

**APPEAL OF LAUSD DECISION ON UCP COMPLAINT
STATE SUPERINTENDENT TONY THURMOND
c/o Local Agency Systems Support Office
California Department of Education
1430 N Street
Sacramento, CA 95814-5901
lcff@cde.ca.gov**

**Ana Carrion and Elvira Velasco
v.
Los Angeles Unified School District and
Los Angeles County Office of Education**

Appeal of LAUSD's Decision Re: Uniform Complaint Procedures Case #UCP-004-19/20

October 4, 2019



JOHN AFFELDT
ANGELICA JONGO
NICOLE GON OCHI
Public Advocates, Inc.
131 Steuart Street, Suite 300
San Francisco, CA 94105
Telephone: (415) 431-7430
Email: jaffeldt@publicadvocates.org

COVINGTON

LAURA E. MUSCHAMP
ROBERT ZHOU
Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067
Telephone: (424) 332-4775
Email: lmuschamp@cov.com

TABLE OF CONTENTS

	Page(s)
I. Allegation 1: The LCAP is null and void because LAUSD failed to vet it with the public or approve it in a public hearing as required by LCFF	4
II. Allegation 2: The LCAP bundles multiple, and often unrelated, programs and services into “mega-actions” that violate LCFF’s transparency requirements and makes it impossible to assess increased and improved services for high need students	5
III. Allegation 3: The LCAP improperly allocates unspecified amounts to unspecified school sites for unspecified actions.....	10
IV. Allegation 5: The LCAP fails to demonstrate how the District is meeting its obligation to increase and improve services for high need students each year by 32 percent above the level of service provided to all pupils.....	12
V. Allegation 6: The LCAP fails to demonstrate that its specific uses of \$1.14 billion in supplemental and concentration funds increase or improve services for high need students.....	14
VI. Allegation 7: The LCAP rolls forward \$340 million in funds for high need students that has never been properly identified, justified, or publicly vetted	21
VII. Conclusion	22

October 4, 2019

State Superintendent Tony Thurmond
Local Agency Systems Support Office
California Department of Education
1430 N Street
Sacramento, CA 95814

Via E-Mail Only

RE: **Appeal of LAUSD Uniform Complaint Procedures Case #UCP-004-19/20
Ana Carrion and Elvira Velasco v. Los Angeles Unified School District**

Dear Superintendent Thurmond,

We submit this appeal of the determination of the Los Angeles Unified School District (“LAUSD”) with respect to the Uniform Complaint Procedure (“UCP”) complaint that Public Advocates filed on behalf of Ana Carrion and Elvira Velasco, two community leaders and parents of LAUSD low-income elementary and middle school students.

As discussed more fully in the attached UCP complaint (Ex. 21), LAUSD has violated its legal obligations under the Local Control Funding Formula by:

- 1) Ignoring the stakeholder engagement and public hearing and approval process for LCAPs, in violation of Education Code § 52062;
- 2) Bundling multiple and often unrelated actions and services into single “mega-actions,” which violates LCFF’s transparency requirements and makes it impossible to assess the nature, legality, and effectiveness of services funded by supplemental and concentration funds, in violation of its responsibility to describe specific actions and associated expenditures and to identify and justify districtwide and school wide uses of supplemental and concentration funds pursuant to 5 Cal. Code Regs. § 15496;
- 3) Allocating hundreds of millions of dollars in supplemental and concentration funds to individual school sites without identifying the specific schools that receive funding or describing and justifying each school’s use of its allocations, or analyzing the effectiveness of the action at the school site, in violation of Cal. Educ. Code § 52060(c), 52061, and 5 Cal. Code Regs. § 15496;

- 4) Failing to demonstrate that services for high need students are being increased or improved by 32 percent above the level of services provided to all students, in violation of Cal. Educ. Code 42238.07 and 5 Cal. Code Regs. § 15496(a);
- 5) Failing to justify the use of supplemental and concentration funds to support individual districtwide or schoolwide actions, in violation of 5 Cal. Code Regs. § 15496(b); and
- 6) Inappropriately rolling forward \$340 million of unidentified, unjustified, and unnoticed supplemental and concentration expenditures dating back to the 2016-17 annual update in the 2017-18 LCAP, in violation of Cal Educ. Code § 52064(b)(7) (description of material changes), § 52062 (public process), and 5 Cal. Code Regs. § 15496(a)-(b) (justification of supplemental and concentration funds).

Accordingly, Complainants requested through a UCP complaint filed on July 11, 2019 that LAUSD adopt a new LCAP that fixes the fundamental errors identified in the complaint and follow all the community engagement provisions set forth in Cal. Educ. Code § 52062. Complainants requested direct state intervention given the futility of previous requests to the District and for LACOE intervention on prior LCAPs and the irreparable harm that results when funds are dissipated, educational opportunities are lost, and the public is denied the notice and consultation opportunity that LCFF provides. On July 22, 2019, CDE denied Complainant's request for direct state intervention because the 2019-20 LCAP was still under review by LACOE and the statutory time limits had not yet elapsed. *See Ex. 23.* Accordingly, CDE referred the Complaint to LAUSD (and separately to LACOE). *See Ex. 24.*

After a meet and confer on August 16, 2019 followed up by additional correspondence between the parties between that date and September 11, 2019 (Exhs. 27-32), LAUSD publicly released an amended LCAP on September 12, 2019 ("9/12 LCAP"), which improved upon the adopted LCAP, but still contained many deficiencies (Ex. 26). LAUSD provided a 5-day window for the public to provide online feedback on the 274-page document but did not seek input from the PAC or DELAC or hold a public hearing on its amended LCAP. After receiving comments critical of many aspects of the 9/12 LCAP from Complainants, Ex. 27, on September 23, 2019, LAUSD postponed Board consideration of the amended LCAP from September 24th to October 1st. On September 23, 2019, LAUSD posted a further revised LCAP on its website ("9/20 LCAP"), which made significant, unexplained changes that undermined the integrity of the document. *See Ex. 25.* LAUSD did not present this final version of its 2019-20 LCAP to the PAC or DELAC for review and feedback, nor did it invite further public comment beyond the limited number of speakers and minutes permitted at its October 1st adoption hearing. On October 1, 2019, the LAUSD Board voted to approve the amended LCAP by a 6-1 vote; the

amended LCAP will be transmitted to LACOE for approval by or before October 8th.¹ Therefore, the operative LCAP is the 9/20 LCAP that was posted on 9/23 and adopted on October 1st.²

On September 20, 2019, Complainants' counsel received the attached determination and report of findings from LAUSD in which the district found no violations of law, except for the failure to identify the subset of schools for Goal 1, Action 8 and Goal 1, Action 10, which affect only a subset of schools. Ex. 2, p.17 (LAUSD investigation report). The report notes that the District will make several voluntary additional changes, such as disaggregating expenditures for the massive School Autonomy action and providing additional descriptions and explanations, in its amended LCAP. *Id.*

In its response, LAUSD asserts that it cannot possibly be expected to comply with the transparency demands LCFF has placed upon other districts because of its size and complexity. The District ignores the fact that it has benefited immensely from the Local Control Funding Formula. It has willingly accepted the disproportionately greater increase in funds it has received as a result of its high need student population relative to other districts; it has fully embraced the new freedom from categorical spending and the new flexibility in spending. In return, LAUSD must meet the same transparency and engagement requirements as all other districts, particularly so where it controls nearly 12% of all supplemental and concentration

¹ Complainants' agreed to extend the deadline for LACOE to respond to the Carrion/Velasco UCP Complaint until October 11, 2019. *See* Ex. 39. Should Complainants' choose to appeal LACOE's determinations, we will request to join the appeals and/or reserve the right to amend this appeal to the extent the forthcoming LACOE action so warrants.

