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**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES**

COMMUNITY COALITION OF SOUTH LOS  
ANGELES and REYNA FRIAS,

Petitioners/Plaintiffs,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT;  
RAMON C. CORTINES, in his official capacity as  
Superintendent of the Los Angeles Unified School  
District; and ARTURO DELGADO, in his official  
capacity as the Los Angeles County Superintendent  
of Schools,

Respondents/Defendants.

**CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court**

JUL 01 2015

Sherri R. Carter, Executive Officer/Clerk  
By: Moses Soto, Deputy

D-82

Luis A.  
LAVIN

CASE NO. **BS 156259**

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

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1 **INTRODUCTION**

2 1. “Equal treatment for children in unequal situations is not justice.” Gov. Brown Jan. 24,  
3 2013 State of the State Speech. Governor Brown’s proposal for California to adopt the Local Control  
4 Funding Formula (“LCFF”) reflects the recognition that a just educational system must acknowledge  
5 differences among the student population, identify those youth most at risk, and systematically address  
6 the needs of at-risk youth to improve their chance for success.

7 2. Enacted on July 1, 2013, LCFF is California’s new education finance system. Compared  
8 to the former system, it is intended to redirect a much greater portion of the state’s education dollars to  
9 high-need students, including a significant portion of the \$18 billion in new funds expected to come into  
10 the system as a result of an improving economy and Proposition 30’s temporary tax increases.

11 3. The Los Angeles Unified School District (“LAUSD”) is undermining LCFF’s promise of  
12 ensuring greater educational equity by diverting money under the new formula that should be used to  
13 increase or improve services for high-need students to other, general purposes.

14 4. In enacting LCFF, the legislature recognized that low-income students, foster youth and  
15 English language learners are among the most vulnerable students, and that these students face unique  
16 challenges based on their circumstances. LCFF provides a uniform “base” grant to all school districts  
17 for each student enrolled in the district. LCFF also provides a “supplemental grant” for each student  
18 who falls under one or more of these categories, and, when the overall percentage of enrollment of these  
19 high-need students in the district equals or exceeds 55%, an additional “concentration grant” for each  
20 such student over that 55% threshold. LCFF refers to low-income, foster youth and English language  
21 learners as “unduplicated pupils” because each pupil is counted only once for purposes of the LCFF  
22 funding scheme, even if the pupil falls into two or more of the qualifying categories (*e.g.*, if the pupil is  
23 both a foster youth and an English language learner).

24 5. The statute requires that districts use the supplemental and concentration funds to  
25 “increase or improve services” for these high-need student groups “in proportion to” the overall increase  
26 in the district’s funding attributable to those funding streams post-enactment. Educ. Code §  
27 42238.07(a)(1).

1           6.       The State Board of Education enacted regulations to implement LCFF. Among other  
2 things, the regulations created a uniform standard for districts to follow to define their obligation to  
3 proportionally increase or improve services for unduplicated pupils. With respect to the supplemental  
4 and concentration funds, the regulations created a seven-step formula to calculate the total amount of  
5 funds and the percentage target for increasing or improving services; the formula applies uniformly even  
6 though districts began from different state funding starting points relative to what they will ultimately  
7 receive under LCFF's new statutory formula. *See* 5 C.C.R. § 15496(a).

8           7.       The transition to fully funding LCFF's base grants and the supplemental and  
9 concentration add-ons began in fiscal year 2013-14 and is predicted to reach completion in 2020-21,  
10 when districts will receive their full target amount of base, supplemental and concentration funding  
11 based on their overall enrollment. Until then, districts will only receive a portion of the funds that they  
12 will be entitled to at full implementation. Over the course of this phase-in, districts must use the seven-  
13 step formula to determine how much supplemental and concentration funds they must spend in a given  
14 year. Under the formula, this calculation of supplemental and concentration expenditures is based in  
15 part on what the district already spends on services for unduplicated pupils.

16           8.       Most significantly for this litigation, the second step of the formula requires a Local  
17 Educational Agency (*i.e.*, a district, a charter school or a county office of education that directly  
18 educates students) to estimate its prior year expenditures of supplemental and concentration funding by  
19 “[e]stimat[ing] the amount of LCFF funds expended by the LEA [Local Educational Agency] on  
20 services for unduplicated pupils in the prior year that is in addition to what was expended on services  
21 provided for all pupils.” 5 C.C.R. § 15496(a)(2). The regulations further specify how school districts  
22 should approach this estimate of prior year spending for the first year they completed this calculation  
23 (the 2014-15 budget year): “The estimated amount of funds expended in 2013-14 shall be no less than  
24 the amount of Economic Impact Aid funds the LEA expended in the 2012-13 fiscal year.” *Id.*

25           9.       Under LCFF, districts must create a Local Control and Accountability Plan (“LCAP”), in  
26 which they describe how they plan on using LCFF funding to meet student goals generally and  
27 specifically detail how they intend on using supplemental and concentration funding to increase or  
28 improve services for unduplicated pupils.

1           10.     In direct contravention to the statute and regulations, LAUSD included in its 2014-15  
2 LCAP, adopted by LAUSD’s governing board on June 24, 2014, expenditures on *special education* as  
3 prior year (2013-14) spending on services for unduplicated pupils. Special education is instruction  
4 specifically designed to allow children with disabilities or developmental delays to attain educational  
5 benefit. Under federal and state law, a school district must provide special education services to any  
6 student with a qualifying disability, regardless of whether she is low-income, an English language  
7 learner or a foster youth. Because special education services are not targeted to unduplicated students,  
8 LAUSD’s inclusion of special education funding is improper under the LCFF statute and regulations,  
9 and therefore violated mandatory duties created by the statute and regulations, for at least four distinct  
10 reasons:

- 11           •       Under step two of the proportionality calculation, only funds expended on services  
12 for unduplicated pupils *in addition to services provided for all pupils* can be counted as a  
13 prior year expenditure, and special education services must be made available to all pupils,  
14 not only unduplicated pupils.
- 15           •       LAUSD’s reading of the regulations would lead to absurd results. Under its  
16 interpretation, LAUSD would be able to count all services that benefit unduplicated pupils  
17 but do not reach 100% of students as “services for unduplicated pupils.” For instance, under  
18 LAUSD’s formulation, the district could credit its supplemental and concentration obligation  
19 by counting the proportional unduplicated enrollment of all types of pre-existing and  
20 longstanding programs such as summer school, sports and extracurricular activities that are  
21 available to all students but serve only some of them even though those programs were  
22 neither targeted to, nor designed for, unduplicated pupil populations.
- 23           •       The legislature’s decision not to identify special education students as one of the  
24 categories of unduplicated pupils and to maintain a separate restricted source of revenue for  
25 special education confirms that funds for special education services are not to be counted as  
26 funds to increase or improve services for unduplicated pupils.

- Funds LAUSD spends on special education are spent pursuant to preexisting legal obligations and thus cannot be classified as funds that “increase or improve” services for unduplicated pupils under the Education Code and regulations.

11. By including nearly \$450 million in special education funding in its prior year (2013-14) expenditure estimate of supplemental and concentration funding, LAUSD has inflated its calculation of the baseline dollar amount it is already spending to serve unduplicated pupils, and lessened its obligation to spend new funds it will receive to increase or improve services for these students, over the course of implementation. In other words, LAUSD overstates how far it has already progressed towards its target for supplemental and concentration funds at full implementation. This maneuver deprived unduplicated pupils of roughly \$126 million in increased or improved services in the 2014-15 school year and will result in a decrease of roughly \$288 million in increased or improved services for those students in the 2015-16 school year. Instead, the district spent those funds without regard for the requirement that they be used to increase or improve services for unduplicated pupils. Over the course of LCFF implementation, LAUSD’s impermissible inflation of its baseline starting point of supplemental and concentration funding will deprive unduplicated pupils of *more than \$2 billion* in increased or improved services.

12. The Petitioners file this writ to remedy LAUSD’s violation of its clear, mandatory duties under the Education Code and LCFF regulations. Pursuant to the Education Code, LAUSD has a mandatory duty 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[.]” Educ. Code § 42238.07. Similarly, LAUSD has a mandatory duty to determine the percentage by which it must increase or improve services for unduplicated pupils (called the “proportionality percentage”) in accordance with the regulations. That duty includes properly estimating the amount of funds spent on services for unduplicated pupils in the prior year to include only funding spent on “services for unduplicated pupils in the prior year that is *in addition to* what was expended on services provided for all pupils.” 5 C.C.R. § 15496(a)(2) (emphasis added). By including special education spending in its prior year expenditures for unduplicated pupils in its 2014-15 LCAP, LAUSD violates its duties under both the Education Code and the regulations. In addition, LAUSD

1 continues to violate these same regulations in its newly-adopted 2015-16 LCAP, which continues to  
2 carry forward \$450 million in special education spending from 2013-14 as services for unduplicated  
3 pupils.

4 13. Petitioners also file this writ to remedy the Los Angeles County Office of Education’s  
5 (“LACOE”) violation of its clear, mandatory duty under the Education Code to oversee LAUSD’s  
6 LCAP and ensure that it complies with the regulations. Respondent Dr. Arturo Delgado, Los Angeles  
7 County Superintendent of Schools, approved LAUSD’s LCAP despite the LCAP’s failure to comport  
8 with the Education Code and expenditure regulations. Respondent Delgado is thus in violation of his  
9 duties under the Education Code.

10 14. Petitioners have no adequate or speedy remedy at law. Petitioners brought this issue to  
11 the attention of the District as early as April 2014 and have made every attempt to convince the District  
12 to correct its proportionality percentage and to convince LACOE to deny approval or reconsider its  
13 approval. Both have steadfastly refused to alter their conduct.

