



**CALIFORNIA DEPARTMENT
OF EDUCATION**

TONY THURMOND
STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

1430 N STREET, SACRAMENTO, CA 95814-5901 • 916-319-0800 • WWW.CDE.CA.GOV

July 30, 2019

Cynthia Rice, Director
California Rural Legal Assistance, Inc.
1430 Franklin Street, Suite 103
Oakland, CA 94612

Lyndsi Andreas, Attorney
Greater Bakersfield Legal Assistance, Inc.
615 California Ave
Bakersfield, CA 93304

Deborah Escobedo, Attorney
Lawyers' Committee for Civil Rights
131 Steuart Street, Suite 400
San Francisco, CA 94105

Dear Cynthia Rice, Lyndsi Andreas, Deborah Escobedo:

Subject: Request for Appeal – Bakersfield City School District
California Rural Legal Assistance, Inc. and Greater Bakersfield Legal
Assistance, Inc., Appellants

Case No. 2019-0189

The Local Agency Systems Support Office (LASSO) of the California Department of Education (CDE) is in receipt of your request for appeal dated June 5, 2019. You are appealing the Bakersfield City School District's (District's) Decision dated May 21, 2019.

I. Background

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

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

On March 20, 2019, California Rural Legal Assistance, Inc. and the Greater Bakersfield Legal Assistance, Inc. (collectively, Appellants) submitted a UCP Complaint (Complaint) to the CDE requesting Direct State Intervention (DSI). The Complaint alleges that the District failed to comply with legal requirements pertaining to its Local Control and Accountability Plan (LCAP). Appellants submitted the request for DSI on the basis of 5 CCR, Section 4650(a)(6), which requires that the CDE shall directly intervene without waiting for the District investigation if the complainant alleges and the CDE verifies that he or she would suffer immediate and irreparable harm as a result of an application of a districtwide policy that is in conflict with state or federal law covered by the Uniform Complaint Procedures and that filing a complaint with the LEA would be futile. Because the CDE was unable to verify that appellants would suffer immediate and irreparable harm, the CDE was required by 5 CCR, sections 4620, 4631, and 4640 to refer the complaint to the District to process and investigate in accordance with its Uniform Complaint Procedures within 60 days. The CDE referred the Complaint to the District on March 22, 2019.

The District issued its Decision in this matter on May 21, 2019. Appellants submitted an Appeal to the CDE of the District's Decision on June 5, 2019. The CDE sent a notice of appeal letter, dated June 12, 2019, to the District requesting the investigation file and other applicable documentation as required by 5 CCR Section 4633. The CDE received the District's documentation on June 24, 2019.

Following receipt of this documentation from the District, the CDE reviewed all material received related to the Complaint, applicable laws, and the District's complaint procedures. Title 5 CCR 4633(i)(1) requires the CDE to include a finding that the LEA complied or did not comply with its complaint procedures. The CDE has reviewed the complaint procedures for the District and finds that the District did comply with its complaint procedures in this matter.

II. Summary of Complaint and District Decision

Complaint

According to the Complaint, dated March 20, 2019, the District adopted its 2018-19 LCAP on June 26, 2018, which provided for a STEAM-focused summer school program in Goal 1, Action 34. In a letter dated December 20, 2018, the District indicated that this summer school program would not be implemented. The Complaint states that the cancellation of this program is a material revision to the LCAP because it is a cancellation of an entire action in the LCAP. As such, the Complaint alleges, the District was required to adhere to the legal requirements for revising an LCAP as described in EC Section 52062.

The initial Complaint made one allegation in three parts.

Allegation (1): BCSD failed to properly revise the LCAP by “cancelling” summer school without complying with *EC* Section 52062(c).

- a. BCSD violated *EC* Section 52062(c) when BCSD cancelled summer school before seeking engagement and input by stakeholder groups and the public.
- b. BCSD’s recent attempts to rush through the revision process are merely a façade: BCSD has not sought, and does not seek, meaningful engagement or input.
- c. BCSD’s LCAP revision lacks transparency regarding the uses of supplemental and concentration funding.

