services in quantity” (5 *CCR* Section 15495[k] and [l]).

An LEA is required to follow the LCAP Template approved by the SBE (*EC* sections 52064, 52070). The DIISUP section of the 2017–2020 LCAP Template requires an LEA to identify the amount of its LCFF funds in the LCAP year calculated on the basis of the number and concentration of unduplicated students, and to identify the percentage by which it must increase or improve services for unduplicated students as compared to all students. This section also requires an LEA to describe how the services provided for unduplicated students are increased or improved by at least this percentage, either quantitatively or qualitatively, as compared to services provided for all students in the LCAP year (*EC* Section 42238.07; 5 *CCR* 15496).

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

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

Services of the latter category are referred to as either a schoolwide or an LEA-wide (i.e., districtwide, countywide, or charterwide) service.

In the DIISUP, the LEA is required to include a description of, and justification for, the use of any funds in a districtwide or schoolwide manner (5 *CCR* 15496). An LEA is required to describe how services provided on a “wide” basis are “principally directed towards” and “effective in” meeting its goals for unduplicated pupils (*EC* Section 42238.07, 5 *CCR* 15496[b]).

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 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 service’s design, content, methods, or location). In addition, the description must explain how the LEA expects the service 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.

Findings

The CDE reviewed 2019–2020 LCAPs for the three identified districts brought forth by the Appellants in the Complaint to determine whether the SBCOE approved the districts' LCAPs despite their omission of the required description of, and justification for, the use of any funds on a districtwide or schoolwide basis. The Complaint focused on the inappropriate use of LCFF S&C funds spent on law enforcement services and stated that the identified districts' LCAPs did not justify the need for nor analyze the effectiveness of such services.

HUSD

The 2019–2020 LCAP for HUSD has 14 contributing actions provided on a districtwide and schoolwide basis (Goal 1, Actions 1-9; Goal 2, Actions 2-5; and Goal 3, Action 1). The Complaint and Appeal alleged the 2019–2020 HUSD LCAP did not include the required descriptions and justifications for its districtwide and schoolwide actions. The Complaint and Appeal identified Goal 2, Action 2 to support this allegation.

On page 84 of the 2019–2020 HUSD LCAP, Goal 2, Action 2 states:

“Provide school police officers and additional campus assistants at secondary schools to help ensure safety on the campuses.”

On page 103 in the 2019–2020 HUSD LCAP, the District attempts to demonstrate why its wide actions are principally directed towards meeting the needs of its unduplicated students with the following explanation:

“Expenditures are planned on a districtwide and schoolwide basis due to our unduplicated pupil count percentage being 76.56%. These funds are being used to provide an increase of quality learning opportunities through... School Police to provide greater securing to all students.”

It is evident that this explanation does not demonstrate how providing school police officers and additional campus assistants at its secondary schools is principally directed to meeting any identified need(s) of any of its unduplicated student groups. Simply stating that an LEA has a high enrollment percentage of a specific student group or groups does not meet the increased or improved services standard because enrolling students is not the same as serving students.

Additionally, the 2019–2020 HUSD LCAP does not demonstrate how Goal 2, Action 2 is effective in meeting any identified need(s) of its unduplicated student group(s). It is unclear how the LEA planned to measure the effectiveness of school police officers and additional campus assistants. There is not an established through line between the

LEA's identified metrics and the use of school police officers and campus assistants to improve outcomes for the LEA's unduplicated students as compared to the outcomes of all students.

Therefore, based on the description provided, the requirements of 5 CCR 15496(b) and the instructions for the DIISUP in the LCAP Template are not met with respect to Goal 2, Action 2.

CJUHSD

The 2019–2020 LCAP for CJUHSD has 40 contributing actions provided on a districtwide and schoolwide basis (Goal 1, Actions 1, 3, 4, 5, 6, 9, 11, 12, 13, 14, 15, 16, 17; Goal 2, Actions 1, 2, 4, 5, 7, 8, 9, 10, 11, 12; Goal 3, Actions 1, 2, 5, 6, 7, 8, 11, 12, 13, 14, 15; Goal 4, Actions 1, 2, 3, 5, 6, 7). The Complaint and Appeal alleged the 2019–2020 CJUHSD LCAP does not include the required descriptions and justifications for its districtwide and schoolwide actions. The Complaint and Appeal identified Goal 3, Action 12 to support this allegation.

On page 143 of the 2019–2020 CJUHSD LCAP, the action description for Goal 3, Action 12 includes:

Increase campus security resources.

