



**CALIFORNIA DEPARTMENT  
OF EDUCATION**

**TONY THURMOND**  
STATE SUPERINTENDENT OF  
PUBLIC INSTRUCTION

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March 15, 2019

Maura Tokarski

[REDACTED]  
[REDACTED]

Dear Maura Tokarski:

Subject: Request for Appeal – Mill Valley School District  
Maura Tokarski, Appellant

The Local Agency Systems Support Office (LASSO) of the California Department of Education (CDE) is in receipt of your request for appeal of Mill Valley School District's (District's) Decision dated November 16, 2018. You submitted the appeal on November 28, 2018. The CDE sent a notice of appeal letter, dated December 12, 2018, 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 December 20, 2018.

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. *California Code of Regulations*, Title 5 (5 CCR) Section 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 fully complied with its complaint procedures in this matter.

Pursuant to *California Education Code (EC)* sections 52075(c) and 33315(a)(4), the CDE must issue a decision on an appeal of a local decision on a Local Control and Accountability Plan complaint within 60 days, unless the CDE documents exceptional circumstances and informs the complainant. In a letter dated January 25, 2019, the CDE notified you that the issues presented in your appeal are matters of statewide interest and involve complex factual and legal arguments, which require thorough consideration and analysis and constitute good cause for an extension of the timeline.

### **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)<sup>1</sup>, 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* Section 52075; *California Code of Regulations*, Title 5 Section 4600 et seq.). On July 4, 2018, the Appellant submitted a UCP Complaint (Complaint) to the District, alleging that the District is in violation of the LCFF statute.

## II. Summary of Complaint and District Decision

### **The Complaint**

As defined in 5 CCR Section 4600(d), a UCP Complaint is a written and signed statement “alleging a violation of federal or state laws or regulations . . .” The Complaint includes several allegations, three of which allege a violation of state laws or regulations:

1. The Parent Advisory Committee (PAC) did not meet compositional requirements (*EC* Section 52063; 5 CCR 15495).
2. The PAC meetings, as required by *EC* Section 52063, did not adhere to the open meeting requirements of *EC* Section 35147(b) (aka “Greene Act”).
3. The District failed to adequately justify supplemental and concentration fund allocations to unduplicated student programs, specifically those supplemental and concentration funds that support counseling, homework programs, and the Reading and Math Program (RAMP).

### **District’s Decision**

In its Decision, the District found itself to be in compliance with respect to Allegations 1 and 3. The District found itself to be out of compliance with respect to Allegation 2 because the PAC meetings did not adhere to the applicable open meeting requirements as provided in the Greene Act.

### **Allegation 1**

Regarding Allegation 1, the District affirms that the Parent Advisory Committee (PAC) is composed of a majority of parents and includes at least one parent of an unduplicated student, as required by 5 CCR Section 15495(f). The District reports that, of the 19 members on the PAC, 15 are parents and 5 are parents of unduplicated students.

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

## **Allegation 2**

In response to Allegation 2, the District found that the PAC meetings did not meet the requirements of *EC* Section 35147(c), which states:

Any meeting held by a council or committee specified in subdivision (b) [which includes the PAC per *EC* Sections 52063 and 52069] shall be open to the public, and any member of the public shall be able to address the council or committee during the meeting on any item within the subject matter jurisdiction of the council or committee. Notice of the meeting shall be posted at the schoolsite, or other appropriate place accessible to the public, at least 72 hours before the time set for the meeting. The notice shall specify the date, time, and location of the meeting and contain an agenda describing each item of business to be discussed or acted upon. The council or committee may not take any action on any item of business unless that item appeared on the posted agenda or unless the council or committee members present, by unanimous vote, find that there is a need to take immediate action and that the need for action came to the attention of the council or committee subsequent to the posting of the agenda.

The District indicated that it will administer corrective actions to review district policies and ensure that PAC meetings are open to the public, and that anticipated meeting dates are shared with the community, as required by *EC* Section 35147.

## **Allegation 3**

Regarding Allegation 3, the District states, "...the laws governing LCFF and the LCAP provide wide discretion for school districts in how they develop their budgets and the allocations to the educational programs as they see fit...Further, the law provides authorization for the District to allocate these specialized funds for District-wide programs accessible to all students" (5 *CCR* § 15496(b)(2)) (Decision, p. 3).

