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**Kern County Superior Court**

**By Julie Irvin, Deputy**

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26 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
27 COUNTY OF KERN – CIVIL DIVISION

28 N. U., a minor child and L. U., a minor child,  
through their Guardian ad Litem, Jacqueline  
Pabon,

Petitioners/Plaintiffs,

vs.

BAKERSFIELD CITY SCHOOL DISTRICT;  
BCSD BOARD OF EDUCATION; LILLIAN  
TAFOYA, DR. FRED HAYNES, REV. RALPH  
ANTHONY, PAM BAUGHER, and MICHAEL  
HORNE, in their official capacities; and  
SUPERINTENDENT DOC ERVIN, in his official  
capacity;

Respondents/Defendants.

Case No. BCV-19-101166

**PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR  
DECLARATORY RELIEF**

(Code Civ. Proc., §§ 1060, 1085)

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Petitioners/Plaintiffs (“Petitioners”) allege as follows:

1. Petitioners are economically-disadvantaged students who will suffer harm due to a loss of educational benefits resulting from the Bakersfield City School District Board of Education’s decision to cancel the 2019 summer school session. Funding for summer school was provided by the State of California for the express purpose of paying for the District’s summer school program, which was designed to accelerate academic achievement for at-risk and “unduplicated” students. However, instead of complying with the funding plan approved by the Board of Education and the Kern County Office of Education, and funded by the State of California, the District is diverting \$1.6 million of those funds to pay for other expenses. The District’s diversion of dedicated funds violates the mandates of California’s school funding program. Petitioners seek a temporary restraining order, preliminary injunction, and writ of mandate directing the Bakersfield City School District to comply with its Local Control and Accountability Plan and offer the 2019 summer school program promised in the District’s 2018-2019 Plan.

**PARTIES**

2. Petitioner/Plaintiff N. U. is a second-grade student enrolled in Ramon Garza Elementary School, a school site operated by and within the Bakersfield City School District. He is an English learner and eligible for free or reduced-price school meals. He attended summer school at Ramon Garza Elementary School in 2018 and intended to and would attend summer school there in 2019, if it is offered, in order to take Science, Technology, Engineering, Arts, and Math (“STEAM”) focused classes to help with his academic achievement goals. He brings this action through his Guardian ad Litem, Jacqueline Pabon.

3. Petitioner/Plaintiff L. U. is a fourth-grade student enrolled in Ramon Garza Elementary School, a school site operated by and within the Bakersfield City School District. She is an English learner and eligible for free or reduced-price school meals. She attended summer school at Ramon Garza Elementary School in 2018 and had intended to and would attend summer school there in 2019, if it is offered, in order to take STEAM oriented classes to help with her academic achievement goals. She brings this action through her Guardian ad



1 Litem, Jacqueline Pabon.

2 4. Respondent/Defendant BAKERSFIELD CITY SCHOOL DISTRICT (“BCSD” or  
3 “the District”) is a Local Educational Agency as that term is defined in 5 Cal. Code Regs. section  
4 15495, subdivision (d). The District applied for and received funding, including supplemental  
5 and concentration grant funding under Education Code section § 42238.02, for the 2018-2019  
6 school year from the State of California to provide education and related services to students  
7 enrolled in its 43 elementary, middle, and junior high schools.

8 5. Respondents/Defendants BCSD BOARD OF EDUCATION and its members  
9 LILLIAN TAFOYA, DR. FRED L. HAYNES, REV. RALPH ANTHONY, PAM BAUGHER,  
10 and MICHAEL HORNE (collectively referred to herein as “the BCSD Board”) constitute the  
11 governing body of BCSD and are charged with the oversight of BCSD and its compliance with  
12 state and federal laws regarding the education of its students. (Educ. Code, §§ 35160-61.) The  
13 BCSD Board members are sued in their official capacities.

14 6. Defendant/Respondent DOC ERVIN is the Superintendent of BCSD and is sued  
15 in his official capacity. As Superintendent of the District he is charged with oversight of BCSD  
16 and its compliance with state and federal laws regarding the education of its students. (Educ.  
17 Code, § 35036.)

