



**CALIFORNIA DEPARTMENT
OF EDUCATION**

TONY THURMOND
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

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April 26, 2019

Lauren Holzer, Staff Attorney
California Rural Legal Assistance, Inc.
1111 I Street, Suite 310
Modesto, CA 95354

Dear Lauren Holzer:

Subject: Request for Appeal – Merced City School District
California Rural Legal Assistance, Inc., Appellant

Case No. 2019-0092

The Local Agency Systems Support Office (LASSO) of the California Department of Education (CDE) is in receipt of your request for appeal received on March 6, 2019. You are appealing the Merced City School District's (District's) Decision dated February 19, 2019.

I. Background

The Local Control Funding Formula (LCFF) statute authorizes the filing of an administrative complaint pursuant to the Uniform Complaint Procedures (UCP) to resolve allegations that a local educational agency (LEA), such as a school district, failed to meet the requirements of Article 4.5. Local Control and Accountability Plans and the Statewide System of Support [52059.5 – 52077.] (California *Education Code (EC)* Section 52075; *California Code of Regulations*, title 5 (5 *CCR*) Section 4600 et seq.).¹

On December 21, 2018, California Rural Legal Assistance, Inc. (Appellants) submitted a UCP Complaint (Complaint) to the District alleging that the District's 2017-20 Local Control and Accountability Plan (LCAP) adopted for the 2018-19 year violates the LCFF statute. The District issued its Decision in this matter on February 19, 2019. The Appellants submitted an Appeal to the CDE of the District's Decision on March 6, 2019. The CDE sent a notice of appeal letter, dated March 12, 2019, to the District requesting the investigation file and other applicable documentation as required by 5 *CCR* Section 4633. The CDE received the District's documentation on March 22, 2019.

Following receipt of this documentation from the District, the CDE reviewed all material received related to the Complaint, applicable laws, and the District's complaint procedures. Title 5 *CCR* 4633(i)(1) requires the CDE to include a finding that the LEA

¹ LEA means a school district, county office of education, or charter school. (5 *CCR* 15495(d)).

complied or did not comply with its complaint procedures. The CDE has reviewed the complaint procedures for the District and finds that the District did not fully comply with its complaint procedures in this matter. Specifically, the District's Administrative Regulation 1312.3(a) states that the District's annual UCP notice, pursuant to title 5 California Code of Regulations Section 4622, must advise that the District will complete the local investigation process within 60 days (as set forth in 5 CCR 4631(e)). However, the District's Administrative Regulation 1312.3(d) adds an interim step within that 60 day timeline, stating that the District will send the complainant a decision within 30 days; the complainant can appeal that decision to the local school Board within 5 days; if the Board does not hear the matter, the District's decision becomes final; or, if the Board hears the matter, the District will send the Board's decision to the complainant within the 60 day timeline. In this case, the local complaint was filed on December 21, 2018, and the District's decision was issued on the 60th day after that, on February 19, 2019 – in compliance with District Administrative Regulation 1312.3(a) and 5 CCR 4631(e). But there is no evidence that the District adhered to its own local requirement for an additional interim step, as set forth in Administrative Regulation 1312.3(d), to send the complainant a decision within 30 days and allow for the possibility of a review by the local school board while still within the 60 day timeline. For that reason and in that respect, the CDE finds that the District did not follow its complaint procedures.

II. Summary of Complaint and District Decision

Allegation (1): The District fails to articulate goals for unduplicated pupils and numerically significant pupil subgroups as required by *EC* Section 52060.

The Complaint alleges that the District has failed to describe its annual goals for unduplicated pupils and all numerically significant pupil subgroups as required by *EC* Section 52060. In its Decision, the District did not find merit in this allegation and stated that because the District's LCAP includes goals, actions, and services for all students, it necessarily includes goals, actions, and services for unduplicated students.

Allegation (2): The District fails to demonstrate in its LCAP how it will meet the requirement to increase or improve services for unduplicated students in proportion to the increase in funding it is receiving as required by *EC* Section 42238.07 and 5 *CCR* Section 15496.

