

June 30, 2020

Sent via Email and Priority Mail

Superintendent Ted Alejandre
Mr. Richard De Nava, Assistant Superintendent, Business Services
Ms. Beth B. Higbee, Ph.D., Assistant Superintendent, Student Services
San Bernardino County Office of Education
601 North E Street
San Bernardino, CA 92415-0020

RE: UCP Complaint Against San Bernardino County Superintendent and San Bernardino Office of Education for Their Failure to Ensure that 2019–20 District LCAPs Complied with Expenditure Regulations and Adhered to LCAP Template and Instructions to the Detriment of Millions of High-Need Students in the County

Dear Superintendent Alejandre, Mr. De Nava, and Ms. Higbee:

Public Advocates, Inc. and the ACLU Foundation of Southern California submit this Uniform Complaint Procedure (“UCP”) complaint on behalf of Inland Congregations United for Change (“ICUC”) and Congregations Organized for Prophetic Engagement (“COPE”) to Superintendent Ted Alejandre (“SBCSS”) and the San Bernardino County Office of Education (“SBCOE”) for abdicating oversight duties and approving district LCAPs that, on their face, flagrantly violate the law.¹ Hereinafter, this Complaint will refer to SBCSS and SBCOE collectively as “SBCOE.” Specifically, SBCOE improperly approved 2019–20 LCAPs from Local Education Agencies (“LEAs” or “districts”) that:

1. Lacked the requisite transparency by failing to show how they planned to meet the proportionality requirement, meaning districts did not adequately identify and explain how they intended to use funds to advance goals for low-income students, English learners, and foster youth (collectively “high-need students”) at the heart of Local Control Funding Formula’s (“LCFF”) equity promise, thereby undermining meaningful community engagement and accountability;
2. Lacked the requisite focus on equity by failing to address material proportionality shortfalls from prior years, meaning districts did not utilize all of their funds intended for high-need students in previous years and did not explain how they will carry forward those funds and their associated proportionality obligation into future years; and

¹ This UCP complaint is filed pursuant to Cal. Educ. Code Section 52075(a), which authorizes filing a UCP complaint against a county superintendent of schools that has not complied with Cal. Educ. Code Sections 52059.5 through 52077. As discussed herein, SBCSS failed to comply with Cal. Educ. Code Section 52070(d), which sets forth the obligations of County Superintendents in approving district LCAPs.

3. Allowed LEAs to count improper services towards their proportionality requirements, for example by allowing LEAs to spend funds for high-need students on law enforcement, even though such expenditures are neither principally directed towards, nor effective in advancing goals for high-need students; indeed, law enforcement has been shown to harm the very students that LCFF is intended to protect.

As a result, SBCOE allowed hundreds of millions of dollars that LEAs must direct towards new and improved services for high-need students to be unaccounted for or, worse yet, misspent.²

Our schools are facing unprecedented challenges—from a global pandemic to impending budget cuts to elevated calls to address anti-Blackness and structural racism in schools after the murder of George Floyd and countless other Black people. In this context, LCFF’s equity, transparency, and effectiveness protections are more important than ever. SBCSS and other County Superintendents across the state play a critical role in ensuring that districts adhere to these fundamental values because they are responsible for reviewing and approving district LCAPs. County Superintendents may only approve LCAPs if they comply with the LCFF laws and regulations—including, importantly, if they find that the LEAs are using their supplemental and concentration (“S&C”) funding to support effectively the low-income students, foster youth, and English learners who generate those funds.

To maximize scarce resources and equitably address the competing priorities and demands of our new reality, SBCOE must correct the gross deficiencies in its LCAP review and approval process before the next regular three-year LCAP cycle. Additionally, SBCOE must review the 2019–20 LCAPs analyzed herein to identify material proportionality shortfalls that should be carried forward to the next three-year LCAP to serve high-need students equitably.

I. Complainants

ICUC is a faith-based, grassroots 501(c)(3) non-profit community organization that comprises 63 member interfaith congregations representing more than 60,000 families. For decades, ICUC has been organizing parents and students in San Bernardino City Unified School District (“SBCUSD”) to provide a voice to high-need families in public education and to advance education equity for students of color. ICUC works with students from every comprehensive high school in SBCUSD and organizes parents from 10 different schools and 12 different congregations across the district. ICUC has also fought for more mental health services for students, more meaningful engagement for parents in the LCAP process, and more equitable funding for high-need students of color.

COPE is a 501(c)3 faith-based organization, established in 2000 by a core group of pastors. Its mission is to train and develop the capacity of religious and lay leaders in congregations and across the Inland Empire to protect and revitalize the communities in which they live, work, and worship. To advance its mission, COPE engages in public policy initiatives that lead to program innovations and stronger communities. It also provides leadership training, community organizing, empowerment, and innovative programs to build community and uplift its core

² We advised SBCSS and SBCOE of these concerns by copying Superintendent Alejandre on several letters to the San Bernardino City Unified School District (“SBCUSD”) superintendent and board members, alerting them of their LCFF violations. See 4/17/2020 and 5/11/2020 letters from Public Advocates and ACLU of SoCal to SBCUSD et al. (Exs. 1 & 2).

values. Amongst other priorities, COPE’s work includes advocating for equity in school funding, improving parent and community engagement, and creating a new vision of school and community safety centered on health, education, and investing in youth rather than in law enforcement and punitive policies that push students out of school.

II. County Superintendents and the County Offices of Education Represent the Primary Accountability Mechanism for Protecting LCFF’s Equity Principles by Ensuring that Districts Properly Increase or Improve Services for High-Need Students and Operate with Sufficient Transparency

County Superintendents play a critical role in making LCFF work. Described as “the foundation of the emerging Statewide System of Support[,]”³ County Superintendents act as the intermediate agent between the state and LEAs by providing external accountability and overseeing the LCAP process.⁴ LEAs must file their LCAP or annual update with the County Superintendent every year.⁵ County Superintendents must review the LCAPs and may seek clarification about LCAP contents,⁶ submit recommendations for LCAP amendment,⁷ and may only approve an LCAP if the superintendent determines that it adheres to the state template, includes sufficient expenditures to implement services described, and—central to this complaint—complies with the expenditure regulations.⁸ If County Superintendents do not approve an LCAP, they must provide technical assistance until the LEA provides an LCAP that complies with LCFF laws and regulations.⁹

Pursuant to the relevant expenditure regulations, County Superintendents must ensure that LEAs include evidence in their LCAPs to “demonstrate how funding apportioned on the basis of the number and concentration of [high-need] pupils . . . is used to support such pupils.”¹⁰ County Superintendents must confirm that LEAs “increase or improve services for [high-need] 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 [high-need] pupils.”¹¹ In short, County Superintendents must ensure that LEAs provide services equitably to low-income students, English learners, and foster youth who generate additional funds for their districts. In San Bernardino County, LEAs received more than \$800 million in S&C grants in the 2019–20 school year.¹² County Superintendents who shirk their primary obligation to hold districts accountable for providing equitable education services deny high-need students the resources they are entitled

³ CAL. CTY. SUPERINTENDENTS EDUC. SERV. ASS’N, LOCAL CONTROL AND ACCOUNTABILITY PLAN (LCAP) APPROVAL MANUAL 2019–20 EDITION, 1 (2019) [hereinafter *CCSESA Manual*] (Ex. 3).

⁴ *Id.*

⁵ CAL. EDUC. CODE § 52070(a) (Deering 2020).

⁶ CAL. EDUC. CODE § 52070(b) (Deering 2020).