#### 18 **CALIFORNIA SCHOOL FUNDING MANDATES IMPOSED ON BCSD**

19 7. In 2013, the State of California enacted a school funding program – the Local  
20 Control Funding Formula (“LCFF”) – designed to provide both base funding for general  
21 education services and to grant additional funding for programs and services designed to increase  
22 or improve services for students with the greatest needs. Under the LCFF, school districts,  
23 including BCSD, receive a base grant for all students and additional “supplemental” and  
24 “concentration” grant funding based on the count of “unduplicated” students — defined as  
25 students who are classified as English learners, foster youth, and/or are eligible for free or  
26 reduced-price meals. (Educ. Code, § 42238.02 subd. (b).)

27 8. As codified, the LCFF mandates that districts engage in a budget process, during  
28 which a Local Control and Accountability Plan (“LCAP”) is developed and approved after

1 obtaining and taking into consideration the meaningful engagement of parents, students, and  
2 school personnel. (Educ Code, § 52060, subd. (g).) The LCAP must demonstrate an allocation  
3 of supplemental and concentration grant funding in a manner that will “increase or improve  
4 services for unduplicated pupils” proportional to the number and concentration of unduplicated  
5 students for which the funding was received. (Educ. Code, § 42238.07.) The LCAP is effective  
6 for a period of three years and must be updated on or before July 1 of each year. (Educ. Code,  
7 §§ 52060, subd. (b); 52061.)

8 9. As part of the LCAP development and approval process, BCSD is and was  
9 required to establish a parent advisory committee to provide advice to the BCSD Board and the  
10 Superintendent regarding the development of the LCAP. (Educ. Code, § 52063, subd. (a).)  
11 BCSD established such a committee, referred to as the District Advisory Committee or “DAC”.  
12 BCSD was and is required to present the LCAP or annual LCAP update to parents, including the  
13 DAC, for review and comment prior to its adoption. (Educ. Code, §§ 52060, subd. (g); 52062,  
14 subd. (a)(1).)

15 10. As part of the LCAP development and approval process, BCSD is and was also  
16 required to establish an English learner parent advisory committee (“DELAC”) to provide advice  
17 to the BCSD Board and the Superintendent regarding the development of the LCAP. (Educ.  
18 Code, § 52063, subd. (b).) The BCSD established such a committee and was and is required to  
19 present the LCAP or annual LCAP update to the DELAC for review and comment prior to its  
20 adoption. (Educ. Code, §§ 52060, subd. (g); 52062, subd. (a)(2).)

21 11. As mandated by Education Code section 52060, subdivision (a), BCSD developed  
22 and adopted its LCAP for the academic years of 2017-2018, 2018-2019, and 2019-2020 using  
23 the template adopted by the State Board of Education. As required by the LCFF and LCAP  
24 template, BCSD established goals and action items designed to improve academic performance.  
25 The District also allocated supplemental and concentration grant funding to those goals,  
26 representing that the funding would increase or improve services to unduplicated students. In  
27 Goal 1, Action 34 of the LCAP, BCSD allocated supplemental and concentration grant funds to  
28 pay for a “STEAM-focused summer school program” for academic years 2017-2018, 2018-2019,



1 and 2019-2020. BCSD's LCAP allocated and budgeted expenditures of supplemental and  
2 concentration grant funds for summer school in the amount of \$2,748,447 for fiscal year 2017-  
3 2018, \$1,655,634 for fiscal year 2018-2019, and \$1,655,634 for fiscal year 2019-2020. In the  
4 LCAP, BCSD indicated that these funds were being expended on a district-wide basis and were  
5 principally directed towards, and are effective in, meeting the District's goals for its unduplicated  
6 pupils as required by the LCFF and its regulations. (5 Cal. Code. Regs., § 15496, subd. (b)(2).)

7 12. BCSD received funding from the State of California, through the California  
8 Department of Education ("CDE") for the 2018-2019 school year. That funding included the  
9 supplemental and concentration grant funding which had to be expended in a manner consistent  
10 with its LCAP. (Educ. Code, §§ 42238.02, subs. (e), (f)(2).) The supplemental and  
11 concentration funding must be used to increase or improve services for unduplicated pupils, as  
12 compared to the services provided to all pupils, in proportion to the increase in funds apportioned  
13 on the basis of the number and concentration of unduplicated pupils. (5 Cal. Code Regs., §  
14 15496, subd. (a).) The funding must also be principally directed towards, and effective in  
15 meeting the District's goals for its unduplicated pupils. (*Id.*)

16 13. The STEAM-focused summer school program was implemented at the end of the  
17 2017-2018 school year, as provided in the District's LCAP.

