

September 22, 2021

J. Todd Finnell, Ed.D.  
County Superintendent of Schools  
Imperial County Office of Education  
1398 Sperber Road  
El Centro, CA 92243  
Via Electronic Mail: [todd.finnell@icoe.org](mailto:todd.finnell@icoe.org).

**RE: Calexico Unified School District Local Control and Accountability Plan**

Dear Superintendent Finnell:

The ACLU Foundation of San Diego & Imperial Counties (“ACLUF-SDIC”) writes to express concerns regarding the 2021-22 Calexico Unified School District (“District”) Local Control and Accountability Plan (“LCAP”). We have heard from stakeholders and families in the District of concerns about lack of transparency in the LCAP and the lack of meaningful stakeholder engagement opportunities. We were troubled to hear that there are low-income students in the District who are without basic school supplies and in need of additional school services and supports year after year. Parents have also shared that they have struggled to get clear answers about what services are being offered to students and how funding decisions are being made. Based on the discussions with your stakeholders and our review of the LCAP, we have learned of deficiencies in the LCAP that preclude the level of transparency that is legally required and will unlawfully shortchange educational opportunities and services for the District’s Low Income, Foster Youth and English Language Learner students. Our analysis regarding why the District’s LCAP likely violates the Local Control Funding Formula is provided below.

**I. Liability of County Office of Education**

As you likely know, County Offices of Education are responsible for ensuring districts comply with laws and regulations pertaining to LCAP expenditures. A County Office of Education may be subject to a potential administrative complaint and potential litigation for unlawful approval of a district LCAP. The county superintendent must review LCAPs and may only approve a district’s LCAP if 1) the LCAP adheres to the state template; 2) the LCAP includes sufficient expenditures to implement the services planned and described in the LCAP; and 3) the LCAP complies with expenditure regulations.<sup>1</sup>

Central to our concerns is compliance with expenditure regulations. More specifically, we are concerned about the actions being funded from the District’s supplemental and concentration (“S&C”) funds. As you know, S&C funds are additional funds apportioned to a district based on the number and concentration of Low-Income, Foster Youth, and English Language Learner students in the district.<sup>2</sup> (These categories of students are defined collectively as “high-need”

<sup>1</sup> Cal. Educ. Code § 52070(d)(1)-(3).

<sup>2</sup> Cal. Educ. Code § 42238.01, 42238.02.

students in the Education Code.) A district is required to increase or improve services for high-need students as compared to the services provided to all students in proportion to the additional funding generated by the students.<sup>3</sup> The district's demonstration of increased or improved services must be described with clarity and specificity in the LCAP.

As county superintendent, you are responsible for ensuring that the District has met this obligation.<sup>4</sup> This oversight is critical to ensure that districts do not shortchange students with the highest needs. Imperial County Office of Education ("ICOE") cannot lawfully approve the District's LCAP unless it determines that the District is properly using S&C funds in service of the high-need students who are generating these funds for the District.

## **II. Deficiencies in the 2021-22 Calexico Unified School District LCAP**

### *A. The District's Actions and Expenditures Are Not Sufficiently Justified*

The District's LCAP lacks the requisite justifications to show that the District is meeting its requirement to increase and improve services for high-need students. This clarity is required by law and is critical to hold the district accountable.

The LCAP must identify each action the District is taking to meet its requirement to "increase or improve" services for high-need students. For each action, the District must also explain how it will increase or improve services by the required percentage. The final section of the mandated LCAP template is the "Increased or Improved Services for Foster Youth, English Learners, and Low-Income Students." This section is reserved for those actions and services supported by S&C funds and the corresponding explanations.

The LCAP template instructions state that for each districtwide or schoolwide action a district is counting toward its "increase or improve" services requirement, a district must include an "explanation of (1) how the needs of foster youth, English learners and low-income students were considered first, and (2) how these actions are effective in meeting the goals for these students."<sup>5</sup> In other words, the District must demonstrate that each action is "principally directed towards and effective in" meeting identified goals for high-need students.<sup>6</sup>

A district demonstrates how an action is principally directed towards and effective in meeting the goals by explaining, for each action, (1) how it considers the needs, conditions, or circumstances of the students; (2) how the action or aspects of the action is based on these considerations; and (3) how the action is intended to help achieve an expected measurable outcome of the associated goal.<sup>7</sup>

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<sup>3</sup> See Cal. Code Regs. tit. 5 §§ 15496(a), 15497.

