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November 9, 2015

Mr. Victor Leung  
Staff Attorney  
ACLU of Southern California  
1313 West 8<sup>th</sup> Street, Suite 200  
Los Angeles, CA 90017

**Re: Uniform Complaint Procedures (UCP) Case # UCP-029-15/16**  
**Parent and Non-Profit Organization**

Dear Mr. Leung,

The Los Angeles Unified School District (the District) has completed its investigation of the above-referenced complaint alleging that LAUSD violated its legal obligations under Education Code § 42238.07 and 5 C.C.R. § 15496 by including special education spending on foster youth, low income students, and English learners (collectively "High Need Students") as part of its estimate of prior year expenditures for services for High Need Students in its 2014-15 and 2015-16 LCAPs. Enclosed is a copy of the final report that includes details of the investigation, conclusions, and, if necessary, corrective actions.

Please be assured of the confidential treatment of this complaint and accompanying report. Information is only being provided to those persons within the District on a need to know basis within the confines of the District's reporting procedures and investigative process. You are advised that the District prohibits retaliation against you or anyone who files a complaint, anyone who requests an appeal or anyone who participates in any complaint investigation process. You are also advised that civil law remedies may be available to you.

#### **Appeal Information**

If you disagree with the findings and conclusions presented to you by this office you have the right to appeal within fifteen days of the receipt of this letter. Such an appeal should specify the reason for appealing the decision. A copy of the original complaint and a copy of this report should be included. Send your appeal to:

**California Department of Education  
1430 N Street  
Sacramento, CA 95814**

If you have any questions or need more information pertaining to the complaint process or the enclosed report, please feel free to call me at (213) 241-7682.

Sincerely,



Julie Hall-Panameno, Director  
Educational Equity Compliance Office

C: Sharyn Howell, Associate Superintendent, Division of Special Education  
Megan Reilly, Chief Financial Officer, Los Angeles Unified School District  
John Walsh, Deputy Chief Financial Officer  
Nargis Merchant, Deputy Budget Director, Budget Services & Financial Planning Division  
Tony Atienza, Director, Finance Policy  
Cheryl Simpson, Director, Budget Services & Financial Planning Division  
Nirupama Jayaraman, Asst. Budget Director, Budget Services & Financial Planning Division  
Pedro Salcido, Accountability Advisor, Office of Government Relations  
Edgar Zazueta, Chief of External Affairs  
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Gregory Luke, Attorney, Strumwasser & Woocher LLP



**Los Angeles Unified School District  
Uniform Complaint Procedure Case #UCP-029-15/16  
Parent and Non-Profit Organization**

**Background:**

In 2013, the Legislature adopted a comprehensive reform of the rules governing the financing of schools in California, known as the Local Control Funding Formula (“LCFF”). The LCFF directs state funding to schools under three new “grants” (base, supplemental, and concentration) and delegates broad discretion over the spending of those funds to local educational agencies. The Legislature set a long-term target for the increased funding of public education throughout California and provided for yearly incremental increases in spending over the course of five fiscal years to reach the ultimate LCFF funding goal.

The LCFF provides that schools districts, charter schools, and county offices of education must generate Local Control Accountability Plans (“LCAPs”) for each fiscal year during the period leading up to the full funding of the LCFF. The Legislature did not itself enact rules governing the contents of LCAPs, but instead delegated authority to the State Board of Education to adopt appropriate regulations to ensure that local educational agencies would increase and improve services for unduplicated pupils — i.e., foster youth, English learners, and low-income pupils — in proportion to the supplemental and concentration dollars those students generate during the intervening years leading up to the full funding of LCFF. To that end, the regulations governing LCAPs, codified at Cal. Code Regs, tit., 5, §§ 15494-15497.5, require local educational agencies to “[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on *services provided for all pupils*” as part of the calculation of “the percentage by which services for unduplicated pupils must be increased or improved above services provided to all pupils” in each fiscal year. (Cal. Code Regs., tit. 5, § 15496, subd. (a) [emphasis added].)

The LCAP regulations grant schools that serve high concentrations of unduplicated pupils the highest level of flexibility in demonstrating compliance with these “proportionality” requirements, in recognition of the special expertise those schools have acquired in the provision of education to high needs students. (Cal. Code Regs., tit. 5, § 15496, subd. (b).) The Los Angeles Unified School District (“LAUSD” or “the District”) serves, by far, the largest aggregation of pupils of any school in the state, over 84% of whom are unduplicated. After consultation with the counsel and staff of the State Board of Education, LAUSD issued its initial LCAP in June of 2014, identifying over \$700 million of varied LCFF expenditures on services for unduplicated pupils, which figure included \$450 million of District general fund expenditures on Individualized Education Programs for the many thousands of unduplicated pupils who also meet the eligibility criteria to receive Special Education services under federal and state law. On



September 5, 2014, the Los Angeles County Office of Education (“LACOE”) approved the initial LAUSD LCAP.

