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August 23, 2017

State Superintendent Tom Torlakson  
c/o Local Agency Systems Support Office  
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*Via E-Mail and U.S.P.S. Priority Mail*

**Re: Appeal of Uniform Complaint Procedure Complaint Concerning LBUSD's Failure to Comply with Legal Requirements Pertaining to LCAP**

Dear Superintendent Torlakson:

We submit this appeal of the determination of the Long Beach Unified School District ("LBUSD" or the "District") with respect to the Uniform Complaint Procedure complaint our firms filed on behalf of Children's Defense Fund-California (CDF-CA), Latinos In Action-California, and parents Marina Roman Sanchez and Guadalupe Luna (collectively, "Complainants"). This appeal concerns the District's failure to comply with the legal requirements pertaining to its Local Control and Accountability Plan (LCAP).

As discussed fully in the attached complaint, LBUSD has violated its legal obligations under the Local Control Funding Formula (LCFF) by failing in the 2016-17 LCAP to demonstrate that it is meeting its obligation to increase and improve services for high-need students in proportion to the supplemental and concentration (S&C) funds that they generate. (See Educ. Code § 42238.07; 5 CCR §§ 15496(a) & (b).) In particular, the District failed to adequately justify all districtwide expenditures of S&C funds in accordance with the regulations of the Local Control Funding Formula (LCFF). Accordingly, Complainants requested through UCP that the District justify four significant districtwide expenditures in the LBUSD's Amended 2016-17 LCAP, totaling more than \$40 million in S&C funds.<sup>1</sup>

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<sup>1</sup> Please find the UCP complaint, dated September 9, 2015, at [http://bit.ly/LBUSD\\_UCP](http://bit.ly/LBUSD_UCP). It is also Attachment 1 to the District's UCP Response (Exhibit 1), which can be accessed at [http://bit.ly/LBUSD\\_UCPResponse](http://bit.ly/LBUSD_UCPResponse) as Exhibit 1.

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In response to our complaint, Long Beach Unified made some significant amendments to its September 2016 First Amended LCAP.<sup>2</sup> The amendments, however, did not resolve all violations identified in Complainants' complaint. Nevertheless, on August 8, 2017, Complainants received the attached determination and report of findings from LBUSD, in which the District wrongly concludes that the "[c]omplaint is unfounded and is denied."<sup>3</sup>

We now appeal LBUSD's erroneous determination to the State Superintendent on the bases of numerous errors in fact and errors in law. For the reasons described in the attached complaint and elaborated further below, LBUSD has violated critical equity provisions of the new funding law. Complainants specifically appeal the District's determination on its expenditures of \$17 million for standards-aligned textbooks and \$14.5 million on classified salaries and benefits to provide Supplemental Educational Supports for Unduplicated Pupils, because these expenditures do not constitute genuinely increased or improved services for high-need students. As a result, Long Beach Unified must revise its proportionality calculation for the 2017-18 LCAP year to remove those amounts from its calculation of prior year spending on unduplicated pupils and ensure that it spends the appropriate amount of money on increased and improved services for high-need students in FY 2017-18 and in future years.

This appeal is organized as follows:

- Procedural Background
- Analysis of Issues on Appeal
- Request for Corrective Action and Conclusion

#### **A. Procedural Background**

The events precipitating this appeal extend back to more than one year ago prior to the adoption of LBUSD's 2016-17 LCAP. On June 8, 2016, Public Advocates sent a letter to the District raising numerous concerns with respect to the District's failure to properly justify districtwide spending of S&C funds, including \$14.4 million in teacher retirement contributions that did not constitute an increased or improved service to high-need students, \$7 million in teacher salary and \$17 million on Common-Core aligned textbooks. On June 23, 2016, the District persisted in adopting its 2016-17 LCAP without addressing the concerns raised by the June 8<sup>th</sup> letter and then dismissed the issues raised therein as mere "editorial concerns" in a letter dated July 21, 2016. Public Advocates then reiterated its concerns to the Los Angeles County Office of Education (LACOE) by letter dated August 9, 2016. LACOE issued requests for clarification on August 12, 2016 and recommended amendments to LBUSD's LCAP on September 9, 2016. The District issued an amended 2016-17 LCAP on September 15, 2016 (LBUSD First Amended 2016-17 LCAP) that

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<sup>2</sup> The LBUSD First Amended 2016-17 LCAP is available at [http://bit.ly/LBUSD\\_1stAmLCAP](http://bit.ly/LBUSD_1stAmLCAP).

