



**VIA ELECTRONIC AND U.S. MAIL**

February 21, 2019

Jeff Breshears, Director  
Local Agency Systems Support Office  
California Department of Education  
1430 N Street  
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[Jbreshears@cde.ca.gov](mailto:Jbreshears@cde.ca.gov)

**RE: Case Number 2019-0009, Klamath-Trinity Joint Unified School District  
Yurok Tribe, Hoopa Tribal Education Association, American Civil Liberties  
Union Foundation of Northern California, Appellants**

Dear Director Breshears,

Thank you for the careful and comprehensive analysis of the legal issues presented in your February 13, 2019 Decision (“February 13 Decision”) regarding the above-referenced appeal. Appellants write to provide your office with further information about the District’s “revised” 2018-2019 LCAP, which does not address the vast majority of legal deficiencies outlined in your February 13 Decision, but which was nevertheless approved on February 12 by the District School Board, in apparent consultation with the Humboldt County Office of Education (“HCOE”). Additionally, we write to express our serious concerns that the District is unwilling to take corrective action to remedy the legal problems with its 2018-2019 LCAP, and that HCOE has been unable to provide sufficient guidance on the necessity of those corrective actions. Our concern is based on the fact that the District disregarded the explicit instructions in your November 2, 2018 Decision (“November 2 Decision”) to take corrective action to fix the *very same* legal deficiencies in its 2018-2019 LCAP (which are again identified in your February 13 Decision). At this point, we have little or no faith that the District will take the meaningful corrective actions required in your February 13 Decision without more significant oversight than was provided in the period from November 3, 2018 through February 15, 2019, when the District was required to make revisions to its 2018-2019 LCAP to conform with your November 2 Decision but failed to do so.

Finally, we respectfully request a meeting with you, HCOE, and the District to discuss in concrete terms how we can collectively work to resolve the serious defects in the District’s 2018-2019 LCAP and stakeholder engagement process articulated in your February 13 Decision. Appellants would like to be able to devote meaningful attention to working with the District to provide input in the development of a robust 2019-2020 LCAP to serve the children in our Tribal

Nations and surrounding community who are students in District schools. Unfortunately, because of the District's refusal to acknowledge the blatant problems with its 2018-2019 LCAP and stakeholder engagement process, we are forced to expend even more time and energy on the current year's LCAP, appealing to your office yet again to realize basic guarantees of equity, transparency, and accountability that are clearly laid out in the text of the LCFF statutes, the accompanying regulations, and your November 2 and February 13 Decisions that are directly on point. We seek your assistance to find a path forward so that we can focus on continuous improvement to outcomes for the District's students, rather than continuous appeals to your office at every step because of the District's refusal to act in accordance with the law.

### **The District's Revised 2018-2019 LCAP**

As noted above, the District School Board approved a revised 2018-2019 LCAP ("Revised LCAP") on February 12, 2019, despite our extensive and detailed public comments during the School Board meeting that the revisions do not remedy significant legal violations identified in Appellants' multiple Complaints to the District and CDE's November 2018 Decision. A copy of the Revised LCAP is attached, for your reference.

Below is a non-exhaustive list of legal problems identified in your February 13 Decision which are not resolved, or simply unaddressed, in the District's Revised LCAP.

1. "[T]he District fails to sufficiently describe how the District plans to meet its increased or improved services requirement for the 2018-2019 LCAP year." February 13 Decision at 11. For example, the Decision notes that the District fails to demonstrate how "Maintain Music Teacher" (Goal 4, Action 1) contributes to meeting the increased or improved services requirement. *Id.* The District's Revised LCAP does not address this at all. In fact, the Revised LCAP offers no explanation for how the following five actions / services that total over half a million dollars in supplemental and concentration ("S&C") fund allocations will meet its increased or improved services requirement:
  - a. Goal 1, Action 6: Purchase and Implement Supplemental TK12 English Language Arts Program, TK5 Math Supplemental (ST Math) , 6th12th Math Supplemental. Revised LCAP at 53, 109 (indicating this item is paid for with S&C funds but failing to explain how this meets the increased and improved services requirement).
  - b. Goal 2, Action 4: Increase After School Activity opportunities, including transportation, for students to help increase attendance and graduation rates. Revised LCAP at 83, 110 (indicating this item is paid for with S&C funds but failing to explain how this meets the increased and improved services requirement).
  - c. Goal 4, Action 1: Maintain Music Teacher. Revised LCAP at 110 (indicating this item is paid for with S&C funds but failing to explain how this meets the increased and improved services requirement).