14 15. Accordingly, this writ petition seeks an order setting aside LAUSD’s decision to approve  
15 and adopt its LCAP because it contravenes LAUSD’s mandatory duties to calculate its prior year  
16 expenditures on unduplicated pupils in accordance with the Education Code and expenditure  
17 regulations.

## 18 **PARTIES**

### 19 **Petitioners**

20 16. Petitioner Community Coalition of South Los Angeles (“Community Coalition”) is a  
21 non-profit organization formed and existing under the laws of the State of California, with its principal  
22 office presently located at 5414 Crenshaw Boulevard, Los Angeles, CA 90043. Founded in 1990 by  
23 United States Congresswoman Karen Bass, Community Coalition has worked for 25 years to help  
24 transform the social and economic conditions in South Los Angeles that foster addiction, crime, violence  
25 and poverty.

26 17. Community Coalition works to improve educational opportunities for low-income  
27 students and students of color in Los Angeles County. Community Coalition recognizes that LCFF  
28 presents a critical opportunity for investing in LAUSD’s most vulnerable students: “The

1 implementation of LCFF presents a historic moment, a chance to follow the spirit of the state law, which  
2 directs extra resources specifically to areas with the highest needs.” Mar. 18, 2014 Press Release,  
3 <http://cocosouthla.org/files/LCFFPressRelease.pdf>.

4 18. As a non-profit organization committed to improving educational opportunities for low-  
5 income students and students of color in Los Angeles County and that has worked on securing  
6 appropriate services for high-need students in LAUSD’s LCAP, Community Coalition has a clear,  
7 present and beneficial interest that is distinct from that of the public at large in ensuring that LAUSD  
8 complies with its obligation under LCFF to use appropriate supplemental and concentration funds to  
9 improve and increase services for unduplicated pupils.

10 19. In addition to its direct beneficial interest as a non-profit organization committed to  
11 improving educational opportunities for low-income students and students of color, including by  
12 advocating specifically around LAUSD’s use of LCFF funds, Petitioner Community Coalition is  
13 interested as a California-based non-profit in having Respondents LAUSD and Superintendent  
14 Delgado’s statutory duties enforced. There is a substantial public interest in the enforcement of  
15 Respondents’ duties, given the substantial public interest in the lawful use of funds by public agencies,  
16 the operation of the state’s public education system and the historic nature of the reforms reflected in  
17 LCFF to emphasize equity in the statewide public education system.

18 20. Petitioner Reyna Frias is the mother of two minor children, both of whom attend public  
19 schools in LAUSD. Her youngest child attends an elementary school in the district, where he is  
20 classified as an English learner and is therefore classified by LCFF as an unduplicated pupil. He also  
21 receives special education services to address a speech or language impairment. Ms. Frias’ oldest child  
22 attends middle school in the district. Both of Petitioner Frias’ children also are classified as  
23 unduplicated pupils because they are eligible to receive a free or reduced-price meal and thus qualify as  
24 low-income under the statute. Petitioner Frias volunteers at each of her children’s schools, and makes  
25 time separately to volunteer at another elementary school, which also is part of LAUSD.

26 21. As a mother of two children presently attending public schools in LAUSD who are  
27 classified as “unduplicated pupils,” Petitioner Frias has a clear, present and beneficial interest that is  
28 distinct from that of the public at large in ensuring that LAUSD complies with its obligation under



1 LCFF to use appropriate supplemental and concentration funds to improve and increase services for  
2 unduplicated pupils.

3 22. In addition to her direct beneficial interest as a parent of two unduplicated pupils in  
4 LAUSD, Petitioner Frias is interested as a resident of California in having Respondents' statutory duties  
5 enforced. There is a substantial public interest in the enforcement of Respondents' duties, given the  
6 substantial public interest in the lawful use of funds by public agencies, the operation of the state's  
7 public education system and the historic nature of the reforms reflected in LCFF to emphasize equity in  
8 the statewide public education system.

9 **Respondents**

10 23. Respondent LAUSD is a public school district organized and existing under the laws of  
11 the State of California. The second largest school district in the nation, LAUSD enrolls more than  
12 640,000 students in kindergarten through 12th grade, at over 900 schools, and 187 public charter  
13 schools. *See* LAUSD website, <http://achieve.lausd.net/about>. In June 2014, LAUSD adopted its LCAP,  
14 in which LAUSD set forth a proposal and budget to meet State and local education priorities in the  
15 subsequent three years, including a calculation of expenditures to increase or improve services for  
16 unduplicated pupils. In 2015, LAUSD performed an annual update of its LCAP but did not revise its  
17 method of calculating expenditures to increase or improve services for unduplicated pupils. LAUSD's  
18 Board of Education adopted the updated LCAP in June 2015.

19 24. Respondent Ramon C. Cortines is the Superintendent of LAUSD. As LAUSD's highest  
20 administrative officer, Respondent Cortines shares responsibility with LAUSD to ensure that LAUSD  
21 complies with all laws, including the LCFF regulations. Respondent Cortines is sued in his official  
22 capacity only.

23 25. Respondent Dr. Arturo Delgado is the Los Angeles County Superintendent of Schools.  
24 In this position, Respondent Delgado is responsible for ensuring the financial and academic stability of  
25 80 K-12 school districts, including LAUSD. *See* LACOE website, <http://lacoed.edu/Superintendent.aspx>.  
26 As the County Superintendent of Schools, Respondent Delgado is responsible for determining whether  
27 LAUSD has fully demonstrated that it will increase or improve services for unduplicated pupils, as  
28 required by 5 C.C.R. § 15496(a). *See* Educ. Code § 52070(d). Respondent Delgado approved

1 LAUSD's LCAP and budget on September 5, 2014. Respondent Delgado is sued in his official capacity  
2 only.

### 3 JURISDICTION AND VENUE

4 26. This Court has jurisdiction under California Code of Civil Procedure §§ 525-526, 1060  
5 and 1085.

6 27. Venue is proper in the Superior Court of Los Angeles under California Code of Civil  
7 Procedure §§ 393, 394 and 395, because Respondents in this action are public officers or public agencies  
8 situated in Los Angeles County and because all of the acts and omissions complained of in this Petition  
9 took place in Los Angeles County.

### 10 FACTUAL ALLEGATIONS

#### 11 **A. Local Control Funding Formula (LCFF)**

12 28. California's Local Control Funding Formula represents a landmark change in school  
13 funding. "The [LCFF] legislation was the culmination of more than a decade of research and policy  
14 work on California's K-12 funding system." Mac Taylor, *Updated: An Overview of the Local Control*  
15 *Funding Formula*, California Legislative Analyst's Office, at 1 (Dec. 2013),  
16 <http://www.lao.ca.gov/reports/2013/edu/lcff/lcff-072913.pdf> (hereinafter, Taylor, *Overview of LCFF*).

17 29. One paper, in particular, set forth a framework that formed the core tenets for what  
18 ultimately became LCFF. In 2008, with the aim of remedying pervasive inequalities in the educational  
19 system, Dr. Michael Kirst, the current President of the State Board of Education, along with the former  
20 California Secretary of Education Alan Bersin and then-professor and current California Supreme Court  
21 Justice Goodwin Liu, wrote a seminal brief proposing a reformed finance system for public education.  
22 *See Alan Bersin et al., Getting Beyond the Facts: Reforming California School Finance*, The Chief  
23 Justice Earl Warren Institute on Race, Ethnicity and Diversity (2008) at 6,  
24 <https://www.law.berkeley.edu/files/GBTfissuebriefFINAL.pdf>.

25 30. The primary components of the proposal included: (1) establishing a new standard base  
26 amount that is distributed to districts on an equal per pupil basis, (2) maintaining pre-existing special  
27 education funding and (3) creating new supplemental and concentration funding that targets low-income  
28 students and English language learners. The new, targeted funding scheme was informed by the

1 principal that “[o]utside of special education, many students face disadvantages that call for additional  
2 educational resources if they are to meet the same academic standards of their more advantaged peers.”  
3 *Id.* at 7.

4 31. LCFF was enacted on July 1, 2013 and went into effect for the first time during the 2013-  
5 14 school year. The legislation “made major changes both to the way the state allocates funding to  
6 school districts and the way the state supports and intervenes in underperforming districts.” Taylor,  
7 *Overview of LCFF* at 1.

8 32. The legislature created LCFF to give California a framework for reducing historic  
9 inequities among our extremely diverse population and was intended to provide funding to help close  
10 California’s persistent student achievement gap for English language learners, foster care students, and  
11 low-income students.

12 33. Between the 2013 enactment and the 2020-21 school year, the State anticipates roughly  
13 \$18 billion in new revenues will flow back into the public school system, enabling LCFF to be fully  
14 implemented by the end of the 2020-21 school year when total revenues are projected to reach the prior  
15 2007-08 high point, adjusted for cost of living increases.

16 34. As the LCFF funding scheme is phased in to full implementation and thereafter, the  
17 legislature has directed a greater portion of the state’s education funding to three categories of students:  
18 English-language learners, low-income students and foster youth. Specifically, LCFF provides an  
19 additional 20%-42.5% per student in state education funds to school districts for these three categories  
20 of students. *Id.* at 3-5; *see also Jan. 30, 2014 Initial Statement of Reasons*,  
21 <http://www.cde.ca.gov/re/lr/rr/lcffemergencyregs.asp>, at 1. Pursuant to the statute, all school districts  
22 are “required . . . to increase or improve services for unduplicated pupils in proportion to the increase in  
23 funds apportioned on the basis of the number and concentration of unduplicated pupils in the school  
24 district.” Educ. Code § 42238.07(a)(1).