⁷ CAL. EDUC. CODE § 52070(c) (Deering 2020).

⁸ CAL. EDUC. CODE § 52070(d)(1)–(3) (Deering 2020).

⁹ CAL. CODE REGS. tit. 5, § 15497 (2020).

¹⁰ CAL. CODE REGS. tit. 5, §§ 15496(a), 15497 (2020).

¹¹ CAL. CODE REGS. tit. 5, §§ 15496(a), 15497 (2020).

¹² Cal. Dep’t of Educ., Principal Apportionment Summary, 2019–2020 Second Principal (P-2) Apportionment, <https://www.cde.ca.gov/fg/aa/pa/lcffsumdata.asp> (calculated by adding up supplemental and concentration grants to LEAs with county code 36 (San Bernardino County)) (Ex. 4).

to and undermine the statewide system’s purpose to “address the gaps in achievement between pupil subgroups”¹³

III. 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

At the heart of LCFF is the requirement that districts be fully transparent about how they are spending their money in their LCAP so that community stakeholders can provide input into decisions and hold districts accountable for using funding equitably and effectively.¹⁴ County Superintendents are charged with ensuring that districts provide this foundational transparency to their communities. Specifically, County Superintendents must review district LCAPs to determine whether they demonstrate “proportionality” and are consistent with the LCAP template and instructions adopted by the State Board of Education (“SBE”).¹⁵

An LEA’s proportionality obligation refers to its responsibility to “increase or improve services” for high-need students in proportion to the increase in funds the district receives on the basis of those students under LCFF.¹⁶ The 2019–20 LCAP template and instructions require LEAs to identify the percentage by which services for high-need students must be increased or improved as compared to services provided to all students in the Demonstration of Increased or Improved Services for Unduplicated Students (“DIISUP”) section of the LCAP.¹⁷ This figure is known as the Minimum Proportionality Percentage (“MPP”). In addition, LEAs must address in the DIISUP “how the action(s)/service(s) limited for one or more [high-need] student group(s), and any schoolwide or districtwide action(s)/service(s) supported by the appropriate description, taken together, result in the required proportional increase or improvement in services for [high-need students].”¹⁸ An LEA may establish this demonstration qualitatively (improvement in

¹³ CAL. EDUC. CODE § 52059.5(b)(2) (Deering 2020).

¹⁴ See CAL. EDUC. CODE § 42238.07(a) (authorizing the State Board of Education to adopt regulations that require LEAs to increase or improve services for unduplicated pupils in proportion to their S&C allocation); see also CAL. EDUC. CODE § 52061 (requiring school districts to annually update the LCAP and annual update pursuant to the template adopted by SBE); CAL. EDUC. CODE § 52062 (setting forth the community engagement requirements for LCAP development and adoption); CAL. CODE REGS. tit. 5, § 15496(a) (“An LEA shall provide evidence in its LCAP to demonstrate how funding apportioned on the basis of the number and concentration of unduplicated pupils . . . is used to support such pupils.”); Letter from Tom Torlakson, State Superintendent of Public Instruction, California Department of Education & Michael W. Kirst, President, California State Board of Education, to County Superintendents, District Superintendents, and Direct-Funded Charter School Administrators, (Aug. 7, 2013), <https://www.cde.ca.gov/nr/el/le/yr13ltr0807.asp> (“The 2013–14 Budget Act included passage of landmark legislation that shifts California from a complex school finance system to one focused on *equity, transparency, and performance through the LCFF and related Local Control and Accountability Plan (LCAP)*.”) (emphasis added).

¹⁵ CAL. EDUC. CODE § 52070(d)(1) (Deering 2020) (stating that the LCAP must adhere to the template adopted by the state board and follow any instructions for completing the template that are adopted by the state board); see also CAL. EDUC. CODE § 52070(d)(3) (stating that the LCAP must adhere to the expenditure requirements for funds apportioned on the basis of the number and concentration of unduplicated pupils).

¹⁶ CAL. EDUC. CODE § 42238.07(a)(1) (Deering 2020).

¹⁷ See Cal. Dept. of Educ., *LCAP Template Instructions: Demonstration of Increased or Improved Services for Unduplicated Students* <https://www.cde.ca.gov/re/lc/templateinstructions.asp#Demonstration> (last reviewed Feb. 1, 2019) [hereinafter *LCAP Template*] (Ex. 5). See also *CCSESA Manual*, *supra* note 3, at 22, 55 (Ex. 3).

¹⁸ *Id.*

services) or quantitatively (increase in services).¹⁹ Importantly, LEAs must include this demonstration in the LCAP itself. *See* Cal. Code Regs. § 15496(a) (“An LEA ***shall provide evidence in its LCAP*** to demonstrate how funding apportioned on the basis of the number and concentration of unduplicated pupils . . . is used to support such pupils.”) (emphasis added).

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. For example, SBCOE approved the 2019–20 LCAPs for San Bernardino City Unified School District, Hesperia Unified School District (“HUSD”), and Victor Valley Union High School District (“VVUHSD”), even though none of them attempt to demonstrate how they meet their MPP obligation, either qualitatively or quantitatively.²⁰ Indeed, these three districts alone cumulatively provided less than *one-quarter* of the level of increased or improved services required by LCFF,²¹ a quantitative shortfall of more than \$150 million in funding intended for high-need students. Beyond these three districts, it is likely that many of the other 30 districts within SBCOE’s jurisdiction have similar problems, depriving high-need students of the benefit of millions of additional dollars in funding intended to support them.

An explanation of these districts’ failure to demonstrate proportionality is described below.

2019–20 Proportionality Obligation & Failure to Demonstrate Proportionality in the LCAP						
	S&C Allocation ²²	Base Allocation ²³	Minimum % increase/improvement required-MPP (S&C/base) ²⁴	Qualitative demonstration of increased/improved services	Quantitative demonstration (% increase/improvement demonstrated) ²⁵	Proportionality Shortfall (expressed quantitatively) ²⁶
San Bernardino City Unified School District	\$140,288,462	\$392,162,976	35.78%	None	\$21,931,894 ²⁷ (5.60%)	30.18% (\$118,356,568)
Hesperia Unified School District	\$48,733,795	\$181,092,469	26.91%	None	\$21,026,479 ²⁸ (11.61%)	15.30% (\$27,707,316)
Victor Valley Union High School District	\$30,881,783	\$94,968,274	32.44%	None	\$10,575,324* ²⁹ (11.14%)	21.30% (\$20,306,459)

¹⁹ *See* CAL. CODE REGS. tit. 5, §§ 15495–96(a); *CCSESA Manual*, *supra* note 3, at 22, 55 (Ex.3); *LCAP Template*, *supra* note 17 (“To improve services means to grow services in quality and to increase services means to grow services in quantity.”) (Ex. 5).

²² LCFF Summary Data, 2019–20 Second Principal (P-2) Apportionment, *supra* note 12 (Ex. 4).

²³ *Id.*

²⁵ The LCAP template and instructions require LEAs to list actions and services contributing to the increased and improved services requirement, which enables a district to provide a quantitative demonstration of proportionality by adding up all of its contributing expenditures and comparing that total with its total base expenditures for all students. *LCAP Template: Goals, Actions, Services instructions*, *supra* note 17 at 16–18 (Ex. 5). The numbers in this column are calculated by summing LCFF funds allocated to actions and services contributing to the increased or improved services requirement and dividing the amount by LCFF base funding allocated to the district that year.

²⁶ Calculated by subtracting the amount quantitatively demonstrated from the S&C allocation.