On or about July 1, 2015, Complainants filed a lawsuit against LAUSD and LACOE (the “Petition”) seeking a writ of mandate and declaratory relief to remedy alleged District violations of the LCFF and the LCAP regulations arising from the inclusion of Special Education expenditures in the calculation of prior-year expenditures under section 15496. LAUSD demurred to the Petition on the ground that Complainants had failed to exhaust the administrative remedies provided in the LCFF for stakeholders aggrieved by any aspect of an LCAP, which include appeal to the State Superintendent of Public Instruction. (Educ. Code, § 52075.) In response, the Complainants filed the subject Complaint, reserving their argument that exhaustion was not required. The Complaint attaches and incorporates the Petition.

**Policy/Authority:**

- Title 5, Code Cal. Regs., §§ 15494-15497.5
- Education Code §§ 2574, 2575, 42238.01, 42238.02, 42238.03, 42238.07, 47605, 47605.5, 47606.5, 48926, 52052, 52060-52077, and 64001.

**Method of Investigation:**

- The investigation was conducted at the direction of Julie Hall-Panameño, Director of the Educational Equity Compliance Office. Information was gathered from interviews to investigate the allegations made in the complaint. Additionally, the correspondence between the counsel for Complainants and counsel for the District that preceded the filing of the Petition and the instant Complaint was reviewed.
- Persons interviewed:
  - Megan Reilly, Chief Financial Officer, LAUSD
  - John Walsh, Deputy Chief Financial Officer
  - Tony Atienza, Director, Finance Policy
  - Cheryl Simpson, Director, Budget Services & Financial Planning Division
  - Nargis Merchant, Deputy Budget Director, Budget Services & Financial Planning Division
  - Nirupama Jayaraman, Assistant Budget Director, Budget Services & Financial Planning Division
  - Pedro Salcido, Accountability Advisor, Office of Government Relations
  - Sharyn Howell, Associate Superintendent, Division of Special Education
  - Edgar Zazueta, Chief of External Affairs



### **Allegation(s):**

The Complainant alleges that LAUSD has violated its legal obligations under Education Code section 42238.07 and title 5, section 15496 of the California Code of Regulations by including special education spending on foster youth, low income students and English learners in its estimate of prior year expenditures on services for unduplicated pupils in its 2014-15 and 2015-2016 LCAPs. There does not appear to be any difference between the allegations of the Complaint and the allegations of the antecedent Petition filed by Complainants in the Superior Court of Los Angeles County.

### **Legal Framework:**

The relevant provision of the Code of Regulations on which Complainants rely directs local agencies to do the following when preparing an LCAP each fiscal year:

“[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on services provided for all pupils. The estimated amount of funds expended in 2013-14 shall be no less than the amount of Economic Impact Aid funds the LEA expended in the 2012-13 fiscal year.” (Cal. Code Regs., tit. 5, §15496, subd. (a)(2).)

Notably, this regulation does not require local agencies determine the actual expenditures on services for unduplicated pupils in any given fiscal year, but rather to “estimate the amount” of such expenditures. Complainants contend that LAUSD violated this regulation by including that portion of LCFF funding budgeted for the Individualized Education Programs provided to unduplicated pupils in its LCAP estimate of prior year spending.

Complainants also claim that the District has violated Education Code section 42238.07. However, that statute does not impose any duties upon local educational agencies, but rather comprises a directive to the State Board of Education. In its entirety, it reads:

(a) On or before January 31, 2014, the state board shall adopt regulations that govern the expenditure of funds apportioned on the basis of the number and concentration of unduplicated pupils pursuant to Sections 2574, 2575, 42238.02, and 42238.03. The regulations shall include, but are not limited to, provisions that do all of the following:

(1) Require a school district, county office of education, or charter school to increase or improve services for unduplicated pupils in proportion to the increase in funds apportioned on the basis of the number and

concentration of unduplicated pupils in the school district, county office of education, or charter school.

(2) Authorize a school district, county office of education, or charter school to use funds apportioned on the basis of the number of unduplicated pupils for schoolwide purposes, or, for school districts, districtwide purposes, for county offices of education, countywide purposes, or for charter schools, charterwide purposes, in a manner that is no more restrictive than the restrictions provided for in Title I of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301, et seq.).

(b) The state board may adopt emergency regulations for purposes of this section.

The Complaint does not identify any specific element of this statute that LAUSD is alleged to have violated, or any clear, present ministerial duty imposed by this statute on LAUSD. Complainants reference this statute solely as authority for the proposition that “school districts must increase or improve services for High Need Students in proportion to the additional dollars those students generate.” (Complaint, at p. 4.) Because a statute expressly and solely directed at the State Board of Education does not impose duties upon local educational agencies, this statute does not provide authority for the issuance of a writ or declaratory relief against LAUSD, but, at most, may provide an interpretive aide if the regulations adopted by the State Board of Education are determined to be ambiguous.