<sup>3</sup> See LBUSD UCP Response, Exhibit 1, at p.1, available at [http://bit.ly/LBUSD\\_UCPResponse](http://bit.ly/LBUSD_UCPResponse).

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removed the challenged retirement contribution expenditure (shifting \$14.5 million into classified salaries and benefits under Instructional Services) and provided some limited additional explanation for the teacher salary and textbook expenditures. LACOE then approved the First Amended 2016-17 LCAP.<sup>4</sup>

On April 4, 2017, Complainants filed the complaint that is the subject of this appeal with the District. The complaint challenged more than \$40 million in districtwide S&C expenditures in the First Amended 2016-17 LCAP on the basis that the District had failed to justify those expenditures as increased and improved services for high-need students according to the LCFF regulations. At issue were four FY 16-17 expenditures: 1) \$17 million in Common Core-aligned textbooks and instructional materials, 2) \$14.5 million in Supplemental Educational Supports for Unduplicated Pupils that appeared to be for classified staff salary and benefits, 3) \$7 million in certificated salaries and 4) \$2.5 million in technology.

On May 17, 2017, Complainants and their counsel met with representatives of the District to discuss the subject matter of the complaint. On or around June 9, 2017, in response to a request from LBUSD, LACOE issued a request for clarification with respect to its First Amended 2016-17 LCAP. On June 12, 2017, the LBUSD school board adopted the Second Amended 2016-17 LCAP with little discussion.<sup>5</sup> The Second Amended LCAP contains lengthy revised descriptions of the expenditures challenged in the complaint, which were posted the night before the board meeting and were never subject to community input or review.<sup>6</sup>

LBUSD then issued its “UCP Response to Complaints Regarding LCAP” on August 8, 2017 denying the complaint.<sup>7</sup> (Exhibit 1.) In light of LBUSD’s response, our clients now appeal two of the four expenditures challenged in the complaint on the basis that the District erred both in its findings of fact and its application of the law. While Complainants are not convinced by the post-hoc justification the District provides for the challenged teacher salary expenditure, given that the District has discontinued funding this ongoing \$7 million expenditure out of S&C funds in the future, Complainants have chosen not to appeal this issue.

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<sup>4</sup> The underlying documents referenced in this paragraph can be found at Attachments 1-5 of the complaint (Exhibit 1 at pp.46-80). For additional relevant chronology and more detailed descriptions of the June 23, 2016 and September 15, 2016 LCAPs, please see the complaint at pp.3-4 (Exhibit 1 at pp.37-38).

<sup>5</sup> The LBUSD Second Amended 2016-17 LCAP, adopted on June 12, 2017, is available at [http://bit.ly/LBUSD\\_2dAmLCAP](http://bit.ly/LBUSD_2dAmLCAP).

<sup>6</sup> Complainants also have serious doubts about whether LBUSD can properly claim any of the amended districtwide expenditures as properly justified given that the process that LBUSD followed to amend the 2016-17 LCAP in June 2017 without public notice, posting the lengthy revised descriptions less than 24 hours prior to their discussion, and doing so far beyond the time that the expenditures had already been incurred, prevented stakeholders from having any opportunity to meaningfully weigh in on the validity of the expenditures.

<sup>7</sup> The time for LBUSD to respond to the complaint had been extended to that date by mutual agreement.

## **B. Analysis of Issues on Appeal**

Under LCFF, S&C “funding shall be used to increase or improve services for unduplicated pupils as compared to the services provided to all pupils in proportion to the increase in funds apportioned on the basis of the number and concentration of unduplicated pupils ....” (5 CCR 15496(a).) To increase or improve services means to grow services for high-need students either quantitatively or qualitatively. (5 CCR 15495(k) & (l).) A district “may demonstrate it has increased or improved services for unduplicated pupils ... by using funds to upgrade the entire educational program of a schoolsite [or] district ... as follows: (1) A school district that has an enrollment of unduplicated pupils of 55[%] or more ... may expend [S&C] grant funds on a districtwide basis.” (5 CCR 15496(b).) To expend funds on a districtwide basis, a district shall “(A) Identify in the LCAP those services that are being funded and provided on a districtwide basis. (B) Describe in the LCAP how such services are principally directed towards, and are effective in, meeting the district’s goals for its unduplicated pupils in the state and any local priority areas.” (*Id.*) “When properly explained in the LCAP, it will be apparent how the LEA is acting to increase or improve services for unduplicated pupils, and why it has determined the services identified will be effective to achieve its goals for unduplicated pupils.” (CDE decision, 5/5/2017 at p.6.)<sup>8</sup>