Specifically, the Complaint alleges that the District has failed to provide a complete description in the Demonstration of Increased or Improved Services for Unduplicated Pupils (Demonstration) section of the actions/services included as contributing to meeting the increased or improved services requirement. The Complaint also alleges that the District fails to adequately justify those actions/services included as contributing to meeting the increased or improved services requirement that are provided on an LEA-wide or schoolwide basis.

In its Decision, the District did not find merit in this allegation and stated that the narrative provided in the Demonstration section "specifies all of the district-wide

services that it identified as increased and improved and describes how these services are principally directed toward and effective in meeting its goals for unduplicated students” (Decision, p. 5). The District also states that it “considered the needs and conditions of its unduplicated students...as described in the Greatest Needs and Performance Gaps” in the Plan Summary of the LCAP (Decision, p. 5).

Allegation (3): The District’s LCAP Lacks Transparency Regarding the Use of LCFF supplemental and concentration grant funding.

The Complaint alleges that the District has failed to Comply with the LCAP template as required by *EC* Section 52064(d) by failing to write the LCAP in a language that is understandable and accessible to parents. The Complaint also alleges that the District’s failure to include all LCFF supplemental and concentration grant funds “obfuscates the uses of those funds and compromises the ability of stakeholders to meaningfully engage in the LCFF planning, review, and accountability process in violation of § 52064” (Complaint, p. 9). The District has failed to “[m]eaningfully engage local stakeholders in the process of developing and annually updating the LCAP by failing to use clear [and] accessible language and failing to account for all supplemental and concentration grant funds received. § 52064(e)” (Complaint, p. 1).

III. Appeal

In its Appeal, the Appellants reiterate the allegations as provided in the Complaint. Appellants state that the basis for the Appeal of the District’s Decision regarding each of the Allegations is that the District misapplied the law in its findings for each Allegation.

Additionally, Appellants allege that the District failed to follow its local uniform complaint procedures. According to Appellants, the District’s local uniform complaint procedures require the District to provide to the complainant a written report of the District’s investigation and decision within 30 days of receiving the complaint.

IV. Legal Authorities

California *Education Code* sections 44238.01, 42238.02, 42238.07, 52059.5 – 52077
California Code of Regulations sections 15494 – 15497

V. CDE Findings of Fact and Conclusions of Law

Allegation (1): The District fails to articulate goals for unduplicated pupils and numerically significant pupil subgroups as required by *EC* Section 52060.

The CDE has addressed this issue in a prior uniform complaint appeal decision issued by the CDE on October 19, 2018, in the matter of *California Rural Legal Assistance, Inc. v San Joaquin County Office of Education*.

EC Section 52060(c), as it read at the time the District adopted its 2018-19 LCAP, states that an LCAP of a school district shall include “a description of the annual goals, for all pupils and each subgroup of pupils identified pursuant to Section 52052.” This is not a specific requirement to include separate and unique goals for each student group. The LCAP template requires an LEA to indicate whether an action/service will serve “all” students, or a particular student group identified in the LCAP. A designation of “all” necessarily includes students who are included in the student groups. If an LEA intends that an action/service will serve a particular student group, it must identify the student group with that action/service in its LCAP. For actions/services that contribute towards meeting an LEA’s obligation to increase or improve services for unduplicated students (English learners, foster youth, and low-income students), the LEA is required to specify in its LCAP which of the unduplicated student groups will be served.

EC sections 52060 and 52064, as read at the time the District adopted its 2018-19 LCAP, state in relevant part:

(c) A local control and accountability plan adopted by the governing board of a school district shall include, for the school district and each school within the school district:

(1) A description of the annual goals, for all pupils and each subgroup of pupils identified pursuant to Section 52052, to be achieved for each of the state priorities identified in subdivision (d) and for any additional local priorities identified by the governing board of the school district. For purposes of this article, a subgroup of pupils identified pursuant to Section 52052 shall be a numerically significant pupil subgroup as specified in paragraphs (2) and (3) of subdivision (a) of Section 52052.” (EC Section 52060(c)).

(2) A description of the specific actions the school district will take during each year of the local control and accountability plan to achieve the goals identified in paragraph (1)...