Decision

In its Decision, dated May 21, 2019, the District concluded that its LCAP revision complied with *EC* Section 52062.

In its Decision, the District provided further explanation of the revision to Goal 1, Action 34. In place of the summer school program originally planned in the 2018-19 LCAP, the District decided to offer a modified summer learning program. The original summer program was planned for 13 days at 10 different school sites. The modified summer program was planned for 20 days at 4 different school sites.

The District asserts that it satisfied all legal requirements for revising an LCAP by consulting with parent advisory and English learner advisory committees, holding 9 stakeholder meetings, informing staff and the community about the revisions, and holding a required public hearing prior to board adoption.

The revised LCAP was adopted by the District’s local governing board on April 23, 2019, and approved by the Kern County Superintendent of Schools on May 16, 2019.

In its Decision, the District also states that the Kern County Superior Court ruled that the District properly complied with the required LCAP revision procedures of *Education Code*.

III. Appeal

In its Appeal, the Appellants reiterate the allegations as provided in the Complaint. Appellants state that the basis for the Appeal of the District’s Decision is that the District made unsupported findings of fact and misapplied the law in concluding that its LCAP was properly revised in compliance with *EC* Section 52062.

Appellants respond to the District’s Decision by stating that there is no evidence to suggest that a revised LCAP document existed prior to April 9, 2019. Appellants assert that, as a consequence, it would not have been possible that the revised LCAP plan was submitted to the relevant committees during the March meetings. *EC* Section

52062 requires as part of the LCAP adoption and revision processes that the LCAP be presented to the Parent Advisory Committee and, if applicable, the English Language Parent Advisory Committee. The meetings of these committees were held on March 5, 2019.

Appellants also responded to the District's Decision by stating that the District failed to provide the public an opportunity to provide input on how the expenditures associated with the cancelled action (i.e. Goal 1, Action 34) would be spent. Appellants cite *EC* Section 52062(a)(3), which states in relevant part,

“The superintendent of the school district shall notify members of the public of the opportunity to submit written comments regarding the specific actions and expenditures proposed to be included in the local control and accountability plan...”

According to Appellants, the District originally budgeted \$1,655,634 for the action in question. The revised LCAP budgeted \$50,572 for the revised action. During the revision process, according to the Complaint, the District failed to provide information about the remaining difference of \$1,605,062. Appellants allege that, by failing to provide the public with an opportunity to provide input regarding this amount, the District has failed to comply with *EC* Section 52062(a)(3).

IV. Legal Authorities

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

V. CDE Determinations

After a thorough review of the District's investigation file, the Complaint, the District's Decision, the Appeal, and documents provided by the appellant, in accordance with 5 *CCR* Section 4633(g), the CDE finds that the Decision is supported by substantial evidence and its legal conclusions are not contrary to law. Therefore, the Appeal is denied.

The LCAP is a planning document that each LEA updates and adopts on an annual basis. In its LCAP, an LEA describes planned actions and services to meet goals that address state and local priorities. The LCAP is adopted by an LEA's governing board in good faith as the plan an LEA intends to implement at the time of adoption.

An LEA has discretion as to whether or not to revise its LCAP document to update and track ongoing changes in implementation or to address changes in implementation in the Annual Update through the LCAP development process. Statute provides that the governing board of a school district may adopt revisions to its LCAP during the period the LCAP is in effect provided that it adheres to the process to adopt an LCAP as described in *EC* Section 52062.

Statute does not specify criteria to determine when or if an LEA must adopt revisions to its LCAP during the period in which the LCAP is in effect. If changes in implementation are not addressed through revisions of the LCAP document while it is in effect, changes in implementation must be reflected in the Annual Update section of the LCAP, which provides for the articulation of variances between what was planned and the actual implementation of actions and services for the previous LCAP year.