<sup>4</sup> *Id.*

<sup>5</sup> See Cal. Dept. of Educ., *LCAP Template Instructions*, available at <https://www.cde.ca.gov/re/lc/> (emphasis added).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

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The “Increased or Improved Services” section of the District’s 2021-22 LCAP likely falls short of this requirement for most actions. First, the majority of the District’s actions do not have corresponding explanations describing particularized needs of high-need students and how the action was selected because of those needs. The District groups several actions together and there is no independent analysis of each action. Second, the descriptions that are provided in the District’s LCAP are often overly generalized, vague, and arbitrary.

For example, the District states that, “Goal 1 Actions 1, 2, 3, 5, 6, 7, 9, 10, 11, 13, 14, and 15 will allow for professional development and curriculum planning for teachers and support staff with emphasis on addressing socioeconomic disadvantage students, foster youth, and English Learners academic needs.”<sup>8</sup>

Additionally, “Goal 3 actions will allow us to equip students with 21<sup>st</sup> Century Skills, providing student and staff access to technology and connectivity with a focus on professional development to strengthen instructions and to support the diverse learning needs of our students through effective implementation of technology in the classroom.”<sup>9</sup>

The District has not stated what needs it considered and how the actions will meet the needs. Unfortunately, it appears that unjustified and arbitrary explanations are replete throughout this LCAP section. As the LCAP instructions make clear, “Conclusory statements that a service will help achieve an expected outcome for the goal, without an explicit connection or further explanation as to how, are not sufficient.”<sup>10</sup>

In order to provide the level of transparency that the funding law requires, the District must explain, for each action, what “needs, conditions, or circumstances” of high-need students were considered first relative to the action, how the action will meet the need and achieve an expected outcome. In its current form, the actions in this LCAP section do not suffice as action-specific explanations of how these uses are principally directed towards, and effective in, meeting the District’s goals for its high-need students.

#### *B. Several LCAP Actions Cannot Meet the “Increased or Improved Services” Requirement*

Several of the S&C-funded actions do not target services for high-need students. While the District may use these funds on districtwide actions that may impact all students, it must still select and implement action and services in a way that increases or improves services for high-need students as compared to all students in the District.

In this case, the LCAP allots funds for “Crossing Guards” to “ensure the safe arrival and departure of students to and from school.”<sup>11</sup> The LCAP also allots funds for “Shade Structures” to “prevent student heat exhaustion, overheating, and other heat-related conditions.”<sup>12</sup> Further,

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<sup>8</sup> *Calexico Unified School District LCAP* at p. 50.

<sup>9</sup> *Id.*

<sup>10</sup> Cal. Dept. of Educ., *LCAP Template Instructions*, available at <https://www.cde.ca.gov/re/lc/>.

<sup>11</sup> *Calexico Unified School District LCAP* at p. 47.

<sup>12</sup> *Id.*

the LCAP allots funds for “Hydration Stations” to “ensure our students stay well hydrated while helping to prevent the spread of germs and are kept safe during the hot season.”<sup>13</sup> Finally, the LCAP allots funds for “Playgrounds” to “improve health, unstructured free play, attention, decrease stress and anxiety, and avoid overcrowding in the current playground structures.”<sup>14</sup>

The LCAP Contributing Expenditures Tables, which lists expenditures that contribute to the district’s “increase or improve services” requirement, asserts that these four expenditures are for English Learners, Foster Youth, and Low Income students and are districtwide in scope.<sup>15</sup> However, these districtwide expenditures do not meet the legal standard because the district has not, and likely cannot, demonstrate that they are principally directed toward and effective in meeting goals for DISTRICT’s high-need pupils.

While these actions and services may be necessary and important to the function of the District’s schools, a district may not pull from S&C funding to cover routine expenses. This concern applies to every action identified by the District under LCAP Goal 6. While a high number of high-need students may be a reason to offer services directed toward increasing or improving services for them on a districtwide basis, expenditures on shade equipment and playgrounds are not principally directed at high-need students.