- Partner with local municipalities and law enforcement to provide a School Resource Officer on each school site. Contracts with Ontario and Montclair police departments and San Bernardino Probation office for PO at Chaffey High.
- Interquest Canine Services
- Director of Safety and Campus Officers
- Increase staffing for Campus Officers
- Other related security services and training
- Contracts with Ontario, Montclair, Rancho Cucamonga, and County law enforcement agencies
- Additional Campus Officers
- Additional training

On page 166 of the 2019–2020 CJHUSD LCAP, the District attempts to demonstrate why its wide actions are principally directed towards meeting the needs of its unduplicated students with the following explanation:

The District also offers services and programs that are aligned with LCAP goals that serve all students in areas such as, intervention counseling, recruitment and retention of quality teachers, RTI administrative support and committees at each site, positive behavior support, SEL, and restorative practices. School wide implementation of these practices will not only have an impact on learning environment and the climate of the schools as a whole but will also have a disproportionately positive impact on the targeted subgroups.

The District recognizes that while these funds are generated in order to serve the focus students, some services may, should the need arise, be utilized for students outside the focus subgroups. While the majority of students served will be focus students (61.8%), there may be other students in need that the District does not want to overlook.

By providing the services identified without limitations, CJUHSD will best serve all students, especially students who need the most support to provide them equitable access and opportunity. The full list of expenditures is aligned with the goals of the CJUHSD Local Control and Accountability Plan and addresses the needs of the District's English learners, socioeconomically disadvantaged students and foster youth. Services included are principally directed to unduplicated students.

It is unclear if the increased campus security resources described in Goal 3, Action 12 are included as part of this explanation. Additionally, simply stating that "services are principally directed to unduplicated students" is a conclusory statement. Conclusory statements that a service will help achieve an expected outcome for the goal, without an explicit connection or further explanation as to how, are not sufficient. Therefore, this explanation does not demonstrate how providing increased campus security resources is principally directed to meeting any identified need(s) of any of its unduplicated student groups.

Additionally, the 2019–2020 CJUHSD LCAP does not demonstrate how Goal 3, Action 12 is effective in meeting any identified need(s) of its unduplicated student group(s). It is unclear how the LEA planned to measure the effectiveness of increased campus security resources. There is not an established through line between the LEA's identified metrics and the use of increased campus security resources to improve outcomes for the LEA's unduplicated students as compared to the outcomes of all students.

Therefore, based on the description provided, the requirements of 5 CCR 15496(b) and the instructions for the DIISUP in the LCAP Template are not met with respect to Goal 3, Action 12.

AVUSD

The 2019–2020 LCAP for AVUSD has 21 contributing actions provided on a districtwide and schoolwide basis (Goal 1, Actions 1-5; Goal 2, Actions 1-4; Goal 3, Actions 1, 3, 4,

5, 8, 9, 10, 11, 12; Goal 4, Actions 3 and 4). The Complaint and Appeal alleged the 2019–2020 AVUSD LCAP does not include the required descriptions and justifications for its districtwide and schoolwide actions. The Complaint and Appeal identified Goal 4, Action 4 to support this allegation.

On page 112 of the 2019–2020 AVUSD LCAP, the action description for Goal 4, Action 4 includes:

“Increased supervision and security measures at school sites. Includes police officers, deans, Campus Security and Proctors depending upon site need. Includes the addition of two elementary principals thereby giving each K8 site at least one fulltime coadministrator [sic] per the [District Advisory Committee] DAC request.”

On pages 131 and 132 of the 2019–2020 AVUSD LCAP, the District attempts to demonstrate why its wide actions are principally directed towards meeting the needs of its unduplicated students with the following explanation:

The following actions, discussed by goal area, are LEA wide actions that are principally directed to the over 70% of students who comprise the unduplicated count of pupils. The actions will have a majority impact on those students and in some cases are not the type of service that can be restricted from the remaining minority of students.

Goal four, action three is principally directed toward students of poverty who make up the great majority of our bus riding population thereby allowing an improvement in transportation service by reducing the distance that students must walk to school in our area of roads without sidewalks or safe shoulders. Action four allows for supplemental supervision and administrative support staff to build relationships, mentoring, and intervention programs for students in need.

It is evident that this explanation does not demonstrate how providing increased supervision and security measures at school sites through police officers, deans, campus security, and proctors is principally directed to meeting any identified need(s) of any of its unduplicated student groups. Simply stating that an LEA has a high enrollment percentage of a specific student group or groups does not meet the increased or improved services standard because enrolling students is not the same as serving students.