18 14. As mandated by Education Code section 56061, subdivision (a), BCSD updated  
19 and adopted the "BAKERSFIELD CITY SCHOOL DISTRICT LOCAL CONTROL AND  
20 ACCOUNTABILITY PLAN 2017-18 ANNUAL UPDATE AND 2017-18, 2018-2019, 2019-20  
21 PLAN" ("2018-19 LCAP") on June 26, 2018. The State Superintendent of Public Instruction  
22 approved the updated 2018-19 LCAP. Supplemental and concentration grant funding in the  
23 amount of \$1,655,634 for summer school to be held during the summer of 2019 was allocated to  
24 Item 34 of the 2018-19 LCAP. Action 34 of the 2018-19 LCAP was described as an "LEA" or  
25 district-wide program, providing services to foster youth, English learners and low-income  
26 students located at all school sites and characterized as "[a]ctions/services included as  
27 contributing to meeting the Increased or Improved Services Requirement."

28 15. By operation of its 2018-19 LCAP and the budget adopted in furtherance of the

1 goals and funding allocations included in the LCAP, BCSD was and is required to spend funds in  
2 accordance with those allocations. (Educ. Code, §§ 42238.02, subd. (e); 52060, subd. (a); 5 Cal.  
3 Code Regs., § 15496 subd. (a).)

4 16. An adopted LCAP may be revised while it is effective. However, in order to  
5 properly revise the LCAP, the BCSD was and is required to follow the same process it followed  
6 to adopt the LCAP. (Educ. Code, § 52062, subd. (c).)

7 **BCSD VIOLATES LCFF FUNDING MANDATES BY RE-ALLOCATING**  
8 **SUPPLEMENTAL AND CONCENTRATION GRANT FUNDING FOR 2019 SUMMER**  
9 **SCHOOL**

10 17. At the end of 2018, BCSD made the decision to ignore the program commitments  
11 and allocation of funding included in the 2018-19 LCAP and announced to staff, in a letter dated  
12 December 20, 2018, that “the District Leadership Team, with support from the Board of  
13 Education, has determined that we will not implement a regular education Summer School  
14 Program as part of summer 2019.” The BCSD Board did not amend or revise the 2018-19 LCAP  
15 to incorporate this re-allocation and/or redirect the funding to other activities designed to  
16 increase or improve services to unduplicated students prior to making this announcement.

17 18. Parents, school staff, and communities objected to the elimination of the summer  
18 school program after hearing of the decision. Those objections were met with hostility by the  
19 BCSD Board. On more than one occasion prior to March 21, 2019, parents, administrators, and  
20 community members were unequivocally told by BCSD officials that the decision had been  
21 made and that summer school would not be offered in 2019. Teaching staff were notified that  
22 summer school positions would not be available. Announcements were made about planned  
23 alternatives to summer school, but BCSD at no time sought meaningful input from students,  
24 parents, staff members, or the community about the cancellation, alternatives to summer school  
25 programming, or reallocation of the unexpended supplemental and concentration grant funds.

26 19. In late 2018 or early 2019, BCSD executive leaders issued a memorandum to  
27 BCSD staff. The memorandum stated “To help you with responding to parent inquiries  
28 regarding the cancellation of BCSD’s Summer Learning Program for 2019, we have put together  
the following talking points that clearly outline the rationale that led the District Administration



1 and Board of Education to this decision...” In that statement, BCSD included as a talking point  
2 the fact that the “the state of California no longer provides funding for this program.” This  
3 statement was misleading and, on information and belief, intentionally so, because the  
4 supplemental and concentration grant funding provided to BCSD could be — and without  
5 revision to the LCAP, had to be — used to fund the 2018-2019 summer school.