EC Section 52052(a)(2) identifies the following student subgroups: ethnic subgroups, socioeconomically disadvantaged students, English learners, students with disabilities, foster youth, and homeless youth. The statute further defines “numerically significant” as 30 pupils for each of the subgroups other than homeless youth and foster youth. For those student groups, numerically significant is 15 pupils.

First, with respect to LCFF requirements related to unduplicated students, LEAs are apportioned additional funding based on the number and concentration of unduplicated students (EC Section 44238.02(e) and (f)). Statute and regulation require any LEA receiving such additional funding to increase or improve services for unduplicated students as compared to services provided to all students in proportion to the increase in funding received (EC Section 42238.07; 5 CCR 15496). The LCAP template requires an LEA to demonstrate it will meet this requirement to increase or improve services for unduplicated students. For each action/service associated with a goal, the LCAP

template requires the LEA to designate whether or not it is including the action as contributing towards meeting the requirement to proportionally increase or improve services for unduplicated students. For actions/services that contribute towards meeting an LEA's obligation to increase or improve services for unduplicated students, the LEA is required to specify in its LCAP which of the unduplicated student groups will be served (LCAP template, Goals, Actions, & Services section). Further information regarding an LEA's demonstration of increased or improved services is also required (addressed more fully below with the discussion of Allegation 2).

Second, as required by *EC* section 52060(c), as quoted above, the LCAP template addresses student groups identified in *EC* Section 52052, and requires inclusion of goals and related actions for all such numerically significant student groups. A district may address this requirement by writing a goal with actions that serve "all" students, in which case the district will indicate "all" for "students to be served." A designation of "all" necessarily includes pupils who are included in the student groups identified in *EC* Section 52052. Alternatively, an LEA may write a goal with actions that serve one or more designated student groups – such as students with disabilities or groups, including ethnic groups, consistent with *EC* Section 52052 (See, LCAP template, "Goals, Actions, & Services" section). However, if an LEA intends that an action/service will serve a particular student group, it must identify the student group with that action/service in its LCAP.

The CDE does not find merit in the Appeal of the District Decision regarding Allegation 1.

Allegation (2): The District fails to demonstrate in its LCAP how it will meet the requirement to increase or improve services for unduplicated students in proportion to the increase in funding it is receiving as required by *EC* Section 42238.07 and 5 *CCR* Section 15496.

This Allegation is made in two parts:

- a) The Complaint alleges that the summaries of actions/services provided in the Demonstration section do not align with the actions/services that are included as contributing to the increased or improved services requirement in the Goals, Actions, and Services section of the LCAP;
- b) The Complaint also alleges that the District fails to adequately justify those actions/services included as contributing to meeting the increased or improved services requirement that are provided on an LEA-wide or schoolwide basis.

Background

The LCFF apportions additional funds to LEAs on the basis of the number and concentration of unduplicated students (low-income, English learner, and foster youth) (*EC* sections 42238.02, 42238.07.) These funds are commonly referred to as "supplemental and concentration grant funds." LEAs are required to increase or improve

services for unduplicated students as compared to the services provided to all students in the fiscal year in proportion to the additional funding provided (*EC* Section 42238.07, 5 *CCR* 15496). “To improve services” means to “grow services in quality,” and “to increase services” means to “grow services in quantity” (5 *CCR* Section 15495(k) and (l)).

As such, there is no spending requirement; rather, an LEA must demonstrate in its LCAP how the services provided will meet the requirement to increase or improve services for unduplicated students over services provided for all students in the LCAP year. Regulations provide the formula for calculating the percentage by which services must be proportionally increased or improved for unduplicated students above services provided to all students in the fiscal year (5 *CCR* 15496).

The collective set of services described by an LEA that will contribute to meeting the required proportional increase or improvement in services for unduplicated students over services provided to all students include two categories of services:

- Services that are limited to serving one or more unduplicated student group, and
- Services that upgrade the entire educational program of an LEA or school site(s).

Services of the latter category are referred to as either a schoolwide or an LEA-wide (i.e., districtwide, countywide, or charterwide) service.