### **Findings:**

#### **(1) SPECIAL EDUCATION IS NOT A SERVICE PROVIDED TO ALL STUDENTS.**

- a. Special Education is provided only to pupils who satisfy detailed criteria regarding recognized disabilities and who are not subject to specific exclusionary factors.**

The Individuals with Disabilities Education Improvement Act (“IDEA”), codified at 20 U.S.C. § 1400 et seq., imposes duties on states and local educational agencies to provide an Individualized Education Program (“IEP”) to students who meet the specific eligibility requirements.<sup>1</sup> Accordingly, Special Education services are by definition not services provided

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<sup>1</sup> The IDEA contains multiple parts. Direct services to children are codified in Parts B and C of the IDEA. Part B of the IDEA covers school aged children (ages 3-22). Part C of the IDEA covers infants and toddlers (ages birth to 3). In California, Part B IDEA services are carried out primarily by local educational agencies, such as the District; Part C IDEA services are carried out primarily by regional centers. (Educ. Code, § 56001; Gov. Code § 95004; *see also*, Educ. Code, §§ 56000 et seq. and Gov. Code, §§ 95000 et seq.) While California school districts may



to all students, but rather specialized services provided to individual students who have qualifying disability and satisfy the related test for eligibility. In 2013-2014, only 12 percent of LAUSD's student population qualified to receive some form of specialized instruction or assistance under an IEP.

Only children of certain ages, with qualifying disabilities who, by reason thereof, require special education intervention are eligible for and entitled to services under the IDEA. (*See*, 20 U.S.C. § 1400 (3) [definition of "child with a disability"].) Special education eligibility is limited in many ways, including by (1) qualifying disability, (2) need for special education, and (3) age.

The first limiting criterion is qualifying disability. In order to qualify as a "child with a disability" under IDEA the student must first meet the definition of one or more of the categories of disability eligibility. These include: intellectual disability, hearing impairment (including deafness), speech or language impairment, visual impairment (including blindness), serious emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, and (for certain age groups) developmental delay. (20 U.S.C. § 1400 (3)(A)(i); *see also*, Educ. Code, § 56026 (a).)

It is important to note that some children may have a qualifying disability but, regardless, may still be ineligible for special education under the IDEA. This second exclusionary factor dictates that disability, or even diagnosis of a disability<sup>2</sup>, is insufficient in and of itself to qualify a child for special education services under the IDEA. Rather, a child must demonstrate a need for special education and related services.<sup>3</sup> (20 U.S.C. § 1400 (3)(A)(ii).) California law further explains this standard as a child whose disability (or impairment) "requires instruction and services which cannot be provided with modification of the regular school program." (Educ.

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have some limited involvement in Part C IDEA services, this response addresses only Part B IDEA services.

<sup>2</sup> A diagnosis of a potentially disabling condition is "neither required nor sufficient" to establish eligibility under the IDEA. (*Lakeside Joint School District*, (OAH 2010), Case No. 2009090504.)

<sup>3</sup> "Special education" itself is narrowly defined by California law as something above and beyond what is available in the regular school program. Education Code section 56031 defines "special education" as "specially designed instruction . . . to meet the unique needs of individuals with exceptional needs." In addition, certain related services are specifically defined as special education, including: speech and language pathology services, travel training, and vocational education. (Educ. Code, § 56031, subd. (b); *see also* 34 C.F.R. § 300.39(2).) A child who needs only a related service which is not otherwise classified as "special education" will not meet IDEA eligibility criteria. (34 C.F.R. § 300.8 (2).)



Code, § 56026, subd. (b).) As the Ninth Circuit has confirmed, a child will not be eligible for special education, even with a qualifying disability, if the impact of the disability can be addressed through regular education programming. (*Hood v. Encinitas Union Sch. Dist.*, 486 F.3d 1099 (9th Cir. Cal. 2007).)

Even where a need for specialized services is indicated, exclusionary factors may still prevent special education eligibility under the IDEA. To wit, a child will not be eligible for services under the IDEA if the need for special services is due to either of the following: (a) limited English proficiency; (b) lack of appropriate instruction in reading or math; (c) temporary physical disability; (d) social maladjustment; or, (e) environmental, cultural, or economic factors. (34 C.F.R. § 300.306 (b)(1); *see also* Educ. Code § 56026, subd. (e).) For example, a student with ADHD was found not to be eligible for special education during a period of time when it was reasonable to conclude that his school issues were caused primarily by his unstable home life, rather than a qualifying disability and/or the impact of his ADHD. (*Oceanside Unified School District*, (OAH 2010) Case No. 2010071003.) The exclusionary factor related to limited English proficiency is quite significant in the context of the instant Complaint. If Special Education services were indeed a “service provided to all pupils” then all English learner unduplicated pupils would necessarily qualify for Special Education. The fact that the IDEA expressly *prohibits* any such conclusion amply demonstrates that Special Education services are not “services provided to all pupils.”