Because LBUSD fails to satisfy these basic legal requirements that are at the heart of the equity promise of LCFF, Complainants choose to appeal the following issues:

1. Despite having adopted a 2<sup>nd</sup> Amended 2016-17 LCAP, the District still does not adequately justify how its \$17 million in S&C expenditures for **Common Core aligned textbooks and instructional materials** in the 2016-17 fiscal year are genuine increased or improved services at all for high-need students nor how those services are principally directed towards, and effective in, meeting its goals for high-need students. Given the significant amount of this expenditure, the District does not appear to meet its minimum proportionality obligation to increase or improve services for high-need students. To the extent that some or all of this \$17 million was not spent on services provided to unduplicated students as compared to services for all students, the District should not count these amounts in its calculation of prior year spending on unduplicated pupils pursuant to 5 C.C.R. 15496(a).
2. Absent further evidence, the District still fails to justify the \$14.5 million S&C expenditure for “Supplemental Educational Supports for Unduplicated Pupils” as an increased or improved service for unduplicated pupils as compared to all pupils.

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<sup>8</sup> The May 5, 2017 CDE decision (“5/5/17 CDE Decision”) is available at <https://assets.documentcloud.org/documents/3711100/LCAP.pdf>.

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At issue in these two expenditures is more than \$31 million worth of services. While we recognize that the proportionality requirement is not a dollar-for-dollar obligation, given that these expenditures represent some 28% of all S&C funding the District received in FY 2016-17, it is important to verify that these were genuine services for high-need students. Where this cannot be verified, we request that CDE ensure that LBUSD does not include the amounts of those expenditures in its proportionality calculation to determine S&C funding and discontinue that spending in the 2017-18 school year.

Allowing LBUSD to subvert these legal requirements threatens to undermine the promise of genuinely increased or improved services for high-need students at the heart of the LCFF.<sup>9</sup>

Finally, we wish to correct the District's misconception that by seeking greater clarity in LBUSD's LCAP, Complainants would have the District recreate "a map with a 1:1 scale." (Exhibit 1, UCP Response at pp.30-31.) Throughout this process, LBUSD has repeatedly dismissed Complainants' legitimate concerns as "wholly editorial." This complaint, however, has never been about mere words on a page. What Complainants have always sought is a level of transparency and clarity on the accessibility of the increased and improved services to unduplicated pupils that will enable parents and community members, like themselves, to engage meaningfully as partners in the LCAP development and continuous improvement process as the law requires.

Indeed, Complainants do not believe the overly verbose descriptions that the District provided in its Second Amended 2016-17 LCAP are necessary or particularly helpful. As the CDE has stated: "When properly explained in the LCAP, it will be apparent how the LEA is acting to increase or improve services for unduplicated pupils, and why it has determined the services identified will be effective to achieve its goals for unduplicated pupils." (5/5/17 CDE Decision at p.6.) It is telling that the District felt the need to write such lengthy explanations concerning some of the challenged expenditures. Where an action represents a genuine growth in service, we would expect that it would be possible to concisely describe that action with sufficient detail to allow community to understand how it is intended to meet the needs of high-need students.

1. The District still fails to justify how its entire \$17 million S&C expenditure for legally required Common Core-aligned textbooks and Advance Placement instructional materials, which amounts to the cost of nearly all textbooks purchased across the District, is an increased or improved service for unduplicated pupils as compared to all pupils.

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<sup>9</sup> LBUSD may argue that our complaint is somehow moot, because it was based on an inactive LCAP. Requiring a new complaint, however, would only further and unnecessarily delay resolution of the critical issues raised in this appeal. Our complaint put LBUSD on notice of the violations in its LCAP, and the First Amended 2016-17 LCAP fails to correct at least two of the violations described in our complaint. Filing a new complaint to LBUSD on the basis of the Second Amended 2016-17 LCAP would be futile and thus is not required.