6 20. Education Code section 52060, subdivision (g), mandates that a school district’s  
7 governing board shall consult with teachers, principals, administrators, other school personnel,  
8 local bargaining units of the school district, parents, and pupils in developing a LCAP. BCSD did  
9 not meaningfully engage with parents, students, and other stakeholders, including those  
10 representing and/or serving unduplicated pupils, regarding LCAP revision prior to the December  
11 2018, decision to cancel summer school for 2019.

12 21. At various times in December, January, and February, parents and community  
13 members raised concerns about the cancellation of summer school to BCSD administrators and  
14 members of the BCSD Board. BCSD administrators and BCSD Board members made various  
15 statements to parents, community members, and the press all indicating that the decision to  
16 cancel summer school was final and not under review. In December 2018, Assistant  
17 Superintendent Mark Luque was quoted as saying that “[t]his was not an easy decision to make,”  
18 and “we recognized a need to make an adjustment to reallocate dollars for our kids.” At a  
19 February 23, 2019, Parent University/Parent/Community Feedback Forum held at Walter Stiern  
20 Middle School, Superintendent Ervin stated that, “[a]t some point, we are going to come up with  
21 a better summer learning program, but it won’t be this summer,” and “[i]t’s not going to  
22 happen.” BCSD Board member Reverend Ralph Anthony stated that the summer school issue  
23 was “done” in response to questions from community members on March 10, 2019.

24 Additionally, various press reports between December 2018 and March 20, 2019, attributed  
25 statements to BCSD administrators or Board members indicating that the decision was final, that  
26 it was driven by an unexpected increase in special education and transportation costs, as well as  
27 rising costs relating to employee retirement. On February 25, 2019, the press reported that, when  
28 questioned by a reporter from *The Bakersfield Californian*, BCSD Superintendent Ervin stated



1 that the \$1.6 million budgeted for summer school in 2019 will go back into the general fund to  
2 be used for other purposes.

3 22. In response to widespread and publicly reported objections to the decision, BCSD  
4 began, *ex post facto*, to attempt to comply with the prerequisites for amending or revising the  
5 2018-19 LCAP.

6 23. On March 20, 2019, Petitioners, through their counsel, filed a complaint with  
7 CDE pursuant to the Uniform Complaint Procedures, seeking direct intervention by the State, as  
8 authorized by 5 Cal. Code Regulations, section 4650, subdivision (a)(6). Petitioners requested  
9 that BCSD be directed to expend the supplemental and concentration grant funding for the 2019  
10 summer school program as provided in the BCSD 2018-2019 LCAP. CDE refused to directly  
11 intervene and, instead, directed the complaint to the BCSD.

12 24. On March 21, 2019, BCSD announced that summer school would be offered at  
13 four sites: Casa Loma, Longfellow, and Stella Hills elementary schools and Emerson middle  
14 school. This decision was not made as part of the 2018-19 LCAP revision process, nor was it  
15 presented during any initial discussions regarding the revision of the LCAP. According to the  
16 BCSD announcement, these summer school programs are to be funded by a Comprehensive  
17 Support and Improvement Grant (“CSI”), not with the supplemental and concentration grant  
18 funding allocated for summer school under the 2018-19 LCAP. CSI grants are funded by the  
19 federal Every Student Succeeds Act. School districts apply for this funding outside of the LCAP  
20 process. Only students who are invited to attend BCSD’s limited summer school program may  
21 enroll. The minor child Petitioners and other unduplicated students will not be invited to attend  
22 BCSD’s limited CSI-funded summer school. The minor child Petitioners attend Ramon Garza  
23 Elementary school where summer school was offered in 2018, consistent with the LCAP, but is  
24 not being funded by the CSI grant, or otherwise offered. To date, Petitioners have received no  
25 information to indicate that summer school will be held at Ramon Garza Elementary School  
26 during 2019.

27 25. In a notice on March 21, 2019, BCSD announced that it had created a “timeline  
28 with information on next steps in regards to the revision of the Summer Learning Action item in

1 the Local Control Accountability Plan (LCAP).” The notice stated that “The Board of Education  
2 will hold a public hearing on the 2018-2019 LCAP Revision on April 9, 2019 as part of a Special  
3 Board Meeting and then take action on the proposed revision during the April 23, 2019 Regular  
4 Board Meeting.” BCSD did not provide a draft of a proposed revised 2018-19 LCAP at that  
5 time, nor any information about the amount of 2018-2019 supplemental and/or concentration  
6 grant funds allocated to summer school that would or would not be expended for summer school.  
7 BCSD provided no specific information about how the supplemental and/or concentration grant  
8 funds not spent on summer school would be reallocated.