In this case, the LEA decided to track changes in implementation of the summer school program prospectively by revising the LCAP. The District initially adopted its 2018-19 LCAP on June 26, 2018, which provided for a STEAM-focused summer school program in Goal 1, Action 34 with \$1,655,134 in budgeted expenditures. In a letter dated December 20, 2018, the District indicated that it would not implement a regular summer school program as part of summer 2019. The revised LCAP, adopted April 23, 2019, included a revised description of Goal 1, Action 34, which stated the District would provide summer learning programs for at-risk and unduplicated students with \$1,214,358 in budgeted expenditures. The difference in expenditures is \$440,776, a decrease of 27%.

In order to revise its 2018-19 LCAP, the District was required to adhere to *EC* Section 52062. A summary of these requirements are as follows:

- The superintendent of the District must present the LCAP to the Parent Advisory Committee and, if applicable, to the English Learner Parent Advisory Committee, for review and comment. *EC* Section 52062(a)(1-2).
- The superintendent of the District must notify members of the public of the opportunity to submit comments regarding the LCAP. *EC* Section 52062(a)(3).
- The superintendent of the District must review School Plans for Student Achievement (SPSAs) to ensure that actions included in the LCAP are consistent with the SPSAs. *EC* Section 52062(a)(4).
- The superintendent of the District must consult with its special education local plan area administrator to determine specific actions for individuals with exceptional needs are included in the LCAP. *EC* Section 52062(a)(5).
- The school board must hold at least one public hearing prior to, and not on the same day as, the meeting at which the LCAP is adopted. *EC* Section 52062(b)(1).
- The school board must adopt the LCAP in a public meeting. *EC* Section 52062(b)(2).

The CDE finds that the evidence supports the conclusion that these requirements were met. The Appeal acknowledges that the District held a District Advisory Committee meeting on March 5, 2019, a District English Learner Advisory Committee on March 6, 2019, and stakeholder meetings in February and March of 2019. The district consulted

with its special education local plan area (SELPA) administrator on March 12, 2019. The Appeal also acknowledges that the community and staff were informed about the LCAP revision process on March 21, 2019, that a notice of a public hearing was posted on April 5, 2019, and a public hearing occurred on April 9, 2019. The revised LCAP was adopted in a public meeting on April 23, 2019. Neither the Complaint nor the Appeal allege that the superintendent failed to meet the requirement to ensure consistency with SPSAs.

These facts are supported by meeting agendas and minutes provided by the District, declarations filed by individuals with Kern County Superior Court, as well as the Appeal itself. Additionally, the Kern County Superior Court stated in its Proposed Order Denying Petitioners' Ex Parte Application for Temporary Restraining Order, dated May 3, 2019, that the District complied with the required LCAP revision procedures.

Regarding Appellants' allegation that the absence of a revised LCAP document prior to April 9, 2019, precluded the District from possibly meeting the requirements of *EC* Section 52062(a)(1-2), meeting agendas and presentations provided by the District show that the revision of the LCAP was presented to the Parent Advisory Committee (i.e. the District Advisory Committee), the English Learner Parent Advisory Committee (i.e. the District English Learner Advisory Committee), and the SELPA administrator. The revision to Goal 1, Action 34 was the only revision made to the LCAP and the presentation provided at these meetings was comprehensive and thorough. The District justified the revision with data showing that retention rates in the summer school program had been between 51% and 56% over the last 5 years. The District also referenced the modified school year calendar as a reason for the revision due to the reduced length of the summer break. The District states that the revised, extended learning summer program will provide for more additional school days than the earlier summer program. The District also described the next steps in the LCAP revision process. As such, the CDE finds that the District is substantially compliant with *EC* Section 52062(a)(1-2).

VI. Conclusion

The CDE does not find merit in the Appeal of the District's Decision. No corrective actions are required.

VII. Discretionary Reconsideration

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

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

Sincerely,

Jeff Breshears, Administrator
Local Agency Systems Support Office

JB:jf

cc: Doc Ervin, Superintendent, Bakersfield City School District
Erin Johnston, Coordinator I, Bakersfield City School District
Rebecca Buckley-Stein, Attorney, California Rural Legal Assistance, Inc.
Jodie Smith, Attorney, California Rural Legal Assistance, Inc.