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According to LCAP and budget documents, LBUSD appears to have funded nearly its entire purchase of standards-aligned textbooks districtwide with S&C funds generated by high-need students. In 2016-17, LBUSD budgeted \$17,301,351 for “Approved Textbooks and Core Curricula Materials” from its Unrestricted General Fund. (Exhibit 2, 2016-17 Adopted Budget, Form 01, at p.11.) At the end of the school year, LBUSD estimated actually spending \$17,406,059 on that line item. (Exhibit 3, 2017-18 Adopted Budget, Form 01 at p.11.) In the Second Amended 2016-17 LCAP, LBUSD allocated \$17,020,000 S&C to “Adopt, replace, and/or provide sufficient textbooks and instructional materials that align with Common Core,” and the District reports an estimated actual expenditure of \$17,000,000 S&C on this action. (Compare Second Amended 2016-17 LCAP, at pp.11-12 to 2017-20 Adopted LCAP at Annual Update, p.14 of 234.)<sup>10</sup> Given the striking similarity in the figures between the budget and LCAP documents, and in the absence of evidence to the contrary, it may fairly be inferred that the District is funding almost the entire cost of its textbook replacement out of S&C funds.<sup>11</sup>

As stated in the complaint, 100% compliance with the instructional materials requirements “is a basic requirement that appears to apply equally to all students.” Under the first LCFF state priority on *basic conditions of learning* applicable to all students, districts must ensure all students have access to standards-aligned instructional materials. This is a legal requirement rooted in the landmark *Williams* Settlement Legislation—one that the District must comply with as a condition of receiving state funding. Under that law, every student has the right to sufficient standards-aligned textbooks and instructional materials to use in class and at home. (Educ. Code § 60119.) Thus, providing textbooks is a basic service and expense that the District would have had to incur for all students as part of its core educational program in the course of its regular textbook adoption cycle.<sup>12</sup> Yet LBUSD seeks to claim the entire cost of meeting this core educational obligation for all students as an enhanced growth in service for high-need students.

Allowing districts to claim 100% of the cost of providing legally required textbooks to which *all students*—high-need and non-high-need alike—are entitled, does not serve to increase and improve services for high-need students as compared to all students. Under

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<sup>10</sup> In the Second Amended 2016-17 LCAP, LBUSD also allocated \$5,100,000 Base and reported an estimated actual expenditure of \$3,354,805 Base funds on this action. (Second Amended 2016-17 LCAP, at pp.11-12; [2017-20 Adopted LCAP](#) (6/20/2017) at p.14 of 234.) The LBUSD 2017-20 LCAP is available at [http://bit.ly/LBUSD\\_2017-20LCAP](http://bit.ly/LBUSD_2017-20LCAP).

<sup>11</sup> LBUSD has not provided any proof to the contrary. The District explains in its findings of fact that the expenditure on ELA and AP materials followed the purchase in 2015-16 of math textbooks with S&C funds and is part of a multiyear rollout of new textbooks. (Exhibit 1, UCP Response ¶3, at p.8.) Complainants have requested documents to verify what specific instructional materials were purchased with S&C funds and are still awaiting a response from the District. In the 2015-16 Annual Update, the District reports that approximately \$12 million in ELA materials were scheduled to be delivered in the 2016-17 school year. (Second Amended 2016-17 LCAP, Annual Update at p.94.)

<sup>12</sup> According to the District LEA Plan, the last adopted ELA and ELA intervention textbooks ranged in publishing dates from 2000 to 2004. (LBUSD LEA Plan at p.18, available at [http://bit.ly/LBUSD\\_LEAPlan](http://bit.ly/LBUSD_LEAPlan).)

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Section 3.B of the former LCAP template (and the final section of the current LCAP template), a district must demonstrate that it is meeting its proportionality obligation to increase or improve services for high-need students as compared to all students either quantitatively or qualitatively. In doing so, it is necessary for a district to identify what is the core or base program that it is providing to *all students*. Those things that are part of that core or base program should not count towards the District's obligation to high-need students. (Note, this same distinction is cemented in the regulations' 7-step formula for determining the LEA's minimum proportionality percentage whereby the percentage's numerator represents the quantum of increased or improved services and the denominator the quantum of base program expenditures.)<sup>13</sup>

While LBUSD does not make clear exactly how it is purportedly demonstrating that it is meeting its proportionality obligation, it appears to be doing so quantitatively in Section 3.A and 3.B of the Second Amended 2016-17 LCAP (See pp. 166-168). The District discusses its S&C fund total of \$108 million, references some specific expenditures and states that these resources "aim to improve the educational experiences of" unduplicated pupils. (See p. 168.) Given this approach, LBUSD apparently seeks to count the entire amount of the textbook expenditure, some \$17 million towards meeting its increase and improve requirement quantitatively. To do so, however, would require accepting that standards-aligned textbooks and instructional materials are not part of the base educational program to which all students are entitled and are not qualitative services that all students enjoy. As noted, this fiction runs head long into the *Williams* textbook requirement set in statute and reinforced as LCFF priority one for all students.