Finally, the third broad factor which could limit a disabled child’s eligibility for special education under the IDEA is age. Part B of the IDEA narrowly defines qualifying students as those “between the ages of 3 and 21.” (20 U.S.C. § 1412 (a)(1)(A); Educ. Code, § 56026 subd. (c).) Further, even within this age span, other limitations apply, as follows:

- Children incarcerated in an adult correctional facility who were not identified as a “child with a disability” or did not have an individualized education program (the plan implementing special education) prior to incarceration will be ineligible for services under the IDEA. (20 U.S.C. § 1412 (a)(1)(B); Educ. Code, § 56040.)
- Children who have received a regular high school diploma will be ineligible for services under the IDEA. (20 U.S.C. § 1414 (c)(5)(B)(i); 34 C.F.R. § 300.102 (a)(3)(i); *see also* Educ. Code, § 56026.1.)



- Children who did not receive special education prior to their 18<sup>th</sup> birthday will not be eligible for services under the IDEA. (20 U.S.C. § 1412 (a)(1)(B)(i); Educ. Code, § 56026.)

Special education eligibility is not conferred lightly. In order to qualify, a child must first undergo an extensive formal assessment of his/her abilities and needs. (20 U.S.C. § 1414 (b).) With that information, a team of qualified professionals, along with the child's parents, then determine whether the assessment and other data warrant a finding of IDEA eligibility. (20 U.S.C. § 1414 (d)(1)(B).)

**b. Special Education personnel are not permitted to provide services to the general student population.**

Both federal and state law prohibit the instructors, assistants, and therapists that provide Special Education services to LAUSD pupils from providing services to general education students. Special Education service providers are not certified to operate as teachers in LAUSD classrooms, as recognized in the collective bargaining agreement between LAUSD and the United Teachers of Los Angeles ("UTLA").

Special Education teachers, including Resource Specialists ("RSP") and Special Day Program providers ("SDP") are funded and allocated to provide services according to stated caseloads and norms, in accordance with the services listed on a students' Individualized Education Program. Certificated assignments for RSP teachers are based on caseload allocations and guidelines referenced in Education Code section 56362. SDP teacher allocations are determined based upon norms negotiated with UTLA. These teachers are assigned solely for the purpose of improving performance outcomes for students with disabilities.

Special Education teachers, trainees, and assistants may not be allocated for teaching non-disabled students, nor may they be re-allocated during the school day for non-special education responsibilities. They may not serve as coordinators, coaches, athletic directors or other non-special education instructional assignments during the school day. They are required to directly support the instructional program for students with disabilities during the entire school day.

If a school wishes to assign a Special Education teacher to act as a coordinator, coach, or perform any other such duties not related to Special Education, the school must budget for this position through grants or other funding sources. It is a misuse of Special Education resources to assign personnel funded to support the instructional program for students with disabilities to any other duties.



**(2) LAUSD PROPERLY ESTIMATED ITS PRIOR-YEAR SPECIAL EDUCATION SPENDING ON UNDUPLICATED PUPILS**

**a. The LCFF Calculation**

The District's General Fund contribution to Special Education (net of the Revenue Limit and affiliated charters) was estimated at \$653.4 million for 2013-14 and \$633.9 million for 2014-15. Seventy nine percent (79%) of the District's students with disabilities are identified as low income, English learners, or foster youth. The District identified the subset of Special Education programs that benefit these targeted student populations and applied 79 percent to the expenditures of those programs to estimate the share that would benefit these high needs students. This calculation totals to \$449.88 million for 2013-14 and 2014-15, thereby reflecting the estimated share of General Fund expenditures for services that benefit low income, English learners, or foster youth with an Individualized Education Program. In addition to this amount, \$22.2 million was allocated in supplemental funds for Special Education teachers and assistants in 2014-15, and an additional \$3 million for anticipated cost increases.

These expenditures include initiatives addressing integration of students with disabilities into general education settings, and reducing disproportionality among subgroups identified for special education. Furthermore, the District has increased support services to advance the academic achievement of every English Learner with Disabilities (ELD). The District aligns IEPs with the English Learner Master Plan for each English learner with disabilities. Each IEP is required to include goals for English proficiency, and the ELD present level of performance for each student.

**b. Budget and Expenditures used in the Initial Prior Year for 2013-2014**

Table 1 shows that the District's Maintenance of Effort (MOE) for Special Education was \$1.5 billion in 13-14. This includes \$178 million in unassigned support costs, known as PCRA. In addition, expenditures in General Fund programs that support Special Education, including administrative and transportation costs, amounted to \$25 million for that year. This reflects a grand total of \$1.6 billion in expenditures. The LCFF supplemental amount of \$449.88 million reflects only 28.9 percent of these expenditures.