## **III. Appeal**

### **Allegation 1**

The Appeal acknowledges the District's compliance "as of 2018 regarding low income and foster youth representation on the PAC" (Appeal, p. 4). Nevertheless, the Appeal seeks to compel the District to inform stakeholders about past non-compliance.

### **Allegation 2**

The Appeal acknowledges the District's findings that it was not in compliance with the requirements of *EC* Section 35147, regarding the open meeting requirements of the

PAC. The Appeal challenges the adequacy of the District's self-imposed remedy and seeks further corrective actions to compel the District to inform stakeholders about past non-compliance.

### **Allegation 3**

The Appeal disagrees with the District's conclusion of law that the laws governing the LCAP provide wide discretion for school districts. The Appeal suggests that in order to meet the requirements for spending supplemental and concentration grant funds on a schoolwide basis, the District should provide data to substantiate the District's claim that such actions are effective.

## **IV. Legal Authorities**

California *Education Code* sections 44238.01, 42238.02, 42238.07, 52059.5 – 52077  
*California Code of Regulations*, Title 5 sections 15494 – 15497

## **V. CDE Findings of Fact and Conclusions of Law**

### **Allegation 1**

The Appellant has not challenged the District's finding of compliance. No further action is required.

### **Allegation 2**

The District properly self-imposed a remedy of complying with the Greene Act and indicated it has already taken steps towards doing so. The Appellant does not challenge that remedy, but rather asks the CDE to compel the District to communicate its past non-compliance to the community. The CDE finds that the District's remedy is adequate.

### **Allegation 3**

The Appellant alleges that the District fails to meet its obligations under 5 *CCR* 15496 by not adequately justifying supplemental and concentration fund allocations to unduplicated student programs, specifically those supplemental and concentration funds that support counseling, homework programs, and the Reading and Math Program (RAMP). While LEAs are not required to justify specific expenditures of supplemental and concentration grant funds, LEAs are required to adequately justify LEA-wide and schoolwide actions/services included in the Goals, Actions, and Services section as contributing to the LEA's requirement to increase or improve services for

unduplicated students as compared to the services provided to all students in proportion to the increase in supplemental and concentration grant funds (5 CCR 15496).

The LCFF apportions additional funds to LEAs on the basis of the number and concentration of unduplicated students (low-income, English learner, and foster youth) (EC sections 42238.02, 42238.07.) These funds are commonly referred to as “supplemental and concentration grant funds”. LEAs are required to increase or improve services for unduplicated students as compared to the services provided to all students in the fiscal year in proportion to the additional funding provided (EC Section 42238.07; 5 CCR 15496). “To improve services” means to “grow services in quality,” and “to increase services” means to “grow services in quantity” (5 CCR Section 15495(k) and (l)).

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

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

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

Services of the latter category are referred to as either a schoolwide or an LEA-wide (i.e., districtwide, countywide, or charterwide) service. An LEA is required to follow the LCAP Template approved by the State Board of Education (SBE) (EC Sections 52064, 52070). The Demonstration of Increased or Improved Services for Unduplicated Pupils (Demonstration) section of the LCAP requires an LEA to identify the amount of its LCFF funds in the LCAP year calculated on the basis of the number and concentration of unduplicated students, and to identify the percentage by which it must increase or improve services for unduplicated students over all students. Also in this section, the LEA must describe how the services provided for unduplicated students are increased or improved by at least this percentage, either quantitatively or qualitatively, as compared to services provided for all students in the LCAP year (EC Section 42238.07; 5 CCR 15496).

The template also requires an LEA to identify each action/service contributing to the increased or improved services requirement that is funded and provided on a

schoolwide or LEA-wide basis, and to include the required description supporting each schoolwide or LEA-wide action/service. An LEA must describe in its LCAP how the actions/services are “*principally directed towards*” and “*effective in*” meeting its goals for unduplicated students in the state and any local priority areas. A school district such as Mill Valley School District, which has an unduplicated student enrollment less than 55 percent, must also describe how the LEA-wide action/service *is the most effective use of the funds* to meet the LEA’s goals for its unduplicated pupils. This requirement also applies to schoolwide actions/services for schools with an unduplicated student enrollment less than 40 percent (5 CCR 15496(b)).