Undaunted, the District nevertheless boldly asserts that its entire S&C-funded purchase of replacement textbooks for the 2016-17 year constitutes a growth in service for high-need students as compared to all students because of the particular materials selected. LBUSD alleges that there is "wide latitude in the selection of instructional materials" and the District selected its particular Common Core materials "[w]ith English Learners primarily in mind" and "[w]ith a focus on the particular needs of its unduplicated pupils." (See Second Amended 2016-17 LCAP, at pp.24-25, for complete description.)<sup>14</sup> The District claims that the particular textbooks purchased are principally directed to meeting goals of closing achievement gaps for unduplicated pupils, especially English Learner (EL) students.

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<sup>13</sup> See 5 CCR 15946(a).

<sup>14</sup> In the Second Amended 2016-17 LCAP, LBUSD did not modify the language for the specific challenged textbook expenditure. (See Goal "Conditions of Learning #2" at pp. 11-12.) In its UCP response, however, the District cites to language for a different action item regarding the allocation of "resources directly to schools so that they can implement the Common Core State Standards and address the unique needs of their students" as being responsive to the complaint. (Goal "Conditions of Learning #4" at pp. 24-25.) We assume that the cited language was erroneously included under the wrong expenditure and will nonetheless respond to the District's further justification as cited in its response.

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Even accepting LBUSD’s assertion that it chose its core textbooks with the needs of its EL and unduplicated students “in mind,” such would at most justify *some portion* of the \$17 million cost of the textbooks—such as any premium paid for these superior materials above and beyond what a typical program might cost, the actual cost of any supplemental or enhanced materials, or some quantitative estimate of the increment of improved service the chosen textbooks provide for ELs over and above the standard level of service the books provide all students. **Given, however, that the District would have had to purchase ELA textbooks for all students regardless, it is plainly improper to count the entire cost of all ELA textbooks as a districtwide “growth” in service for unduplicated pupils.**

Moreover, Complainants question whether the selection of textbooks was in fact primarily focused on the needs of EL students. The Findings of Fact assert that “[t]he District chose materials with a particular emphasis on making major gains with the EL student population as well as on other unduplicated pupils for whom language acquisition is difficult.” (Exhibit 1, UCP Response ¶3, at p.8.) At the time of adoption, however, the official memo from the adoption committee to the board of education made no reference to this particular emphasis on EL students and other unduplicated pupils. Indeed, the memo states that “[t]he new instructional materials should meet the needs of *all students*—those who have mastered most of the content taught in the earlier grades and those who may have significant gaps in learning.” (See Exhibit 4, Approval of Basic Textbooks and Instructional Materials,” at p.2 (emphasis added).) The textbook committee’s omission of any mention of unduplicated pupils and focus on the “needs of all students” contradicts the District’s current claim that materials were chosen with a particular emphasis on unduplicated pupil needs. It also appears inconsistent with the District’s finding that its “selection of its particular Common Core instructional materials was neutral with respect to non-unduplicated pupils” yet somehow “principally directed towards unduplicated pupils.” (Exhibit 1, UCP Response ¶12, at p.9.)

Because the District has not shown that 100% of the districtwide expenditure for all Common Core-aligned textbooks is principally directed towards unduplicated pupil goals, the expenditure does not satisfy the proportionality requirements of the regulations even before one examines its possible effectiveness.<sup>15</sup> However, the District appears to claim

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<sup>15</sup> We also wish to correct a misstatement of the legal framework under LCFF. The District correctly reiterates the applicable regulation that the District must identify districtwide expenditures and describe how such services are “principally directed towards, and are effective in, meeting the district’s goals for its unduplicated pupils.” (5 CCR 15496(b).) However, the District then inexplicably jumps to the erroneous conclusion that “[t]hese aren’t separate requirements. The latter achieves the former.” (Exhibit 1, UCP Response at p.4.) The plain text of the regulation is clear that a district must show both how the service is “principally directed towards, *and* are effective in” meeting district goals for unduplicated pupils. (Emphasis added.) We urge the CDE to clarify that districts may not skip over the required description of how a service is “principally directed” simply because it believes that it has demonstrated the service is effective. Simple rules of statutory construction affirm that such distinct and separate words are not to be read as surplusage; to the contrary, independent words must be given their independent meanings. Moreover, the dual framework reflected in the *principally directed* and *effective* formulation is consistent with the entire LCFF

