



November 1, 2013

Mike Kirst, President
California State Board of Education
1430 N Street, Suite 5111
Sacramento, CA 95814

Re: SBE November 2013 Agenda Item #13 - LCFF

Dear President Kirst:

On behalf of Public Advocates and the ACLU of California, we write to strongly urge the State Board of Education to pursue the one combined option presented within the “Conceptual Framework and Options for the Local Control Funding Formula (LCFF) Expenditure Regulations” that is consistent with the statutory mandate and, further, to offer recommendations for strengthening the Local Control and Accountability Plan (LCAP) Concept to ensure that the template aligns with the applicable statutes and maximizes the chances for successful implementation.

BACKGROUND

Our organizations, members and partners have been, and remain, supporters of the LCFF. We cheered Governor Brown when he touted the LCFF in his State of the State speech in January and proclaimed, “Equal treatment for children in unequal situations is not justice.” We stood by the Governor’s side literally and figuratively during the budget debates and right through the bill signing, fighting for the LCFF because by “strategically direct[ing] additional money above base funding to children with the greatest need – low-income students, English learners and foster youth,”¹ it promises greater educational opportunity for the children we have represented over the years.

The State Legislature entrusted you and your fellow Board Members with the task of adopting expenditure regulations and LCAP templates that fulfill the promise of the LCFF. In so doing, they established some minimum requirements for the templates and the regulations. Specifically, with respect to the expenditure of LCFF funds, *Education Code* § 42238.07 dictates that the regulations must include:

¹ Office of the Governor, Press Releases, April 24 & June 5, 2013.

- Provisions that “require a [local educational agency] 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 [local educational agency];” and
- Provisions that authorize a local educational agency to use funds apportioned on the basis of the number of unduplicated pupils for schoolwide, districtwide, countywide, or charterwide purposes, as applicable, “in a manner that is no more restrictive than the restrictions provided for in Title I of the federal No Child Left Behind Act of 2001.”

THE PROBLEM: THE DRAFT EXPENDITURE REGULATIONS PRESENTED IN ITEM #13 FAIL TO MEET THESE MINIMUM STATUTORY CRITERIA.

The draft regulations do not—as they must—require increases or improvements in services for unduplicated pupils in proportion to the increase in funds generated by these students and fail to meaningfully address the required schoolwide and districtwide provisions.² Instead, the draft regulations authorize such unbounded discretion that local educational agencies (LEAs) are free NOT to proportionately increase or improve services for high-need students. Indeed, LEAs may choose under some options to use some or all of their supplemental and concentration funds on students who are not high-need at all.

The most glaring deficiencies are further elucidated as follows:

- The requirement of proportional spending on high need students in § 42238.07 applies to ALL funds, including base funding because base funds, like supplemental grants, are also “apportioned on the basis of the number...of unduplicated pupils.” Yet, there is no application of the proportionality principle to base funding in the proposed regulations. Nor is there, for example, any corresponding distinction between core services supported with base funding and supplemental services for high need students supported with supplemental and concentration grants.³ Consequently, **LEAs would be free to spend their base funding disproportionately on non-needy students and use their supplemental and concentration dollars to provide merely the basic, core services to high need students.** Core programs should be funded out of base dollars and should flow in equal measure to all students. The regulations should make clear that LEAs must also proportionally spend their base dollars on high need students as statutorily required.
- The “provide more” option is delinked from the “spend more” option. As a result, LEAs could “spend more” on high need students without actually “increas[ing] or improv[ing] services” for them as required by the statute. Conversely, LEAs could satisfy the

² “Unduplicated pupils” include low-income students, English Learners, and foster youth as defined in *Education Code* § 42238.01 and are also collectively referred to herein as “high-need students.”

³ This concept was present in the September version of the draft regulations shared with the Implementation Working Group but was dropped from the latest iteration despite the statutory requirement compelling its inclusion.