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

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

Because Mill Valley’s unduplicated student enrollment is less than 55%, the District must also describe how the LEA-wide actions/services are the most effective use of the funds to meet the district’s goals for its unduplicated students. Such a description must provide the basis for this determination, including, but not limited to, any alternative considered and any supporting research, experience, or educational theory (5 CCR 15496(b)(2)(C)).

### *Findings for Allegation 3*

The District’s current LCAP, adopted for the 2018-19 school year, includes three actions that are included as contributing to meeting the increased or improved services requirement for the 2018-19 LCAP year (Goal 1, Actions 1, 3, 7). Goal 1, Actions 1 and 3 are provided on an LEA-wide basis; Goal 1, Action 7 is limited to unduplicated students. The Demonstration section for the 2018-19 LCAP year references several actions/services including counseling, academic intervention, RAMP, English Language Development (ELD) program, reading intervention, math academic workshop, and supported math classes. The descriptions provided for Goal 1, Actions 1, 3, and 7 appear to include these services described in the Demonstration section.

The description provided in the Demonstration section addresses services provided to all students “at-risk”, “those students with extra needs”, or “those students struggling to meet grade level grade standards.” The District states that “[t]hese at-risk students *include* [emphasis added] our foster youth, low-income students, and our EL students” (2018-19 LCAP, p. 112). As such, the description provided in the Demonstration section applies to a vaguely defined set of students that encompasses both unduplicated students and students who do not qualify as unduplicated. The requirement in the Demonstration section is to describe how the District plans to meet its requirement to increase or improve services for its unduplicated students relative to what all students receive. As such, by describing how it plans to increase or improve services for all students “with extra needs”, it is not clear how the District intends to meet its increased or improved services requirement.

In order to provide the required justification for LEA-wide actions, one of the requirements as described above is that the District explains in its LCAP how it considered factors such as the needs, conditions, or circumstances of its unduplicated students. The description of services provided in the Demonstration section fails to describe or reference any needs, conditions, or circumstances specific to its unduplicated students. The only factor referenced that is a need, circumstance, or condition of students is a struggle to meet grade level standards. This factor is mentioned relative to all students. That is, any student the District determines to be struggling to meet grade level standards appears to be included within this group and, according to the description provided in the Demonstration section, is the intended recipient of the actions and services included by the District to meet its increased or improved services requirement.

While this group likely includes unduplicated students, it likely includes many other students as well who are not low-income, English learners, or foster youth. Also, importantly, not all unduplicated students struggle academically and good academic performance does not necessarily mean that all educational needs have been met. To equate a student’s status as low-income, English learner, or foster youth with low academic performance can lead to ignoring educational needs of unduplicated student groups.

The CDE concludes that the District failed to describe how it will meet its increased or improved services requirement and failed to adequately justify those actions included as contributing to meeting the increased or improved services requirement that are provided on an LEA-wide basis in its 2018-19 LCAP.

The Appeal of the District’s Decision regarding Allegation 3 has merit.

## **VI. Conclusions**

As to Allegation 1, the Appeal is denied. As to Allegation 2, the Appeal is denied. The CDE finds merit in the Appeal of Allegation 3. Corrective actions are assigned below.

## **VII. Corrective Actions**

With respect to the 2017-20 LCAP adopted for the 2018-19 LCAP year considered in its entirety, the District is required to work with the Marin County Office of Education, with the support of the California Department of Education, to ensure that the District meets the requirements of 5 CCR 15496(b)(2) by providing adequate justification of all LEA-wide and schoolwide actions included as contributing to meeting the increased or improved services requirement in the 2018-19 LCAP year and 2019-20 LCAP year. Adequate justification for such actions must be provided for in the 2017-20 LCAP adopted for the 2019-20 LCAP year. If adequate justification for a particular LEA-wide or schoolwide action is not provided, the District shall not include that action as contributing to meeting the increased or improved services requirement.

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

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

Sincerely,

Jeff Breshears, Director  
Local Agency Systems Support Office

JB:jf

cc: Raquel Rose, Interim Superintendent, Mill Valley School District