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that its selected Common Core materials improve performance among unduplicated pupils without providing evidence of such improvement in its LCAP or Annual Update. (Second Amended 2016-17 LCAP, at p.25.) Its Findings of Fact assert “[e]xtraordinary gains at some of the District’s most challenging schools with high unduplicated pupil populations” but cites no supportive data as to the specific gains achieved at which schools in the UCP Response or the Annual Update. Nor does the District cite any data to support a claim that such gains may be credited to its selected Common Core materials. With respect to the challenged expenditure, LBUSD merely reports in the 2016-17 Annual Update 100% compliance with the instructional materials requirement. Under a separate goal regarding academic achievement, the District reports that it met its goal for ELA proficiency for all students (45%), but it fell short of its target for student subgroups, including Economically Disadvantaged and English Learner students. (2017-20 LCAP at p.44 of 234.)

Finally, the District’s explanations in its Second Amended 2016-17 LCAP go largely to the purchase of ELA texts districtwide. The District, however, appears to have also purchased other kinds of textbooks and instructional materials using S&C funds in the 2016-17 year. Specifically, the findings of fact state that Advanced Placement (AP) coursebooks were also purchased. That may explain the difference between the amended 2015-16 Annual Update, which claims the allocation for ELA textbooks in the 2016-17 year was only \$12 million, and the \$17 million actually allocated by LBUSD. (Exhibit 1, UCP Response ¶3, at p.8; Second Amended 2016-17 LCAP, Annual Update at p.94.)

To the extent that this expenditure includes AP materials, the District has failed to provide any valid justification as to how purchase of such materials are *principally directed* towards, and *effective in*, meeting the District’s goals for unduplicated pupils. The District attempts to provide such a justification in its LCAP, stating:

These materials (including supplementary resources) play a vital role in advancing college and career readiness efforts, as well as enhancing access to the core curriculum and closing achievement gaps. For example, with the rapid expansion of the Advanced Placement program (PO 7 and 8), principally among Hispanic, African American, low income, and other students, there is a substantial need for LBUSD to address instructional materials strategically.

(Second Amended 2016-17 LCAP, at pp.11-12.) PO7 references Pupil Outcome 7, to Increase the percentage of 11<sup>th</sup> and 12<sup>th</sup> grade students who enroll in at least one [AP] course by 2% annually. (2017-20 Adopted LCAP at p. 73 of 234.) PO8 is to increase the passing rate for 11<sup>th</sup> and 12<sup>th</sup> grade AP exams by 2% annually. (*Id.* at p.78 of 234.) Neither of these outcomes, however, is specific to unduplicated pupils.

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statutory structure of focused, equity-based investments up front (principally directed) that should lead to improved performance and gap-closing for high-need students down the line (effective). Where this does not happen, the cycle of continuous improvement reflection and reworking should expose and correct for ineffective investments over time.

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Other than claiming some growth in the AP program among the groups of students named above, which includes low-income as well as Hispanic, African American “and other students,” the District fails to make “apparent” how purchasing AP materials is an action “to increase or improve services for unduplicated pupils.” (Cf. 5/5/17 CDE Decision re: Fresno UCP appeal, at p.6.) According to the adopted 2017-20 LCAP, “EL participation in AP courses at the 11<sup>th</sup> and 12<sup>th</sup> grade levels has gone up from 5% to 8%.” (2017-20 Adopted LCAP at p.4.) The District also reports African American participation grew to 35% and Hispanic participation grew to 40%. (2017-20 Adopted LCAP at p.76 of 234.) While such an increase is commendable, it demonstrates that EL students comprise a small minority of the students taking advantage of AP courses available to all students generally. Otherwise, the District provides no further data about unduplicated pupil growth in AP courses, nor explains how the District’s purchase of AP texts takes into consideration “factors such as the needs, conditions or circumstances of its unduplicated pupils....” (5/5/17 CDE Decision at p.6.) The District’s findings of facts only confirm that AP materials were purchased with S&C Funds. (Exhibit 1, UCP Response, ¶2, at p.8.)