San Bernardino City Unified School District

In the 2019–20 school year, SBCUSD had an obligation to increase or improve services for high-need students by 35.78% compared to the services it provided to all students.³⁰ The SBCUSD DIISUP section references a \$21.6 million action to school sites based on the concentration of high-need students at each site and an \$11 million investment in centralized supports for English learners, African American Student Achievement, Latinx Student Achievement, and Gifted students, in addition to unspecified expenditures on AVID programs and foster youth programs.³¹ However, SBCUSD never describes how these services qualitatively or quantitatively amount to a 35.78% increase or improvement in services for high-need students over and above what all students receive. Moreover, SBCUSD identifies only \$21,931,894 in expenditures for actions listed as contributing to the increased or improved services requirement in the Goals, Actions, Services (“GAS”) section.³² Expressed in proportionality terms, SBCUSD identified only an equivalent to a 5.60% increase or improvement in services, which misses the required minimum proportionality percentage of 35.78% by more than four-fifths, or more than \$118 million.³³ As a result, the district deprived parents, students, and other stakeholders, like those organized by Complainants, of crucial information about how it planned to meet its full equity obligation, which impaired their advocacy. For example, SBCUSD recently disclosed in their budget (not their LCAP) that they spend \$9.5 million of S&C funds on their school police department, but because the district failed to disclose the expenditures in its LCAP, stakeholders, including Complainants, were unaware that the district had diverted these funds to law enforcement and were deprived of an opportunity to object.³⁴ In fact, the vast majority of

²⁴ MPP is calculated here by dividing S&C allocation by base allocation as derived from the CDE website reporting district apportionments. *Id.* Some districts reported slightly different MPPs in the DIISUP sections of their LCAPs. In all cases, this discrepancy was less than plus or minus 1%.

²⁵ The LCAP template and instructions require LEAs to list actions and services contributing to the increased and improved services requirement, which enables a district to provide a quantitative demonstration of proportionality by adding up all of its contributing expenditures and comparing that total with its total base expenditures for all students. *LCAP Template: Goals, Actions, Services instructions*, *supra* note 17 at 16–18 (Ex. 5). The numbers in this column are calculated by summing LCFF funds allocated to actions and services contributing to the increased or improved services requirement and dividing the amount by LCFF base funding allocated to the district that year.

²⁶ Calculated by subtracting the amount quantitatively demonstrated from the S&C allocation.

²⁷ *SBCUSD 19–20 LCAP*, *supra* note 20, at 78–116 (2017–20 GAS) (Ex. 6).

²⁸ *HUSD 19–20 LCAP*, *supra* note 20, at 49–96 (2017–20 GAS) (Ex. 7).

²⁹ *VVUHSD 19–20 LCAP*, *supra* note 20, at 191–271 (2017–20 GAS) (Ex. 8). *This amount does not include \$21,086,063 S&C funds explained only in the DIISUP section, which may not increase or improve services. *Id.* at 279–82.

³⁰ See *SBCUSD 19–20 LCAP*, *supra* note 20, at 117 (Ex. 6).

³¹ *Id.* at 117–18.

³² *Id.* at 76–78, 82. Contributing actions include Goal 1, Action 2 (“Implement targeted programs to improve the support and performance of Foster Youth/Homeless Students.”), Goal 1, Action 3 (“Develop summer academic enrichment programs to support English Learner students . . .”), and Goal 1, Action 5 (“Allocate funds to schools to plan and implement site based programs . . .”).

³³ The actions listed as contributing to the increased or improved services requirement total \$21,931,894 and the district received \$392,162,976 in base funding, which is equivalent to a 5.60% quantitative increase or improvement of services. See *SBCUSD 19–20 LCAP*, *supra* note 20, at 74–116 (GAS section) (Ex. 6); and Cal. Dep’t of Educ., LCFF Summary Data, 2019–20 Second Principal (P-2) Apportionment, *supra* note 12, (Ex. 4).

³⁴ See San Bernardino City Unified School District, 2019–20 Second Interim Budget Report at 6 (March 17, 2020), available at https://www.sbcusd.com/UserFiles/Servers/Server_59869/File/2nd%20Interim%20Report%20-

SBCUSD's efforts to increase and improve services are either not transparent or nonexistent. As discussed, SBCOE has a duty to ensure that SBCUSD's LCAP is transparent and clearly demonstrates how the district is proportionally increasing and improving services for high-need students. SBCOE failed to fulfill this duty by rubber stamping an LCAP that, on its face, omits the vast majority of actions and services that contribute to the district's proportionality obligation, in violation of LCFF's transparency requirements.

Hesperia Unified School District

In the 2019–20 school year, HUSD had an obligation to increase or improve services for high-need students by 26.09% compared to services provided to all students.³⁵ HUSD's DIISUP section explains that it offers most of its contributing services to all students because HUSD is a concentrated district with 76.56% of their students qualifying as high-need.³⁶ However, as the California Department of Education ("CDE") has repeatedly held, the fact that a district has a high concentration of high-need students does not automatically qualify each and every action as a contribution towards its MPP obligation.³⁷ HUSD makes no effort to describe how it is qualitatively or quantitatively providing 26.91% more or better services to the high-need students that it serves. Moreover, HUSD identifies only \$21,026,479 in expenditures for actions listed as contributing to the increased or improved services requirement in the GAS section.³⁸ Expressed in proportionality terms, the district has demonstrated only an 11.61% increase or improvement in services, which misses the required minimum proportionality percentage by more than half, or more than \$27 million.³⁹ Despite these egregious transparency and equity violations of LCFF, SBCOE approved HUSD's 2019–20 LCAP.

[%20Digital%20File%20\(2019-2020\).pdf](#); see also 4/17/2020 Letter from Public Advocates and ACLU of SoCal to SBCUSD et al., *supra* note 2, at p. 3 (Ex. 1).

³⁵ *HUSD 19–20 LCAP*, *supra* note 20, at 103 (Ex. 7). Note: the MPP is slightly higher (26.91%) if calculated by dividing the S&C funds allocated to HUSD by the base allocation HUSD received.

³⁶ *Id.*

³⁷ *Compare* May 5, 2017 CDE Fresno Unified School District CDE Decision, at 7 (finding that the district's reference to its high unduplicated pupil population was not an adequate justification of services provided on a districtwide and schoolwide basis being principally directed and effective towards meeting the district's goals for its high-need student population) (Ex. 11), *with* Aug. 5, 2016 CDE Los Angeles Unified School District Decision, at 16–17 (finding that the district's reasoning for meeting the principally directed and effective requirement unpersuasive, as having a high concentration of high-need students surpassing the 55% requirement merely qualifies a district to S&C funds on a districtwide basis) (Ex. 12), *and* Oct. 5, 2016 CDE Mojave Unified School District Decision, at 23 (rejecting the district's argument that "because of its high percentage of unduplicated students, actions and services are invariably principally directed towards and effective in meeting the goals for its unduplicated pupils") (internal quotations omitted) (Ex. 13).

³⁸ *HUSD 19–20 LCAP*, *supra* note 20, at 59, 62, 63, 65, 67, 69, 71–72, 74, 83, 85, 89, 95–96 (Goal 1, Action 1; Goal 1, Action 2; Goal 1, Action 3; Goal 1, Action 4; Goal 1, Action 5; Goal 1, Action 6; Goal 1, Action 7; Goal 1, Action 8; Goal 1, Action 9; Goal 2, Action 2; Goal 2, Action 3; Goal 2, Action 5; and Goal 3, Action 1) (Ex. 7).