² LAUSD contends that its Report pertains only to the June 18, 2019 Complaint and implies that a new complaint must be filed to challenge the amended LCAP. *See* Ex. 2 at 1. We disagree. Pursuant to the UCP regulations, the District here was required to take whatever corrective action was legally warranted by the instant Complaint, *see* 5 Cal. Code Regs. 4631(e)(5). That corrective action was a properly amended 2019-20 LCAP and, indeed, Complainants expressly pled relief that LAUSD adopt an amended 2019-20 LCAP that corrects all the errors identified in the Complaint. Ex. 21 at 40, IX.2. Complainants properly file this appeal concerning LAUSD's improper denial of nearly every aspect of their Complaint and the failure to take the corresponding legally required corrective action in amending its 2019-20 LCAP. Because the District's amended LCAP, with its inadequate corrective actions, contains the same material deficiencies raised in the complaint, it is entirely appropriate for CDE to review the amended LCAP, particularly where there are disputes of law, rather than fact. *Cf. Californians for Political Reform Found. v. Fair Political Practices Comm'n*, 61 Cal. App. 4th 472, 480 (Cal. Ct. App. 1998) (holding that the appeal was not moot even though the challenged regulation expired; the court held that because a material portion of the statute or regulation was re-enacted, the case was not moot). Indeed, if a complainant were forced to submit a new complaint every time a district imperfectly modified its LCAP, CDE would never have the opportunity to review the legal issues until well into or even after the LCAP year--if ever. Such a result would only invite districts to adopt slightly modified LCAPs to evade review.

In the alternative, we request that CDE treat this appeal as a request for direct intervention pursuant to 5 Cal. Code Regs. 4650(a)(6) for the same reasons stated in the underlying Complaint together with the new evidence presented by this appeal of the futility of the District's efforts to resolve the issues raised here on its own investigation.

(S&C) funding in the state as a result of its size. In other words, if LAUSD is too large to explain and justify its use of \$1.14 billion in additional funding for high-need students, then it is too big to be bestowed the flexibility of local control.

The District also variously seeks to insulate itself from liability behind a claim that its LCAP plans have been approved in years past or because it is in year 3 of a 3-year LCAP. As with its “size and complexity” argument, neither of these feints have any basis in statute or regulation. Where the District’s LCAP is deficient, it must be corrected. Accordingly, Complainants Carrion and Velasco now appeal LAUSD’s erroneous legal determinations to the Superintendent of Public Instruction and request that the Superintendent and the California Department of Education (“CDE”) issue a decision clarifying the law and issuing a remedial order to address the deficiencies in LAUSD’s determinations and in the operative LCAP, as discussed below and as set forth in the original complaint.

I. Allegation 1: The LCAP is null and void because LAUSD failed to vet it with the public or approve it in a public hearing as required by LCFF.

The complaint alleged that the June 28th LCAP that had been posted on LAUSD’s website after the Board approved a *different* LCAP on June 18th must be deemed legally null and void because it failed to follow the community engagement and public hearing approval processes required by law. *See* Ex. 21 at p. 4-7. LAUSD denied Complainants’ allegation here, concluding that the District “followed all procedures required under the Education Code” with respect to the June 18th LCAP and that the June 28th LCAP had never been submitted to LACOE. *See* Ex. 22 at pp. 4-5. We disagree with the factual finding that LAUSD did not submit the June 28th LCAP to LACOE as its operative LCAP and, therefore, likewise we disagree with LAUSD’s legal conclusion.

The District asserts that it “determined based on interviews with District staff that the June 28th, 2019 LCAP was simply an early working draft of revisions . . . never adopted by the Board, nor submitted to LACOE.” Ex. 22 at pp. 4-5. However, documents produced by LACOE pursuant to a Public Records Act request show that the June 28th LCAP was in fact submitted to LACOE as the operative “Formal” and “submitted LAUSD LCAP.” *See* Ex. 40 (7/12/19 LACOE email with 6/28/19 LCAP version attached).³ It is concerning that the District failed to correctly identify the LCAP that had been submitted to LACOE when that was easily verifiable. As a legal matter, LAUSD’s conclusion that there was no legal violation is clearly wrong and needs to be corrected on appeal. LAUSD does not dispute that the changes in the 6/28/19 LCAP were never run by the community for input and concedes that it was never

³ Ex. 40 is an email transmitting by attachment “the submitted LAUSD LCAP” from one LACOE staff person to another. The 233-page email attachment is the unilaterally revised 233-page June 28th LCAP (Ex. 6), as opposed to the Board-approved, 112-page June 18th LCAP (Ex. 5).

approved by the Board. Accordingly, the District's denial of Allegation I needs to be overturned and CDE needs to issue a clear legal determination that the substitution of a community-reviewed and board-approved LCAP with a staff-revised LCAP was improper as was its transmission to LACOE and representation to that body as the District's LCAP.

Contrary to the District's attempt to portray this instance as some minor misunderstanding, the Complaint illustrates that LAUSD has a pattern of staff unilaterally modifying Board and/or county-approved LCAPs that needs to be halted. The Complaint identifies three such instances:

1. As noted, the board-approved 6/18/19 LCAP was unilaterally modified by staff and transmitted to LACOE as the final version without public input or board approval. *See* Ex. 21 at pp. 4-7.
2. The official, LACOE-approved 2018-19 LCAP was substituted on the District's website with the prior version of the 2018-19 LCAP that the Board had approved but LACOE had rejected. *See* Ex. 21 at p. 17, n. 60.
3. Staff unilaterally modified and substituted the 2017-18 LCAP with a new version at some point well after the conclusion of the 2017-18 school year, again without community review or board or county approval. *See* Ex. 21 at p. 36, n. 137; *see also* Exs. 2 and 16.

The Complaint explicitly seeks relief from CDE that LAUSD be ordered henceforth not to modify board and/or county-approved LCAPs unilaterally and represent those modified versions as the official District LCAPs and that instead, any material proposed LCAP modifications be subjected to the statutorily required community input, public hearing and approval processes before those LCAPs can be treated as the District's official version. Ex. 21 at p. 41, IX.4. Accordingly, Complainants respectfully request that the CDE issue a determination that declares the 6/28/19 LCAP version null and void and further that grants the foregoing relief to avoid a repetition of such harms in the future.

II. Allegation 2: The LCAP bundles multiple, and often unrelated, programs and services into “mega-actions” that violate LCFF’s transparency requirements and makes it impossible to assess increased and improved services for high need students.

The complaint alleged that the practice of bundling multiple, unrelated programs and services into “mega-actions” prevent the District from fulfilling its obligation to provide all the information called for in the LCFF statute and LCAP template as to “specific actions” (*i.e.*, distinguishing between actions that have distinct natures, serve specific populations, have unique scopes of service, and unique locations), as required by Cal. Educ. Code 52060(c) and

from evaluating whether entity-wide expenditures are principally directed and effective, as required by 5 Cal. Code Regs. 15496(a)(8). *See* Ex. 21 at pp. 8-21. Complainants in particular highlighted 4 different “Actions” in LAUSD’s LCAP (1.5, 1.9, 2.9, and 3.2) that were bundled and that accounted for the vast majority of supplemental and concentration funds. LAUSD concluded that there was no violation in the way that it classified its actions in the 6/18 LCAP, but decided to: (1) list and specify the amounts for all individual expenditures for School Autonomy (1.5); (2) move services associated with targeted instructional support (2.11) and targeted parent involvement (4.1) out of School Autonomy (1.5) and into their own actions; (3) relocate the “Central Office/ Local District Supports for school-site school for school climate program implementation” to Goal 5, Action 1’s School Climate and Restorative Justice Program. *See* Ex. 22 at p. 9. The District took no actions to unbundle the other identified items. LAUSD misapplied the law in concluding that its bundling practice did not violate the law and failed to take full corrective action in its amended 9/20 LCAP.