Absent further explanation that the districtwide purchase of AP textbooks is principally directed to, and effective in, meeting district goals for its high-need students, the District has not justified counting this expenditure as a growth in service for unduplicated pupils. Because of the way the District lumps its AP materials purchase together with its Common Core materials, it is impossible to tell what amount of the \$17 million in S&C funds the District claims to have spent in the past year was for AP texts. The District should not be allowed to count that spending as a prior year expenditure on unduplicated pupils in its minimum proportionality calculation for the 2017-18 fiscal year under the LCFF regulations. (5 C.C.R. 15496(a); see 5/5/17 CDE Decision, at p. 14.)

In sum, the District simply does not appear to meet its minimum proportionality obligation to increase or improve services for high-need students with regard to this significant expenditure. At a minimum, only a fraction of this \$17 million was spent on services provided to unduplicated students as compared to services for all students, and perhaps none of it was properly spent on such services. In any case, the District should not count these amounts in its calculation of prior year spending on unduplicated pupils pursuant to 5 C.C.R. 15496(a).

2. The District still fails to justify the \$14.5 million S&C expenditure for “Supplemental Educational Supports for Unduplicated Pupils” as an increased or improved service for unduplicated pupils as compared to all pupils.

The 2016-17 LCAP allocated some \$14.5 million in S&C funds to classified salaries and benefits for “Supplemental Educational Supports for Unduplicated Pupils” that “enable differentiation.” (1<sup>st</sup> Amended 2016-17 LCAP at p.17.) The complaint noted that the First Amended 2016-17 LCAP contained an exponential 75-fold increase in the investment in this area, without any change in the promised outcomes of Common Core implementation

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or clear description of what services were being purchased with this significant investment of S&C funds. (Complaint at pp.7-8.)

In response to the Complaint, the District amended its 2016-17 LCAP to state that the “Supplemental education supports for pupils include providing Instructional Aides to work with teachers in classrooms where the achievement gap is the hardest to close.” (Second Amended 2016-17 LCAP at p.20.) The Second Amended LCAP asserts these “Instructional Aides assist teachers with tasks designed to provide more individualized instruction to unduplicated pupils who are struggling and require targeted interventions.” (*Id.*) This justification, if true, may meet the regulatory standard for an increased and improved service for high-need students. But given the history with regard to this issue, Complainants are compelled to question its accuracy.

This history includes the District’s last-minute addition to the First Amended 2016-17 LCAP of this \$14.5 million (equal to what it was formerly spending on teacher retirement contributions that the county office of education forced it to change) as well as vague and shifting explanations over the past year of the services being provided without a clear connection to how the effectiveness of this significant increased investment would be measured.<sup>16</sup> First, the September Amended LCAP cited unspecified Supplemental Educational Supports. Then, the service appeared to be for Special Education Aides. Finally the Second Amended LCAP spoke of Instructional Aides assigned to classrooms based on need and not for special education support. Because of the lack of clarity in the LCAP about the nature of these supports, community stakeholders did not have any opportunity to provide input on this significant expenditure, totaling more than 10% of all S&C funds.

While the revised language is much improved, it still leaves ambiguity as to the nature of pupil support services being provided. First, the amended language in the LCAP states that the “supports for pupils *include* providing Instructional Aides ....” (Second Amended 2016-17 LCAP at p.20 (emphasis added).) This begs the question as to what other supports the expenditure includes—a question which we posed to the District by public information request and to which we are awaiting a response.

Moreover, in the Findings of Fact, the Investigator references several pieces of information to support the District’s position: a) that the 1-to-1 aide assignments are independent of any Individualized Education Program (IEP) or 504 plan to which students with disabilities are legally entitled, irrespective of their unduplicated status; b) that the Aides were assigned to classrooms with greater numbers of struggling unduplicated pupils; c) that surveyed principals specifically attributed unduplicated pupil success to having Instructional Aides assigned to high-need / high-density unduplicated pupil classrooms; and d) that the assignment of Instructional Aides was for the primary purpose of better reaching vulnerable unduplicated pupils. (Exhibit 1, UCP Response at ¶¶ 24-25, 27-28 at pp.17-18.) With respect to each of these assertions, Complainants are awaiting documentation in response to their information request.

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<sup>16</sup> See Complaint at pp. 3-4, 7-8 (Exhibit 1 at pp.37-38, 41-42).

