

CALIFORNIA DEPARTMENT OF EDUCATION (CDE)
Investigation Report
Case No. 2019-0271TM/2019-058CPCM

Local Educational Agency: Los Angeles Unified School District

Complainant: Archdiocese of Los Angeles

Complaint Received: September 19, 2019

Report Mailed: June 25, 2021

PROCEDURAL BACKGROUND

Complaint Procedures

On August 2, 2019, the Categorical Programs Complaints Management Office (CPCM) of the California Department of Education (CDE) received a complaint (No. 2019-0271TM/2019-058CPCM) via e-mail from Mr. Ronald Wenkart, of Atkinson, Andelson, Loya, Ruud and Romo, on behalf of the Archdiocese of Los Angeles (ADLA) school consortium. The complaint alleged that the Los Angeles Unified School District (LAUSD or District), a local educational agency, violated laws and/or regulations regarding the provision of Title I equitable services to ADLA private schools for the 2019–2020 school year relative to pooling of Title I funds. In accordance with sections 1117(b)(6)(A), (c)(2) and 8503, Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. §§ 6320(b)(6)A), (c)(2) and 7883) and sections 4663-4665, Title 5, *California Code of Regulations* (5 CCR), it was determined that this matter would be investigated by the CDE as a direct State complaint. On August 2, 2019, CPCM gave notice of the complaint to LAUSD.

On August 21, 2019, CPCM received additional information from Mr. Wenkart appealing the District's Investigation Report (IR) to a complaint that had been filed locally, containing overlapping and additional allegations pertaining to laws and/or regulations regarding the provision of Title I equitable services to private schools for the 2018–2019 and 2019–2020 school years relative to timely and meaningful consultation with the ADLA Consortium, in addition to the method selected to calculate poverty level for the applicable school years, and the calculation of the number of children from low-income families for the purpose of determining the proportional share. In accordance with ESEA Section 1117(b)(6)(A), (c)(2) and 5 CCR sections 4663-4665, it was determined that this matter would also be investigated by the CDE as a direct State complaint and the appeal request would be subsumed into complaint No. 2019-0271TM/2019-058CPCM. On September 6, 2019, CPCM sent notice of the amendment of the complaint to LAUSD.

On September 19, 2019, CPCM received further information from Mr. Wenkart in the form of an Addendum to the August 2, 2019, complaint. Even though the immediate context involved a Public Records Act Request (PRA) which is not under the jurisdiction of ESEA or the Uniform Complaint Procedures, the complainant indicated that the PRA sought the District's last three years' information entered into the CDE's Consolidated Application and Reporting System; as well as three years' budget documents and related information showing the cost of Title I services provided to ADLA students. ADLA

had previously requested this information from the District (and not received it) under the provisions of timely and meaningful consultation related to Title I equitable services to ADLA private schools for the 2019–2020 school year. In addition, in its August 14, 2019, Investigation Report (IR) to the original complaint, LAUSD indicated that “the Archdiocese had the option to challenge the [pertinent issues] to the California Department of Education... Under the ESEA, Section 1117 (c)(2) – COMPLAINT PROCESS...” Therefore, in accordance with ESEA section 1117(b)(6)(A), (c)(2), 8503, and 5 CCR sections 4663-4665, CDE determined that this matter would be investigated as a direct State complaint and the Addendum would also be subsumed into complaint No. 2019-0271TM/2019-058CPCM. On September 20, 2019, CPCM gave notice of this further amendment of the complaint to LAUSD.

A request for information (RFI) was sent to ADLA on November 20, 2019. On November 27, 2019, and December 20, 2019, the ADLA provided certain documentation. On June 25, 2020, the CDE requested additional information, which was provided by ADLA on July 17, 2020. After review, the CDE held a telephone conference with ADLA on August 13, 2020, to clarify the allegations and address additional issues. The ADLA provided additional documentation on August 25 and September 1, 2020.

An RFI was sent to LAUSD on September 18, 2019. On September 26, 2019, LAUSD objected to the subsuming of the appeal and the Addendum to the original direct State complaint, indicating that the District intended to supply the CDE only with documentation in connection with the ADLA’s August 2, 2019, submission. On September 27, 2019, LAUSD provided some documentation. On October 14, 2019, the CDE informed LAUSD that, “If the CDE does not receive the information requested pertaining to all allegations, it will make a decision based on the available information, in accordance with 5 CCR 4633(d).” CDE sent a subsequent reminder to LAUSD. No additional documentation was received by the CDE from LAUSD.