An LEA is required to follow the LCAP Template approved by the State Board of Education (SBE) (*EC* sections 52064, 52070). The Demonstration section requires an LEA to identify the amount of its LCFF funds in the LCAP year calculated on the basis of the number and concentration of unduplicated students, and to identify the percentage by which it must increase or improve services for unduplicated students over all students. Also in this section, the LEA must describe how the services provided for unduplicated students are increased or improved by at least this percentage, either quantitatively or qualitatively, as compared to services provided for all students in the LCAP year (*EC* Section 42238.07; 5 *CCR* 15496).

The actions/services included as contributing to meeting the increased or improved services requirement must be indicated as such in the Goals, Actions, and Services section of the LCAP. As a result, the description of actions and services in the Demonstration section must be aligned with those actions and services that are included in the Goals, Actions, and Services section as contributing to meeting the increased or improved services requirement. An adequate description of how a District will meet its increased or improved services requirement must address in some manner the actions/services included in the Goals, Actions, and Services section as contributing to meeting this requirement.

Description of Increased or Improved Services

The District's 2018-19 LCAP contains 45 actions over five Goals that are included as contributing to meeting the increased or improved services requirement for the 2018-19 LCAP year. Only two actions in the LCAP (Goal 2, Actions 1 and 16) are not included as contributing to the increased or improved services requirement. Of these 45 actions, 42 of them are provided on either an LEA-wide or a schoolwide basis. In its Decision, the District states that its response provided in the Demonstration section "specifies all of the district-wide services that it identified as increased and improved... (Decision, p. 5). Of these 42 actions, 8 of them appear to be addressed in some manner by the description of increased or improved services provided in the Demonstration section; these actions are Goal 2, Actions 2, 5, 6, 10, 13, 18; Goal 3, Actions 1, 5.

The remaining 34 actions do not fall within the scope of the description provided in the Demonstration section. For example, the description provided in the Goals, Actions, and Services section for Goal 2, Action 4 states, "Continue to implement MDM Solutions Technology Application Management System (Airwatch)." (2018-19 Merced LCAP, p. 49). According to the District's 2018-19 LCAP, this action is included as contributing to meeting the increased or improved services requirement and is being provided on an LEA-wide basis. However, there is no mention of this action/service, nor is there anything that would suggest this action/service, within the description of increased or improved services in the Demonstration section. The same conclusion is made for each of these 34 actions.

Provided the District intends to include these actions as contributing to meeting the increased or improved services requirement, these actions must be addressed within the description of increased or improved services in the Demonstration section. If the District does not intend to include these actions as contributing to meeting the increased or improved services requirement, the District must indicate as such in the Goals, Actions, and Services section by appropriately completing the LCAP Template for these actions.

For those actions/services that do fall within the scope of the description of increased or improved services in the Demonstration section, the inclusion of some is not complete. For example, Goal 2, Action 2 for the 2018-19 year states, "Fund the positions of 8 supplemental school psychologists" (2018-19 Merced LCAP, p. 47). This entire action is being included as contributing to meeting the increased or improved services requirement and is provided on an LEA-wide basis. However, in the Demonstration section, the description of increased or improved services states, "1 additional psychologist" (2018-19 Merced LCAP, p. 100). The District does not account for the remaining 7 psychologists in its description of how it plans to increase or improve services for unduplicated students.

The incongruity between the Goals, Actions, and Services section and the Demonstration section goes in both directions. Not only are actions left out of the Demonstrations section, the description of increased or improved services provided in the Demonstration section references actions/services not included in the Goals,

Actions, and Services section of the LCAP. The description of increased or improved services in the Demonstration section includes a reference to “A District Intervention Center” (2018-19 Merced LCAP, p. 100). No action in the Goals, Actions, and Services section mentions the use of a “District Intervention Center” or anything similarly named.

Due to this demonstrated insufficiency of the description of increased or improved services provided in the Demonstration section, the District fails to sufficiently describe how the District plans to meet its increased or improved services requirement for the 2018-19 LCAP year.

