



June 6, 2014

Superintendent John Deasy
Los Angeles Unified School District
333 S. Beaudry Ave.
Los Angeles, CA 90017
Via email: john.deasy@lausd.net

Comments re: Proposed LAUSD LCAP & Proportionality Computation for High Need Students

Superintendent Deasy:

We appreciate the transparency with which Los Angeles Unified has approached review of its draft Local Control Accountability Plan (LCAP) and your sensitivity to many community concerns. On behalf of Public Advocates and the ACLU of California, we raise a major concern regarding the district's improper inclusion of special education funding as part of its estimate of prior year (FY 2013-14) services for unduplicated pupils. This action has resulted in a significant under-calculation of the funds allocated to "increase or improve services for unduplicated pupils" in the district's LCAP.

Specifically, the district's proportionality calculation under the emergency regulations adopted by the State Board in January (Title 5 C.C.R. § 15496) is flawed due to your inclusion of \$450 million in special education spending as part of the \$700 million in prior year services for unduplicated pupils. By our rough calculation, the district's flawed proportionality approach results in LAUSD under-calculating the amount by which it must increase or improve services for high need students by \$100-\$127 million in 2014-15 alone and promises to repeat that error for every future year LCFF remains in place. **We urge you and the Board to correct this error immediately and certainly prior to adoption of the LCAP at the end of June.**

By more than doubling what the district spent last year on high need students, LAUSD is able to significantly overstate how far it has progressed toward its ultimate full implementation target for Supplemental and Concentration spending and, thereby, greatly reduce the size of the step the district actually needs to take this year toward that target. Special education dollars simply do not belong in the calculation of prior year services provided to unduplicated pupils over and above what was provided to all pupils. Under 5 C.C.R. § 15496(a)(2), funds expended on prior year services are only those that are "in addition to what was expended on services provided for all pupils." All pupils are potentially able to take advantage of special education services. All pupils are able to request an IEP to seek services, and all who qualify must be provided special education services regardless of unduplicated pupil status. This is quite unlike the former Economic Impact Aid program, the example and minimum baseline referenced in

§ 15496(a)(2), which, as you know, was a program targeted exclusively to low-income and English learner students.¹

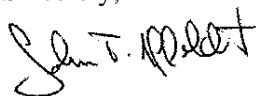
Merely backfilling the district's general fund spending on legally required special education services with Supplemental and Concentration dollars does not result in any new "increase or improve[ment]" in services or "upgrade" to the district's educational program. To the contrary, the district has long been required to make special education services generally available to its student population and any decision not to provide these services or to make them available only to targeted "high need" student populations would subject the district to significant liability.

As noted, by our calculations, with the \$450 million in special education spending properly excluded from the calculation of prior year services in the regulations' proportionality formula (at step (a)(2) of § 15496), the total Supplemental and Concentration funding the district should be expending to increase or improve services in 2014-15 is at least \$237 million, not \$137 million, (as determined by step (a)(5) of § 15496) (and may be as much as \$264 million). The district's budget and LCAP materials indicate elsewhere that the district is planning to spend some \$2.9 billion in unspecified "other base program" expenditures in 2014-15. The additional \$100 million in Supplemental and Concentration funds will likely need to come from this portion of the district's budget, to ensure compliance with the LCFF proportionality provision and expenditure regulations. Without more specificity regarding that portion of the district's budget, it is not possible to say more at this time.

We have met with district staff to express these concerns and have been promised additional information to justify the current district approach. To date, no additional information has been received and the time for LCAP approval is fast approaching. Thus, we have had to voice these concerns formally and as part of the public comment process on the district's draft LCAP. We respectfully request that you remove the \$450 million in special education expenditures from the proposed calculation of prior year services for unduplicated pupils and that you increase the proposed Supplemental and Concentration spending for 2014-15 accordingly. Should the district not do so, we will consider any and all means to ensure compliance with the law.

Thank you for your attention to this matter. We remain available to discuss this concern at your earliest convenience.

Sincerely,



John Affeldt
Managing Attorney & Education Program Director
Public Advocates, Inc.
131 Steuart Street, Suite 300
San Francisco, CA 94105-1241
(415) 431-7430 / jaffeldt@publicadvocates.org



David Sapp
Director of Education Advocacy/Legal Counsel
ACLU of Southern California
1313 West Eighth Street
Los Angeles, CA 90017-9639
(213) 977-5220 / dsapp@aclu-sc.org

¹ To the extent the district is suggesting that any service which does not reach "all," *i.e.*, 100%, of your students is somehow eligible for consideration as a prior year service—a portion of which can then be assigned to unduplicated pupils—the notion must be rejected as not only in conflict with the statute and regulations but as leading to absurd results. Under that approach, a huge and obviously over-inclusive portion of a district's general education services would qualify for treatment as a "prior year" unduplicated pupil service; many district programs are open to all but serve only a portion of students including, for example, summer school, after school, counseling, and health services to name a few.

cc: Members, LAUSD Board of Education
 Sylvia Rousseau, District 1 Board Liason
 Dave Holmquist, LAUSD General Counsel
 Olivia Fuente, LA County Office of Education
 Marlene Dunn, LA County Office of Education
 Karen Stapf Walters, Executive Director, California State Board of Education
 Judy Cias, Chief Counsel, California State Board of Education