³⁹ The actions listed as contributing to the increased or improved services requirement total \$21,026,471 and the district received \$181,092,469 in base funding, which is equivalent to a 11.61% quantitative increase or improvement of services. See *id.*, and Cal. Dep't of Educ., LCFF Summary Data, 2019–20 Second Principal (P-2) Apportionment, *supra* note 12 (Ex. 4).

Victor Valley Union High School District

In the 2019–20 school year, VVUHSD had an obligation to increase or improve services for high-need students by 31.78% compared to services provided to all students.⁴⁰ The VVUHSD DIISUP acknowledges that the LCAP reflects only 26% of its total supplemental and concentration grants and identifies how it believes it spends additional S&C funds outside of the LCAP.⁴¹ The district fails to disclose, track, or justify those funds over time in the LCAP as “contributing” services toward the increased/improved requirement, nor does it even connect the spending with the district’s goals for high-need students. As such, those funds cannot properly contribute towards the district’s MPP obligation.⁴² In fact, VVUHSD identifies only \$10,575,324 in expenditures for actions listed as contributing to the increased or improved services requirement in the GAS section, which is equivalent to a 11.14% increase or improvement in services, and misses the MPP obligation by nearly two-thirds, or more than \$20 million.⁴³ Despite these egregious transparency and equity violations of LCFF, SBCOE approved VVUHSD’s 2019–20 LCAP.

In sum, 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.⁴⁴ At a minimum, SBCOE’s failure has deprived stakeholders of crucial information about how their districts spend their money and may have resulted in high-need students losing out on millions of dollars in services that could have been used to fund the wellness centers, restorative justice programs, and engagement opportunities that Complainants have been requesting for years.⁴⁵ Worse yet, SBCOE’s abdication of its

⁴⁰ *VVUHSD 19–20 LCAP*, *supra* note 20, at 277 (Ex. 8). Note: Note: the MPP is slightly higher (32.44%) if calculated by dividing the S&C funds allocated to VVUHSD by the base allocation VVUHSD received.

⁴¹ *Id.* at pp. 279–81.

⁴² See Cal. Code Reg. 15496(a) (“An LEA shall **provide evidence** in its LCAP to demonstrate how funding apportioned on the basis of the number and concentration of unduplicated pupils . . . is used to support such pupils.”) (emphasis added). LEA’s must identify in the GAS section “any action/service contributing to the LEA’s overall demonstration that it has increased or improved services for unduplicated students above what is provided to all students.” See *LCAP Template: GAS section instructions*, *supra* note 17, at 6 (Ex. 5). LEA’s must also “describe how services provided for unduplicated pupils are increased or improved **by at least the percentage** calculated as compared to services provided for all students in the LCAP year.” See *LCAP Template: DIISUP section*, *id.* at 8 (emphasis added). Given that VVUHSD’s reference of additional S&C funds both exists outside of the GAS section of the LCAP and (where funding schoolwide or districtwide actions) is not justified as principally directed and effective, the funds cannot count towards meeting the proportionality required by law.

⁴³ The actions listed as contributing to the increased or improved services requirement total \$10,575,324, and the district received \$94,968,274 in base funding, which is equivalent to a 11.14% quantitative increase or improvement of services. See *VVUHSD 19–20 LCAP*, *supra* note 20, at 111–271 (Ex. 8), and Cal. Dep’t of Educ., LCFF Summary Data, 2019–20 Second Principal (P-2) Apportionment, *supra* note 12 (Ex. 4).

⁴⁴ See CAL. EDUC. CODE § 42238.07(a) (requiring the State Board of Education to adopt regulations that require LEAs to increase or improve services for unduplicated pupils in proportion to their S&C allocation); see also Cal. Code Reg. 15496(a) (“An LEA shall provide evidence in its LCAP to demonstrate how funding apportioned on the basis of the number and concentration of unduplicated pupils . . . is used to support such pupils.”); *LCAP Template*, *supra* note 17, at 8 (Ex. 5) (requiring LEAs to describe how services provided for unduplicated pupils are increased or improved by at least the percentage calculated as compared to services provided for all students for the given LCAP year).

⁴⁵ ICUC Public Comment (Apr. 7, 2020) (Ex. 14); ICUC Public Comment (June 2, 2020) (Ex. 15); and Letter from San Bernardino Educational Justice Coalition (Apr. 21, 2020) (Ex. 16).

duties may have allowed the districts to evade their proportionality obligations, meaning that the districts may have actually deprived high-need students of millions of dollars of critical services.

Indeed, SBCUSD, HUSD, and VVUHSD include some of the schools with the largest opportunity gaps in California,⁴⁶ which makes SBCOE's oversight failure even more egregious. If SBCOE had caught the effective loss of more than \$150 million in increased or improved services, these districts would have been required to revisit and substantially revise their menu of services for high-need students. In turn, these new and better investments in programs could have improved school climate and closed opportunity gaps for high-need students, quite possibly changing the trajectory of many students' lives. SBCOE's failure to hold districts accountable to the transparency, equity, and community accountability values of LCFF undermines the legitimacy of the entire system, risks stakeholders losing faith in the engagement process, and must be remedied immediately.

IV. SBCOE Failed to Ensure that 2019–20 District LCAPs Address Material Proportionality Shortfalls from Prior Years, Violating LCFF's Fundamental Equity Requirement

Under LCFF, the proportionality obligation not only requires LEAs to describe how they plan to increase or improve services by the requisite percentage transparently, but it also requires LEAs to *fulfill the equity mandate* that is at the heart of LCFF by actually increasing or improving services at a specified level⁴⁷ and to do so each year concurrent with the receipt of LCFF funds.⁴⁸ Because County Superintendents must ensure that LEAs' LCAPs adheres to the proportionality requirement in the expenditure regulations,⁴⁹ they must also be vigilant about material proportionality shortfalls. 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.

In the case of spending obligations taken on as a condition of receiving governmental funds, recipient agencies have only two options when not meeting the promised obligation during the promised time period—return the funds to extinguish the obligation or satisfy the obligation

⁴⁶ Daniel J. Willis, *Database: California's Lowest-Performing Schools in 2018–19*, EDSOURCE (Feb. 6, 2019), <https://edsources.org/2019/database-californias-lowest-performing-schools/608316>.

⁴⁷ An LEA's duty to increase or improve services for high-need students in proportion to increase in funding generated by those students is a mandatory duty. See CAL. EDUC. CODE § 42238.07(a)(1) (Deering 2020) (mandating regulations that “[r]equire a school district, county office of education, or charter school to increase or improve services for unduplicated pupils in proportion to the increase in funds apportioned on the basis of the number and concentration of unduplicated pupils in the school district, county office of education, or charter school.”) (emphasis added); CAL. CODE REGS. tit. 5, § 15496(a) (“This funding [apportioned on the basis of the number and concentration of unduplicated pupils] *shall* be used to increase or improve services for unduplicated pupils as compared to the services provided to all pupils in proportion to the increase in fund apportioned on the basis of the number and concentration of unduplicated pupils as required by Education Code section 42238.07(a)(1).”) (emphasis added).

⁴⁸ CAL. CODE REGS. tit. 5, § 15496(a) (Deering 2020) (“An LEA shall determine the percentage by which services for unduplicated pupils must be increased or improved above services provided to all pupils *in the fiscal year* as follows”) (emphasis added).