“provide more” option’s proportionality requirement by offering high need students any additional level of new service, no matter how small or how far below the increase in supplemental and concentration funding levels. **As discussed below, the only viable option consistent with the statute is to combine these two approaches.**

- Most strikingly, the “achieve more” option in draft regulation § XXX3(a)(3) and the associated example illogically suggest that a retrospective examination of local achievement data can demonstrate that a local educational agency is going to proportionally increase or improve services for unduplicated pupils in the upcoming fiscal year(s). This option does not even purport to govern the expenditure of funds as required by § 42238.07 and therefore has no place in the expenditure regulations.

Moreover, despite its attractive title, the “achieve more” option fails to clarify if it would involve any commitment to achieve more in future years and/or how a proportionate increase would be determined. Based on the example provided, the option can be read to allow a district that has experienced what it deems “significant” growth over the last two years in one local measurement of achievement for a single group of unduplicated students (e.g., an improved graduation rate for foster youth) complete freedom to spend its supplemental and concentration dollars on anything (e.g., a new football stadium or a general salary increase) and not increase or improve services for unduplicated students at all. In other words, “achieve more” could actually exacerbate existing achievement gaps by allowing funds generated by high-need students to be diverted.⁴

- As noted above, the proposed regulations also fail to set any standards regarding the proper schoolwide, districtwide, countywide, or charterwide uses of supplemental grants as required. Instead, the draft renders the statutory language a nullity by completely delegating application of *Education Code* § 42238.07(a)(2) to the LEAs themselves. Moreover, in the course of this abdication, the regulations fail to fully clarify that the provision authorizing the schoolwide/districtwide use of funds applies only to supplemental and not concentration grants. *See id.* (entity-wide provision applies to “funds apportioned on the basis of the number of unduplicated pupils” not those apportioned based on pupil concentration).

The proposed regulations appear to be implementing the version of weighted student funding initially proposed by the Administration in its January 2012 budget. In that proposal, weighted funds were allocated to districts based on their high-need student populations but no fiscal

⁴ Note, the overarching LCFE statutory structure posits that high-need students will achieve more as a result of LEAs exercising substantial discretion to establish goals within the eight State priority areas and then pursuing those goals by “providing more” to high need students by “spending more” on them. The expenditure regulations at issue address the *latter* component in this overarching structure—the proportionate increase in services for high need students—not achievement objectives. Achievement objectives—and interventions where they fall short—properly belong in the LCAP and the evaluation rubrics. *See* EC § 42238.07 (calling for regulations to “*that govern the expenditure of funds* appropriated on the basis of the number and concentration of unduplicated pupils”).

accountability existed. Rather, LEA dollars were to be “completely flexible for use in supporting any locally determined educational purpose.”⁵ That approach, however, did not ultimately prevail. Instead, it was met with significant resistance from civil rights and other advocacy groups as well as from the Legislature. SB 69 introduced by the Senate leadership in May of this year as a counterpoint to the Governor’s proposal, for example, included “[p]rovisions that ensure that supplemental funds generated by low income, English Learner, and foster students are used to *improve services to those students, and not to supplant existing resources* dedicated to them.”⁶ The final compromise solution incorporated such concepts, resulting in the proportional spending provision set forth in § 42238.07.

As noted in the Assembly LCFF bill analysis (in part quoting the Administration’s rationale):

“Scholarly research and practical experience indicate that low-income students, foster children, and English learners come to school with unique challenges and often require supplemental instruction and other support in order to be successful in school. These challenges are most extreme in communities with high concentrations of poverty and non-English speakers’ . . . The LCFF ensures a uniform base grant for all students *and provides local educational agencies with supplemental funding to support students that come to school with additional needs.*”⁷

Having participated in the LCFF Implementation Working Group, we anticipated that the Board might be asked to consider regulatory options which we would consider too weak. However, we presumed all options presented for consideration would at least fall within the scope of the Board’s discretion under the *Education Code* § 42238.07 and its mandate to ensure expenditures are proportionally used to support heightened services for high-need students.