Table 1: MOE and Support to Special Ed Expenditures		Amount, 13-14
PCRA*		\$177,894,430
Special Ed Portion of MOE		\$1,354,331,202
Total MOE		\$1,532,225,632
Expenditures in Programs that Support Special Ed**		\$25,401,341
Grand Total, MOE and Support to Special Ed Prog		\$1,557,626,973

\*The MOE calculation includes an amount for the Program Cost Report Allocation. Procedure 910 of the California School Accounting Manual provides a method of



distributing unassigned support costs to different user programs such as special education. The calculation is performed in state provided SACS software.

**\*\*These are expenditures in Programs 13232 and 13233. They are part of the General Fund and are not included in the MOE.**

Note: Special Ed Portion of MOE also includes Specially Funded Programs. The MOE is calculated using all expenditures in SACS Goal 5000.

Table 2 shows that the District's Special Education program had an authorized budget of \$1.36 billion and expenditures of \$1.34 billion. This excludes amount for Specially-Funded Programs and General Fund programs that support Special Ed.

Table 2: Special Education Budget and Expenditures	Amount, 13-14
Authorized CM0 Budget	\$1,361,780,338
Expenditures	\$1,335,666,481
Difference, Budget Less Expenditures	\$26,113,857

Note: Excludes Specially-Funded Programs and General Fund programs that support Special Education.

Table 3 shows Special Education revenues for 2013-14.

Table 3: Special Education Revenues	Amount in Millions, 2013-14
Federal Revenues	\$110.9
State Revenues	\$353.2
Local Revenues	\$0.1
SELPA Charter Schools Revenue	\$59.7
Contribution-Unrestricted Programs	\$727.6
Contribution-Fair Share	\$11.4
<i>Total Revenue</i>	\$1,262.9

Note: Excludes Specially-Funded Programs and General Fund programs that support Special Education.

The District's General Fund contribution to Special Education (net of the Revenue Limit and of affiliated charters) was estimated at \$653.4 million for 2013-14. Of this amount, supplemental and concentration funds was estimated at \$449.88 million and base funds was estimated at \$203.5 million.

### **c. Identifying Unduplicated Pupils who Receive Special Education Services**

The table below shows how LAUSD determined that 79% of its students who receive Special Education services are unduplicated pupils. It first matched the 2012-13 CALPADS file, which was used for the District's overall unduplicated calculation, to the 2012-13 CASEMIS



file. There were 65,589 students with disabilities (SWD) identified on the 2012-13 CALPADS file. Of this count, 61,265 students were identified as not attending affiliated charter schools. (Affiliated charter students must be excluded from the unduplicated calculation as these schools receive their LCFF allocation independent from the District.) Of the 61,265 students with disabilities in CALPADS not attending affiliated charter schools, 48,633 students were identified as being either EL, Foster, or Low-Income. This computes to an unduplicated percentage of 79.38% for LAUSD's students with disabilities (48,633/61,265).

Table 4: SWD Identified as Unduplicated Pupils	
Count of SWD on CALPADS file, 12-13	65,589
Count of SWD on CALPADS file not attending charter schools, 12-13	61,265
Count of unduplicated SWD on CALPADS file not attending charter schools, 12-13	48,633
Percent unduplicated SWD, 12-13	79.38%

**d. LAUSD excluded from its prior year calculation all categories of Special Education expenditures that did not provide direct services to pupils.**

The LCAP regulations broadly define “services”, without limitation, to include “services associated with the delivery of instruction, administration, facilities, pupil support services, technology, and other general infrastructure necessary to operate and deliver educational instructions and related services.” (Cal. Code Regs., tit., 5, § 15495, subd. (d).) Though the regulations thus clearly permit school districts to include a wide array of expenditures in the calculation of prior-year expenditures on unduplicated pupils, LAUSD conservatively limited the calculation to the major spending groups within Special Education that provide direct services to pupils. As a result, the calculation of Special Education expenditures on unduplicated pupils is substantially smaller than permitted under the regulations.

In fiscal year 2014-2015, the total authorized budget for Special Education services in LAUSD was in excess of \$ 1.4 billion. The District estimated that \$633.9 million (net of Revenue Limit and affiliated charters) would be contributed towards this budget from the District's LCFF general fund. However, the District only counted \$566 million of this general fund encroachment towards the estimate of proportionality spending. *In other words, despite the broad definition of services in the LCAP regulations, the District did not consider \$68 million in Special Education expenditures as potential sources of proportionality expenditures on unduplicated pupils.* Of this amount, \$ 33 million was excluded because it related to major group categories of Special Education spending on pre-school and adult student populations. An additional \$6.5 million budgeted for the “SPED Career & Transition Program” was excluded because it served pupils from both the K-12 and adult student populations. In other words, the District did not attempt to isolate how much of the expenditures in that major subgroup were



directed to the K-12 pupils that are targets of LCFF funding, but instead took the conservative approach of excluding the major subgroup from the proportionality calculation altogether.