25 **1. LCFF Largely Replaces Categorical Programs with Per-Pupil Funding and**  
26 **Funds Targeted at Low-Income Students, English-Learners and Foster**  
27 **Youth.**  
28

1           35.     Prior to the enactment of LCFF, California provided funds to school districts pursuant to  
2 the “revenue limits” and “categorical” funding system. School districts received the majority of their  
3 funding through a complex series of formulas known as “revenue limit” funding. School districts were  
4 permitted to use revenue limit funds for general purposes. In addition to the revenue limit funding,  
5 school districts also received funding through “categorical” programs, which had restrictions on their  
6 use and provided earmarked funding to school districts to support specific activities. Categorical  
7 programs earmarked funding for such programs as reduced class sizes in selected grades, incentives to  
8 hire physical education teachers, oral health assessments for students in kindergarten and more.

9           36.     In contrast to the categorical approach, LCFF consolidated funds previously scattered  
10 across multiple categorical programs into a single per-pupil grant, with additional funds allocated to  
11 districts with students facing greater challenges. In revising the funding scheme, LCFF eliminated  
12 approximately three-quarters of the categorical programs, with only fourteen categorical programs  
13 surviving—including the categorical program for special education. *See Taylor, Overview of LCFF* at  
14 6-7. Categorical programs that receive funding from other state sources, like special education, are  
15 generally excluded from the LCFF calculation.

## 16                   **2.     An Overview of the LCFF Statutory Framework.**

17           37.     Under LCFF, school districts receive funds from the state based on a straightforward  
18 formula. First, each district receives a base amount for each pupil, with the base amount varying based  
19 on the pupil’s grade. The new single formula also includes an add-on “supplemental grant” (20% over  
20 the base amount) for each unduplicated pupil. Unduplicated pupils are students categorized as either an  
21 English learner, low-income student and/or foster youth. Finally, when the overall percentage of  
22 unduplicated pupil enrollment in the district equals or exceeds 55%, LCFF provides districts with an  
23 additional “concentration grant” equal to 50% of the base amount for each such student beyond the 55%  
24 threshold.

25           38.     California Education Code § 42238.07 requires the State Board of Education to draft  
26 regulations to govern the expenditure of the supplemental and concentration funds to ensure that these  
27 funds are used for the benefit of unduplicated pupils. Section 42238.07 specifies that the new  
28 regulations must include provisions “[r]equir[ing] a school district, county office of education, or charter

1 school to increase or improve services for unduplicated pupils in proportion to the increase in funds  
2 apportioned on the basis of the number and concentration of unduplicated pupils in the school district,  
3 county office of education, or charter school.” Educ. Code § 42238.07. This proportionality calculation  
4 evidences LCFF’s equity requirement that school districts must increase or improve services for  
5 unduplicated pupils in proportion to the additional dollars these students generate.

6 39. The statute also requires that the State Board of Education’s regulations specify the rules  
7 by which school districts may use supplemental and concentration funds for schoolwide or districtwide  
8 purposes. *See id.*

9 40. The regulatory framework implementing this requirement is described in greater detail in  
10 Section B below.

11 **3. LCFF Relies on County Offices of Education to Provide Oversight and**  
12 **Enforcement.**

13 41. LCFF’s increased funding flexibility was accompanied by the requirement that each  
14 district adopt an LCAP, in which the district must describe in detail how it is using LCFF funding to  
15 meet student goals in eight statutorily identified state priority areas and is using supplemental and  
16 concentration funding to increase or improve services for unduplicated pupils.

17 42. County offices of education provide the primary accountability mechanism for district  
18 LCAPs. Each year, after a district adopts its LCAP, it must file the LCAP with the County  
19 Superintendent of Schools. *See* Educ. Code § 52070(a). The County Superintendent may then seek  
20 clarification from the district, and may submit recommendations for amendments to the LCAP. *See*  
21 Educ. Code §§ 52070(b)-(c). The County Superintendent may approve a district’s LCAP, but only if the  
22 County Superintendent determines, among other things, that the LCAP complies with the regulations  
23 adopted by the State Board implementing the requirement to increase or improve services for  
24 unduplicated pupils. *See* Educ. Code § 52070(d)(3).

25 **B. Regulations Enacting LCFF**

26 **1. History and Transition to the LCFF Funding Scheme.**

27 43. As noted, LCFF is premised on an eventual increase of \$18 billion in overall K-12  
28 funding that will enable LCFF to be fully phased in by the end of the 2020-21 school year. If those

1 funding projections hold true, by that time all districts will have reached the level of funding established  
2 by the uniform per-pupil formula. In the meantime, however, supplemental and concentration grants are  
3 new features of school funding in California which need to be gradually phased in as new funding  
4 becomes available. Also, in the meantime, each district must meet the statutory standards for increasing  
5 or improving services for unduplicated pupils and must do so while starting from a different baseline (in  
6 terms of the district's total state aid which was set by the former widely varying per pupil revenue limit  
7 amounts and categorical funding received by each district).

8 44. The State Board of Education was therefore tasked with developing regulations that  
9 would establish a methodology that districts would follow to establish the baseline of total initial  
10 supplemental and concentration funding (and the services tied to that funding) and a method for growing  
11 that baseline level of services during LCFF implementation until the district grows its services at full  
12 phase-in to a level proportionate to the total increase in funding generated by unduplicated pupils.

13 45. In November 2013, the State Board of Education published draft expenditure regulations.  
14 *See* State Board of Education Agenda for November 2013, Item # 13,  
15 <http://www.cde.ca.gov/be/ag/ag/yr13/agenda201311.asp>. The draft regulations presented an “options-  
16 based policy framework” that would give each district flexibility to demonstrate how it would meet the  
17 requirement to increase or improve services for unduplicated pupils. *See id.* However, the State Board  
18 of Education received numerous complaints from legislators, advocates and community groups  
19 regarding the “options-based policy framework” presented in the draft regulations and ultimately  
20 adopted a much more defined standard enacted in its “emergency regulations,” which governed the  
21 2014-15 LCAPs that LEAs had to adopt by July 1, 2014.

22 46. The process to develop permanent regulations to implement LCFF proceeded in parallel,  
23 but the State Board of Education issued emergency regulations in order to establish a framework before  
24 the June 30, 2014 deadline for school districts to finalize their initial LCAPs. The permanent regulations  
25 have since superseded the emergency regulations. (Because the provisions regarding the calculation of  
26 prior year expenditures and the proportionality obligation remain unchanged by the permanent  
27 regulations, except where otherwise noted, this Petition cites to the emergency regulations, as those  
28 governed the initial 2014-15 LCAP first at issue in this case.)

1                   **2.     The State Board of Education Enacted Emergency Regulations**  
2                   **Implementing LCFF.**

3           47.     In early February 2014, the emergency regulations for implementing LCFF went into  
4 effect, and are set forth in 5 C.C.R. §§ 15494-97. The emergency regulations created a number of  
5 mandatory duties for school districts. Relevant to this petition, Section 15496(a) created a duty for  
6 school districts to use supplemental and concentration grant funds “to increase or improve services for  
7 unduplicated pupils as compared to the services provided to all pupils in proportion to the increase in  
8 funds apportioned on the basis of the number and concentration of unduplicated pupils as required by  
9 Education Code section 42238.07(a)(1).” 5 C.C.R. §§ 15496(a).

10           48.     To ensure the requisite proportional increase in services for unduplicated pupils, the  
11 regulations set forth a duty for school districts to engage in a seven-step process to “determine the  
12 percentage by which services for unduplicated pupils must be increased or improved *above services*  
13 *provided to all pupils*” in a fiscal year. *Id.* (emphasis added).

14           49.     The first step is to estimate the amount of an LEA’s full LCFF funding target that would  
15 be attributed to the supplemental and concentration grants. *See* 5 C.C.R. § 15496(a)(1). This step  
16 requires the district to determine how much total LCFF funding it would receive if LCFF were fully  
17 funded today, and how much of that total would be supplemental and concentration funding.

18           50.     The second step—which is in controversy in the present Petition—requires estimating the  
19 expenditures of supplemental and concentration funding in the all-important initial “prior year” (*i.e.*,  
20 2013-14) and every prior year thereafter: “Estimate the amount of LCFF funds expended by the LEA on  
21 services for unduplicated pupils in the prior year that is *in addition to* what was expended on services  
22 provided for all pupils.” 5 C.C.R. § 15496(a)(2) (emphasis added). The estimated amount of funds  
23 expended in 2013-14 cannot be less than the amount of Economic Impact Aid (“EIA”) funds that the  
24 LEA spent in the 2012-13 fiscal year. *See id.* EIA is a former categorical program that required districts  
25 to spend money only on services “to improve the academic achievement of English learners and  
26 economically disadvantaged pupils.” Educ. Code § 54025(b). A district may include additional funds in  
27 the estimate only if they were “expended by the LEA on *services for unduplicated pupils* in the prior  
28 year that is *in addition to* what was expended on *services provided for all pupils*.” 5 C.C.R. §

1 15496(a)(2) (emphasis added). Step two of the regulations recognizes only two types of expenditures:  
2 (1) expenditures on services for all pupils and (2) expenditures on services for unduplicated pupils.

3 51. In step three, the number from step two (the baseline starting point for supplemental and  
4 concentration expenditures) is subtracted from the first step's number (the ultimate target for  
5 supplemental and concentration expenditures), and the difference, or the gap in supplemental and  
6 concentration expenditures between current and target supplemental and concentration spending, is  
7 determined. *See* 5 C.C.R. § 15496(a)(3).

8 52. In step four, the school district's gap amount from step three is multiplied by what is  
9 known as the "gap closure" percentage, which is the percentage "step" the state as a whole is taking in  
10 that fiscal year to close the overall LCFF funding gap between current levels and the projected 2020-21  
11 full implementation LCFF target. The product of multiplying the LEA's gap amount by the statewide  
12 LCFF gap closure percentage yields the amount of new supplemental and concentration expenditures the  
13 LEA must add to its local spending plan (the "LCAP") in the fiscal year for which it is adopted. *See* 5  
14 C.C.R. § 15496(a)(4).