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By the District's own admission, the Instructional Aides that the District now explains were funded out of S&C funds in the past year lacked a unique job description that distinguished them from Instructional Aides assigned as a result of a student's legally mandated IEP or Section 504 Plan. Although the District ostensibly denied the complaint, as a "Corrective Action," the Investigator nonetheless explicitly "recommends working with the Personnel Commission to develop a job classification for Instructional Aides funded out of S&C funds in order to make clearer in their classification and description that their focus is on working with the population of unduplicated pupils in order to distinguish them from Instructional Aides who are assigned as a result of a 1-to-1 aide service provided in an IEP or 504 plan or who might work with non-unduplicated pupils." (Exhibit 1, UCP Response at p.32.) This further underscores the need to verify that these Supplemental Education Supports were genuinely increased services to high-need students.

Moreover, the draft LCAP budget summary released by the District in May 2017 referenced an expenditure of almost the same amount of S&C funds (\$14.4 million) where it states: "Provide general support to schools in their efforts to implement the LCAP (Special Education Aides)." (Exhibit 5, Budget Summary LCAP (5/5/2017).) This document produced towards the end of the school year describing the expenditure as one on Special Education Aides generally raises red flags about whether the S&C funding was allocated to support delivery of general special education services required by IEPs or whether it was properly allocated to Instructional Aides who were not providing mandated IEP or 504 plan services and were instead primarily providing supplemental services to unduplicated pupils as the Second Amended 2016-17 LCAP now claims.

Complainants have a pending information request to the District regarding the methodology for how these Instructional Aides were assigned to classrooms, to which classrooms they were assigned, and how the District distinguished them from Instructional Aides provided to students as part of their special education services. However, based on the information made available to date, the District's allocation of these funds appears not to meet the requirements of the LCFF and, therefore, is the subject of this appeal.

### **C. Request for Corrective Action and Conclusion**

For the reasons set forth above, the District has erred in counting \$17 million in standards-aligned instructional materials and \$14.5 million in classified staff as increased and improved services for unduplicated pupils. Because the expended funds were not principally directed towards, or effective in, meeting the District's goals for its unduplicated pupils as distinct from services for all pupils in the 2016-17 year, the District should not be able to count these amounts in its prior year spending for the FY 2017-18 calculation of S&C funds. Moreover, the District should reallocate any funds spent on these items this year and in the future to genuinely increased and improved services. The District must commit to consulting with students, parents and community members through the

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required engagement process regarding any new S&C funding identified as a result of corrective actions the District may need to take as a result of this appeal.

As noted throughout the appeal, Complainants are awaiting responsive documents from LBUSD that may bear on the issues raised here. We commit to timely sharing any relevant information we receive that may impact your decision. For any questions related to this appeal or to contact the Complainants, please contact the attorneys listed below.

Thank you for your consideration.

Sincerely,



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Enclosures

(For the electronic version of this appeal, click on the weblinks below to download attachments.)

Exhibits:

1. [LBUSD UCP Response and Attachments](#), available at [http://bit.ly/LBUSD\\_UCPResponse](http://bit.ly/LBUSD_UCPResponse). (For convenience and ease of reference, Complainants added page numbers to the UCP response provided by LBUSD, which was not paginated.)
2. [Excerpt of 2016-17 Adopted Budget, Form 01, p.11](#)  
Entire budget available at [http://www.lbschools.net/Asset/Files/Business\\_Services/Financial/Adopted%20Budget%20State%20Financial%20Report%202016-17%20v2.pdf](http://www.lbschools.net/Asset/Files/Business_Services/Financial/Adopted%20Budget%20State%20Financial%20Report%202016-17%20v2.pdf).
3. [Excerpt of 2017-18 Adopted Budget, Form 01, p.11](#)  
Entire budget available here: [http://www.lbschools.net/Asset/Files/Business\\_Services/Financial/2017-2018%20Budget%20Final%20for%20Web.pdf](http://www.lbschools.net/Asset/Files/Business_Services/Financial/2017-2018%20Budget%20Final%20for%20Web.pdf)

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4. [Excerpt of May 5, 2016 LBUSD Board Meeting Materials](http://www.lbschools.net/Asset/Files/BOE/Agenda/2016-04-051.pdf), "Approval of Basic Textbooks and Instructional Materials," available at <http://www.lbschools.net/Asset/Files/BOE/Agenda/2016-04-051.pdf>.
5. [Budget Summary LCAP, May 5, 2017](http://bit.ly/LBUSD_Draft_LCAPBudget), available at [http://bit.ly/LBUSD\\_Draft\\_LCAPBudget](http://bit.ly/LBUSD_Draft_LCAPBudget).