- d. Goal 4, Action 11: Maintain 5 Library/Media Technicians to further assist unduplicated students in literacy and technology skill development. Revised LCAP at 110 (indicating this item is paid for with S&C funds but failing to explain how this meets the increased and improved services requirement).
- e. Goal 4, Action 12: Instructional aides/monitors support academic growth of all students in day to day academics and after school tutoring. Revised LCAP at 110 (indicating this item is paid for with S&C funds but failing to explain how this meets the increased and improved services requirement).

Additionally, the Revised LCAP fails to describe in the Demonstration section how S&C expenditures for “Information Technology department,” such as the digital curriculum or the technology needs of students, meets the increased or improved services requirement. February 13 Decision at 10. Instead, for this item, the only mention of unduplicated (“high-need”) students is a statement that a significant majority of the District’s students are high-need students. Revised LCAP at 109. But “[s]imply stating that an LEA has a high percentage of unduplicated student enrollment does not meet this standard because serving students is not the same as enrolling students.” February 13, 2019 Decision at 12. Thus, the Revised LCAP does not meet the legal standard.

2. “The District does not explain either in the Demonstration section or elsewhere in the LCAP how it considered factors such as the needs, conditions, or circumstances of its unduplicated student[s], nor how the actions/services take[] these factors into consideration. As a result, the District has failed to describe how districtwide and schoolwide actions/services included as contributing to meeting the increased or improved services requirement are principally directed to meeting the LEA’s goals for unduplicated students in any state or local priorities.” February 13 Decision at 10. The Revised LCAP does not list any needs, conditions, or circumstances of its high-need students in any section, including the Demonstration section. Instead, the District summarily asserts that the actions / services benefit high-need students in addition to all students. This is insufficient as a matter of law. *See id.* at 11 (noting that “[t]o 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.”). Thus, the Revised LCAP does not meet the legal standard.
3. “[T]he District fails to adhere to the LCAP template directions pertaining to the identification of the *actual* actions/services in the Annual Update.” February 13 Decision at 16 (emphasis in original). This direction is intended to reflect whether the District carried out the planned action or service for students, in whole or in part, from the previous year. This is essential for the District to be transparent and accountable to stakeholders about the educational services it has provided to students. The District made no revisions to the Annual Update section of its 2018-2019 LCAP. Thus, the Revised LCAP does not meet the legal standard.

4. The Annual Update failed to analyze whether the planned actions and services were effective in meeting the District's goals. The February 13 Decision found that "the District's response to the first prompt for Goals 1, 2, 3 and 4 do not adhere to the LCAP template directions for the first prompt of the Analysis part of the Annual Update." *Id.* at 18. Additionally, the February 13 Decision found that "the District does not adhere to the LCAP template directions provided for the second prompt of the Analysis part of the Annual Update for all Goals 1, 2, and 3." *Id.* at 19. This analysis is essential for the District to be transparent and accountable to stakeholders about the effectiveness of the educational services it has provided to students. The District made no revisions to the Annual Update section of its 2018-2019 LCAP. Thus, the Revised LCAP does not meet the legal standard.
5. The District's description in the Annual Update of any changes made to Goals 1-4, expected outcomes, metrics, or actions and services was legally insufficient. The February 13 Decision found that "the District's response to this prompt does not appear to address the goals, actions or services planned for the 2018-19 LCAP year, [therefore,] the District fails to adequately respond to this prompt." This analysis is essential for the District to be transparent and accountable to stakeholders about changes to the educational services it has provided to its students or to its expected outcomes for its students. The District made no revisions to the Annual Update section of its 2018-2019 LCAP. Thus, the Revised LCAP does not meet the legal standard.
6. The District failed to adhere to legal requirements that it present its LCAP to a parent advisory committee, composed of a majority of parents of students and including parents of high-need students, for review or comment; and that the Superintendent respond in writing to comments received from that committee. *See* February 13 Decision at 21. The District continues to fall short of its obligation to obtain the "significant input from their communities" required<sup>1</sup> by failing to provide sufficient time for public comment, to notify stakeholders of opportunities for input, and to meaningfully take contributions of the community into account in reviewing and updating the LCAP. Here, the District provided the Indian Policies and Procedures ("IPP") Task Force – which is not a properly constituted parent advisory committee, for all of the reasons articulated in Appellants'