15 53. Step five estimates the total amount of supplemental and concentration spending  
16 obligation for the upcoming fiscal year by adding the prior year supplemental and concentration  
17 expenditure amount from step two to the new supplemental and concentration expenditure amount  
18 calculated in step four. The district must report that total supplemental and concentration spending  
19 amount in its LCAP. *See* 5 C.C.R. §§ 15496(a)(5) & 15497 (LCAP Template, Section 3.C).

20 54. In steps six and seven, a method is provided to determine the "proportionality  
21 percentage" by which the school district must increase or improve services for unduplicated pupils over  
22 and above the level of services provided for all pupils. *See* 5 C.C.R. § 15496(a)(6)-(7); 5 C.C.R. §  
23 15497 (LCAP Template, Section 3.D).

24 55. In January 2014, the California Department of Education ("CDE") published an  
25 instructional guide describing how school districts should perform the proportionality calculation. The  
26 guide includes a sample scenario that illustrates how a hypothetical school district would demonstrate  
27 increased or improved services under the regulations. *See* CDE, "Local Control Funding Formula  
28 Sample Scenario" (Jan. 2014) at 1-2, Attachment 1 (excerpted).



1           **C.     LAUSD Improperly Counted \$450 Million in Special Education Services as Part of**  
2           **Its Prior Year Expenditure Estimate, Depriving Unduplicated Pupils of Some \$126**  
3           **Million in Increased or Improved Services for FY 2014-15, and Likely More Than**  
4           **\$2 Billion by the Time LCFF is Fully Funded.**

5           56.     To determine the percentage target LAUSD must satisfy for increasing or improving  
6 services for unduplicated pupils for the first year of LCFF implementation (2014-15), LAUSD was  
7 required to perform the 7-step process outlined in the regulations. As described above, the second step  
8 in the calculation required the district to determine its prior year spending on “services for unduplicated  
9 pupils.” 5 C.C.R. § 15496(a)(2). By regulation, LAUSD had to include, at a minimum, the “Economic  
10 Impact Aid funds the LEA expended in the 2012-13 fiscal year,” and could include additional  
11 expenditures in the estimate only if those funds “expended . . . on services for unduplicated pupils” are  
12 “*in addition to what was expended on services provided for all pupils.*” 5 C.C.R. § 15496(a)(2)  
13 (emphasis added).

14           57.     In addition to some \$250 million in undisputed prior year 2013-14 spending—most of  
15 which was 2012-13 EIA—LAUSD included \$450 million of *special education* expenditures in its  
16 estimate of funds expended on services for unduplicated pupils in 2013-14. Special education services  
17 are not services for unduplicated students because, under federal and state law, a school district must  
18 provide special education services to all students with a qualifying disability without regard to status as  
19 low-income, an English language learner, or a foster youth. *See, e.g.*, 20 U.S.C. §§ 1412(a)(1)-(4) &  
20 1414(d)(2); Educ. Code § 56040.

21           58.     Approximately 13.5% of LAUSD’s students receive some type of special education  
22 services. According to LAUSD, 79% of students who use special education services also are  
23 unduplicated pupils. This is a lower concentration than the general student population, which is  
24 comprised of 84% unduplicated pupils. LAUSD has attempted to justify the use of supplemental and  
25 concentration dollars to fund special education services based on the fact that a small portion of  
26 unduplicated pupils use special education services. Although there is no distinction between the special  
27 education services provided to unduplicated and non-unduplicated pupils, LAUSD nevertheless  
28 apportions special education funds based on the percentage of students receiving special education

1 services who also happen to be unduplicated pupils. Special education services cost LAUSD  
2 approximately \$653.4 million in 2013-14 in expenditures unreimbursed by either state or federal  
3 categorical funds. Based on its estimate that 79% of students who received special education services  
4 were unduplicated pupils in 2013-14, LAUSD counted approximately \$450 million of special education  
5 expenses as prior year spending on services for unduplicated pupils.

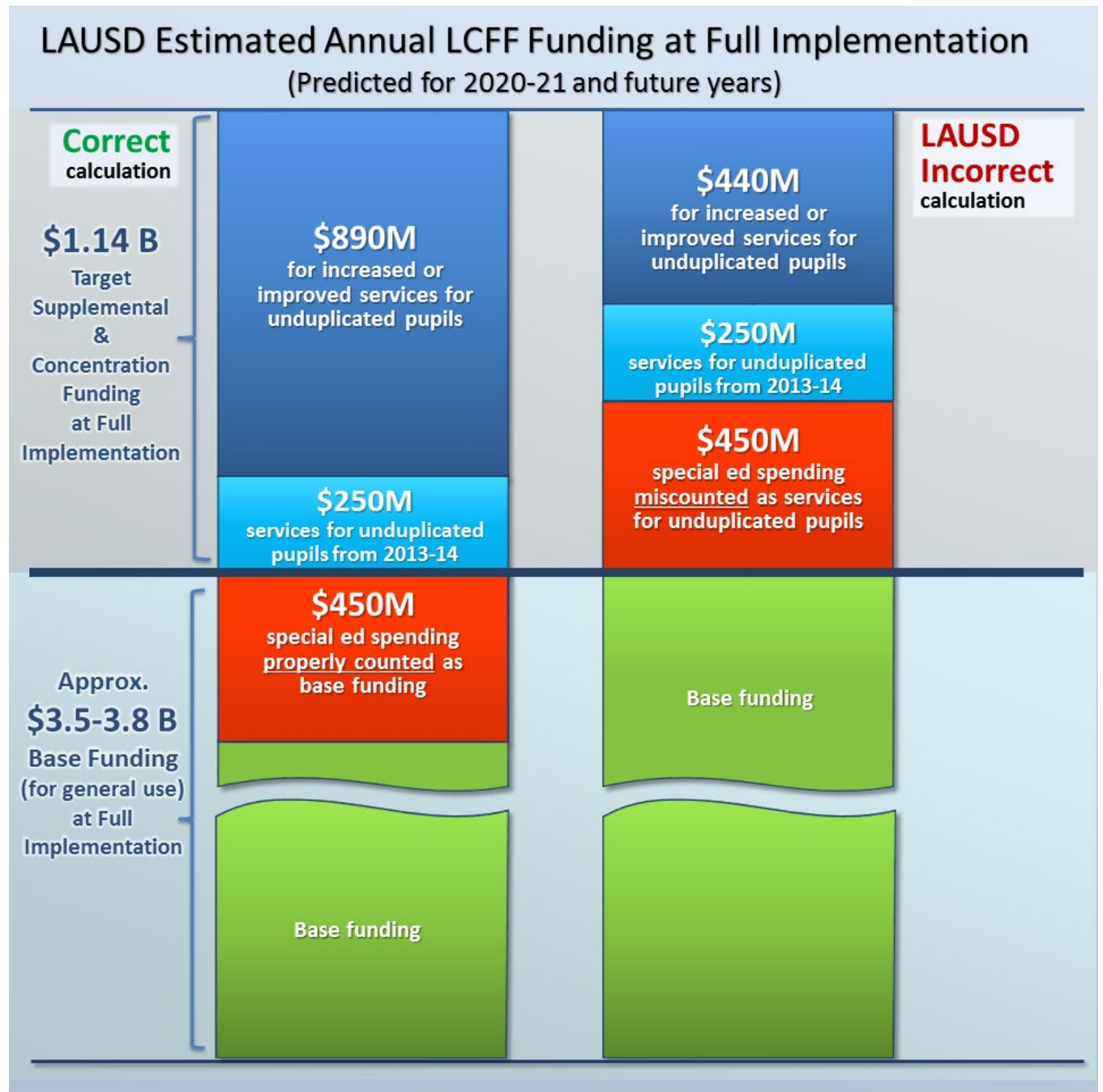
6 59. By including this \$450 million in special education expenditures, LAUSD was able to  
7 inflate its initial prior year expenditures for unduplicated pupil services to \$700 million. Given that its  
8 2014-15 supplemental and concentration funding obligation under the 7-step calculation was \$837  
9 million, the district only proceeded to allocate “new” supplemental and concentration expenditures in  
10 the amount of \$137 million in its 2014-15 LCAP. In contrast, had LAUSD left special education  
11 spending out of its prior year estimate (and funded special education services out of general LCFF base  
12 funds instead), the amount of new state funding the district would have been required to use towards  
13 increasing or improving services for high needs students in 2014-15 alone would have been some \$264  
14 million—approximately \$126 million higher than what LAUSD allocated.

15 60. LAUSD’s initial year approach of including \$450 million in special education spending  
16 as part of its supplemental and concentration allocation has a ripple effect on all future-year LCAP  
17 calculations. For example, in its recently adopted 2015-16 LCAP, LAUSD continues to rely on this  
18 erroneous calculation by carrying forward the \$450 million in special education expenditures as prior  
19 year expenditures on programs and services targeting unduplicated pupils. As a result, LAUSD claims  
20 that it spent \$846 million on services for unduplicated pupils in 2014-15, when in fact it spent only some  
21 \$514 million. This results in a loss of roughly \$288 million in spending to increase or improve services  
22 for unduplicated pupils in 2015-16 on top of the \$126 million deprivation from 2014-15.

23 61. As the state moves each year towards full funding of LCFF, LAUSD’s approach will  
24 increasingly shortchange the district’s high-need students until full implementation when the district will  
25 reach its “Target Supplemental and Concentration” spending of roughly \$1.14 billion each year. The  
26 state estimates that full implementation will be reached in FY 2020-21. At that point, the district will  
27 deprive high-need student investment the full \$450 million in supplemental and concentration funding  
28 (*i.e.*, the amount of special education services that LAUSD initially misallocated as prior year spending

on services for unduplicated pupils). That \$450 million deficit will then be repeated each and every year after that, so, in total, LAUSD is on track to shortchange high-need students by billions of dollars over the phase-in of LCFF and beyond.