⁴⁹ CAL. EDUC. CODE § 52070(d)(3) (Deering 2020).

going forward.⁵⁰ Thus, if an LEA materially fails to meet its proportionality obligation in a given year, the obligation does not disappear—unless the district decides to return a portion of its LCFF funds to the state—but must be fulfilled in a subsequent year. No state guidance or CDE UCP decision has ever indicated a contrary result; in fact, any contrary result would eviscerate the statutory mandate requiring proportional increases or improvements in services by encouraging districts to withhold S&C funds in the year they receive them so they can convert them to base funds in the following year. Therefore, to square LCAPs with LCFF’s annual proportionality obligation, County Superintendents must identify material proportionality shortfalls and should only approve LCAPs that account for and redress such prior year shortfalls. Proportionality shortfalls can be accounted for in the LCAP by including additional actions that contribute to the increased or improved services requirement over and above the new fiscal year’s MPP.

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. Specifically, SBCOE approved 2019–20 LCAPs for SBCUSD, HUSD, and VVUHSD despite evidence that they provided less than half of the requisite increased and improved services that high-need students were entitled to receive in 2018–19 and failed to address this shortfall in its planned actions and services for 2019–20.⁵¹ Currently, there is no indication that those districts ever spent those funds to support high-need students. The table below shows the proportionality shortfall and estimated carryover obligation that SBCOE improperly approved for each of these districts:

⁵⁰ See, e.g., *Bennett v. Kentucky Dep’t of Educ.*, 470 U.S. 656, 663 (1985) (holding that the government is entitled to recover school funds spent contrary to ‘supplement, not supplant’ assurances made as a condition of receiving federal funds); *U.S. v. Marion Cty. Sch. Dist.*, 625 F.2d 607, 609 (5th Cir. 1980) (finding that the government could compel specific performance by a school district that violated non-discrimination assurances the district made by accepting federal money).

⁵¹ Complainants do not assert that the provision and demonstration of increased or improved services undertaken by LEAs must exactly match their MPP or precisely equal their S&C allocation. We are not concerned here with minor shortfalls but meaningful, material ones. Where precisely the line between those two lies is not at issue in this matter as the proportionality shortfalls approved by SBCOE are extensive, indeed, staggering, amounting in each case to well over half of the LEAs’ MPPs being unaccounted for.

2018–19 Proportionality Shortfall and Estimated Carryover Obligation						
	S&C Allocation ⁵²	Base Allocation ⁵³	Minimum % increase/improvement required - MPP (S&C/base) ⁵⁴	Qualitative demonstration of increased/improved services	Quantitative demonstration(% increase /improvement demonstrated) ⁵⁵	Proportionality Shortfall Subject to Carryover (shortfall expressed quantitatively) ⁵⁶
San Bernardino City Unified School District	\$136,065,696	\$383,510,512	35.47%	None	\$21,470,059 ⁵⁷ (5.60%)	29.88% (\$114,595,637)
Hesperia Unified School District	\$44,128,131	\$173,452,818	25.44%	None	\$15,543,795 ⁵⁸ (8.96%)	16.48% (\$28,584,336)
Victor Valley Union High School District	\$27,845,197	\$87,842,506	31.70%	None	\$10,788,675* ⁵⁹ (12.28%)	19.42% (\$17,056,522)

Hesperia Unified School District

In 2018–19, HUSD had an obligation to increase or improve services by 26.83% but did not qualitatively or quantitatively demonstrate an increase or improvement in services to this degree.⁶⁰ Hesperia made the conclusory statement that “funds are being used to provide an increase of quality learning opportunities,” but it made no attempt to explain how that increase in quality is equivalent to a 26.83% improvement in services.⁶¹ Quantitatively, Hesperia spent only \$15.5 million on actions that allegedly increased or improved services, even though it received \$44.1 million in S&C grants based on its number and concentration of high-need students in

⁵² LCFF Funding Snapshot, 2018–19, <https://ias.cde.ca.gov/lcffsnapshot/lcff.aspx> (sum of concentration and supplemental grants).

⁵³ *Id.*

⁵⁴ 2018–19 MPP is calculated here by dividing S&C allocation by base allocation. All three districts reported slightly different MPPs in the 2018–19 DIISUP sections of their LCAPs. In all cases, this discrepancy was less than plus or minus 1.4%.

⁵⁵ Calculated by summing up LCFF funds contributing to increased/improved services requirement and dividing the amount by LCFF base funding allocated to the district that year.

⁵⁶ Calculated by subtracting the amount quantitatively demonstrated from the S&C allocation.

⁵⁷ Sum of 2018–19 LCFF funds contributing to meeting the increased or improved services requirement. *SBCUSD 19–20 LCAP*, *supra* note 20, at 78–116 (2017–20 GAS) (Ex. 6).

⁵⁸ Sum of 2018–19 LCFF funds contributing to meeting the increased or improved services requirement. *HUSD 19–20 LCAP*, *supra* note 20, at 49–96 (2017–20 GAS) (Ex. 7).

⁵⁹ Sum of 2018–19 LCFF funds contributing to meeting the increased or improved services requirement. *VVUHSD 19–20 LCAP*, *supra* note 20, at 191–271 (2017–20 GAS) (Ex. 8). Though not legally valid, this amount treats \$5,255,925 as 2018–19 S&C funds contributing towards the MPP as the district claims in the DIISUP section. *Id.* at 275–76.

⁶⁰ *HUSD 19–20 LCAP*, *supra* note 20, at 99 (Ex. 7.) Note: the MPP is slightly lower (25.44%) if calculated by dividing the S&C funds allocated to HUSD by the base allocation HUSD received.

⁶¹ *Id.*

2018–19.⁶² This is equivalent to an 8.96% increase in services for high-need students, which is ***only a third of its 26.83% proportionality requirement***. The district failed to provide evidence about how the quantitative or qualitative equivalent of more than \$28 million of increased or improved services, nearly two-thirds of the district’s proportionality requirement, were delivered to high-need pupils. Hesperia should have carried forward that shortfall to its 2019–20 actions and services but failed to do so. Hesperia’s 2019–20 LCAP includes no reference to the 2018–19 proportionality shortfall, much less an attempt to make up for that shortfall.⁶³ Nevertheless, SBCOE approved Hesperia’s LCAP, shortchanging that district’s high-need students.

San Bernardino City Unified School District

Similarly, SBCUSD had an obligation to increase or improve services by 35.47% in 2018–19, but did not quantitatively or qualitatively demonstrate an increase or improvement in services to this degree.⁶⁴ The district explains how a number of programs and expenditures increase or improve services for high-need services, but there is no attempt to explain how such an increase is equivalent to a 35.47% improvement of services.⁶⁵ Quantitatively, in the GAS section, the district identifies \$21.5 million of the total \$136.1 million of S&C funds the district received that year as contributing to the district’s increased or improved services requirement.⁶⁶ This amounts to increasing or improving services by 5.60%—less than one-sixth of the district’s MPP obligation, amounting to a proportionality shortfall of 29.88%.⁶⁷ This unmet assurance to use S&C funds to increase or improve services for high-need students must be carried over to the following fiscal year. However, the district did not reference this shortfall in its 2019–20 annual update, nor attempt to make up the shortfall. Nevertheless, SBCOE approved SBCUSD’s 2019–20 LCAP, including its annual update.

Victor Valley Union High School District

In 2018–19, VVUHSD had an obligation to increase or improve services by 31.70% but did not quantitatively or qualitatively demonstrate an increase or improvement in service to this

⁶² This calculation was made by summing the 2018–19 LCFF funds allotted to 2018–19 actions in the GAS section that were designated as contributing to meeting the increased or improved services requirement.