The District’s legal analysis relies heavily on the fact that its actions in the 2019-20 LCAP are very similar to the actions used in prior approved LCAPs, and therefore, it should be insulated from liability.⁴ This analysis is not persuasive or supported by law. It is irrelevant that LACOE approved prior LCAPs with similar bundling problems. Indeed, the District ignores the fact that the Complaint challenges both the 2018-19 and 2019-20 LCAPs, and names LACOE as a respondent for improperly approving LAUSD’s LCAPs in the past. *See* Ex. 21. The District fails to point to any basis in the LCFF statute or regulations or template instructions that insulates it from compliance with those requirements because of prior illegal LCAPs that were approved in error or, for that matter, because the violations reside in the third year of a 3-year LCAP.⁵

⁴ The District argued that *the attorneys* who represented the previous complainants to the 2015-16 LCAP are bound by the settlement agreement and thus estopped from bringing the current challenge to the 2018-19 and 2019-20 LCAPs. *See* Ex. 22 at p. 6, n. 15. This is plainly wrong. The settlement agreement with respect to the 2015-16 LCAP only purported to and can only bar the parties to that settlement agreement, not to the attorneys who represented them. In fact, the California Rule of Professional Conduct prohibits an attorney from agreeing to a restriction of the right to practice law in connection with a settlement of a lawsuit. Rule 1-500. Ms. Carrion and Ms. Velasco were and are not in privity with the parties to the *Frias* litigation and cannot be bound by it.

⁵ Neither of the cases cited by the District supports its position. In *Corbett v. State Board of Control*, the Supreme Court of California held that the statutory term “actual traveling expense” included hotel bills, as it was “the common use” of the phrase. 188 Cal. 289, 291 (Cal. 1922). As we explained, the plain and ordinary meaning of the term “each specific action” requires that the district includes a detailed and particular description for every discrete activity or service that the LEA intends to carry out for high needs students. Ex. 21 at 9. That is indeed the “common use” of the phrase. *Corbett*, 188 Cal. At 291. The District’s reliance on *Citizens Opposing a Dangerous Environment v. County of Kern* is similarly inapposite. 228 Cal. App. 4th 360 (Cal. Ct. App. 2014). The Court there found that it was appropriate for the state agency to rely on the expertise of the Federal Aviation Administration, which “exercise[s] *sole discretion* in regulating air safety.” *Id.* at 384. Neither districts nor county offices have sole discretion in determining LCAP legality. Both are subject to higher review by the SPI and CDE through the UCP process.

The District also repeatedly disclaims responsibility for adhering to LCFF because it is so large. *See, e.g.*, Ex. 22 at p. 7 (“With a district as large as LAUSD, treating such granular services as full LCAP Actions would make the LCAP unnecessarily cumbersome and inaccessible to the public.”). There is no “large district” or “LAUSD-specific exception” or exemption to following the LCAP template. The statute and template require district LCAPs to identify which specific actions and budgeted expenditures are:

- Distinctive in nature (*e.g.*, in design or in being responsive to different needs or effectiveness rationales)
- Targeted only to one or more unduplicated pupil subgroups;
- Provided only at schools serving certain grade spans;
- Provided only at one or more schools.

See Cal. Educ. Code 52064(b)(4); Ex. 21 at pp. at 8-10. LAUSD’s LCAP (even after amendments) fails to make these required distinctions.

For example, Action 1.5 (School Autonomy) states that it is an LEA-wide service (as opposed to limited to unduplicated pupil groups). *See* Ex. 25 at p. 144 (9/20 LCAP). However, some of the actions bundled within this mega-action are limited to unduplicated pupil groups and are not provided LEA-wide, such as “Transition Services for Targeted Student Populations” and “Bilingual differentials” to support English Learners. *Id.* at p. 147. These initiatives should be pulled out of the LEA-wide School Autonomy action into their own actions, where it is specified that the services are limited to Unduplicated Student Groups, as required by the template.⁶

Action 1.5 also bundles programs that serve different grade spans yet states that it is a service provided at all schools. *Id.* at p. 144. For example, Preschool for All Expansion, which is only provided at elementary schools and counselors under the combined “School Nurse/HS Counselor” is by definition, only provided at high schools. *Id.* at p. 147. These initiatives should also be pulled out of the “All Schools” School Autonomy action, into their own actions, where the different grade spans are specified.⁷

⁶ The opposite is true for Action 2.9 - English Learner Supports. Although the LCAP states that this service is limited to Unduplicated Student Groups and will serve English Learners and Low Income students, many of the sub-actions are LEA-wide. Ex. 25 at p. 196. For example, the improved literacy interventions, such as a Universal Reading Assessment, are not *limited* to unduplicated student groups, even though they may disproportionately benefit them. This *may* be a justifiable expenditure of supplemental and concentration funds, but it should be unbundled into its own action. *Id.* at 198. The same is also true for the device carts and LCAP administrative support, which are discussed further, *infra* at p. 20.

⁷ The bundling in Action 2.9 suffers from the same problem. The LCAP states that Action 2.9 is provided at “All Schools,” but the Pre-school for All (PAL)/ Pre-School Collaborative (PSC) sub-action that embeds Speech and Pathology services into existing classes, is only provided at elementary schools. *See* Ex. 25 at p. 197-98. Therefore, this service should be pulled out into its own action, per the template.

The School Autonomy mega-action also includes programs that are limited to specific schools, despite its identification as an action that is provided at “All Schools.” For example, the Pilot School program is only provided at 46 schools and the “Additional Resources for Innovation Focus Schools” are only provided at two schools. *Id.* at 256. These school-specific programs must be pulled out of School Autonomy into their own actions.⁸

More generally, the District’s latest alteration to the description of the School Autonomy item is to add yet another grouping of actions into newly defined initiative buckets (*e.g.*, Academic Intervention and Achievement, Student Social-Emotional, Physical and Mental Health, Teacher Quality, etc.), Ex. 25 at 145-6. This is just yet one more vague grouping of multiple discrete specific actions under School Autonomy without associated expenditures that fails to satisfy LCFF’s transparency requirements. Compare, for example, the alternative grouping of School Autonomy’s “cadre of services” in the 2018-19 LCAP’s Annual Update description of Action 1.5, breaking School Autonomy into School Climate, Parent Involvement, Student Achievement & State Standards, and Student Engagement. Ex. 4 at 24-34. Precisely because the School Autonomy action is so large (9% of all of the state’s S&C allocation!), it is capable of such multiple and varied generalized descriptions. What is clear is that LAUSD was wrong to deny Allegation 2 and that it is improperly bundling specific actions under School Autonomy without associating expenditures with each one, justifying each one when required, and tracking each action’s effectiveness in contributing to achieving District goals.