Required Justification for LEA-Wide and Schoolwide Actions/Services

The LCAP template also requires an LEA to identify each action/service contributing to the increased or improved services requirement that is funded and provided on a schoolwide or LEA-wide manner, and to include the required description supporting each schoolwide or LEA-wide action/service. An LEA such as Merced City School District, which has an unduplicated student enrollment greater than 55%, must describe in its LCAP how the actions/services are “*principally directed towards*” and “*effective in*” meeting its goals for unduplicated students in the state and any local priority areas (EC Section 42238.07, 5 CCR 15496(b)).²

To provide the required justification for services provided on a “wide” basis, an LEA must distinguish between services directed toward unduplicated students based on that status, and services available to all students without regard to their status as unduplicated students or not. An LEA describes how a service is principally directed to meeting the LEA’s goals for unduplicated students in any state or local priorities when it explains in its LCAP how it considered factors such as the needs, conditions, or circumstances of its unduplicated students, and how the service takes these factors into consideration (such as, for example, by the service’s design, content, methods, or location).

In addition, the description must explain how the service will be *effective* in meeting the LCAP goals for its unduplicated students. An LEA meets this requirement by providing in the LCAP an explanation of how it believes the action/service will help achieve one or more of the expected outcomes for the goal. Conclusory statements that an action/service will help achieve an expected outcome for the goal, without an explicit connection or further explanation as to how, are not sufficient.

When an LCAP contains the necessary descriptions as described above for actions/services provided on a wide basis, it will be apparent how the LEA is acting to increase or improve services for unduplicated students, and why it has determined the

² Schoolwide services at a district school with enrollment of unduplicated pupils that is 40 percent or more of its total enrollment must be supported by the same description. Schoolwide services at a school district school with less than 40 percent unduplicated pupil enrollment must be supported by the additional description of how the schoolwide use of funds is the *most effective* use of the funds to meet the LEA’s goals for its unduplicated pupils. This tripartite explanation is also required for actions/services provided on LEA-wide basis in an LEA with unduplicated pupil enrollment of less than 55%. (5 CCR 15496(b)).

services identified will be effective to achieve its goals for unduplicated students. Simply stating that an LEA has a high percentage of unduplicated student enrollment does not meet this standard because serving students is not the same as enrolling students.

The Demonstration section of the District's 2018-19 LCAP does not reference any need, condition, or circumstance of its unduplicated students to be addressed by actions included in the Goals, Actions, Services section as contributing to meeting the increased or improved services requirement. In response to the Greatest Needs prompt in the Plan Summary section of the LCAP, the District does reference the suspension rate and English language arts achievement as areas of need for homeless students; homeless students qualify as unduplicated students. However, these areas of need for homeless students are not associated with any specific actions/services in the LCAP.

Furthermore, for the 2017-18 school year, the District enrolled 32 homeless students.³ For that same year, the District enrolled 9,110 unduplicated students.⁴ While addressing the needs of homeless students is necessary, the requirement is to describe how each of its LEA-wide or schoolwide actions that contribute to meeting the increased or improved services requirement are principally directed towards, and effective in, meeting the District's goals for its unduplicated students. Such a description requires that needs, conditions, or circumstances applicable to all the District's unduplicated students be considered, and not only the needs, conditions, or circumstances of its homeless students.

Because the District fails to describe the needs, conditions, or circumstances of its unduplicated students to be addressed by its LEA-wide and schoolwide actions, the District fails to describe in its LCAP how such actions are principally directed towards, and are effective in, meeting the District's goals for its unduplicated students in the state and any local priorities (5 CCR 15496).

The CDE finds merit in the Appeal of the District's Decision regarding Allegation 2.

Allegation (3):

The Appeal of the District's Decision regarding Allegation 3 does not allege that the District violated any specific requirement of *EC* sections 52059.5 – 52077. Allegation 3 as described in the initial Complaint alleged that the District violated *EC* sections 52064(b) and 52064(d-e) by failing to use clear and accessible language and failing to include all LCFF supplemental and concentration grant funds. The underlying allegation was that the absence of such information compromises the ability of stakeholders to meaningfully engage in the LCAP development process. The Complaint referenced *EC* Section 52064 as currently read; *EC* Section 52064 was last amended in 2018.