⁶³ The district could have referenced the shortfall in the Analysis section when asked to describe the implementation of the prior year’s LCAP. The district then could have included additional actions and expenditures in their 2019–20 GAS section and demonstrated in the 2019–20 DIISUP how they qualitatively or quantitatively increased or improved services by the current year’s MPP and the prior year’s proportionality shortfall. For example, Hesperia had a 2019–20 MPP of 26.91% and a proportionality shortfall of 15.30% from 2018–19. In its 2019–20 LCAP, the district should have described how it planned to fulfill its total proportionality obligation by describing what increased or improved services it would provide in 2019–20 or subsequent years to make up for the one-time 15.30% MPP shortfall from 2018–19.

⁶⁴ *SBCUSD 19–20 LCAP*, *supra* note 20, at 119–20 (Ex. 6.).

⁶⁵ *Id.*

⁶⁶ SBCUSD identified that it spent \$21.5 million in actions that contributed to the increased or improved services requirement in 2018–19. See *SBCUSD 19–20 LCAP*, *supra* note 20, at 14–69 (Ex. 6). It is possible that SBCUSD meant to include all of the actions described in the annual update as contributing to the increased or improved services requirement. Even if this is the case, the district still failed to explain how over \$6.9 million of 2018–19 S&C funds contribute to increasing or improving services for unduplicated pupils.

⁶⁷ The quantitative demonstration of increased or improved services (5.56%) is calculated by dividing the \$21.5 million of 2018–19 S&C funds used to increase or improve services by the 2018–19 base funding the district received (\$383.5 million). The proportionality shortfall of 29.91% is calculated by subtracting 5.56% from 35.47% (the district’s 2018–19 MPP).

degree.⁶⁸ In its DIISUP, the district acknowledges it budgeted only a fifth (\$5.5 million) of its S&C funds in its GAS section and explains that it budgeted an additional \$5.3 million⁶⁹ of its S&C funds on actions not reflected in the GAS section that nonetheless contributed to the increased or improved services requirement.⁷⁰ As discussed above, these actions should not be counted towards the district's minimum proportionality obligation because VVUHSD failed to disclose, track, or justify these funds over time in the LCAP as "contributing" toward the increased/improved requirement for high-need students.

Nonetheless, even assuming these actions could be counted towards the MPP requirement, VVUHSD still fails to meet its minimum obligations. Quantitatively, summing the S&C funds referenced in the GAS section (\$5.5 million) and the DIISUP (\$5.3 million), the district demonstrates (albeit improperly and imperfectly) at most a 12.28% increase or improvement in services, which is just two-fifths of its MPP obligation. To comply with the supplemental and concentration grant requirements, VVUHSD should have referenced this shortfall in its LCAP and carried forward at least the \$17 million proportionality shortfall, if not more, to its 2019–20 actions and services.⁷¹ Moreover, SBCOE should not have approved VVUHSD's LCAP until it had done so.

Former Governor Jerry Brown, who championed LCFF during his tenure and signed it into law, famously stated: "Equal treatment for children in unequal situations is not justice."⁷² Allowing material proportionality shortfalls to continue unchecked is essentially allowing LEAs to provide equal treatment for children in unequal situations, which invariably harms the students who are already grappling with the greatest challenges.⁷³ As inequities have grown during the COVID pandemic, it is more important than ever to ensure that districts use scarce funding equitably and justly as the law requires. Ensuring that districts fulfill the proportionality requirement by accounting for shortfalls and carrying over the obligation to increase or improve services for high-need students is a critical way to achieve justice for the low-income students of color who have been hit the hardest by the pandemic.

⁶⁸ Calculated by dividing 2018–19 S&C funds allocated to VVUHSD by the base funds VVUHSD received that year; *see also VVUHSD 19–20 LCAP*, *supra* note 20, at 273 (Ex. 8) (listing MPP as 31.29%).

⁶⁹ This number is calculated by summing the expenditures identified in the 2018–19 DIISUP that purportedly also "directly impact[] that supplementary and concentration grant funding." *Id.* at 273–76.

⁷⁰ *Id.*

⁷¹ This number is calculated by subtracting \$10.9 million of 2018–19 S&C funds designated as increasing or improving services from the total \$27.8 million 2018–19 S&C funds the district received. LCFF Funding Snapshot, 2018–19, <https://ias.cde.ca.gov/lcffsnapshot/lcff.aspx>.

⁷² *See* Valerie Strauss, *California's Gov. Brown Blasts State, Federal Education Policy*, WASH. POST (Jan. 24, 2013), <https://www.washingtonpost.com/news/answer-sheet/wp/2013/01/24/californias-gov-brown-blasts-state-federal-education-policy/#:~:text=Jerry%20Brown%20smacked%20state%20and%20federal%20education%20policy,issues%20and%20saying%2C%20E2%80%9CI%20would%20prefer%20to%20>.

⁷³ Emma Dorn et al., *COVID-19 and Student Learning in the United States: The Hurt Could Last a Lifetime*, MCKINSEY & CO. (June 1, 2020), <https://www.mckinsey.com/industries/public-sector/our-insights/covid-19-and-student-learning-in-the-united-states-the-hurt-could-last-a-lifetime#> (finding that learning loss resulting from the pandemic will likely be greatest among low-income, Black and Hispanic students).

V. 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

An action or service only counts towards an LEA's proportionality obligation if it increases or improves services for high-need students. LEAs may increase or improve services in two ways: (1) provide services limited to high-need student groups (e.g., bilingual aides for English learners or specialized counselors dedicated to supporting foster youth) or (2) districtwide or school services available to all students that are designed with the goal of addressing the needs of high-need students and closing opportunity gaps (e.g., counselors beyond the norm-allocated ratio at high-need schools or restorative justice programs proven to reduce discipline gaps for high-need students).⁷⁴

As the CDE has held in numerous decisions, “[s]imply stating that a district has a high enrollment of [intended student groups] does not meet this standard [to increase or improve services] because serving students is not the same as enrolling students.”⁷⁵ Instead, an LEA must describe in its LCAP for each districtwide or schoolwide action “how it considered factors such as the needs, conditions, or circumstances of its [intended student groups], and how the service takes these factors into consideration (such as, by the service’s design, content, methods, or location).”⁷⁶ In addition, LEAs must demonstrate “effectiveness” by explaining in a non-conclusory manner how the action/service will help the LEA achieve one or more of the expected outcomes for the goal.⁷⁷ The LEA is also required to demonstrate in the Annual Update after implementation that the contributing actions or services are actually working to improve outcomes for high-need students.⁷⁸

If an LEA fails to describe adequately how a districtwide or schoolwide action is principally directed and, separately, how it is effective, then those actions cannot be counted towards the increased or improved services requirement.⁷⁹ 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.⁸⁰ If an LEA has not made the required

⁷⁴ See Nicole Gon Ochi, et al., OUR RIGHT TO RESOURCES: SCHOOL DISTRICTS ARE CHEATING STUDENTS TO FUND LAW ENFORCEMENT 13 (2020) [hereinafter OUR RIGHT TO RESOURCES] (for a graphic representation of LCFF’s equity rules).

⁷⁵ CALIFORNIA STATE AUDITOR, *K–12 Local Control Funding*, Rep. 2019-101, at 23 (Nov. 2019), <http://www.auditor.ca.gov/pdfs/reports/2019-101.pdf>.

⁷⁶ *Id.*

⁷⁷ See *id.*

⁷⁸ See *LCAP Template*, *supra* note 17 (Ex. 5).