The remainder of the foregone \$68 million excluded from proportionality — \$34.5 million — comprise major subgroup spending that clearly falls within the regulatory definition of “services” in the proportionality calculations, but that the District conservatively opted to exclude. Specifically, the District excluded from its proportionality calculations the following major group categories of Special Education spending that otherwise satisfy the broad regulatory definition of “services” that may be considered to demonstrate proportionality compliance:

- “SPED Central Office” (\$11.15 million);
- “SPED IMA Equipment-Materials” (\$4.56 million);
- “SPED Reimbursement Due Process” (\$4.26 million);
- “SPED Allocation to Schools for Compliance” (\$3.25 million);
- “SPED Program Specialists Certificated” (\$2.94 million);
- “SPED IMA Allocation to Schools” (\$1.05 million);
- “SPED Least Restrictive Environment Counselors” (\$0.65 million); and
- “SPED Temporary Personnel Account” (\$0.13 million).

Though all the subgroups comprise “services associated with the delivery of instruction, administration, facilities, pupil support services, technology, and other general infrastructure necessary to operate and deliver educational instructions and related services” to pupils that is permitted in the proportionality calculations under section 15495, the District opted not to rely on those expenditures to demonstrate proportionality in order to ensure that its proportionality calculations were based upon services geared directly to unduplicated pupils.

**e. LAUSD excludes expenditures on services that may involve de minimis contact with general education students from its proportionality calculations.**

Finally, the District excludes expenditures on services that may involve de minimis contact between Special Education personnel and the general education population from its proportionality calculations. Specifically, with respect to the five major budget subgroups that fund salaries and health benefits for therapists and specialists who participate in assessments to determine eligibility for Special Education, the District budgets the funding of those activities through other state and federal funding sources, and does not include expenditures on those services in its proportionality calculations.



### Analysis:

The Complainants claim that the District's LCAP violates a statute — Education Code section 42238.07 — and a regulation adopted to implement that statute — Cal. Code Regs, tit. 5, § 15496, Subd. (a).) As discussed below, the statute in question does not purport to govern the actions of local educational agencies, but is instead a delegation of authority to the State Board of Education to adopt regulations governing LCAPs. The regulation adopted by the SBE pursuant to this delegation of authority addresses the issue raised in the Complaint by requiring local educational agencies to “[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on *services provided for all pupils*” as part of the calculation of “the percentage by which services for unduplicated pupils must be increased or improved above services provided to all pupils” in each fiscal year. (Cal. Code Regs., tit. 5, § 15496, subd. (a) [emphasis added].) The regulation does not provide any other guidance regarding this aspect of the proportionality requirement for LCAPs, except insofar as it defines “services” broadly, and without limitation, to include “services associated with the delivery of instruction, administration, facilities, pupil support services, technology, and other general infrastructure necessary to operate and deliver educational instructions and related services.” (Cal. Code Regs., tit., 5, § 15495, subd. (d).) Thus, the sole source of a potential violation of law referenced in the Complaint is the regulatory requirement that local educational agencies ““[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on *services provided for all pupils*.”

Complainants contend that “Special Education services cannot be counted as spending on prior year expenditures on services for High Needs Students because these services are *available* to all students . . . who are eligible to take advantage of special education services” and are not “targeted for High Needs Students.” (Complaint, at pp. 4-5 [emphasis added].) But, the LCAP regulations do not employ any of these locutions. The State Board of Education did not exclude services that are “available to all students . . . who are eligible” for those services from the prior-year estimate of unduplicated spending. Nor did it exclude services that are not “targeted for” unduplicated students. To the contrary, section 15496 directs local educational agencies to exclude from the prior year estimate of unduplicated spending only “services provided to all pupils.” Complainants do not address whether Special Education services constitute “services provided to all pupils” under section 15496, but instead introduce language into the regulation that does not exist.

Accordingly, the Complaint presents a single mixed question of fact and statutory interpretation: Are Special Education services “services provided to all pupils” under section 15496 of title 5 of the California Code of Regulations?



As a factual matter, Special Education services are not services provided to all pupils, but rather services provided to individual pupils who are eligible to receive those services. Complainants do not present or identify any evidence to support a factual conclusion that Special Education “services are services provided to all students” or to otherwise contradict the express import of the federal and state laws that set the exacting eligibility criteria for qualified students to receive an Individualized Educational Program. The facts further confirm that the Special Education expenditures counted by the District towards its prior-year estimates of spending are expenditures only on the individual students who have qualified to receive an IEP. Thus, the facts do not support a conclusion that Special Education services are services provided to all pupils.