³ Data provided in the enrollment data files for the 2018 Dashboard available here:

<https://www.cde.ca.gov/ta/ac/cm/>.

⁴ Data provided in the CALPADS UPC Source File for 2017-18 available here:

<https://www.cde.ca.gov/ds/sd/sd/filescupc.asp>. The District's total enrollment for 2017-18 was 11,077.

As currently read, *EC* Section 52064 is not applicable to an LEA's 2018-19 LCAP as it describes the requirements applicable to the new LCAP Template currently in development and to be adopted by the SBE on or before January 31, 2020. As provided in *EC* Section 52064(j), until such time as the SBE adopts a new LCAP Template pursuant to *EC* Section 52064(b) as amended in 2018, the LCAP Template developed pursuant to *EC* Section 52064 as it read on June 30, 2018 shall continue in effect. Because the SBE has not yet adopted the new LCAP Template, *EC* Section 52064, as read on June 30, 2018, remains in effect. As a result, Allegation 3 as described in the initial Complaint did not allege a violation of applicable law. And because the Appeal fails to allege a violation of any requirement of *EC* sections 52059.5 – 52077, the Appellants are unable to provide a basis on which to appeal the District's Decision regarding Allegation 3.

The Appeal maintains that the District did not include all of its LCFF supplemental and concentration grant funds in its LCAP and that this compromised stakeholder engagement. As described in the response provided by the CDE to the Appeal with respect to Allegation 2, the apportionment of supplemental and concentration grant funds to LEAs based on enrollment of unduplicated students does not precipitate a spending requirement. The requirement is for an LEA to describe in its LCAP how it plans to provide for an increase or improvement in services to its unduplicated students over what all students receive in the relevant LCAP year. As such, there is no requirement for an LEA to include its total apportionment of LCFF supplemental and concentration grant funds for a given year as budgeted expenditures in its LCAP. Furthermore, there is no requirement that an LEA distinguish between LCFF base funds and LCFF supplemental and concentration grant funds in its LCAP.

The CDE does not find merit in the Appeal of the District's Decision regarding Allegation 3.

VI. Conclusions

The CDE finds merit in the Appeal of the District's Decision regarding Allegation 2. The CDE does not find merit in the Appeal of the District's Decision regarding Allegations 1 and 3.

VII. Corrective Actions

With respect to the 2017-20 LCAP adopted for the 2019-20 LCAP year considered in its entirety, the District is required to work with the CDE to ensure that all actions provided on an LEA-wide or schoolwide basis and included as contributing to meeting the District's increased or improved services requirement for the 2018-19 and 2019-20 LCAP years are adequately justified as principally directed and effective in meeting goals for unduplicated students in the state and any local priorities.

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Any revisions to the 2017-20 LCAP adopted for the 2018-19 LCAP year required as a result of this review must adhere to the stakeholder engagement requirements as described in *EC* Section 52062. The District shall present any such proposed revisions to its parent advisory committee and its English learner parent advisory committee in accordance with the requirements described in *EC* Section 52062 no later than June 15, 2019. The District's local governing board must adopt any revisions necessary to the 2018-19 LCAP no later than the date on which it adopts the 2019-20 version of its 2017-20 LCAP.

As described in 5 *CCR* 4665, within 35 days of receipt of this report, either party may request reconsideration by the Superintendent. The request for reconsideration shall designate the finding(s), conclusion(s), or corrective action(s) in the Department's report to be reconsidered and state the specific basis for reconsidering the designated finding(s), conclusion(s), or corrective action(s). The request for reconsideration shall also state whether the findings of fact are incorrect and/or the law is misapplied.

I may be reached in the Local Agency Systems Support Office by phone at 916-319-0809 or by email at jbreshears@cde.ca.gov.

Sincerely,

Jeff Breshears, Director
Local Agency Systems Support Office

JB:jf

cc: Jessica Jewell, Basic Unit Director, California Rural Legal Assistance, Inc.
RoseMary Parga Duran, Superintendent, Merced City School District
Paula Heupel, Assistant Superintendent of Educational Services, Merced City School District