9         26. On or about April 7, 2019, BCSD made available the “BAKERSFIELD CITY  
10 SCHOOL DISTRICT LOCAL CONTROL AND ACCOUNTABILITY PLAN - REVISED  
11 2017-18 ANNUAL UPDATE AND 2017-18, 2018-2019, 2019-20 PLAN” (“the 2018-19  
12 Revised LCAP”) by including it in Board materials for the Special Board Meeting to be held on  
13 April 9, 2019, and by posting the document on the District’s website:

14 [https://www.bcsd.com/apps/pages/index.jsp?uREC\\_ID=1158549&type=d&pREC\\_ID=1672743](https://www.bcsd.com/apps/pages/index.jsp?uREC_ID=1158549&type=d&pREC_ID=1672743).

15 On its face, the document noted that it was “For Board Approval – April 23, 2019”. Petitioners  
16 are informed and believe that this was the first public dissemination of the proposed revision to  
17 the LCAP, and that it had not previously been provided to the DAC or DELAC for review and  
18 comment.

19         27. To date, BCSD has failed to provide any budget information about how the \$1.6  
20 million in unexpended supplemental and concentration grants allocated to the 2019 summer  
21 school would be spent. When asked what the funding would be used for, Assistant  
22 Superintendent Marc Luque indicated that “Funds will be allocated to support the formal launch  
23 of academies across 43 school sites in the 2019-2020 school year.” However, that allocation is  
24 not reflected in the 2018-19 Revised LCAP as a new or modified item. No description of the  
25 program was provided at the April 9, 2019, special board meeting or, on information and belief,  
26 at any of the sessions ostensibly held for the purpose of obtaining input into the revision of the  
27 2018-2019 LCAP.

28         28. On or about April 23, 2019, the BCSD Board considered and approved the 2018-



1 19 Revised LCAP, confirming cancellation of the summer school program for the 2018-19  
2 school year at 39 of the 43 BCSD school sites, a decision that had already been made prior to the  
3 Board meeting. Action 34 of the 2018-19 Revised LCAP addresses the allocation of funds to the  
4 Summer School programs for 2018-19. That item is modified to reflect that it is no longer  
5 “LEA” or district-wide, but a school- based program, and now limited to four specific school  
6 sites. Instead of \$1,655,634, the 2018-19 Revised LCAP allocates only \$50,572.00 in  
7 supplemental and concentration grant funding to the 2019 summer school program. It allocates  
8 an additional \$202,288.00 in CSI funding to summer school. There is no reallocation of the  
9 remaining \$1,605,062 in supplemental and concentration grant funding that was removed from  
10 the Item 34 budget line.

11 29. Petitioners are informed and believe that BCSD has submitted, or will submit, the  
12 2018-19 Revised LCAP to the Kern County Office of Education for approval. On April 24,  
13 2019, Petitioners, through their counsel, asked that the KCOE refuse to approve the 2018-19  
14 Revised LCAP on the grounds that it does not comply with the LCFF.

15 30. Petitioners are informed and believe that there continues to be widespread desire  
16 on the part of students, parents, staff members, community members, and individual members of  
17 the DAC and DELAC that the supplemental and concentration grant funding allocated for the  
18 2019 summer school session be expended to pay for that session as promised in the 2018-19  
19 LCAP. Petitioners are further informed and believe that teaching staff, if given notice, would be  
20 available to teach during summer school and that students, including foster children, English  
21 learners, and economically-disadvantaged students, would enroll at most or all of the summer  
22 school sites if given the opportunity to do so.