62. The following graphic illustrates the impact LAUSD’s improper calculation will have on its LCAP in the first year LCFF is expected to be fully implemented (currently projected for 2020-21). This \$450 million deficit in funding for unduplicated pupils will be repeated every year after that.



1           **D.     LAUSD Has Violated Its Mandatory Legal Duty to Determine Its Proportionality**  
2           **Percentage and Craft Its LCAP in Accordance with the Regulations and Statute.**

3           63.     LAUSD has a clear, present and ministerial duty to determine its proportionality  
4 percentage in accordance with the regulations. That duty includes properly estimating the amount of  
5 funds expended on services for unduplicated pupils in the prior year under 5 C.C.R. § 15496(a)(2).  
6 LAUSD further has a clear, present and ministerial duty to demonstrate in its LCAP how funding  
7 apportioned on the basis of the number and concentration of unduplicated pupils is used to increase or  
8 improve services for such pupils. *See* 5 C.C.R. § 15496(a); Educ. Code § 42238.07.

9           64.     By including special education spending in its prior year expenditures for unduplicated  
10 pupils, LAUSD violates the district’s mandatory duties under the regulations and statute because:

11           (a)     only funds expended on services for unduplicated pupils *in addition to services*  
12           *provided to all pupils* can be counted as a prior year expenditure and special education  
13           expenditures serve all pupils without regard to their status as unduplicated or not;

14           (b)     LAUSD’s interpretation of the regulations (*i.e.*, that “all pupils” does not refer to  
15           the sum of the two categories of students addressed by the regulations—unduplicated and  
16           not unduplicated—but to a narrow and numerically precise “100% of students”) would  
17           lead to absurd results by allowing districts to count all services that benefit unduplicated  
18           pupils in some way, but do not reach 100% of students as “services for unduplicated  
19           pupils”;

20           (c)     the legislature’s decision not to identify and categorize special education students  
21           as unduplicated pupils confirms that funds for special education services are not to be  
22           counted as funds to increase or improve services for unduplicated pupils; and

23           (d)     funds LAUSD spends on special education are spent pursuant to preexisting legal  
24           obligations and thus cannot be classified as funds that “increase or improve” services for  
25           unduplicated pupils under both the Education Code and regulations.

1                   **1. Section 15496(a) Makes Clear that Services Provided for All Pupils, Such as**  
2                   **Special Education Services, May Not Be Included in the Prior Year**  
3                   **Expenditure for Unduplicated Pupils.**

4                   65. LAUSD’s inclusion of a proportional share of special education expenditures in its prior  
5 year expenditure estimate for 2013-14 violates the clear duty under the regulation to include only  
6 services that are not available to all pupils in its prior year expenditure estimate. Because LAUSD’s  
7 inclusion of special education services in its prior year expenditure estimate renders meaningless the  
8 distinction specified in the regulation, its actions are contrary to the plain language of the regulation and  
9 in excess of their authority.

10                                   **a) The Regulations Draw a Clear Distinction Between Services for**  
11                                   **Unduplicated Pupils and Services Provided for All Pupils.**

12                   66. To determine the increase or improvement in services for 2014-15, step two of the  
13 proportionality calculation directs districts to estimate funds expended in the prior year (FY 2013-14) on  
14 services for unduplicated pupils “that is *in addition to* what was expended on *services provided for all*  
15 *pupils*. The estimated amount of funds expended in 2013-14 shall be no less than the amount of  
16 Economic Impact Aid funds the LEA expended in the 2012-13 fiscal year.” 5 C.C.R. § 15496(a)(2)  
17 (emphases added). This second step of the process again parses all possible expenditures into two and  
18 only two categories of services for comparison: (1) services for unduplicated pupils; and (2) services  
19 provided for all pupils (*i.e.*, services for both unduplicated pupils and non-unduplicated pupils). Only  
20 the former may be included in the prior year expenditure estimate.

21                   67. The general regulatory standard governing the use of supplemental and concentration  
22 funding reinforces this distinction. Section 15496 mandates that “funding apportioned on the basis of  
23 the number and concentration of unduplicated pupils . . . shall be used to increase or improve services  
24 for unduplicated pupils *as compared to the services provided to all pupils* in proportion to the increase  
25 in funds apportioned on the basis of the number and concentration of unduplicated pupils.” 5 C.C.R. §  
26 15496(a) (emphasis added). Similarly, the regulation frames the seven-step calculation as  
27 “determin[ing] the percentage by which services for unduplicated pupils must be increased or improved  
28 *above* services provided to all pupils in the fiscal year as follows.” *Id.* (emphasis added). In both

1 instances, the regulation again distinguishes between two types of spending for services: (1)  
2 expenditures on services for unduplicated pupils, and (2) expenditures on services for all students  
3 (which, again, necessarily serve unduplicated pupils in addition to other pupils).

4 68. Services “for unduplicated pupils” are precisely that—services designed to serve students  
5 based on their unduplicated status. The former Economic Impact Aid categorical program, addressed in  
6 the regulations as a minimum prior year expenditure for the pre-LCFF baseline estimate of supplemental  
7 and concentration expenditures, was expressly designed to fund services for low-income students and  
8 English learners. *See* Educ. Code § 54025. Similarly, the regulations specify that expenditures in any  
9 previously approved LCAP may be treated in subsequent LCAPs as prior year expenditures on services  
10 “for unduplicated pupils” only if the LEA’s LCAP demonstrated that the expenditure was sufficiently  
11 directed to *unduplicated pupil goals*. 5 C.C.R. § 15496(b). Services that generically serve the universe  
12 of both unduplicated pupils and non-unduplicated pupils—*i.e.*, without regard to students’ low-income,  
13 English learner or foster youth status—do not comply with the regulatory standard for inclusion as part  
14 of prior year expenditures.

15 **b) Special Education Services Are Not Designed for, Nor Provided Only**  
16 **to, Unduplicated Pupils and Thus Are Services Provided for All**  
17 **Pupils.**

18 69. All students—regardless of whether they are low-income, English learners or foster  
19 youth—are eligible to take advantage of special education services under the Individuals with  
20 Disabilities Education Act, 20. U.S.C. § 1400 *et seq.* All pupils may request an Individual Education  
21 Plan to seek special education services, and the district must provide such services to all who qualify,  
22 regardless of whether they are considered “unduplicated” under the LCFF statute.

23 70. Dollars spent on special education services are not expenditures on services designed for  
24 unduplicated students by virtue of their status as low-income, English learner or foster youth students.  
25 Because special education services are available to both students who are unduplicated and those who  
26 are not, special education spending can be considered as only supporting services for all pupils and not  
27 as prior year (FY 2013-14) expenditures on services for unduplicated pupils for purposes of calculating  
28 LAUSD’s supplemental and concentration spending obligation for FY 2014-15.

1           71.     LAUSD, however, has improperly included special education expenditures in its prior  
2 year supplemental and concentration expenditure estimate, and in doing so has vastly overstated its  
3 progress towards meeting its obligation to “increase or improve” services to high-need students.

4                           **c)     LAUSD’s LCAP and Budget Documents Confirm that Special**  
5   **Education Services Are, in Fact, Provided for All Pupils.**

6           72.     LAUSD effectively concedes, in its computation of the prior year expenditure and listing  
7 of LCAP expenditures, that special education services are properly understood as services provided for  
8 all pupils.

9           73.     LAUSD estimates that \$653.4 million was spent on special education services in FY  
10 2013-14. LAUSD further estimates that 79% of students who utilized special education services were  
11 unduplicated pupils, and LAUSD used this percentage to compute the \$450 million prior year  
12 expenditure estimate for special education services, *i.e.*, the district took a pro rata share of certain  
13 special education expenditures for the relevant services. LAUSD’s estimate necessarily reflects that  
14 21% of the students who utilized special education services were not unduplicated pupils and, as such,  
15 that special education services are provided for all pupils, both unduplicated and non-unduplicated.

16                           **d)     Treating Special Education Services as Services “for Unduplicated**  
17   **Pupils” Leads to Absurd Results, Renders Key Regulatory Language**  
18   **Obsolete and Eviscerates the Statutory Provision the Regulations Seek**  
19   **to Implement.**

20           74.     LAUSD’s basis for its rationale that it can apportion the unduplicated pupil “share” of  
21 special education expenditures to its prior year estimate of supplemental and concentration spending  
22 turns on its flawed reading of “services provided for all pupils.” LAUSD reads “all pupils” wrongly to  
23 mean only those services provided to precisely “100% of pupils.”

24           75.     Under LAUSD’s rationale, LAUSD could apportion all types of services that generally  
25 serve the student population—just not 100% of students—and attribute the portion of such services  
26 provided to unduplicated pupils as services that “increase or improve” services for unduplicated pupils  
27 and which, therefore, may be funded by the supplemental and concentration funding generated by  
28 unduplicated pupils.

1           76. Many district programs—like special education services—are available to all students,  
2 but serve only a portion of students, including summer school, after-school programs, sports and other  
3 extracurricular activities, counseling and health services, and class-size reduction initiatives or other  
4 investments in base programs that affect only certain grades, to name a few. Under LAUSD’s theory, a  
5 percentage of spending for *all* of these programs and services should count as prior year spending on  
6 unduplicated pupils.

7           77. “All pupils” is not a reference to 100% or to any particular percentage, but rather to the  
8 sum of the two categories of students addressed in the regulations—unduplicated students and those who  
9 are not unduplicated. As noted, there are only two types of services in the regulations’ universe—those  
10 for unduplicated pupils and those for all pupils. The phrase “all pupils” refers to services provided to  
11 both unduplicated and non-unduplicated pupils, not to a requirement that such services must be  
12 delivered to each and every child in the district.