THE SOLUTION: SPEND MORE TO PROVIDE MORE TO ACHIEVE MORE

Fortunately, a solution that fulfills the LCFF’s dual promises of greater equity and greater local control and meets the statutory requirements can be fashioned from elements already within the conceptual framework.

The theory of change set forth in § 42238.07(a)(1)—and which must be adhered to by the regulations called for therein—is that LEAs must provide more services to high need students by spending more on them. **Thus, the statutory charge to the State Board of Education requires a regulatory approach that marries the “Spend More” and “Provide More” options set forth in draft regulation § XXX3(a) as the statute calls for the provision of additional or**

⁵ Governor’s Budget Summary – 2012-13 (January 2012) at 139-140.

⁶ Senate Approach to the Administration’s Proposed “Local Control Funding Formula” (May 23, 2013) at 4 (emphasis in the original).

⁷ Assembly Bill Analysis of AB 97 (June 14, 2013) at 11-12 (emphasis added).

improved services to high need students as measured by increases in funding levels.

Specifically, LEAs must “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.” The proportional increase or improvement in services is defined explicitly in terms of dollars.

A spend/provide more approach would simply ask every LEA to locally determine the components and costs of base/core services that are provided to all students and then use the LCAP to detail how services will be increased or improved for unduplicated students using the increase in funds generated by these students.⁸ Unlike, for example, the mandatory class size reduction targets in the LCFF, this approach would not impose any specific prescriptions for how a LEA should pursue its goals for unduplicated pupils within the eight state priorities. LEAs would have unfettered discretion regarding the types of programs and services to provide.

Furthermore, the spend/provide more approach would in no way require dollars to follow individual students or restrict the benefits of the increased or improved programs and services to unduplicated pupils exclusively. In many instances services could be focused on particular schools or districtwide programs that LEAs determine would provide the greatest benefit to unduplicated students. The Board is charged with establishing appropriate thresholds for schoolwide and districtwide programs funded with supplemental grants to allow for services that would predominantly, but not exclusively, benefit unduplicated students. These thresholds could be supplemented with a provision that provides even greater flexibility if an LEA can demonstrate to the satisfaction of local stakeholders and the agency reviewing its LCAP that even where these thresholds are not met, a broadly provided service is critical to supporting its unduplicated students.

THE LOCAL CONTROL AND ACCOUNTABILITY PLAN CONCEPT AND TEMPLATES

The format of the LCAP concept described in Item # 13 makes it somewhat difficult to evaluate, but there are critical pieces missing that must be included in the template to fulfill the applicable statutory requirements that are designed to ensure meaningful and effective local implementation of the LCFF across California. Accordingly, we strongly urge you and your fellow Board members to direct that the template presented for your approval in January or March 2014 include these essential elements:

Goals

- In each state and local priority area, consistent with the plain language of *Education Code* §§ 52060 and 52066, the LCAP instructions should provide a roadmap for establishing a three-year plan with annual **LEA- and school-level goals** for all students and each required subgroup of students. The template should guide LEAs through a series of

⁸ The increase in funds would be calculated by taking an LEA’s base year expenditures on unduplicated students + (the LEA’s Supplemental/Concentration Funding Target x this year’s total % increase toward full LCFF Funding Target).

questions to ensure that they have determined a baseline for each locally-determined goal, including both quantitative and qualitative information, and have set rigorous performance targets and related growth benchmarks, including targets for closing achievement gaps for numerically significant subgroups where applicable. LEAs should be prompted to consider whether additional disaggregation would be helpful in identifying and addressing the unique needs of student subgroups not set forth in statute, such as gender subgroups within each racial/ethnic subgroup, long-term English learners, and pregnant and parenting students.