⁷⁹ See, e.g., May 2017 CDE Fresno Unified School District Decision, *supra* note 37, at 14 (“[T]he district must exclude any such services [that cannot be described and justified as principally directed and effective] from services that contribute to meeting the requirement to increase or improve services for unduplicated pupils over services provided to all pupils in the LCAP year.”) (Ex. 11).

⁸⁰ CAL. CODE REGS. tit. 5, § 15497 (2020) (“In making the determinations required under Education Code section 52070(d)(3), the county superintendent of schools shall include review of any descriptions of districtwide or schoolwide services provided pursuant to sections 15496(b)(1) through (b)(4) when determining whether the school district has fully demonstrated that it will increase or improve services for unduplicated pupils pursuant to section 15496(a). If a county superintendent of schools does not approve an LCAP because the school district has failed to meet its requirement to increase or improve services for unduplicated pupils as specified in this section, it shall

demonstration for a particular action, that action must be removed from the proportionality calculation, and the County Superintendent must provide technical assistance to correct the error—i.e., supporting the LEA to identify actions that actually increase or improve services for high-need students.⁸¹

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. As such, SBCOE allowed the LEAs to count millions of dollars towards the proportionality requirement that did not actually increase or improve services for high-need students. SBCOE’s negligence has cheated high-need students in San Bernardino County of the services that they need to achieve their full potential. Most egregiously, 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.⁸² In fact, evidence shows that the presence of law enforcement on school campuses disproportionately harms the high-need students of color who are supposed to benefit from S&C funds under LCFF.⁸³ The following examples are illustrative; further details are available in Exhibit 17, TABLE 1: Selected LCAPs Approved by SBCOE that Improperly Include Law Enforcement Actions as Contributing to the District’s Proportionality Requirement.

Hesperia Unified School District

HUSD’s 19–20 LCAP included millions of dollars in districtwide spending on school police officers and campus assistants as contributing to the increased and improved services requirement. However, the description of this action states that school police are designed to “provide greater securing [sic] to *all students*,” which is the opposite of principally directed and precisely the kind of expenditure that CDE has found to be an inappropriate use of S&C funds.⁸⁴

provide technical assistance to the school district in meeting that requirement pursuant to Education Code section 52071.”).

⁸¹ See May 2017 CDE Fresno Unified School District Decision, *supra* note 37, at 14 (Ex. 11).

⁸² See, e.g., ALEXIS STERN & ANTHONY PETROSINO, WHAT DO WE KNOW ABOUT THE EFFECT OF SCHOOL-BASED LAW ENFORCEMENT ON SCHOOL SAFETY? 2 (WestEd, 2018), <https://www.wested.org/wp-content/uploads/2018/04/JPRC-Police-Schools-Brief.pdf> (“There is no conclusive evidence that the presence of school-based law enforcement has a positive effect on students’ perceptions of safety in schools.”); AARON KUPCHIK, SUMMIT ON SCHOOL POLICING: RESEARCH ON THE IMPACT OF SCHOOL POLICE, (End Zero Tolerance, 2019), <https://drive.google.com/file/d/1yXBHTRHRRy0VaPm7zcLi1PL04rcpnou/view?usp=sharing> (“Scholars studying student behavior have found that students are less likely to misbehave, including criminal behavior, in schools with inclusive social climates . . . a number of qualitative studies have found that the presence of SROs can make schools less inclusive social climates in subtle ways.”); Emily K. Weisburst, *Patrolling Public Schools: The Impact of Funding for School Police on Student Discipline and Long-Term Education Outcomes*, U. OF TEXAS AUSTIN EDUC. RES. CTR. 3 (2018), <https://texaserc.utexas.edu/wp-content/uploads/2018/11/21-UTA034-Brief-BPCAB-11.1.18.pdf> (“Police presence may create an adversarial school culture and alter the experience of attending school.”); OUR RIGHT TO RESOURCES, *supra* note 74, at 26.

⁸³ OUR RIGHT TO RESOURCES, *supra* note 74, at 26–27.

⁸⁴ HUSD 19–20 LCAP, *supra* note 20, at 103 (Ex. 7). See May 2017 CDE Fresno Decision at 13 (holding that Fresno’s school site security expenditure did not contribute to the increased/improved services requirement because

In addition, HUSD makes no attempt to analyze effectiveness.⁸⁵ The only outcome referenced in the description is “greater securing” or greater safety. However, the LCAP does not include any annual measurable outcome that tracks safety or perceptions of safety⁸⁶ and there is no explanation for how school police will make campuses safer for high-need students—in fact, all the research suggests that the opposite is true.⁸⁷ Accordingly, this action should not be counted as contributing to the increased and improved services requirement, and SBCOE should not have approved an LCAP with such obviously deficient descriptions for districtwide services.

If SBCOE had identified this glaring LCAP deficiency, it could have guided the district to reduce its investments in law enforcement and instead hire more counselors and social workers in HUSD, which currently has three times the recommended student to counselor ratio (754:1 compared to 250:1) and nearly 100 times the recommended student to social worker ratio (24,000:1 compared to 250:1).⁸⁸ Research consistently shows that increasing school-based mental health supports is effective in increasing academic outcomes, whereas placing law enforcement in schools does not provide any benefits to students, and indeed harms them.⁸⁹

Chaffey Joint Union High School District

In its 2019–20 LCAP, Chaffey Joint Union High School District (“CJUHS”) counts more than \$6 million in campus security resources, including contracts with local law enforcement agencies, as contributing to the increased or improved services requirement.⁹⁰ This is a nineteen-fold increase from 2017–18 and constitutes more than one-sixth of CJUHS’s total apportionment of supplemental and concentration grants.⁹¹ Yet, the district completely omits this action from its DIISUP and does not provide any explanation for how these services are either principally directed or effective at meeting its goals for high-need students.⁹² In fact, this sharp increase in spending on law enforcement correlates with an acute increase in suspension rates of foster youth, which are more than 5 times the suspension rate of all students.⁹³ Suspension rates for Black students, multi-racial students, and Pacific Islanders also increased, with all of these subgroups placing in the orange performance level compared to the green level for all students.⁹⁴ SBCOE approved this exponential increase in law enforcement spending as an increased or improved service even though the district did not even attempt to justify it and the

it was not clear how security investments were directed towards meeting the needs of unduplicated pupils, as opposed to all students) (Ex. 11).

⁸⁵ *Id.* at 102–05.

⁸⁶ *Id.* at 29–31.

⁸⁷ *See supra* note 82 (collected research).

⁸⁸ OUR RIGHT TO RESOURCES, *supra* note 74, at 27.

⁸⁹ *Id.* at p. 34–37.

⁹⁰ *See* Chaffey Joint Union High School District 2019–20 LCAP, at 143–44 (Action 3.12 – \$5.4 million in law enforcement contracts), 146 (Action 3.14 – \$692,500 in security cameras and LobbyGuard) [hereinafter *CJUHS 19–20 LCAP*] (Ex. 9).

⁹¹ *Id.* at 143–44 (expenditures on campus security resources, including contracts with law enforcement agencies, grew exponentially from \$283,000 in 2017–18 to \$5.4 million in 2019–20). *See also* Cal. Dep’t of Educ., LCFF Summary Data, 2019–20 Second Principal (P-2) Apportionment, *supra* note 12 (the sum of supplemental and concentration funds is approximately \$35 million) (Ex. 4).

⁹² *See CJUHS 19–20 LCAP, supra* note 90, at 165–66 (Ex. 9).

⁹³ *Id.* at 11 (noting that suspension rates for foster youth was 22.4%, whereas the overall suspension rate was 4.4%), 127.