Additionally, the 2019–2020 AVUSD LCAP does not demonstrate how Goal 4, Action 4 is effective in meeting any identified need(s) of its unduplicated student group(s). It is unclear how the LEA planned to measure the effectiveness of providing increased supervision and security measures at school sites through police officers, deans, campus security and proctors. There is not an established through line between the LEA’s identified metrics and the increased supervision and security measures at school sites through police officers, deans, campus security, and proctors to improve outcomes for the LEA’s unduplicated students as compared to the outcomes of all students.

Therefore, based on the description provided, the requirements of 5 CCR 15496(b) and the instructions for the DIISUP in the LCAP Template are not met with respect to Goal 4, Action 4.

Conclusion for Allegation 3

A review of the identified districts' 2019–2020 LCAPs found that the districts' 2019–2020 LCAPs did not meet the requirement to describe how services provided on a districtwide or schoolwide basis are “principally directed towards” and “effective in” meeting its goals for unduplicated pupils (*EC* Section 42238.07, 5 CCR 15496[b]).

As such, the SBCOE did not uphold its statutory obligation, consistent with *EC* Section 52070(d)(3), and approved the 2019–2020 LCAPs for HUSD, CJUHSD, and AVUSD despite their lack of description of how services provided on a districtwide or schoolwide basis are “principally directed towards” and “effective in” meeting goals for unduplicated pupils. Therefore, the Appeal has merit.

Required Corrective Action:

The SBCOE must ensure that identification of actions included as contributing to meeting the increased or improved services requirement in its districts' 2021–22 LCAPs sufficiently support the districts' explanations of how the actions are principally directed towards, and are effective in, meeting goals for their unduplicated students.

The SBCOE is required to consider the findings of the CDE's Investigation Report dated June 18, 2021, as it fulfills its statutory duty to review and approve the school district LCAPs in San Bernardino County consistent with the approval criteria provided in *EC* Section 52070.

VI. Conclusions

With respect to Allegation 1, the Appeal has merit.

With respect to Allegation 2, the Appeal has no merit.

With respect to Allegation 3, the Appeal has merit.

VII. Corrective Actions

Allegation 1: The SBCOE must ensure that identification of actions included as contributing to meeting the increased or improved services requirement in its districts' 2021–22 LCAPs sufficiently demonstrate, either qualitatively or quantitatively, how the districts increased or improved services for their unduplicated students as compared to services provided for all students in proportion to the increase in funding generated by the number and concentration of their unduplicated students, as required by 5 CCR 15496(a).

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The SBCOE is required to consider the findings of the CDE's Investigation Report dated June 14, 2021, as it fulfills its statutory duty to review and approve the school district LCAPs in San Bernardino County consistent with the approval criteria provided in *EC* Section 52070.

Allegation 2: No required corrective actions.

Allegation 3: The SBCOE must ensure that identification of actions included as contributing to meeting the increased or improved services requirement in its districts' 2021–22 LCAPs sufficiently support the districts' explanations of how the actions are principally directed towards, and are effective in, meeting goals for their unduplicated students.

The SBCOE is required to consider the findings of the CDE's Investigation Report dated June 18, 2021, as it fulfills its statutory duty to review and approve the school district LCAPs in San Bernardino County consistent with the approval criteria provided in *EC* Section 52070. As the SBCOE is making these improvements, they will have technical assistance available to them from the CDE, pursuant to *EC* Section 52075(e).

As described in 5 *CCR* 4665, within 30 days of receipt of this report, either party may request reconsideration by the Superintendent or the Superintendent's designee. The request for reconsideration shall specify and explain why:

- (1) Relative to the allegation(s), the Department Investigation Report lacks material findings of fact necessary to reach a conclusion of law on the subject of the complaint, and/or
- (2) The material findings of fact in the Department Investigation Report are not supported by substantial evidence, and/or
- (3) The legal conclusion in the Department Investigation Report is inconsistent with the law, and/or
- (4) In a case in which the CDE found noncompliance, the corrective actions fail to provide a proper remedy.

Should you have any questions related to this Investigation Report, please contact Joshua Strong, Administrator of LASSO, by email at jstrong@cde.ca.gov.

Sincerely,

Lindsay Tornatore, Ed.D., Director
Student Achievement and Support Division

LT:br

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cc: Ted Alejandre, Superintendent, San Bernardino County Superintendent of Schools
Richard De Nava, Assistant Superintendent, Business Services, San Bernardino County Superintendent of Schools
James Dilday, Interim Assistant Superintendent, Education Support Services, San Bernardino County Superintendent of Schools
James Baca, Chief Operating Officer, Atkinson, Andelson, Loya, Ruud, & Romo Law Corporation