When “properly explained” in the LCAP, it will be “apparent” how the district is acting to increase or improve services for high-need students and why it has determined the services identified will be effective to achieve their goals.<sup>16</sup> However, in this case, the District has not, and likely cannot, demonstrate how these expenditures are tailored to the needs, conditions, or circumstances of any high-need student group nor how they are intended to help achieve an expected measurable outcome of the associated goal. Accordingly, ICOE cannot approve the LCAP unless the District properly reallocates the funds.

### *C. The District’s Expenditures on Law Enforcement Are Improper*

The same concern applies to the District’s plan to use \$2.7 million of funding for high-need students on law enforcement and related expenses. The LCAP allots \$2,783,180 to “Campus Security and Support Staff” to provide services and ensure safety of “our unduplicated pupils before, during and after school activities/programs.”<sup>17</sup> Moreover, the LCAP allots \$250,000 to “Cameras” to “increase student safety and security.”<sup>18</sup> Further, the LCAP allots \$8,000 to “Protective Equipment” to “provide personal protective equipment for crossing guards, campus security, etc. who are providing services to our unduplicated pupils’ in participating in before and after school activities.”<sup>19</sup>

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<sup>13</sup> *Id.* at 48.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 66-67.

<sup>16</sup> California Department of Education, *Request for Appeal – Fresno Unified School District, American Civil Liberties Union, Appellant*, 6, [https://www.aclunc.org/docs/20170505-cde\\_response\\_to\\_aclu.pdf](https://www.aclunc.org/docs/20170505-cde_response_to_aclu.pdf).

<sup>17</sup> *Callexico Unified School District LCAP* at p.47.

<sup>18</sup> *Id.* at 48.

<sup>19</sup> *Id.* at 47.

The LCAP Contributing Expenditures Tables asserts that these three actions are for English Learners, Foster Youth, and Low Income students and are districtwide in scope.<sup>20</sup> However, these expenditures that fund campus law enforcement do not meet the legal standard in California Code of Regulations § 15496 because the LCAP does not describe how the expenditure is effective in meeting any identified need(s) of its high-need pupils.

There is not an “established through line” between the district’s goals and its use of increased law enforcement resources to improve outcomes for unduplicated students as compared to the outcomes of all students.<sup>21</sup> The only outcome referenced in the description for campus security and support staff and cameras is to “increase safety and security” generally, but the LCAP does not include any annual measurable outcome that tracks safety and security or perceptions of safety and security, much less those of high-need pupils.

In fact, research shows that campus law enforcement disproportionately harms the unduplicated pupils that the supplemental and concentration funds are meant to benefit. Allowing the district to count funding toward campus law enforcement efforts as contributing to its “increase and improve services” requirement diverts critical funding and effort from services have been shown to improve student outcomes such as school-based mental health and mental health staff. This diversion is particularly concerning as students return to in-person school after a year of attending virtual school during a global pandemic. It has never been more critical that students have access to the educational and mental health services and supports that they need.

### **III. Requested Action**

Accordingly, we ask that ICOE review the District’s LCAP in light of our concerns and ensure it fully complies with the law prior to ICOE approval. For actions and services that are not principally directed toward high-need students, the ICOE must require the District to remove the actions and calculate the percentage shortfall. The ICOE must carry the proportionality shortfall over to the next LCAP in addition to fulfilling the current fiscal year’s obligation and must require that the District solicit stakeholder feedback as required by law. If the ICOE has already approved the District’s LCAP, please confirm and let us know the date of approval. If you have questions or concerns, please contact me at (619) 398-4496 or [dloy@aclusandiego.org](mailto:dloy@aclusandiego.org).

Sincerely,

**s/David Loy**  
Legal Director

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<sup>20</sup> *Id.* at 67.

<sup>21</sup> California Department of Education, *Appeal of County Decision – SBCSS Public Advocates, Inc. and ACLU Foundation of Southern California*, Appellants, 18, [https://www.publicadvocates.org/wp-content/uploads/2021/06/06\\_14\\_2021-final\\_cde-decision-sbccs-003.pdf](https://www.publicadvocates.org/wp-content/uploads/2021/06/06_14_2021-final_cde-decision-sbccs-003.pdf).

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