23 31. As a direct and proximate result of BCSD’s actions, the minor child Petitioners  
24 and, on information and belief, other BCSD students, will suffer a loss of educational services  
25 that would otherwise be available to them during the 2019 summer school session. These  
26 services were specifically designed to enrich their learning experience and accelerate academic  
27 achievement. As economically-disadvantaged students and the intended beneficiaries of the  
28 supplemental and concentration grant funds allocated to BCSD for this purpose, Petitioners and



1 other students will suffer a direct loss of an economic benefit intended to enhance their education  
2 and prevent an academic achievement gap between them and their peers.

3  
4 **FIRST CAUSE OF ACTION**  
5 **WRIT OF MANDATE**  
6 **(Code Civ. Proc. § 1085)**  
7 **(All Petitioners as to all Respondents)**

8 32. Petitioners incorporate by reference all preceding paragraphs as though fully set  
9 forth here.

10 33. Respondents are each required to comply with the laws of the State of California  
11 as they relate to development, approval, and submission for approval of funding sought through  
12 the LCFF. They are further required to expend the funding in a manner consistent with the  
13 District's LCAP submitted approved by the State Superintendent of Public Instruction based on  
14 the criteria established in the LCAP template. (Educ. Code, §§ 42238.02, subd. (e); 52060, subd.  
15 (a).)

16 34. Respondents have the clear, present, and ministerial duty to expend supplemental  
17 and concentration grant funds approved for and provided to BCSD by the State of California in a  
18 manner that is consistent with the 2018-19 LCAP until and unless the LCAP is amended or  
19 revised in a manner consistent with Education Code section 52062, subdivision (c).

20 35. Respondents violated the clear, present, and ministerial duty to expend  
21 supplemental and concentration grant funds approved and provided to BCSD by the State of  
22 California in a manner consistent with the 2018-19 LCAP by making the decision in December  
23 2018, not to expend \$1.6 million in supplemental and concentration grant funding for the 2019  
24 summer school program and failing to allocate and expend those funds for other programs in  
25 2018-19 that are principally directed towards, and are effective in meeting, the District's goals  
26 for its unduplicated pupils in the state and any local priority areas.

27 36. Respondents have the clear, present, and ministerial duty to comply with each  
28 element of the LCAP approval process prior to amending or revising the 2018-19 LCAP as  
provided in Education Code sections 52060, subdivision (g) and 52062 and its implementing  
regulations. (5 Cal. Code Regs., §§ 15494, *et seq.*)

1           37.     Respondents violated the clear and present duty to comply with each element of  
2 the LCAP approval process prior to approving the revision to the 2018-19 LCAP and adopting  
3 the 2018-19 revised LCAP by:

- 4           a) Failing to present the proposed LCAP revision to the DAC for review and comment in a  
5           manner that disclosed the proposed reallocation of the supplemental and concentration  
6           grant funds;
- 7           b) Failing to present the proposed LCAP revision to the DELAC for review and comment in  
8           a manner that disclosed the proposed reallocation of the supplemental and concentration  
9           grant funds;
- 10          c) Failing to notify members of the public of the opportunity to submit written comments  
11          regarding the specific actions and expenditures proposed, using the most efficient  
12          method of notification possible;
- 13          d) Failing to review applicable school plans for schools within the district and ensure  
14          that the specific actions included in the revision are consistent with strategies included in  
15          the school plans; and
- 16          e) Failing to consult with BCSD's special education local plan area administrator to  
17          determine that specific actions for individuals with exceptional needs are included in the  
18          LCAP revisions consistent with strategies included in the annual assurances support plan  
19          for the education of individuals with exceptional needs.

20          38.     Respondents violated the clear and present duty to comply with each element of  
21 the LCAP approval process by failing to include in the 2018-19 Revised LCAP information  
22 regarding the reallocation of the \$1.6 million in unexpended supplemental and concentration  
23 grant funds for summer school that demonstrates how the unexpended funds will be spent on  
24 services provided "...to meet the needs of unduplicated pupils and improve the performance of  
25 all pupils in the state priority areas" as required by 5 Cal. Code Regulations section 15494,  
26 subdivision (c).

27          39.     Respondents violated the clear and present duty to comply with each element of  
28 the LCAP approval process by failing to provide evidence in the 2018-19 Revised LCAP to



1 demonstrate how the \$1.6 million in unexpended supplemental and concentration grant funds for  
2 summer school will “be principally directed towards, and are effective in, meeting the district’s  
3 goals for its unduplicated pupils in the state and any local priority areas” as required by 5 Cal.  
4 Code Regulations section 15496, subdivision (b)(1)(B).