There is also no LAUSD exception to 5 Cal. Code Regs. 15496(b)(1), which requires a demonstration of how districtwide or schoolwide expenditures of supplemental and concentration funds are “principally directed towards, and are effective in, meeting the district’s goals for its unduplicated pupils.” When actions that have different purposes and metrics for evaluating effectiveness are bundled, this analysis becomes impossible. For example, as discussed in detail in the Complaint, Action 1.9 (A-G Immediate Intervention Plan) combines credit recovery with college readiness and AP support, which are measured by very different metrics - *i.e.* the effectiveness of credit recovery programs should be measured using the 4-year cohort graduation rate and 4-year dropout rate--not by the percentage of graduates that pass two or more AP exams with a score of 3 or higher and vice versa. *See* Ex. 21 at pp. 11-13. If these actions are not disaggregated, they cannot be justified properly. In fact, the AP support programs

⁸ Similarly, Action 3.2 - Targeted Supports to Increase Student Engagement is listed as a service that is provided at “All Schools.” Ex. 25 at p. 215, yet the Annual Update suggests that these funds were used by specific school sites to purchase positions, whereas the Foster Youth Leadership Council and Community Trainings and Resource Fairs may have been offered at All Schools. *Id.* at 95-96. The LCAP Template requires these sub-actions to be separated. Moreover, the Foster Youth Leadership Council appears to be a service that is limited to unduplicated pupil groups, specifically foster youth, and is not an LEA-wide program for all students. This sub-action should be separate from both the Community Trainings/ Resource Fairs that are LEA-wide for all schools and the school-specific positions, which are LEA-wide for specific schools.

under Action 1.9 are never discussed or justified in the DISSUP, which would be less likely to happen if the actions were properly unbundled.⁹ *See* 9/20 LCAP at p. 257.

Ultimately, bundling obscures how and why funding is allocated, undermines accountability, and impedes engagement. As discussed in the Complaint, bundling makes it impossible to determine whether the District is double-counting expenditures as meeting its minimum proportionality percentage. *See* Ex. 21 at p. 19.¹⁰

For the reasons discussed above, the District's conclusion that its bundling practices are legal is erroneous and should be overturned as a violation of Cal. Educ. Code 52060(c) and 5 Cal. Code Regs. 15496(a)(8), as discussed in the complaint. Moreover, LAUSD should be required to amend its LCAP to unbundle the descriptions and expenditures for each specific action that is combined under Actions 1.5, 1.9, 2.9, and 3.2. The 9/20 LCAP does not provide disaggregated expenditures for any of these actions, other than 1.5. However, the unbundling for Action 1.5 is still insufficient because it fails to capture the investments in Parent Engagement and Restorative Justice, which have been bundled into this action. Moreover, its failure to fully unbundle all actions results in over \$70 million in School Autonomy actions that are not even discussed in the DISSUP, including:

- Transition Services for Targeted Populations (\$6.2 million)
- Local District Allocations for Schools (\$3.1 million)
- Dual Language Supports (\$580,000)
- Special Assignment Non-Classroom Teachers (\$43.6 million)
- General Supplies (\$7.6 million)
- Non-instructional Contracts (\$2.8 million)
- Contracts for Instructional Services (\$2.5 million)
- Building and Grounds Workers (\$1.7 million)
- Microcomputer Support Assistant (\$1.4 million)
- Software License Maintenance (\$1.4 million)

⁹ In another violation of transparency requirements, the AP support services and elementary and middle school intervention services discussed in the 2018-19 Annual Update are never identified or discussed as modified actions in the GAS section for the 2019-20 school year. *Compare* 9/20 LCAP at pp. 32-49 (Annual Update), *with* p. 160 (GAS stating that the action is unchanged).

¹⁰ Indeed, LAUSD shows itself capable of unbundling when describing when an action, or part of an action moves to another action. For example, the 9/20 LCAP clearly states in the budgeted expenditures that funding for certificated salaries, books and supplies, and services and other operating expenses for Action 4.1 (parent engagement) moved to Action 1.5. *See* Ex. 25 at pp. 226-27. Where portions of line items (and not entire line items) moved, such as moving the school site expenditures from Action 5.1 (restorative justice) to Action 1.5 (School Autonomy), the LCAP describes the shift in the Goals, Actions, and Services (GAS) section. *See, e.g.,* Ex. 25 at p. 233. LAUSD has no legal or practical defense for its failure to unbundle.

Accordingly, LAUSD must unbundle its actions and expenditures to comply with the LCAP template and its obligation to justify all entity-wide expenditures.

III. Allegation 3: The LCAP improperly allocates unspecified amounts to unspecified school sites for unspecified actions.

The complaint alleged that LAUSD’s school site allocations violated its obligation to: (1) identify the schools that receive school-specific allocations (i.e. Action 1.8 is provided at specific schools only); (2) identify the specific actions undertaken at each school site and the associated expenditures; (3) justify schoolwide expenditures as principally directed and effective, and (4) evaluate for change and effectiveness in the Annual Update for each schoolwide item. *See* Ex. 21 at pp. 21-24. LAUSD erroneously narrowed the scope of its inquiry to whether the LCAP identifies the subset of schools served by an action that is not provided on a districtwide basis. *See* Ex. 22 at pp. 10 (“[T]he standard that applies is whether the District has identified individual schools or a subset of schools for services that are provided only to specific schools.”). We disagree that a district’s obligation is limited to identification of specific schools.

First, all districtwide and schoolwide actions that contribute to a District’s requirement to increase or improve services to high need students must demonstrate “how it considered factors such as the needs, conditions, or circumstance 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).” *See* Ex. 20 at p. 11 (“*Klamath-Trinity II*”). The description must also explain “how the service will be *effective* in meeting the LCAP goals for its unduplicated students [by] providing in the LCAP an explanation of how it believes the action/service will help achieve one or more of these goals.” *Id.* at 12. When a district sends hundreds of millions of discretionary dollars to school sites, such as through the SENI¹¹ and other school discretionary initiatives under Action 1.5, the School Innovation Funds under Action 1.10, and the Art Equity Index under Action 2.12, it must satisfy this obligation. We applaud more school site control, but LAUSD cannot abandon its legal obligation to demonstrate how each school is using its discretionary funding to meet the particular needs, conditions, and circumstances of its high need students, and how these investments will be effective. As the LCAP itself states, districtwide policies and practices may not be effective because high need students in different schools have different needs. *See* Ex. 25 at p. 256. Because investments must differ based on

¹¹ The Student Equity Needs Index (“SENI”) is an equity-based funding formula that distributes funding to school sites according to a wide range of indicators, including asthma, gunshot injuries, suspension rates, test scores, and percentages of high need students, such as foster youth, homeless youth, and English Learners. Every school receives SENI funding, but lower need schools receive proportionately less per pupil than high need schools. These funds are discretionary. *See* Ex. 25 at pp. 144-49 (describing SENI allocation formula).

need, an aggregate total of school-level expenditures and an aggregate justification, which is what the 9/20 LCAP provides, is not sufficient.¹²

Second, the LCAP template requires districts to “identify the actual actions/services implemented to meet the described goal.” *See* Ex 17. In *Klamath-Trinity II*, CDE held that the district failed to adhere to this requirement because its description in the annual update did not identify any specific actions or services, instead referencing a school plan “without identifying the actions or strategies being referred to as included in that plan.” Ex. 20 at p. 16. This undermines the ultimate goal of the Annual Update, which is to determine “the extent to which a *planned* action/service was implemented.” *Id.* If planned actions are not described in the first place, it is impossible to hold the district (and the school) accountable for implementation. The amended 9/20 LCAP, for example, provides a lengthy explanation of the Arts Equity Index under Action 2.12, but fails to disclose which actions are happening as a result of this distributional scheme. *See* Ex. 25 at pp. 87-89. LAUSD’s failure to identify any actual actions or strategies is the same problem that CDE identified as illegal in *Klamath-Trinity II*. The LCAP also fails to identify the specific actions that take place at each school site and their associated expenditures for the hundreds of millions of discretionary dollars distributed to schools under Action 1.5 (School Autonomy, which includes SENI, Pilot School funding, Innovation Focus Schools, and Local District Allocations) and 1.10 (School Innovation Funds). *Id.* at 21-28, 49-52.