13           78. When LCFF is fully funded in FY 2020-21 under current projections, supplemental and  
14 concentration funds for LAUSD will total approximately \$1.14 billion. The expenditures for services  
15 for all students, as identified by LAUSD in its 2014-15 budget, amount conservatively to more than \$3.5  
16 billion dollars. Apportioning expenditures for services made available to all students, but which serve  
17 fewer than 100% of students, and charging unduplicated pupils with their “share” of these expenditures  
18 would undoubtedly exceed the \$1.14 billion full target for supplemental and concentration funding very  
19 soon (if it has not already). As such, LAUSD’s overly-narrow reading of what constitutes services  
20 provided for “all pupils” could excuse it from providing *any* additional funding to “increase or improve”  
21 services to unduplicated pupils throughout LCFF’s phase-in period and beyond.

22           79. This unsupportable interpretation of the regulations would allow every school district to  
23 compute an initial baseline supplemental and concentration funding amount that *exceeds* the amount of  
24 such funding the district will receive when LCFF is fully funded. Such an interpretation would render  
25 obsolete both the regulatory mandate and the ultimate statutory requirement that supplemental and  
26 concentration funding be used to increase or improve services for the students who generate those funds  
27 for the district.

28



1           80. By counting the percentage of long-standing special education expenditures that touch  
2 unduplicated pupils towards the district’s overall obligation to provide increased and improved services  
3 for unduplicated pupils, LAUSD defeats the explicit promise and the very spirit of LCFF—to ensure that  
4 California students with the highest needs receive proportional increases and improvements in services.

5                           **e) The Legislative Decision to Treat Special Education Students as a**  
6                           **Subgroup Distinct from the Unduplicated Pupil Subgroups and**  
7                           **Retain the Special Education Categorical Further Confirms that**  
8                           **Special Education Spending Should Not Be Counted as Funds to**  
9                           **Increase or Improve Services for Unduplicated Pupils.**

10           81. The LCAP submitted by each district must describe “goals and specific actions to achieve  
11 those goals for all pupils and each subgroup of pupils identified in Education Code section 52052.” 5  
12 C.C.R. § 15497 (LCAP Template, Introduction at 1.) The subgroups identified in Section 52052 are  
13 ethnic subgroups, socioeconomically disadvantaged pupils, English learners, pupils with disabilities and  
14 foster youth.

15           82. LCFF thus explicitly recognizes subcategories of students other than English learner,  
16 low-income and foster youth, including special education students (“pupils with disabilities”). Yet the  
17 LCFF statutes and regulations specify that only three of these subgroups are the unduplicated groups  
18 that generate the supplemental and concentration funds that must be used to increase or improve services  
19 for those unduplicated pupils: English learners, low-income youth and foster youth.

20           83. At the same time, LCFF folded numerous categorical programs into the general LCFF  
21 funding formula. A limited number of categorical programs remained intact and thus fall outside of the  
22 LCFF formula, including the state special education categorical program. (Also, all federal programs,  
23 including the federal special education categorical, remained untouched by LCFF.) In contrast,  
24 Economic Impact Aid (“EIA”), a categorical program that was restricted to services for English learners  
25 and low-income students, was folded into LCFF. The state board explicitly referenced spending on EIA,  
26 the only former categorical program that both served only unduplicated pupils and was folded into  
27 LCFF, as the minimum baseline for the prior year expenditure estimate for 2013-14.

1           84.     The regulatory distinction between services provided for unduplicated pupils and services  
2 provided for all pupils therefore mirrors, appropriately, the key statutory distinction between the three  
3 unduplicated pupil groups and other subgroups. Especially in light of the continued categorical program  
4 for special education services, the regulatory distinction must be read to reinforce the decision by the  
5 legislature not to include special education students as an unduplicated pupil group to be served by  
6 supplemental and concentration fund expenditures.

7           85.     LAUSD’s approach, in contrast, seeks to override this critical structural feature of LCFF  
8 by unilaterally expanding the permissible uses of supplemental and concentration funds to include  
9 funding services to address goals and actions for students with disabilities.

10                   **2.     Funds Spent on Special Education Are Spent Pursuant to Preexisting Legal**  
11                   **Obligations and Thus Do Not “Increase or Improve” Services for**  
12                   **Unduplicated Pupils.**

13           86.     LCFF emergency regulations provide that districts must use supplemental and  
14 concentration funding “to *increase or improve* services for unduplicated pupils as compared to the  
15 services provided to all pupils in proportion to the increase in funds apportioned.” 5 C.C.R. § 15496(a)  
16 (emphasis added). The emergency regulations specify that “increasing or improving” services means a  
17 growth in quantity or quality of services provided to unduplicated pupils. 5 C.C.R. § 15495(f) & (g)  
18 (Jan. 2014). These provisions remained the same in the permanent regulations adopted in November  
19 2014. 5 C.C.R. § 15495(k) & (l) (Jan. 2015).

20           87.     At the time the emergency regulations were adopted, LAUSD had a pre-existing legal  
21 obligation to provide special education services to all eligible students. Notably, although LCFF  
22 eliminated approximately three-quarters of categorical programs, fourteen categorical programs  
23 survived. Taylor, *Overview of LCFF*, at 6. Among those was funding for special education. *See id.* at  
24 7; *see also* Educ. Code. §§ 56836.08, 56836.15. These funds are provided contingent upon the LEA  
25 providing special education services as required under state and federal law to all eligible students. *See*  
26 Educ. Code. §§ 56845, 56836.30. This categorical funding is separate from, and not subject to, the  
27 LCFF formulas.

1           88.     Thus, LAUSD does not have a choice in whether to provide the services tied to special  
2 education: those services are mandated by federal and state law, and are obligations that predated  
3 LCFF’s enactment and adoption of the expenditure regulations.

4           89.     Rather than *increase or improve* services using supplemental and concentration funds,  
5 LAUSD’s approach allows it to continue providing the same services that it has always agreed to and  
6 been legally required to provide, while counting that as “increasing or improving” services for  
7 unduplicated pupils. Moreover, for students with disabilities who also qualify as unduplicated, such as  
8 Petitioner Frias’ child, LAUSD is denying those students the benefit of increased or improved services  
9 above the special education services that they were already receiving prior to LCFF.

10          90.     Because special education expenditures are incurred pursuant to preexisting legal  
11 mandates and are used to maintain, not increase, legally required services, they cannot be included as  
12 expenditures that “increase or improve services for unduplicated pupils as compared to services  
13 provided to all pupils,” 5 C.C.R. § 15496(a), under any reasonable reading of the terms “increase” or  
14 “improve.”

15           **E.     LAUSD Has Violated Its Mandatory Legal Duty Under the Education Code to Use**  
16                   **Supplemental and Concentration Funds to “Increase or Improve” Services to**  
17                   **Unduplicated Pupils.**

18          91.     LAUSD has a distinct clear, present and ministerial duty to meet the underlying statutory  
19 requirement in Education Code § 42238.07 to “increase or improve services for unduplicated pupils” in  
20 proportion to the increased funding that LAUSD receives as a result of enrolling those students.

21          92.     For the same reasons that LAUSD’s actions violate its duties as spelled out in the LCFF  
22 expenditure regulations and for failing to increase or improve services for unduplicated pupils by merely  
23 maintaining its legally required pre-existing level of special education services, the district has violated  
24 its duty to proportionally “increase” or “improve” services under the statute. *See* Section D, *supra*.

25           **F.     Superintendent Delgado Has Violated His Mandatory Legal Duty to Reject**  
26                   **LAUSD’s LCAP When It Does Not Comport with the Regulations.**

27          93.     The county superintendent must “approve, conditionally approve, or disapprove the  
28 adopted budget for each school district.” Educ. Code § 42127(d). The county superintendent also must

1 “approve a local control and accountability plan . . . on or before October 8, if he or she determines all  
2 of the following:” including that the LCAP “adheres to the expenditure requirements adopted pursuant  
3 to Section 42238.07 for funds apportioned on the basis of the number and concentration of unduplicated  
4 pupils pursuant to Section 42238.02 and 42238.03.” Educ. Code § 52070(d).

5 94. Accordingly, LACOE’s superintendent has a clear, present and ministerial duty to reject  
6 LAUSD’s LCAP when it does not comport with the expenditure regulations. For the foregoing reasons,  
7 Respondent Delgado has violated, and is continuing to violate, his mandatory duty to provide oversight  
8 over LAUSD’s LCAP by refusing to reject the LCAP for failing to comply with the regulations as set  
9 forth above.

10 **LAUSD’S VIOLATION OF 5 C.C.R. § 15496(a) WILL CAUSE IRREPARABLE INJURY**

11 95. Respondents have a clear, present and ministerial duty to determine its proportionality  
12 percentage in accordance with the regulations. That duty includes properly estimating the amount of  
13 funds expended on services for unduplicated pupils in the prior year under 5 C.C.R. § 15496(a)(2). By  
14 including special education funds in its prior year expenditures for unduplicated pupils, LAUSD violates  
15 this duty.

16 96. This petition seeks an order compelling LAUSD to perform the calculation with an  
17 estimate of prior year expenditures that excludes special education spending, which will remain  
18 supported by the district’s core operating dollars or base funds. As a result, LAUSD will have to revise  
19 the 2015-16 LCAP to spend approximately \$288 million more on programs counting towards its goal for  
20 increasing and improving services for unduplicated pupils (\$126 million in services that should have  
21 been initiated and maintained in 2014-15 and \$162 million for new services that should have been added  
22 in 2015-16). Any subsequent LCAPs that commit the same error will also require correc. This sum does  
23 not include the \$126 million in new or better services that unduplicated pupils should have received in  
24 2014-15. This deficit to high-need students will continue to build year after year until it grows to the  
25 full \$450 million annually at full implementation (projected for 2020-21).