5 40. Respondents have a clear and present duty to expend supplemental and  
6 concentration grant funds granted to BCSD for the 2018-19 school year by the State of  
7 California in a manner consistent with improving or increasing services to unduplicated students  
8 during the 2018-19 school year as required by Education Code section 42238.02, subdivisions  
9 (e) and (f)(2).

10 41. Respondents have violated their clear and present duty to expend supplemental  
11 and concentration grant funds granted to BCSD for the 2018-19 school year by the State of  
12 California to improve or increase services to unduplicated students during the 2018-19 school  
13 year by failing to spend \$1.6 million in funds granted by the State of California for services for  
14 unduplicated students during the 2018-19 school year and, instead, allocating those funds for  
15 services to be provided in the 2019-20 school year in violation of Education Code section  
16 42238.02, subdivisions (e) and (f)(2).

17 42. Petitioners are economically disadvantaged students, eligible for free or reduced-  
18 price school meals, and are beneficially interested in ensuring that Respondents comply with  
19 their statutory and regulatory duties regarding expenditure of funds allocated to BCSD under the  
20 supplemental and concentration grant dedicated to the 2019 summer school sessions.

21 43. Petitioners have no effective alternative remedy available to them, as summer  
22 school would generally begin in June 2019. CDE denied Petitioners’ request for direct  
23 intervention to address the violations alleged herein and, instead, directed the complaint for  
24 resolution to Respondent BCSD. Although Respondents have been aware of the complaints  
25 informally since the end of 2018, and formally since on or about March 22, 2019,  
26 Representatives of BCSD, when asked, advised Petitioners, through their counsel, that they  
27 cannot guarantee that BCSD will complete any investigation of the allegations contained in the  
28 complaint in time to allow summer school to be re-established. Petitioners have asked the Kern



1 County Office of Education to deny approval of the revised LCAP, but have received no  
2 response to the request.

3 44. Therefore, Petitioners seek a writ of mandate directing Respondents to comply  
4 with the 2018-19 LCAP and make summer school sessions available at all school sites, or to  
5 show cause why they should not be ordered to do so.

6 **SECOND CAUSE OF ACTION**  
7 **DECLARATORY RELIEF**  
8 **(Code Civ. Proc. § 1060)**  
9 **(All Petitioners as to All Respondents)**

10 45. Petitioners incorporate by reference all preceding paragraphs as though fully set  
11 forth here.

12 46. An actual controversy has arisen and now exists between Petitioners and  
13 Respondents concerning their respective rights and duties in that Petitioners contend that each  
14 Respondent has violated one or more of its legal duties or obligations as to Petitioners, whereas  
15 Respondents dispute these contentions and contend that their actions are consistent with those  
16 rights and duties.

17 47. Petitioners assert that Respondents' decision not to expend the \$1.6 million  
18 dollars in supplemental and concentration funding granted by the State of California and  
19 allocated to the 2019 summer school sessions was made in violation of the Education Code and  
20 implementing regulations and in violation of Petitioners' rights, and that the District's decision  
21 could not and was not validated by the subsequent attempt to comply with the procedural  
22 requirements of Education Code sections 52060, subdivision (g), and 52062 and their  
23 implementing regulations, 5 Cal. Code Regulations sections 15494, *et seq.* Respondents dispute  
24 this assertion.

25 48. Petitioners assert that Respondents were and are required to expend the  
26 \$1,655,634.00 in supplemental and concentration grant funds allocated to 2019 fund summer  
27 school sessions for those summer school sessions and may not carry over some or all of those  
28 funds for "academic academies" or other services to be provided in the 2019-20 academic year.  
Their failure to do so violates their duties under the Education Code and Petitioners' rights to the

1 benefit of those funds. Respondents dispute this assertion.

2 **INJUNCTIVE RELIEF**

3 49. Petitioners incorporate by reference all preceding paragraphs as though fully set  
4 forth here.