Third, the District failed to require all necessary corrective action on the limited issue addressed in its decision (i.e. identification of specific schools for actions that are not districtwide). The District made an erroneous factual finding that Action 3.2 (Targeted Supports to Increase Student Engagement at Campuses of High) and Action 6.4 (Ongoing Major Maintenance) are districtwide actions “that impacts all schools.” Ex. 22 at p. 11. However, the descriptions and justifications for these actions suggest that they are only provided at specific schools.

¹² For example, the amended LCAP aggregates SENI funding by position and then discusses how these expenditures collectively address the needs, conditions, or circumstances of its unduplicated students. *See* Ex. 25 at pp. 147-49. However, the entire rationale for school autonomy is that each school has different needs, conditions, and circumstances. Therefore, it is necessary to identify how each school is spending its discretionary supplemental and concentration funds, how those investments address the needs, conditions, and circumstances of high need students at that school, and how that school is measuring the effectiveness of those particular actions. We recognize that it may be cumbersome to include that level of detail in the LCAP itself, but LAUSD could easily reference and incorporate school site plans that provide these school-level justifications. The amended LCAP references school TSP plans, but these plans do not provide the space to engage in this analysis, as we identified in our complaint (Ex. 21 at p. 23, n. 87) and subsequent meet and confer letters. (Ex. 32 at p. 3.) During meet and confer, we provided suggestions on how to modify the TSP template to comply with LCFE transparency and accountability requirements. *See* Ex. 31. We applaud LAUSD for its equitable funding schemes, such as SENI, the Arts Equity Index, and the School Innovation Funds, but those investments must be justified by school site, with increased clarity for the public in the LCAP about how that money is being used.

- Action 3.2 is titled “Targeted Supports to Increase Student Engagement at Campuses of High Need,” which suggests that it is available only at particular schools. Moreover, the DISSUP section states that “[t]hese resources are provided at the request of schools based on their plans describing their use of Student Equity Needs Index funds.” *See* Ex. 25 at p. 259. If schools request these services based on their SENI plans (presumably their TSP plans), then it is a program that is only provided to specific schools that request it. These schools should be identified.
- Action 6.4 is titled “On-going Major Maintenance” and listed as an action that is provided at “All Schools.” Ex. 25 at p. 248. However, this action is described as “[t]argeted maintenance to school sites with greatest need” by “utilizing our school equity index.” *Id.* The DIISUP section justifies this action as increasing or improving services for high need students by stating that the expansion of Strike Teams “will be directed toward schools with high percentages of unduplicated pupils in order to improve their school environments which should support improvements in attendance and academic outcomes.” *Id.* at 261. Therefore, this action appears to be targeted at a sub-set of schools that should be identified. Alternatively, if this is ongoing maintenance for all schools, it should not be counted toward the requirement to increase and improve services.

In summary, LAUSD misapplied the law when it held that the only legal requirement for school-level allocations is to identify the individual schools served when an action is provided to specific schools. In addition, LAUSD should have analyzed whether the LCAP provides sufficient descriptions, associated expenditures and justifications for school-level allocations. LAUSD also erred by failing to require corrective action for Actions 3.2 and 6.4, which appear to be provided to specific schools, even though they are identified as actions for all schools. Therefore, LAUSD must amend its LCAP to describe and justify all school-level discretionary allocations, including the SENI and other school discretionary initiatives under Action 1.5, the School Innovation Funds under Action 1.10, and arts funding under Action 2.12. LAUSD must also identify the individual schools that are provided services under Action 3.2 and Action 6.4.

IV. Allegation 5: The LCAP fails to demonstrate how the District is meeting its obligation to increase and improve services for high need students each year by 32 percent above the level of service provided to all pupils.

The complaint alleged that LAUSD failed to analyze, beyond a conclusory statement, how high need students will receive 32 percent more in services than all students. *See* Ex. 21 at pp. 25-27. Instead, the DIISUP section almost entirely focused on the general program serving all pupils, instead of the increased services for high need students. *Id.* Notably, LACOE

likewise found the District's response to the DIISUP Minimum Proportionality Prompt (MPP) prompt inadequate. Ex. 41 at 3.

LAUSD concluded that its 6/18 LCAP contained sufficient analysis to demonstrate that it is doing 32 percent more for high need students but noted that it would correct a typographical error and provide additional explanation in the DIISUP section. See Ex. 22 at p. 14. Other than fixing the typographical error, the District's 9/20 LCAP simply replicates the same flawed analysis of how it is meeting its MPP by responding to the DIISUP MPP prompt with a description focused almost entirely on its general education program. See Ex. 25 at p. 253 (only 3 out of 11 bullet points focus on high need students as opposed to all students) Accordingly, LAUSD has failed to address this legal shortcoming and its 9/20 LCAP fails, again, to provide an overall analysis of how LAUSD is meeting its MPP.

Though the 9/20 LCAP provides some additional detail in the DIISUP on specific individual S&C supported actions, the District still fails to respond, in most instances, to the key question: how do services for unduplicated pupils *in comparison to* the services provided for all students exceed the latter quantitatively or qualitatively?

For example, the DIISUP in the amended LCAP states that district initiatives will increase services for unduplicated pupils by “[d]eveloping personalized pathways for English learners, foster youth and low-income students.” Ex. 25 at p. 253. This is an improvement over the 6/18 LCAP, which stated that “all students” would be prepared for success by developing personalized pathways for all students. Ex. 5 at p. 103. However, there is no analysis to understand how high need students are getting *more or better* personalized pathway services than all students. What is the value add that supplemental and concentration funds provide for high need students? Is it a lower counselor-to-student ratio at schools with high concentrations of high need students? Are there investments in tailored pathway programs to support high need subpopulations that experience opportunity disparities, such as English Learners, Foster Youth, and Homeless students?

Similarly, the amended LCAP states that LAUSD will build the capacity of school leaders to serve high need students. Ex. 25 at p. 253. Again, this is an improvement over the 6/18 LCAP, which only mentioned “building the capacity of school leaders.” Ex. 5 at p. 103. However, there is no explanation or analysis in this conclusory statement of how school leaders will be trained or supported in serving high need students better. Is it through specialized professional development? Increased administrative staff at high need school sites? This comparative analysis is at the heart of LCFF's equitable funding formula and is required by statute and regulation, in addition to the LCAP template prompt. See Cal. Educ. Code 42238.07 and 5 Cal. Code Regs. § 15496(a).

LAUSD misapplied the law when it determined that conclusory statements about its dedication to increasing and improving services is sufficient to adhere to the LCAP Template instructions and the statutory and regulatory mandates discussed above. Although its amended LCAP is an improvement in some respects, it still fails to offer a quantitative or qualitative analysis that demonstrates how it is meeting its MPP and corrective action is needed.

V. Allegation 6: The LCAP fails to demonstrate that its specific uses of \$1.14 billion in supplemental and concentration funds increase or improve services for high need students.

The Complaint alleged that LAUSD's 2019-20 LCAP: (1) fails to identify hundreds of millions of dollars that are funded by supplemental and concentration funds and provided on a districtwide basis; (2) fails to make any showing that the few actions identified are principally directed towards high need students; and (3) does not make a single attempt to demonstrate effectiveness. *See* Ex. 21 at pp. 28-33. Incredibly, LAUSD concludes that the incomplete and wholly inadequate 1-page DIISUP section in its 6/18 LCAP is legally compliant because the descriptions "are in line with those previously approved and sufficiently explain how the services are principally directed towards, and effective in, meeting the District's goals for its high need students." Ex. 22 at p. 16. This is both a misapplication of law and an unsubstantiated factual finding. If for no other reason than to set LAUSD straight about its obligations and preclude a future repetition of the woefully inadequate 6/18 DIISUP demonstration, the CDE needs to overrule the District's denial of Allegation 6 and declare the individualized demonstrations of principally directedness and effectiveness unlawful.