⁹⁴ *Id.* at 11, 14, 127.

data clearly shows that this action has been exceedingly ineffective.⁹⁵ In doing so, SBCOE deprived high-need CJUHSD students of services that could actually support them and help them succeed. For example, CJUHSD spends only a very small fraction of its supplemental and concentration grants on Positive Behavior Interventions and Supports and restorative justice programs (approximately \$219,000),⁹⁶ which are proven to close opportunity and discipline gaps for high-need students.⁹⁷ SBCOE is responsible for preventing districts like CJUHSD from directing millions of dollars in proportionality efforts on harmful, ineffective programs and to support them in investing more in positive student supports or other services that are proven to work for high-need students.

Apple Valley Unified School District

Apple Valley's 2019–20 LCAP counted more than \$5 million in districtwide security measures, including law enforcement, as contributing to the increased and improved services requirement.⁹⁸ Apple Valley did not even attempt to describe how this action is either principally directed or effective,⁹⁹ yet SBCOE approved its LCAP with this entirely unjustified expenditure. Moreover, Apple Valley's own data demonstrates that this action has been unsuccessful in meeting the intended goal of closing the discipline gap for Black students and students with disabilities.¹⁰⁰ Although overall suspension rates have declined, Black students are still suspended at more than twice the rate of all students—which is exactly the same disparity revealed by baseline data.¹⁰¹ SBCOE should not have approved this LCAP; instead, it should have intervened and provided technical assistance to support Apple Valley in making different investments that actually increase and improve services for high-need students.

Allowing districts to count police as contributing to their increased and improved services requirement diverts critical funding and effort from services that are proven to close opportunity gaps for high-need students. Law enforcement measures have not been shown to result in increased student engagement, higher student outcomes, or improved school climate—not by districts in San Bernardino County nor elsewhere¹⁰²—but they have instead correlated with increases in school discipline and poorer academic achievement, particularly for high-need students and students of color.¹⁰³ It is perverse to allow these actions to count towards the

⁹⁵ *Id.* at 165–66 (DIISUP section completely omits law enforcement and security actions); see OUR RIGHT TO RESOURCES, *supra* note 74, at p. 5 (“[As funding for law enforcement and security increased], suspension rates of Black students increased sharply in the district. Now at 9.2%, Black students are suspended at nearly 2.5 the rate of their white peers (3.8%).”).

⁹⁶ *CJUHSD 19–20 LCAP*, *supra* note 90, at 145 (Ex. 9).

⁹⁷ OUR RIGHT TO RESOURCES, *supra* note 74, at 38–40.

⁹⁸ Apple Valley Unified School District 2019–20 LCAP, at 113 [hereinafter *AVUSD 19–20 LCAP*] (Ex. 10).

⁹⁹ See *id.* at 131–33. Although there is an attempt, albeit insufficient, to justify Goal 4, Action 4 in the 2018–19 Demonstration section of the LCAP, there is no such attempt made in the 2019–20 Demonstration section. *Id.* at p. 130 (“Likewise, action 4 helps to provide a safe and orderly learning environment which is one of the seven correlates of the Effective Schools research.”).

¹⁰⁰ *Id.* at 105–07.

¹⁰¹ Compare *id.* at 105–07 (baseline suspension rate for all students was 7.2% for all students and 14.8% for Black students, which is more than double), with *id.* at 38–39 (2018–19 suspension rate for all students was 4.7% and suspension rate for Black students was 10.1%, which is more than double).

¹⁰² OUR RIGHT TO RESOURCES, *supra* note 74, at 25.

¹⁰³ *Id.* at 27–31; see also Benjamin Fisher & Emily Hennessy, *School Resource Officers and Exclusionary Discipline in U.S. High Schools: A Systematic Review and Meta-Analysis*, 1(3) ADOLESCENT RES. REV. 217, 228–29

increased and improved services requirement, especially when they come at the cost of positive student supports that are proven to close opportunity gaps for high-need students. These supports include school-based mental health and mental health staff, restorative justice, and positive behavior intervention and support, which all have been shown to improve student outcomes, make students feel safer, and lower rates of expulsion and suspension and incidents of physical conflict.¹⁰⁴

VI. Conclusion and Relief Requested

In sum, SBCOE has wholly failed to perform its legal obligations to review, provide technical assistance, and approve—only when compliant with the law—the LCAPs of the districts under its purview. SBCOE has violated the LCFF laws and regulations in three independent ways. First, SBCOE has not intervened when districts have failed to describe how they are fully meeting their obligations to increase and improve services for high-need students, thereby preventing community members from understanding their districts’ spending patterns and meaningfully participating in the LCAP and budget process. Second, SBCOE has failed to ensure that the districts it oversees address any material proportionality shortfalls and carry forward their unmet proportionality obligations to future years. In other words, SBCOE has allowed districts to shortchange high-need students by not fully and properly meeting their annual equity obligations and by failing to carry forward their unmet obligations, increasing the likelihood that any unused funds would be used to support base programs instead of high-need students. Finally, SBCOE has improperly allowed districts to satisfy their proportionality obligations on services that are neither principally directed nor effective in meeting the goals of high-need students, including by spending S&C funds on law enforcement. Each of these violations undermine the spirit and letter of LCFF and, taken together, represent a grievous disservice to San Bernardino’s high-need students and families.

For the forgoing reasons, SBCOE must approve the instant UCP complaint and immediately:

1. Seek technical assistance from CDE to develop and implement an LCAP review and approval process for the next regular three-year LCAP cycle and, as applicable, for any learning continuity and attendance plan for the 2020–21 school year, that ensures SBCOE identifies and corrects the deficiencies discussed above prior to approving any LCAP. The review and approval process shall include, but not be limited to the following:
 - a. Verification that MPP is demonstrated qualitatively or quantitatively in the DIISUP section or its equivalent.
 - b. Verification that the actions listed as contributing to the increased and improved services requirement meet the MPP when aggregated.

(2016) (Ex. 18); Joscha Legewie & Jeffrey Fagan, *Aggressive Policing and the Educational Performance of Minority Youth*, 84(2) AM. SOC. REV. 19, 220 (2018), <https://doi.org/10.1177/0003122419826020> (Ex. 19).

¹⁰⁴ See Richard T. Lapan et al., *Connecticut Professional School Counselors: College and Career Counseling Services and Smaller Ratios Benefit Students*, 16(2) PROF. SCH. COUNSELING 117–24 (2012) (Ex. 20); see also Susan C. Whiston et al., *School Counseling Outcome: A Meta-Analytic Examination of Interventions*, 89 J. OF COUNSELING & DEV. 37–55 (2010) (establishing a strong connection between comprehensive counseling programs and the reduction of suspension rates and student discipline in secondary schools) (Ex. 21).

- c. Identification of material proportionality shortfall in the Annual Update and verification that the district is redressing that shortfall in its LCAP's planned actions and services on top of the current year MPP.
 - d. Verification that each districtwide or schoolwide action listed as contributing to the increased and improved services requirement is justified as principally directed and effective, with particular scrutiny on law enforcement actions that presumptively fail both the "principally directed" and "effectiveness" requirements.
2. Review, at a minimum, the five 2019–20 LCAPs analyzed herein to clarify the deficiencies outlined above. Where law enforcement actions or other districtwide and schoolwide services are not principally directed and effective, but are improperly counted towards the proportionality requirement, require the districts to remove these actions and calculate any proportionality shortfalls. For all material identified proportionality shortfalls, ensure 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.

Respectfully submitted this 30th day of June 2020 by,



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