26 97. As Governor Brown acknowledged in announcing his proposal for LCFF, supplemental  
27 and concentration funding is intended to meet the greater needs of unduplicated pupils. Students from  
28 those groups have, on average, much poorer outcomes, including lower rates of graduation, lower

1 college access rates, decreased career opportunities, higher drop-out and suspension rates, and poorer  
2 academic performance. LCFF was specifically intended to “increase or improve” services for  
3 unduplicated pupils to begin addressing the major disparities in outcomes they experience. LAUSD’s  
4 actions will have real-world impacts by reducing the extent to which these students experience increased  
5 or improved services, which will negatively impact their educational opportunities. The lost opportunity  
6 of services over an academic year or years cannot be regained.

7 **PETITIONERS HAVE NO ADEQUATE OR SPEEDY REMEDY AT LAW**

8 98. Petitioners have made every effort to attempt to convince LAUSD and Superintendent  
9 Delgado to comply with their clear, present and ministerial duties, without success. Seeking relief  
10 through this writ is therefore Petitioners’ only legal remedy to correct Respondents’ violations of their  
11 mandatory duties.

12 99. LAUSD released a proposed LCAP in early April 2014 that included in its calculation of  
13 expenditures to increase or improve services for unduplicated pupils approximately \$450 million for  
14 special education services. Attorneys from Public Advocates and the ACLU contacted LAUSD staff  
15 within days of this release to discuss the improper inclusion of special education expenditures and  
16 informed LAUSD’s chief operating officer that its proposal would violate the regulation. At the May  
17 2014 State Board meeting, Public Advocates conveyed the same concerns to LACOE’s assistant  
18 superintendent who is overseeing LCAP review.

19 100. On June 6, 2014, Public Advocates and the ACLU contacted LAUSD’s then-  
20 Superintendent John Deasy by letter, copying staff at LACOE involved in reviewing LCAPs, and  
21 cautioned the district that its “improper inclusion of special education funding as part of its estimate of  
22 prior year (FY 2013-14) services for unduplicated pupils . . . resulted in a significant under-calculation  
23 of the funds allocated to ‘increase or improve services for unduplicated pupils’ in the district’s LCAP.”  
24 Public Advocates and the ACLU requested that the district remove the \$450 million in special education  
25 expenditures from its estimate of prior year services for unduplicated pupils, and increase the proposed  
26 supplemental and concentration spending for FY 2014-15 accordingly.

27 101. In response, on June 13, 2014, counsel for LAUSD stated that the District “believes it is  
28 justified in its approach” but failed to explain the basis for this belief other than to state that the LCFF

1 expenditure regulations “do not preclude the District from including special education expenditures as  
2 part of the prior year services for unduplicated pupils.” Two weeks later, LAUSD School Board  
3 adopted the draft LCAP, which included the inflated and incorrect figures.

4 102. Public Advocates and the ACLU also reached out to discuss this matter with both the  
5 district and county office of education counsel subsequent to sending the June 6 letter.

6 103. In mid-August 2014, LACOE initially withheld approval of LAUSD’s LCAP, seeking  
7 further explanation of LAUSD’s claimed \$700 million in prior year spending, which included the  
8 disputed \$450 million in special education spending. In a letter dated August 19, 2014, then-  
9 Superintendent Deasy explained that the District’s General Fund contribution to special education in FY  
10 2013-14 was approximately \$653.4 million, and that 79% of the district’s students with disabilities are  
11 unduplicated pupils. Therefore, he counted 79% of most (though not all) special education program  
12 expenditures towards prior year spending to arrive at approximately \$450 million. LACOE ultimately  
13 approved the LCAP without modification on September 5, 2014.

14 104. With millions of dollars of expenditures remaining misallocated, on December 19, 2014,  
15 Petitioners’ counsel reached out to LAUSD’s new interim Superintendent, Ramon Cortines, and the  
16 County Superintendent of Schools, Arturo Delgado, by letter to “reiterate [their] serious concerns  
17 regarding LAUSD’s Local Control and Accountability Plan (LCAP) and to advise you that we will  
18 pursue legal action” unless “LAUSD and LACOE agree immediately to correct the decision to  
19 impermissibly include special education services as prior year spending on unduplicated students in  
20 LAUSD’s initial LCAP.”

21 105. On April 14, 2015, LAUSD’s Board of Education approved a three-year deal with its  
22 employee unions that would increase LAUSD’s health care costs by roughly \$1 billion per year. *See*  
23 *Annie Gilbertson, LAUSD board backs \$1 billion employee health care agreement, KPCC* (Apr. 14,  
24 2015), [http://www.scpr.org/news/2015/04/14/51022/lausd-board-backs-1-billion-employee-health-care-](http://www.scpr.org/news/2015/04/14/51022/lausd-board-backs-1-billion-employee-health-care-a/)  
25 *a/*. On May 12, 2015, LAUSD’s Board of Education approved a 10.36 percent pay raise for teachers  
26 that is poised to add an estimated \$278.6 million per year to the district’s budget. *See* Thomas Himes,  
27 *LAUSD agrees to teachers contract without knowing how to pay for it, L.A. Daily News* (May 12,  
28 2015), <http://www.dailynews.com/social-affairs/20150512/lausd-agrees-to-teachers-contract-without->

1 knowing-how-to-pay-for-it. Shortly thereafter, Governor Jerry Brown issued a revised state budget that  
2 included an estimated additional \$300 million to \$400 million in funds for LAUSD. *See* Thomas Himes,  
3 *LAUSD gets \$300 to \$400 million more in revised state budget*, L.A. Daily News (May 19, 2015),  
4 [http://losangeles-easy.com/news/california/lausd-gets-300-million-to-400-million-more-in-revised-state-](http://losangeles-easy.com/news/california/lausd-gets-300-million-to-400-million-more-in-revised-state-budget)  
5 [budget.](http://losangeles-easy.com/news/california/lausd-gets-300-million-to-400-million-more-in-revised-state-budget)

6 106. Between January 2015 and the present, Petitioners’ counsel conducted various meetings  
7 and telephone calls with LAUSD in a final attempt to convince LAUSD to revise its LCAP to comply  
8 with the Education Code and regulations. During these negotiations, despite the recent reports that  
9 LAUSD would receive additional state funding and LAUSD’s decision to commit significant funds to  
10 new obligations, LAUSD continued to refuse to amend its LCAP to allocate the correct amount of  
11 supplemental and concentration funds to increase and improve services for unduplicated pupils.

12 107. On June 23, 2015, LAUSD’s Board of Education approved the 2015-16 LCAP, which  
13 again included the erroneous prior year expenditure calculation and which will shortchange unduplicated  
14 students of roughly \$288 million in targeted services in the new school year.

## 15 **CAUSES OF ACTION**

### 16 **FIRST CAUSE OF ACTION**

#### 17 **Writ of Mandate – Code Civ. Proc. § 1085**

#### 18 **(Violation of 5 C.C.R. § 15496)**

#### 19 **(Improper Inclusion of Special Education Expenditures as “Services for Unduplicated Pupils”)**

20 108. Petitioners re-allege and incorporate by reference each and every allegation contained in  
21 paragraphs 1 through 107, inclusive.

22 109. At all relevant times, Respondents LAUSD and Respondent Cortines had a mandatory,  
23 non-discretionary and ministerial duty under Education Code § 42238.07 and 5 C.C.R. § 15496 to use  
24 appropriate supplemental and concentration funds to increase and improve services for unduplicated  
25 pupils. That duty includes properly estimating the amount of funds expended on services for  
26 unduplicated pupils in the prior year under 5 C.C.R. § 15496(a)(2). Likewise, at all relevant times,  
27 Respondent Delgado had a mandatory, non-discretionary and ministerial duty under Education Code §  
28

1 42238.07 and 5 C.C.R. § 15496 to ensure that LAUSD uses appropriate supplemental and concentration  
2 funds to increase and improve services for unduplicated pupils.

3 110. In breaching their mandatory duties to use appropriate supplemental and concentration  
4 funds to increase and improve services for unduplicated pupils, Respondents have violated their  
5 mandatory obligations under 5 C.C.R. § 15496.

6 111. Unless and until the Respondents are compelled to follow the law, LAUSD's current and  
7 prospective unduplicated pupils will be deprived of an increase or improvement of services to which  
8 they are entitled under the LCFF statute and regulations. This miscalculation affects not only the amount  
9 of funding for unduplicated pupils for the 2014-15 and 2015-16 school years, but also will affect  
10 funding in perpetuity because each year's calculation builds on the prior year's calculation.

11 112. Petitioners lack a plain, speedy and adequate remedy at law, except by way of  
12 peremptory writ of mandate pursuant to Code of Civil Procedure § 1085.

13 113. Without relief from this Court, Petitioners are being, and will continue to be, irreparably  
14 harmed by Respondents' failure to perform their legal duties. Respondents' violation of their mandatory  
15 duties under 5 C.C.R. § 15496 will continue to harm Petitioners by depriving unduplicated pupils of  
16 additional educational funding and resources that are needed to ensure academic success in the current  
17 and future academic years.

18 114. The Court must issue a writ of mandate directing Respondents to fully comply with 5  
19 C.C.R. § 15496, including to: (1) compel LAUSD to recalculate its prior year expenditures and adjust  
20 the substance of its current and future LCAPs to account for a larger amount of "new" supplemental and  
21 concentration funding; and (2) compel Respondent Delgado to reject LAUSD's current and future  
22 LCAPs, pending LAUSD's correction of the supplemental and concentration funding calculation as  
23 demanded herein.

24 **SECOND CAUSE OF ACTION**

25 **Writ of Mandate – Code Civ. Proc. § 1085**

26 **(Violation of Educ. Code § 42238.07 & 5 C.C.R. § 15496)**

27 **(Failure to Increase or Improve Services by Using Supplemental & Concentration Spending to**  
28 **Maintain Preexisting, Legally Required Special Education Services)**



1           115. Petitioners re-allege and incorporate by reference each and every allegation contained in  
2 paragraphs 1 through 114, inclusive.