The so-called voluntary actions undertaken by the District in the DIISUP section of the 9/20 LCAP are an improvement, but many expenditures are still not identified or properly justified; therefore, further corrective action is necessary.

First, it is a misstatement of fact that the 6/18 DIISUP is similar to the DIISUP in the approved 2018-19 LCAP. As discussed in the Complaint, LAUSD's 2018-19 LCAP had significantly more robust (albeit still insufficient) explanations for its districtwide use of supplemental and concentration funds and had made some reasonable attempts to justify districtwide S&C-supported actions. *See* Ex. 21 at 31-33. In contrast, the DIISUP in the 6/18 LCAP failed to identify major actions, such as the \$600 million in non-SENI School Autonomy funding (Action 1.5), the \$70 million in School Innovation Funds (Action 1.10), and the \$2 million in Reed funding (Action 1.4), *see* Ex 5 at p. 103, and did not even attempt to demonstrate that its supplemental and concentration funded actions were principally directed and effective for any action. Accordingly, it is not accurate to find that the 6/18 DIISUP was "in line" with the 2018-19 approved DIISUP. *See* Ex. 22 at p. 16.

Second, even if the 6/18 DISSUP was substantially similar to the DIISUP in the approved 2018-19 LCAP, prior approvals are not a legitimate defense to an illegal LCAP. This defense is particularly weak because the complaint alleges that the 2018-19 LCAP is legally deficient, in addition to the 2019-20 LCAP, and names LACOE as a respondent for improperly approving that LCAP.¹³ The 6/18 LCAP was a blatant violation of LAUSD's obligation to "[i]dentify in the LCAP those services that are being funded and provided on a districtwide basis [and] [d]escribe in the LCAP how such services are principally directed towards, and are effective in, meeting the district's goals for its unduplicated pupils." 5 Cal. Code Regs. 15496(b)(1).

Third, although the DIISUP in LAUSD's 9/20 LCAP is a significant improvement, it still fails to identify millions of dollars in supplemental and concentration expenditures and does not sufficiently justify several large expenditures, as discussed below:

- **Services that are not identified in the DIISUP:** The LCAP Template requires districts to identify each action/service that is funded and provided on a schoolwide or LEA-wide basis, and then explain how each use of funds is justified. The 9/20 LCAP fails to identify, much less justify, millions of dollars in expenditures that are bundled with other actions and services. For example, the description of the School Autonomy action in the DIISUP section omits: Transition Services for Targeted Populations (\$6.2 million), Local District Allocations for Schools (\$3.1 million), Dual Language Supports (\$580,000), Special Assignment Non-Classroom Teachers (\$43.6 million), General Supplies (\$7.6 million), Non-instructional Contracts (\$2.8 million), Contracts for Instructional Services (\$2.5 million), Building and Grounds Workers (\$1.7 million), Microcomputer Support Assistant (\$1.4 million), Software License Maintenance (\$1.4 million), which totals more than \$70 million of unidentified expenditures for Action 1.5 alone. Ex. 25 at p. 258. In addition, multiple services that are bundled as part of larger actions are not discussed in the DIISUP. For example, nurses are one of the services that are bundled with many other itinerant resources in Action 3.2 (Targeted Supports to Increase Student Engagement at Campuses of Highest Need) but is not specifically discussed at all in the DIISUP. Ex. 25 at p. 259-60. Custodial services, another service that is bundled as part of Action 3.2, is mentioned in the DIISUP, but without the disaggregation of expenditures, it is impossible to determine whether the expenditure is justified by the limited description of this service (supporting trainings and resource fairs that provide high need families access to community resources). *Id.* at 260. In other words, extra custodial support for a couple trainings and resource fairs cannot justify a large expenditure on this item. The DIISUP section also does not discuss the AP support and middle school intervention programs that are bundled with credit recovery and other

¹³ LAUSD fails to respond to any of the allegations related to the 18-19 LCAP, thereby conceding their validity. *See, e.g., People v. Ferguson*, 194 Cal. App. 4th 1070, 1092 (Cal. Ct. App. 2011) (finding that the Attorney General implicitly conceded a point "as he simply does not respond" to Plaintiff's argument on that issue).

services as part of Action 1.9. These services must be identified and explained in the DIISUP section.

- **Descriptions of services that do not increase or improve services for high need students:** The DIISUP section should be a complete identification, description, and justification of each entity-wide service funded by supplemental and concentration funds. *See* Ex. 17 (LCAP Template Instructions). Supplemental and concentration funds may only be used to “increase or improve services for unduplicated pupils as compared to the services provided to all pupils.” 5 Cal. Code Regs. 15496(a). However, the 9/20 LCAP includes many services that are part of the basic educational program and are not provided to address the particular needs, conditions, and circumstances of high need students.

Across-the-board teacher salary increases: In response to Allegation 7 (Ex. 21 at pp. 33-36), the 9/12 LCAP revealed for the first time that the School Autonomy Action (1.5) includes \$238 million in across-the-board teacher salary increases. *See* Ex. 26 at p. 143. This appears to be one of the items that LAUSD realigned from base funds to supplemental and concentration funds after the CDE held that its use of supplemental and concentration funds for special education was unlawful. *See* Ex. 33 at p. 2, line 19.¹⁴ Although the LCAP attempted to justify this expenditure by stating that the salary increase is for teachers of high need students, it did not explain how this was an ***increase or improvement*** of services for high need students over all students, either by targeting the salary increases or documenting difficulties in recruiting, hiring, or retaining qualified staff. *See* Ex. 34 (letter from State Superintendent Tom Torlakson regarding the use of LCFF supplemental and concentration funds); Ex. 26 at pp. 250-51 (no discussion of teacher salary increases in the DIISUP section). After Public Advocates raised a concern about this expenditure in a comment letter on September 16th, LAUSD issued yet another amended LCAP that changed the description of the salary increase to “[a]dditional [t]eachers to [s]upport A-G [a]ccess” but retained the exact same dollar allocation of \$238.1 million. *See* Ex. 25 at p. 146. This sudden change is highly suspect. At \$100,000 in salary and benefits per teacher, this expense reflects an additional 2,380 teachers. It is extremely unlikely that the District plans to hire 2,380 additional teachers this school year; nor would it be credible to claim that the District suddenly remembered it recently hired 2,380 additional A-G teachers for high need students that it has forgotten to account for in its LCAP. LAUSD must accurately describe this expenditure so that stakeholders and the public can understand whether this large line item is for across-the-board teacher salary increases, targeted salary increases, or additional teachers at targeted school sites

¹⁴ This exhibit was previously publicly posted by LAUSD on its website to explain details of the Realignment process undertaken to respond to the CDE decision in the Frias case. The specific action and associated expenditures discussed in the document relative to a 2015 teacher salary increase have never been specifically revealed to the community in an LCAP, nor justified as principally directed, nor evaluated for effectiveness.

or grade spans. We fully support teachers receiving well-deserved raises and a living wage, but if those increases are not targeted and cannot be justified, these expenditures must come out of base funds.