The only remaining argument suggested in the Complaint is the contention that the Legislature or the State Board of Education intended Special Education services to be exempt from the plain meaning of the phrase “services provided to all students.” Despite numerous requests lodged by the District, Complainants have not identified any authority in the LCFF and its implementing regulations, nor any authority in the relevant legislative and regulatory histories, to support a conclusion that the Legislature or the State Board of Education intended Special Education to be deemed “services provided to all students” despite the plain meaning of that phrase.<sup>4</sup>

It bears noting that the LCFF, its implementing regulations, and the general law require that the District’s quasi-legislative decisions regarding the interpretation and implementation of section 15496 be accorded the most deferential level of judicial scrutiny. (*See, American Coatings Assn., Inc. v. South Coast Air Quality Dist.* (2012) 54 Cal.4<sup>th</sup> 446, 461-462; *Khan v. Los Angeles City Employees’ Retirement System* (2010) 187 Cal.App.4<sup>th</sup> 98, 106.) Mandate in this context will only “lie to correct abuses of discretion” and the courts ask whether the public agency’s action was arbitrary, capricious, or entirely lacking in evidentiary support.” (*County of Los Angeles v. City of Los Angeles* (2013) 214 Cal.App.4<sup>th</sup> 643, 653-654.).

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<sup>4</sup> Notably, the correspondence between counsel for LAUSD and counsel for Complainants contains numerous instances in which LAUSD counsel urged the Complainants to identify any statutory, regulatory, or other authority in the legislative history of the LCFF and its implementing regulations that reflects any legislative intent to deem Special Education services “services provided to all pupils” despite the plain meaning of that phrase. Complainants did not identify any such authority, but instead relied solely on arguments that the District’s proportionality calculations violated the “spirit of the LCFF” and arguments that interpolate language into the relevant statutes and regulations that was neither enacted by the Legislature nor adopted by the State Board of Education. LAUSD has not identified any authority to support the claim that the Legislature or the State Board of Education intended Special Education services to be deemed “services provided to all pupils.”



### *Alleged Violation of Education Code 42238.07*

Complainants allege a violation of Education Code section 42238.07, a statute that by its plain language contains only directives addressed to the California State Board of Education, specifically, directives to “adopt regulations that govern the expenditure of funds apportioned on the basis of the number and concentration of unduplicated pupils.” Standing alone, this statute imposes no clear, present ministerial duties on local educational agencies and, accordingly, no writ of mandate will lie to compel local educational agencies to comply with its terms.

As noted above, the Complaint does not identify any specific term of Education Code section 42238.07 that LAUSD is alleged to have violated. Nor does it articulate how LAUSD could have violated a statute expressly and solely directed at the State Board of Education. Complainants reference this statute solely as authority for the proposition that “school districts must increase or improve services for High Need Students in proportion to the additional dollars those students generate.” (Complaint, at p. 4.) Because the regulations adopted by the Board of Education to govern the LCAP give express effect to this principle, and because Education Code section 42238.07 does not contain any directives regulating the conduct of local educational agencies, that provision does not provide any independent authority for the issuance of a writ of mandate or declaratory relief.

Education Code section 42238.07 may be relevant only to the extent that the regulations adopted by the State Board of Education are ambiguous and properly susceptible to the application of extrinsic aids in support of statutory interpretation. The regulations adopted by the State Board of Education, however, do not admit any ambiguity. Nor are those regulations inconsistent with the Legislative directives set forth in Education Code section 42238.07. In relevant part, the plain terms of the regulations direct local districts to perform two discreet tasks with respect to the calculation of funds expended on services for unduplicated pupils. First, subdivision (a)(2) of section 15496 requires local educational agencies to “[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on services provided for all pupils.” Second, that same provision mandates that “the estimated amount of funds expended in 2013-14 shall be no less than the amount of Economic Impact Aid funds the LEA expended in the 2012-13 fiscal year.”

With respect to the first directive, the evidence clearly shows that LAUSD has properly estimated the amount of funds expended on unduplicated pupils in addition to what was expended on services provided to all pupils. Because Special Education services are not services provided to all pupils, but rather services provided to a small subset of the LAUSD student population under conditions that prohibit the comingling of Special Education expenditures and activities with general education expenditures and activities, LAUSD has clearly acted well within its discretion in its implementation of section 15496.



With respect to the second directive, there is no allegation in the Complaint or Petition that the District's estimated amount of funds is less than the EIA funds expended in 2012-13. Indeed, the District expended \$125.2 from EIA funding in 2012-13, a number far below the estimated amounts expended in 2013-14. There is, accordingly, no factual basis to allege a violation of this directive.

***Alleged Violation of Cal. Code Regs., tit. 5, § 15496***

Neither the Complaint nor the Petition points to any express language in any provision of law that prohibits school districts from counting *any* category of expenditures made from their general fund on unduplicated pupils in the calculation of prior year spending other than "expenditures on services provided to all pupils," nor to any provision that prohibits school districts from including *any* category of expenditures in the account of increased and improved spending on unduplicated pupils. (Cal. Code Regs., § 15946, subd. (a)(2).) To the contrary, Complainants *infer* a prohibition from the allegedly "absurd results" that they claim would ensue if the LCAP is not implemented according to the strictures their legal counsel unsuccessfully advocated before the Legislature and the State Board of Education. In its correspondence with LAUSD's counsel, counsel to Complainants alternatively asserted that the District's actions violated the "spirit" of the LCFF.