5 50. Petitioners are the intended beneficiaries of the LCFF and the supplemental and  
6 concentration grant funding for the 2019-20 summer school sessions that was allocated to BCSD  
7 for the purpose of addressing their academic needs (and those of other unduplicated students)  
8 and the achievement gaps between them and other students who are not foster children, English  
9 learners, or economically disadvantaged.

10 51. Petitioners and other unduplicated students will lose the benefit of those  
11 educational services if the Respondents are not required to return to *status quo ante* and provide  
12 the summer school services guaranteed in the previously approved LCAP.

13 52. Petitioners and other unduplicated students will suffer irreparable harm by being  
14 delayed in achieving credits or gaining the advantage of other educational supports prior to the  
15 2019-20 regular school year, including the possibility that summer school cancellation may  
16 result in their falling further behind their peers in academic achievement. Academic deficits are  
17 cumulative and the failure to compensate for academic deficits at the earliest possible point may  
18 result in the inability of Petitioners and other unduplicated students to ever catch up.

19 53. Plaintiffs bring this action, and each cause, in furtherance of the public policy and  
20 to enforce important rights affecting the public interest as established by the State of California  
21 alleged in this complaint. Therefore, Plaintiffs seek attorneys' fees pursuant to Code of Civil  
22 Procedure section 1021.5.

23 Wherefore, Petitioners pray as follows:

24 1. That the Court grant a temporary restraining order directing that all Respondents  
25 cease and desist all efforts to redirect supplemental and concentration grant funding allocated to  
26 the 2019 summer school session in the 2018-19 LCAP and return to *status quo ante* by  
27 recommencing the steps necessary to ensure that the 2019 summer school sessions take place at  
28 all BCSD school sites;

1           2.       That a preliminary injunction be entered directing that BCSD, the BCSD Board,  
2 and Superintendent Ervin expend the \$1,655,634.00 in concentration grant funding allocated to  
3 the 2019 summer school session in the 2018-19 LCAP on the staffing and services necessary to  
4 ensure that the 2019 summer school sessions take place at all school sites.

5           3.       Issue a Writ of Mandate directing that all Respondents take all steps necessary to  
6 schedule summer school at all school sites and expend the supplemental and concentration grant  
7 funds allocated for that purpose;

8           4.       Enter declaratory judgment in favor of Petitioners and against Respondents that  
9 BCSD, the BCSD Board, and Superintendent Ervin were and are required to expend the  
10 \$1,655,634.00 in supplemental and concentration grant funds allocated to 2019 fund summer  
11 school sessions for those summer school sessions in 2019 and may not carry over some or all of  
12 those funds for “academic academies” or other services to be provided in the 2019-20 academic  
13 year and that their failure to do so violates their duties under the Education Code.

14           5.       Award Petitioners/Plaintiffs costs of suit and reasonable attorneys’ fees under 42  
15 Code of Civil Procedure section 1021.5 and any and all further relief to which they may be  
16 entitled.

17           Dated: April 29, 2019

GREATER BAKERSFIELD LEGAL ASSISTANCE  
CALIFORNIA RURAL LEGAL ASSISTANCE, INC.  
LAWYERS’ COMMITTEE FOR CIVIL RIGHTS

18  
19           By: /s/ CYNTHIA L. RICE  
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20  
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23           By: /s/ DEBORAH ESCOBEDO  
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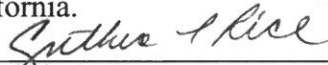


**VERIFICATION**

1 I, Cynthia L. Rice, declare that I am attorney for Petitioners/Plaintiffs L. U. and N. U.  
2 My office is located in Oakland, California, in the county of Alameda and outside of the county  
3 that my clients and the Respondent/Defendants reside or are located. The facts in this petition  
4 and complaint are within my knowledge and belief based upon my review of public records and  
5 other information. Petitioners/Plaintiffs are minors and unable to verify the facts in the  
6 petition/complaint that were derived from those records and information.

7 I declare under penalty of perjury under the laws of the State of California that I have  
8 read the foregoing Petition for Writ of Mandate and Complaint for Declaratory Relief and  
9 believe the matters to be true and based on that belief allege that the matters stated therein are  
10 true.

11 Executed this 29th day of April, 2019 in Oakland, California.

12   
13 \_\_\_\_\_  
14 Cynthia L. Rice