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<sup>1</sup> CDE Guidance Letter on Use of S&C Funds; *see also* Letter from Tom Torlakson, State Superintendent of Instruction, to District Superintendents (Oct. 2, 2017) (stating that "[r]ather than top-down, transactional exchanges between districts and support providers, the new system expects support providers to work collaboratively with districts to identify key challenges and opportunities. And rather than packaged interventions, the new system favors teams of local educators engaging with their communities to tailor approaches to specific needs ... To create change that is supported at the grassroots level, stakeholders must be authentically engaged and transparency must be a top priority. Ensuring that each student has the support they need to succeed is a collective responsibility we all share. As such, we urge you to redouble your efforts to increase awareness and use of the Dashboard, the LCAP, and any improvement plans within your district this fall.").

December 12 Appeal to your office – with incomplete text from only four pages of the Revised LCAP (pages 108 through 111) on February 6, and School Board President Lois Risling suggested at that meeting that anyone who had input on the LCAP should provide that at the February 12 School Board meeting where the LCAP was slated for approval. The complete Revised LCAP was never provided to the IPP Task Force. Moreover, no attempt was made on the part of the District to record or even collect input from parents at the February 6 IPP Take Force meeting, and the Superintendent failed to respond in writing to any input from parents. Thus, the District’s stakeholder engagement process for the Revised LCAP does not meet the legal standard.

### **Legal Status of the District’s Revised 2018-2019 LCAP**

Given the above information, Appellants are unsure about the legal status of the District’s Revised LCAP and would greatly appreciate clarification from your office. The School Board approved the Revised LCAP on February 12, but we do not know if HCOE has approved it. If both approvals were forthcoming, is the District’s 2018-2019 LCAP now “final,” even though the February 13 Decision identified continuing legal deficiencies in both the 2018-2019 LCAP and the District’s LCAP process? Additionally, your February 13 Decision noted that adoption of the 2018-2019 LCAP in June 2018 appears inconsistent with the requirements of California Education Code § 52062(b)(1), which requires the District to hold at least one public hearing and to provide public access to the LCAP at least 72 hours prior to this public hearing. February 13 Decision at 3. If found true after CDE’s investigation, does this mean that the District’s original 2018-2019 LCAP was adopted, and subsequently approved by HCOE, in violation of Education Code § 52062(b)(1)?

### **HCOE’s Role in Guiding the District on the Necessary Corrective Actions**

Prior to the February 12 School Board vote, the Revised LCAP was discussed briefly at the February 6 IPP Task Force meeting, which was attended by Hoopa Tribal Education Association Executive Director Erika Tracy, among others. Jennifer Fairbanks from HCOE made a statement at the February 6 IPP Task Force meeting to the effect that HCOE believed the District had corrected all of the issues that your office identified as problematic (despite the deficiencies listed immediately above), aside from some unspecified minor adjustments yet to be made. At this same meeting, HCOE representatives also suggested that it is the School Board, not HCOE, who makes the final decision to approve the Revised LCAP. Despite Ms. Fairbanks’s statement that “minor adjustments” would be made to the Revised LCAP, no changes or adjustments were made to the Revised LCAP between the February 6 IPP Task Force meeting and the February 12 School Board meeting, at which the LCAP was approved by the School Board.