The LCFF returned control over the decisions regarding school spending to local districts and their stakeholders, replacing the complex web of layered categorical funding programs that had formerly constrained the discretion of local school administrators. Complainants' contention that the "spirit" of the LCFF prohibits supplantation of the funds that were formerly devoted to spending on unduplicated pupils through categorical mandates appears to be contradicted in both the text and legislative history of the LCFF. The original version of the LCFF, set forth in Senate Bill 69, contained express "do not supplant" provisions in the form of a draft Education Code section 52062.5. The early committee reports on this bill expressly reflect such an intention. But none of this statutory and committee report language, and no similar mandate, survived through the ensuing legislative process. Instead, the Legislature ultimately directed the State Board of Education to adopt regulations that *explicitly authorize* school districts to use regarding the expenditure of supplemental and concentration funds for "school-wide" and "district-wide" purposes in a manner that "is no more restrictive" than Title 1. (Educ. Code, § 42238.07, subd. (a)(2).) Both the emergency and the final regulations adopted pursuant to this directive consequently outline a more flexible process for ensuring that supplemental and concentration grant funding will be used to benefit unduplicated pupils.

Notably, those regulations grant the highest level of flexibility to school districts, like LAUSD, that already serve high concentrations of unduplicated pupils. When those districts are required to justify demonstrate in the LCAP the proper expenditure of supplemental and concentration grant funds on a districtwide basis, they are not required to "[d]escribe how these



[district-wide] services are *the most effective use* of the [LCFF] funds to meet the district's goals for its unduplicated pupils in the state and local priority areas." (Cal. Code Regs., tit. 5, § 15496, subd. (b)(2)(C) [emphasis added].) Nor are they required to "provide the basis for this determination, including . . . any alternatives considered and any supporting research, experience, or educational theory in defense of their district-wide spending." (*Ibid.*) Rather, the regulations permit a school district like LAUSD to expend supplemental and concentration grant funds on a districtwide basis as long as the LCAP describes "how such services are *principally directed towards*, and are effective in, meeting the district's goals for its unduplicated pupils in the state and any local priority areas." (*Id.*, subd. (b)(1)(B) [emphasis added].)

Likewise, on the input side of the equation, the LCFF funding formula itself recognizes that the education of *high concentrations* of unduplicated pupils necessarily comports additional expenditures by school districts, above and beyond the standard supplemental expenditures required for unduplicated pupils. Districts receive a supplemental grant based on the number of low-income students, English learners, and foster children they serve. But, districts in which these students make up at least 55 percent of enrollment will be entitled to an additional "concentration" grant, equaling an extra 50 percent of the base grant for each high-needs student above the 55 percent threshold. The purpose of providing an additional per-pupil bonus grant amount for districts with a greater the concentration of high-need students is clear: it is a legislative recognition that the cost of servicing large numbers of unduplicated pupils is not reflected in simply by increasing the additional per-student grant amount, but that the greater concentration of such students makes the costs of servicing those pupils even higher on a per-pupil basis. In other words, the Legislature clearly recognizes that school districts like LAUSD already incur substantial additional costs, and devote substantial additional resources, simply by providing core educational programs to high concentrations of unduplicated students. This express statutory formula, and the concomitant Legislative decision to reject "do not supplant" requirements to restrict the spending of LCFF supplemental and concentrated funds exclusively on unduplicated pupils, together reflect the manifest "spirit" of flexibility contained in the LCFF, particularly regarding school districts that already serve high concentrations of unduplicated pupils.

Because the overwhelming majority of LAUSD's pupils (84%) are unduplicated, the district-wide core educational program is itself "principally directed towards . . . meeting the district's goals for its unduplicated pupils." (Cal. Code Regs., tit. 5, § 15496, subd. (b)(1)(B).) Complainants have nonetheless demanded that \$450 million of expenditures on the provision of special education services to unduplicated pupils be removed from the estimate of funds expended on unduplicated pupils that is required in the LCAP subdivision (a)(2) of 5 Cal. Code Regs., § 15496. Complainants' demands are not supported in the law, nor are they consistent with the core purpose of the LCFF to grant local districts greater discretion over the expenditure of funds on unduplicated pupils.



### **Conclusions:**

Complainants' legal contentions do not have any support in the law. The plain language of the LCAP regulations directs local educational agencies to "[e]stimate the amount of LCFF funds expended by the LEA on services for unduplicated pupils in the prior year that is in addition to what was expended on *services provided for all pupils*." (Cal. Code Regs., tit. 5, § 15946, subd. (a)(2) [emphasis added].) Special Education are not "services provided for all pupils," but rather services provided to a small percentage of the student population that qualifies to receive an individualized education program under the requirements set forth in federal and state law. Complainants have not identified any authority in the legislative history of the LCFF or regulatory history of the LCAP regulations that suggests a legislative intent to deem Special Education a service provided to all pupils. Accordingly, LAUSD acted well within its considerable discretion to interpret subdivision (a) of section § 15496 according to its plain meaning.