Assistant Principals: The 9/20 LCAP demonstrates that approximately 30 percent (\$80 million) of all SENI funds are spent on Assistant Principals. *See* Ex. 25 at p. 148. All Assistant Principals appear to be funded by supplemental and concentration funds and allocated based on enrollment. *See* Ex. 33 at p. 1, line 5 (realigning all assistant principals to be funded by supplemental and concentration funds); Ex. 36 at p. 20 (noting that Assistant Principals are combined with a lump-sum amount based on the SENI ranking into program code 10552, which is funded by supplemental and concentration funds), p. 82 (defining Program Code 10552 as including “Norm-based Assistant Principals and Assistant Principals, Student Counseling Services”). The only reference to Assistant Principals in the 9/20 DISSUP section is the following sentence: “Additional administrators and coordinators in schools improve the quality of instruction in classrooms through professional development and coaching of teachers and by providing direct supports and guidance to high need students through one-on-one meetings and collaboration with parents and teachers.” *See* Ex. 25 at p. 255. Although this explanation may justify some Assistant Principal positions or portions of Assistant Principal positions, it is not sufficient to justify the entire LAUSD budget expenditure for all Assistant Principals who are allocated based on enrollment; these positions serve all students and are part of the general education program.¹⁵

Nurses and High School Counselors: The 9/20 LCAP combines these two district-allocated resources into one line item for \$63.7 million. *See* Ex. 25 at p. 146. This line item is funded by supplemental and concentration funds and is also norm-allocated. *See* Ex. 36 at pp.26-27 (describing nurse norming model); pp. 17, 21 (noting that counselors are norm-generated core positions). Although additional nurses and high school counselors may be purchased using SENI funds, no nurses or high school counselors in high need schools appear to be funded through base funds.¹⁶ *See* Ex. 33 at p. 3, line 27 (noting that all high school counselors will be realigned to meet proportionality

¹⁵ Contrary to the LCAP’s misleading description of Assistant Principals as a discretionary, school-based resource within the SENI allocation to schools, Ex. 25 at p. 148, prior admissions, *e.g.*, Ex. 4 at pp. 31-32 (description of “other school based” personnel allocations), and the budget documents referenced above, reveal that schools must use these so-called discretionary funds to purchase Assistant Principals or lose them. Accordingly, all schools use the funds as directed.

¹⁶ The School Budgeting Handbook specifies that Counselors for non-Title I high schools will be funded by base and counselors for Title I high schools will be funded through supplemental and concentration funds (Program 10529). *See* Ex. 36 at p. 18. However, this funding scheme does not increase or improve services for high need students; students at Title I schools should get **additional** counseling resources, instead of getting the **same** resources funded through a different source. This bifurcated funding system undermines the equitable spending that is at the heart of LCFF and simultaneously appears to violate federal Title I rules against supplanting.

requirements); Ex. 36 at p. 18 (no nurses are listed under general fund program code 13027). This suggests that these resources are not increasing and improving services for high-need students but are part of the base program. The DIISUP section addresses the additional nurses and counselors that are acquired above and beyond the District-allocated norms through SENI but fails to acknowledge these *norm-based* expenditures that are also embedded in the School Autonomy Action. Though occasionally LAUSD LCAPs have asserted that these positions (and/or Assistant Principals) receive professional development that helps them focus on high-need students, nowhere does the District justify how a course or two justifies allocating 100% of the salaries and benefits of these core staff to its proportionality obligation. Nowhere has the District articulated all these positions for every minute of every day are meeting some identified need of unduplicated pupils that is over and above the general need of the student population, much less how they are effectively meeting those needs. Nurses and high school counselors are core resources and the norm-allocated resources should be funded from base.

Class Size Reduction Teacher/ Librarian: The 9/20 LCAP combines these two district-allocated resources into one line item for \$35 million. See Ex. 25 at p. 146. Like Assistant Principals, counselors, and nurses, all librarians in the district are funded using supplemental and concentration funds and allocated based on enrollment. See Ex. 36 at 18, 26; see also Ex. 33 at p. 3, line 26 (shifting budget for Library Media Teachers from base to targeted). Class size reduction teachers also appear to be funded entirely with supplemental and concentration funds and are applied equally to all schools to adhere to state requirements and the additional agreements reached with UTLA during bargaining. See Ex. 36 at pp. 10, 24 (discussing K-3 class size reduction based on state requirements), p. 28 (referencing UTLA agreement). The DIISUP section discusses the benefits that high need students receive from librarians and reduced class sizes, which we do not dispute. However, non-high-need students also benefit from librarians and smaller class sizes. Supplemental and concentration funds must do more than benefit high need students. To be principally directed, they must be tailored to increase and improve services for the students that generate the funding based on a specially identified need of those students, instead of simply replacing core services that generally serve all students. Additional justification is necessary for funding all class size reduction teachers and all librarians in the district from S&C funds.

LAUSD attempts to obscure the fact that hundreds of millions of dollars in supplemental and concentration funds embedded in School Autonomy are actually funding general education expenses. The 9/20 DIISUP describes this Action as increasing resources “above and beyond District-normed resources that are uniquely designed to meet the academic, social-emotional and wellness needs of these students.” See Ex. 25 at p. 255.

Although this statement may be true for the SENI expenditures (minus the norm-allocated Assistant Principal positions embedded within the SENI program), it is not true for the hundreds of millions of dollars in norm-based resource allocations, as discussed above. In fact, the School Allocations for Targeted Student Population spreadsheet referenced in the LCAP demonstrate that these resources are allocated according to norms and not equity. Schools with the lowest need that are not even Title I schools receive the same, or greater, allocations than highest need schools with larger and more concentrated high need student populations.¹⁷ See Ex. 35 (LAUSD School Allocation Spreadsheet with SENI ranking); Ex. 37 (LAUSD Title I ranking). LAUSD must explain how these norm-based allocations increase or improve services for high need students compared to all students,¹⁸ and if it cannot, then it must use base funds for these services.

- **Expenditures that are not principally directed to meet state and local goals for high need students:** Supplemental and concentration funds may be used to upgrade the entire educational program of the district, provided those services are principally directed towards meeting the district’s goals for high need students. CDE has made clear that districts can only demonstrate that a proposed entity-wide use of funds is “principally directed” to high need students by “explain[ing] in its LCAP how it considered factors such as *the needs, conditions, or circumstances* of its unduplicated students, and how the services takes these factors into consideration (such as, for example, by the service’s design, content, methods, or location).” See Ex. 19 at p. 7-8 (emphasis added). Many of the services discussed in the DIISUP fail to meet this standard.

Action 2.9 - Device Carts and Fiscal Specialists: In addition to the examples provided above, the device carts and fiscal specialists that were bundled with English Learner Supports under Action 2.9 are not designed to increase services for high need students based on their unique needs, conditions, and circumstances. The 9/20 DIISUP states that “[a]dditional device carts will also be provided to schools with high numbers of English learners to improve access to the most current literacy intervention online programs,” but that appears to be last-minute wordsmithing to make the action seem targeted to English Learners, when in fact, device carts for all students are improperly embedded under

¹⁷ For example, Paul Revere Middle School has a 25 percent poverty rate, is ranked lowest need according to the SENI index, and has approximately 543 high need pupils, but receives much greater allocations for nurses, librarians, and CSR teachers than Berendo Middle School, which has a 95 percent poverty rate, is ranked highest need according to SENI, and has 787 high need students. Compare Ex. 35 at p. 10 (Berendo receives no Assistant Principal or CSR teacher allocation, and only \$23,255 for nurses and \$105,361 for librarians), with p. 11 (Paul Revere receives \$440,563 for Assistant Principal, \$69,764 for nurses, \$117,160 for CSR teachers, and \$117,956 for librarians).

¹⁸ For example, if these school-based resources were allocated according to need instead of enrollment, that may be justified as increasing and improving services for high need students.

English Learner Supports (Action 2.9).¹⁹ See Ex. 25 at p. 254. Similarly, fiscal specialists and other LCAP administrative supports are bundled with English Learner supports even though they are general administrative positions that are not principally directed to meet high need students. See Ex. 38 (fiscal specialist job description). The fact that a position may impact a high need student does not justify funding the entire position (or class of positions) using supplemental and concentration funds. LAUSD must provide more accurate descriptions of its services and better justifications, when it can do so. If not, these expenditures must be removed from the proportionality calculation.