Additionally, at the IPP Task Force meeting, two parents who serve on two different School Site Councils in the District stated that they were not aware that the School Site Plans would be used to develop the District’s LCAP until just a few weeks prior – thus highlighting the very same problems with the District’s stakeholder engagement process that Appellants raised in our

December 12, 2018 Appeal to your office (concurrently sent to HCOE). We expressed these same concerns to HCOE during an in-person meeting with Ms. Fairbanks and Heidi Moore-Guynup on December 11, 2018, and in several email communications with them throughout January 2019. Our December 19, 2018 letter to HCOE, written to follow up on our December 11 meeting and to suggest concrete next steps the District should take to remedy the legal issues with its 2018-2019 LCAP and LCAP development process, are attached. We have also attached our email communication with HCOE where it appears HCOE accepted the District's assertion that the IPP Task Force serves as the LCAP parent advisory committee, despite our repeated, explicit statements that the IPP Task Force is not and cannot be the parent advisory committee and that the District was failing to meet basic legal standards to obtain stakeholder input on its LCAP.

We are concerned that HCOE has not been able to provide sufficient guidance to the District about the LCAP's legal requirements, including, most pressingly, the need to constitute a parent advisory committee and to engage meaningfully with stakeholders in developing its LCAP.

#### **Next Steps for Corrective Action**

As noted at the beginning of this letter, Appellants are deeply concerned that, in response to your February 13 Decision, the District will again take the same path of little or no corrective action that it took in response to your November 2 Decision. We have previously communicated to the District, School Board, and HCOE that we are ready to meet with Superintendent Jon Ray to discuss our concerns and find solutions. To date, Superintendent Ray has refused to meet with Appellants. In the attached December 18 letter to HCOE, we laid out proposed solutions, and our ideas about how we could assist the District, to resolve the legal problems that formed the basis of our multiple Complaints and were upheld by your Decisions. To date, the District has refused to engage us on those solutions. As noted in the attached December 18 letter, we stand ready to help the District organize and engage in meaningful stakeholder engagement, including by helping the District to constitute an appropriate parent advisory committee and gather input from stakeholders, but we have received no response to these offers from the District or HCOE.


We are alarmed that the District's decisions and decision-making processes regarding educational services provided to our children – children from the Tribal Nations and surrounding community who attend District schools – are inherently flawed by the lack of transparency and accountability mandated by law in California. That the District refuses to meaningfully engage with or solicit input from parents and tribal leaders in developing its LCAP, which reflect deeply important decisions about how the District's scarce resources are allocated, urgently concerns us and many other community leaders and parents. What will happen differently now, as opposed to what happened between November 2018 and February 2019, to ensure that the District will take the appropriate steps mandated by CDE to remedy the legal problems with its 2018-2019 LCAP and its failure to engage stakeholders?

Therefore, we respectfully request an in-person meeting with you, HCOE, and the District to create a plan to work collaboratively to assist the District to address and remedy the multiple legal problems presented in this case. We seek your assistance to find a path forward so that everyone can focus on desperately needed improvement to outcomes for the District's students. We believe a meeting in person best signals the importance with which we approach this situation and our willingness to work together with the District on solutions. We are ready to meet at a place and time of your choosing. Please contact Linnea Nelson at her direct office line, 415-293-6383, or by email at [lnelson@aclunc.org](mailto:lnelson@aclunc.org), to coordinate and if you have any further questions for us.

Sincerely,



Jim McQuillen, MFT, PPS  
Education Director  
Yurok Tribe



Erika Tracy  
Executive Director  
Hoopa Tribal Education Association



Linnea Nelson, ACLU Foundation of Northern California  
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*Letter from Appellants to LASSO Director Jeff Breshears  
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Encl.: Klamath-Trinity Joint Unified School District LCAP, 2018-2019 LCAP Year, 2/4/2019  
 (“Revised LCAP)

December 18, 2018 Letter from ACLU Foundations of California, Hoopa Tribal  
Education Association, and Yurok Tribe to Humboldt County Office of Education

Email communication between the Humboldt County Office of Education, ACLU  
Foundations of California, Hoopa Tribal Education Association, and Yurok Tribe  
between December 18, 2018 and February 4, 2019