Actions/Services

- The actions/services section of the LCAP must include the “specific actions the [LEA] will take during each year of the local control and accountability plan to achieve the goals identified” in the goals section, including the LEA- and school-level goals and the goals specific to each required subgroup of students. (*Education Code* §§ 52060 and 52066.) The LCAP content description in Item #13 neglects to make this required link and suggests that actions/services should be organized by recipients. The LCFF statutes clearly set forth a basic framework for LCAPs that include disaggregated goals under each priority, planned actions for meeting these goals, and a listing and description of the planned expenditures for each fiscal year implementing the specific actions. The template must remain faithful to this architecture.

Apart from the statutory requirements, we recommend that the guidance in this section include references to research on best practices, including programs and strategies that are specific to each student subgroup. The template also should include a recommended timeline for the required annual assessments of progress toward the LCAP goals and the effectiveness of the specific actions.

Expenditures

- The budget information section of the template needs to clearly convey that LCAPs and annual updates must include a listing and description of the planned expenditures for the fiscal year implementing the specific LEA-wide and school-level actions and the planned expenditures for the fiscal year that will serve the “unduplicated” students and students redesignated as fluent English proficient. (*Education Code* §§ 52061, 52064 and 52067.) The instructions also must provide for clear and consistent reporting across all LEAs to enable county offices of education and the California Department of Education to determine if the planned expenditures align with the expenditure regulations, the adopted budgets, and the proposed LEA- and school-level goals and actions. For example, *Education Code* §§ 52061 and 52067 require that the planned expenditures be classified using the California School Accounting Manual.

Additional Recommendations

- The LCAP template should include a dashboard/short-form/executive summary component that ensures all LEAs provide essential information in the state priority areas

in a form that is accessible to parents and community members. The instructions should remind LEAs of existing translation requirements and how they foster more comprehensive and meaningful community engagement.

- The LCAP should minimize duplication of effort and support consistent and coherent planning within each LEA by identifying and incorporating the relevant federal and state programmatic, reporting, and data requirements in each state priority area. For example, instructions should indicate where to include information required under Title III, as reflected in *Education Code* § 443, and call for a description of how the LEA confirms that English learners received appropriate programs and services.
- The LCAP template should clarify that LEAs will need to include the actual data that they use to establish goals under the state and local priorities. A LCAP that merely describes the type of data used, explains that certain analysis was completed, and concludes that relevant data was addressed would not provide the kind of transparency that an effective LCFF process requires. Indeed, for several state priorities, it does not appear possible for districts to set meaningful goals without including specific data in the LCAP itself, e.g., setting a goal of reducing suspension rates by 5% will be of no utility and will not allow meaningful accountability if the LCAP does not specify the current suspension rates. Accordingly, the LCAP template should include space for any specific data that LEAs use in establishing goals and assessing progress toward those goals.

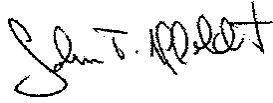
CONCLUSION

When the Legislature chose to empower the State Board of Education to develop the accountability regulations and templates within some relatively broad parameters, it fell to you to ensure that the LCFF’s promise is fulfilled and that the educational needs of children drive how funding and resources are allocated, not just among districts, but among those most local of educational agencies, our children’s schools. Whether the promise that California’s high-need students will receive additional support is to be realized currently lies in your hands.

In other words, the Board faces the daunting task of establishing “the mix of incentives, supports, and accountability mechanisms [that] will ensure that dollars allocated equitably from the state to local districts are in turn spent wisely by local districts to boost performance especially among the neediest students and schools.”⁹ As you consider the appropriate ingredients for this mix, we urge you to consider the statutory parameters and the potential solution we pose above and to reject those options inconsistent with your statutory mandate.

⁹ Bersin, Alan, Michael W. Kirst, and Goodwin Liu. 2008. *Getting Beyond the Facts: Reforming California School Finance*. Issue Brief. Chief Justice Earl Warren Institute on Race, Ethnicity, and Diversity, University of California, Berkeley School of Law.

Sincerely,



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