Action 1.5 - Local District-Salaries/Benefits/OE: The 9/20 LCAP discloses for the first time a \$25 million line item for local district salaries and benefits that is embedded within School Autonomy. See Ex. 25 at p. 147. These administrator positions are ostensibly funded “to support the successful implementation of school-site TSP plans . . . support professional development, coordination and facilitation . . .” and “monitor school implementation of Restorative Justice practices and provide guidance on school progress on accountability measures through monthly principal meetings and regular data discussions with school leaders and leadership teams.” Ex. 25 at pp. 145-149; see also pp. 255-56 (describing Local District staff role in capacity-building of school leaders, coordination of professional development, and facilitation of school site teams to monitor implementation and data for unduplicated pupils). However, local administrators have many additional duties and provide support to all students. Although a portion of Local District salaries and benefits may be justified based on the descriptions in the LCAP, it is very doubtful that \$25 million in salaries and benefits can be justified — that is one hundred percent of time for 250 Local District staff (assuming staff are paid approximately \$100,000 each!) LAUSD must provide a better justification for spending \$25 million of supplemental and concentration funds on administrators that do not provide direct student supports.

In summary, LAUSD erred factually and legally by concluding that the DIISUP in the 6/18 LCAP was legally compliant because of previous, approved LCAPs. The 9/20 LCAP, which includes the amendments referenced in the Decision, is still legally deficient for the reasons discussed above. Therefore, corrective action is necessary to ensure that LAUSD discloses every service funded by supplemental and concentration dollars in its DIISUP and properly justifies them, where possible. If the services cannot be justified as a legitimate

¹⁹ The LCAP does not mention device carts in any other action and did not attempt to justify them in the DIISUP until the most recent iteration of the LCAP. Moreover, the 9/20 LCAP suddenly makes device carts intended for English Learners (instead of all students) and designed to “provide additional curriculum and support beyond the District-provided base curriculum,” instead of being “an intrinsic part of the curriculum and instruction” as conceded in the LCAP version issued eight days earlier—and between the two versions there is no change in expenditures. Ex. 25 pp.199-200. (Compare Ex. 26 at p. 195 (9/12 LCAP), with Ex. 25 at p. 199 (9/20 LCAP)).

increase or improvement in services for high need students above all students (or an upgrade to the educational program based on the specific needs of unduplicated pupils), then it must be funded out of base or other funds.

VI. Allegation 7: The LCAP rolls forward \$340 million in funds for high need students that has never been properly identified, justified, or publicly vetted.

The Complaint alleged that LAUSD improperly claimed \$340 million of unidentified supplemental and concentration expenditures in its 2017-18 LCAP and continues to carry forward these expenditures as part of the burgeoning School Autonomy action without justification or public vetting. Ex. 25 at pp. 33-36. The District erroneously found that this allegation is based “on a single document [Ex. 7] . . . [that] was not a part of the District’s LCAP and is not a formal budget document.” Ex. 22 at p. 16. In fact, this allegation is based on two versions of the 2017-18 LCAP (Exhibits 2 and 16), which show that LAUSD unilaterally and surreptitiously reclassified \$340 million of base expenditures as supplemental and concentration expenditures retroactively in the 2016-17 Annual Update, embedded them in School Autonomy, and never identified the specific actions or justifications for these additional expenditures in any LCAP. *See* Ex. 21 at pp. 34-35; Ex. 2 (LAUSD 2017-18 LCAP). The “single document” that the Decision references was merely corroborating evidence that LAUSD’s proportionality calculation does not add up. LAUSD erred in dismissing this allegation without addressing the full scope of the claim, as described in detail in the Complaint. (And contrary to LAUSD’s conclusion, some version of an Exhibit 7 budget document that accurately summarizes LAUSD’s quantitative analysis of how it is meeting its MPP would both serve that end and the spending transparency that LCFF envisioned in the long run in addition to the immediate need to demonstrate here that all S&C-supported actions and expenditures have been identified in the LCAP.)

The enumeration of expenditures under School Autonomy in the 9/20 LCAP is helpful because it surfaces for the first time, the actual actions and associated expenditures that are part of this enormous \$768 million line item. However, as discussed above, a teacher salary expenditure in the amount of \$238.1 million was disclosed for the first time in the September LCAPs and remains unjustified and more than \$70 million of School Autonomy actions are not identified or explained in the DIISUP section. An additional \$200 million or more has not been properly justified, and likely cannot be entirely justified. LAUSD must be transparent in identifying and explaining how each action bundled within School Autonomy meets the increased and improved services requirement and where it cannot, those expenditures must be removed from the proportionality calculation.

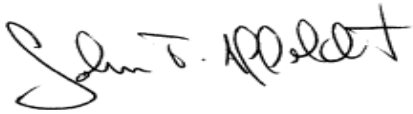
VII. Conclusion

For all the reasons stated here and in the attached Complaint, the District, the District has made erroneous findings of fact with respect to Allegations 1, 3, 6, and 7, misapplied the law with respect to Allegations 1, 2, 3, 5, 6, and 7, and failed to order corrective action when warranted. As a result, the Superintendent should overturn LAUSD's determinations and require the District to correct its actions as follows:

1. Treat its 6/28/19 LCAP as null and void and, further, cease henceforth from unilaterally materially modifying any board and/or county-approved LCAP and representing those modified versions as the official District LCAP unless and until such materially modified LCAP has been subjected to the statutorily required community input, public hearing and approval processes set forth in California Education Code Section 52060.
2. Deem LAUSD's September 20, 2019 Board-approved amended LCAP fundamentally deficient and order LAUSD to further revise its 2019-20 LCAP by doing the following:
 - a. Cease bundling specific actions together and instead identify each specific action the district will take to meet its state and local goals together with their budgeted expenditures, including, but not limited to Actions 1.5 (including specific actions for parent engagement and restorative justice), 1.9, 2.9, and 3.2;
 - b. For discretionary school level allocations of LCFF supplemental and concentration funds, including but not limited to SENI allocations (1.5), Pilot School allocations (1.5), Local District Allocations to Schools (1.5), School Innovation Funds (1.10), and Arts Program (2.12), identify and justify each specific action and the expenditure amounts for each such action by school; further annually evaluate the effectiveness and any material changes in budget or nature of each such school-level action after implementation;
 - c. For districtwide programs provided at specific schools using LCFF supplemental and concentration funds, identify the specific schools, including, but not limited to Actions 3.2 and 6.4;
 - d. Identify each entity-wide action or service funded with supplemental and concentration funds in the DIISUP and demonstrate for each of these services, how it is principally directed toward and effective in meeting high need pupil goals;

- e. Remove and/or modify any expenditures improperly identified as contributing to increasing or improving services for high need students to properly demonstrate how the District is meeting its overall proportionality obligation; and
3. In revising its deficient 2019-20 LCAP as ordered above, follow all the community engagement provisions of LCFE required of an annual initial adoption of an LCAP.

Respectfully submitted this 4th day of October 2019 by,



JOHN AFFELDT
ANGELICA JONGO
NICOLE GON OCHI
Public Advocates, Inc.
131 Steuart Street, Suite 300
San Francisco, CA 94105
Telephone: (415) 431-7430
Email: jaffeldt@publicadvocates.org

LAURA E. MUSCHAMP
ROBERT ZHOU
Covington & Burling LLP
1999 Avenue of the Stars
Los Angeles, CA 90067
Telephone: (424) 332-4775
Email: lmuschamp@cov.com