3           116. At all relevant times, Respondents LAUSD and Respondent Cortines had a mandatory,  
4 non-discretionary and ministerial duty under Education Code § 42238.07 and 5 C.C.R. § 15496 to use  
5 supplemental and concentration funds to increase or improve services for unduplicated pupils in  
6 proportion to the additional funding the district receives due to those students. That duty includes not  
7 using supplemental and concentration funds in a manner that fails to increase or improve services for  
8 unduplicated pupils—*i.e.*, that fails to grow services for unduplicated pupils in quantity or quality. 5  
9 C.C.R. 15495. Likewise, at all relevant times, Respondent Delgado had a mandatory, non-discretionary  
10 and ministerial duty under Education Code § 42238.07 to ensure that LAUSD will use supplemental and  
11 concentration funds to increase and improve services for unduplicated pupils in accord with 5 C.C.R. §  
12 15496.

13           117. In breaching their mandatory duties to use appropriate supplemental and concentration  
14 funds to increase or improve services for unduplicated pupils, Respondents have violated their  
15 mandatory obligations under Education Code § 42238.07 and 5 C.C.R. § 15496. Respondents' improper  
16 use of special education funds to satisfy LAUSD's obligation to increase or improve services for  
17 unduplicated pupils affects not only the amount of funding for unduplicated pupils for the 2014-15  
18 school year, but also will affect funding in perpetuity because each year's calculation builds on the prior  
19 year's calculation.

20           118. Petitioners lack a plain, speedy, and adequate remedy at law, except by way of  
21 peremptory writ of mandate pursuant to Code of Civil Procedure § 1085.

22           119. Without relief from this Court, Petitioners are being, and will continue to be, irreparably  
23 harmed by Respondents' failure to perform their legal duties. Respondents' violation of their mandatory  
24 duties under Education Code § 42238.07 and 5 C.C.R. § 15496 will continue to harm Petitioners by  
25 depriving unduplicated pupils of additional educational funding and resources in the current and future  
26 academic years that are needed to ensure academic success.

27           120. The Court must issue a writ of mandate directing Respondents to fully comply with  
28 Education Code § 42238.07 and 5 C.C.R. § 15496, including to: (1) compel LAUSD to recalculate its

1 prior year expenditures and adjust the substance of its current and future LCAPs to account for a larger  
2 amount of “new” supplemental and concentration funding; and (2) compel Respondent Delgado to reject  
3 LAUSD’s current and future LCAPs, pending LAUSD’s correction of the supplemental and  
4 concentration funding calculation as demanded herein.

5 **THIRD CAUSE OF ACTION**

6 **Declaratory Relief**

7 121. Petitioners re-allege and incorporate by reference each and every allegation contained in  
8 paragraphs 1 through 120, inclusive.

9 122. Petitioners desire a judicial determination of the respective rights of the parties caused by  
10 Respondents’ violation of their mandatory duties under Education Code § 42238.07 and 5 C.C.R. §  
11 15496. Actual controversies have arisen and now exist between Petitioners and Respondents regarding  
12 Respondents violation of their mandatory duties under Education Code § 42238.07 and 5 C.C.R. §  
13 15496. Accordingly, declaratory relief is appropriate and necessary. A judicial determination is  
14 appropriate at this time and under these circumstances so that Petitioners may ascertain their rights and  
15 so that the public’s interest in this action may be resolved.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Petitioners pray for judgment on this Petition as follows:

18 A. For the Court to issue a writ of mandate directing Respondents, and all those acting in  
19 concert with Respondents, to fully comply with Education Code § 42238.07 and 5 C.C.R. § 15496,  
20 including to: (1) compel LAUSD to recalculate its prior year expenditures and adjust the substance of  
21 its current and future LCAPs to account for a larger amount of “new” supplemental and concentration  
22 funding; and (2) compel Dr. Arturo Delgado, the Los Angeles County Superintendent of Schools, to  
23 reject LAUSD’s current and future Local Control and Accountability Plans, pending LAUSD’s  
24 correction of the supplemental and concentration funding figures as demanded herein;

25 B. For the Court to issue a declaratory judgment that Respondents’ conduct described in this  
26 Petition violates 5 C.C.R. § 15496 and Education Code § 42238.07;

27 C. For the Court to issue an order prohibiting Respondents, and all those acting in concert  
28 with Respondents, from using the policies and practices challenged in this Petition;

1 D. For the Court to exercise continuing jurisdiction over this action to ensure that  
2 Respondents comply with the writ of mandate of this Court;

3 E. For the recovery in full of Petitioners' costs and reasonable attorneys' fees incurred in  
4 this action; and

5 F. For such further equitable and legal relief as this Court deems just and appropriate.  
6

7 Respectfully submitted,

8 ACLU FOUNDATION OF SOUTHERN  
9 CALIFORNIA

10 DATED: July 1, 2015

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21 DATED: July 1, 2015

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**VERIFICATION**

I, Alberto Retana, hereby declare:

1. I am President and Chief Executive Officer of Community Coalition of South Los Angeles (“Community Coalition”), a Petitioner in the above-entitled action. I am authorized to act on behalf of Community Coalition. I have read the foregoing petition for writ of mandate and complaint for injunctive and declaratory relief and the facts alleged therein are within my knowledge and I know them to be true, except as to those matters stated on information and belief and as to facts alleged about the other petitioner in paragraphs 20-22 and 89, and as to those matters, I believe them to be true.

2. Upon information and belief, the attached document filed in conjunction with and in support of this writ petition is a true and correct copy.

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: July 1, 2015



Alberto Retana  
on behalf of  
PETITIONER COMMUNITY COALITION  
OF SOUTH LOS ANGELES

# **ATTACHMENT 1**

## LOCAL CONTROL FUNDING FORMULA SAMPLE SCENARIO

The Local Control Funding Formula (LCFF) requires the State Board of Education to adopt spending regulations that require local educational agencies (LEAs) to increase or improve services for low-income students, English Learners, and foster youth (“unduplicated pupils”) in proportion to the increase in funds apportioned for supplemental and concentration grants. The following sample scenario illustrates how a hypothetical school district would demonstrate increased or improved services under proposed Title 5 *California Code of Regulations* (5 CCR) section 15496. (See Attachment 3).

### Sample Unified School District (USD)

68.83% of the students in Sample USD are low-income students, English Learners and/or foster youth.

2013-14 Total LCFF Funding	\$113,658,945
2014-15 Total LCFF Funding	\$120,009,636

#### Full Implementation:

Sample USD’s LCFF Funding Target	\$ 167,569,262
Sample USD’s Supplemental/Concentration Target Total	\$ 27,862,406

### Calculation of Proportionality Percentage

To determine the proportionality percentage for its budget and initial Local Control and Accountability Plan (LCAP) in 2014-15, Sample USD will follow these steps:

(References to “estimated supplemental and concentration grant funding” below are intended to refer to funds apportioned on the basis of the number and concentration of unduplicated pupils.)

- Determine the district’s target supplemental and concentration grant funding, 5 CCR section 15496(a)(1):** Estimate how much of Sample USD’s total LCFF funding when it reaches its LCFF target at full implementation will be attributed to supplemental and concentration grants.  
**\$27,862,406**
- Determine prior year expenditures to support unduplicated pupils, 5 CCR section 15496(a)(2):** Estimate Sample USD’s expenditures in 2013-14 on services for low-income pupils, English Learners, and foster youth that are in addition to expenditures on services provided to all pupils. The estimated amount should be no less than the amount of Economic Impact Aid funds Sample USD expended in the 2012-13 fiscal year.  
**\$5,000,000**

- 3. Calculate the gap between prior year expenditures and target supplemental and concentration grant funding, 5 CCR section 15496(a)(3):** Subtract the estimated 2013-14 expenditures on additional services for low-income pupils, English Learners and foster youth from Sample USD's supplemental and concentration grant target. This calculation will result in a figure that is Sample USD's approximate supplemental and concentration funding gap.  
 **$\$27,862,406 - \$5,000,000 = \$22,862,406$**
- 4. Calculate the increase in estimated supplemental and concentration grant funding in the LCAP year, 5 CCR section 15496(a)(4):** Estimate Sample USD's increase in estimated supplemental and concentration grant funding in 2014-15 by multiplying the gap figure in step 3 by the estimated percentage of the remaining statewide funding gap between current funding and full implementation of LCFF that is eliminated in the fiscal year for which the LCAP is adopted as calculated by the Department of Finance. For purposes of this hypothetical, assume the Department of Finance has calculated that the total LCFF funding gap is reduced by 11.8% in 2014-15.  
 **$\$22,862,406 \times 11.8\% = \$2,697,764$**
- 5. Calculate the district's total estimated supplemental and concentration grant funding in the LCAP year, 5 CCR Section 15496(a)(5):** Calculate Sample USD's estimated supplemental and concentration grant funding in 2014-15 by adding the gap reduction figure above to the past year expenditure total from step 2. (Note: this amount will appear in Section 3C of Sample USD's 2014-15 LCAP. (See Attachment 3.)  
 **$\$2,697,764 + \$5,000,000 = \$7,697,764$**
- 6. Calculate the district's base funding in the LCAP year, 5 CCR Section 15496(a)(6):** Estimate the amount of funding attributable to base grants in 2014-15 by subtracting the amount calculated pursuant to Step 5 above from Sample USD's total amount of LCFF funding in 2014-15.  
 **$\$120,009,636 - \$7,697,764 = \$112,311,872$**
- 7. Calculate the minimum proportionality percentage, 5 CCR Section 15496(a)(7):** Divide the approximate amount of supplemental and concentration grant funds by the approximate amount of base grant funds in 2014-15. This calculation will result in the percentage by which services for low-income pupils, English Learners and foster youth must be increased or improved as compared to the services provided to all pupils.  
 **$\$7,697,764 / \$112,311,872 = \underline{6.9\%}$**