The CDE asked the ADLA for additional clarification on various issues via telephone conference on August 13, 2020.

CDE Authority to Investigate

The CDE’s authority on investigation as well as the applicable complaint procedures are set forth in ESEA Section 8503, in addition to 5 CCR sections 4663-4665.

ESEA Section 1117(c)(2) provides, “Any dispute regarding low-income data for private school students shall be subject to the complaint process authorized in section 8503.” ESEA Section 1117(b)(A) provides, “A private school official shall have the right to file a complaint with to the State educational agency asserting that the local educational agency did not engage in consultation that was meaningful and timely, did not give due consideration to the views of the private school official, or did not make a decision that treats the private school students equitably as required by this section.”

ESEA Section 8503 (a) provides:

(a) PROCEDURES FOR COMPLAINTS.—The Secretary shall develop and implement written procedures for receiving, investigating, and resolving complaints from parents, teachers, or other individuals and organizations concerning violations of section 8501 by a State educational agency, local educational agency, educational service agency, consortium of those agencies, or entity. The individual or organization shall submit the complaint to the State educational agency for a written resolution by the State educational agency within 45 days.

5 CCR Section 4663 provides:

Department Investigation Procedures

- (a) The investigator(s) shall request all documentation and other evidence regarding the allegations in the complaint.
- (b) The investigation shall include an opportunity for the complainant, or the complainant's representative, or both, to present the evidence or information leading to evidence to support the allegations of non-compliance with state and federal laws and/or regulations.
- (c) Refusal by the complainant to provide the investigator with documents or other evidence related to the allegations in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation may result in the dismissal of the complaint because of a lack of evidence to support the allegations.
- (d) Refusal by the local educational agency to provide the investigator with access to records and/or other information related to the allegation in the complaint, or to otherwise fail or refuse to cooperate in the investigation or engage in any other obstruction of the investigation may result in a finding based on evidence collected that a violation has occurred and may result in the imposition of a remedy in favor of the complainant.

COMPLAINT ALLEGATIONS

Summary for Allegation No. 1:

The complainant alleges the District failed to comply with ESEA Section 1117(c)(1) (20 U.S.C. § 6320 (c)(1)) when, in 2018 (applicable to the 2018-2019 school year) and in 2019 (applicable to the 2019–2020 school year), it did not calculate the number of children, ages 5 through 17, who are from low-income families and attend ADLA schools.

Summary for Allegation No. 2:

The complainant alleges the District failed to comply with ESEA Section 1117(b)(1) (20 U.S.C. § 6320 (b)(1)) in that the District did not engage in timely and meaningful consultation with the ADLA between August 23, 2017, and August 23, 2019, by failing to:

(a) Consider the views of the Archdiocese during the 2018–2019 school year relative to the scope and methods for determining the number of eligible students resulting in the lack of provision of services to children enrolled in Archdiocese schools.

(b) Consult with the Archdiocese regarding the following: 1) the scope and sequence of the special review process conducted by the LAUSD Office of Inspector General to verify the poverty data used to calculate the number of eligible students used to generate the proportional share allocation for 2018–2019 and to calculate the allocation for 2019–2020, 2) to consult with the Archdiocese during the review process when it was being used to calculate or recalculate the proportional share allocation, and 3) to consult with the Archdiocese before submitting the poverty data into the Consolidated Application.

(c) Consult regarding the changes in the forms used to collect poverty data and the determination of eligibility for the provision of services, in addition to bypassing ADLA administrators in communication with ADLA schools.

(d) Consult relative to requests for information regarding the ADLA's proportional share allocation, expenditures and services provided in the 2018–2019 school year to ADLA schools, which resulted in a subsequent PRA germane to consultation.

(e) Comply with ESEA Section 1117(b)(1)(J) (20 U.S.C. § 6320 (b)(1)(J)) when it unilaterally eliminated the provision of services to the neediest students via the pooling option.

FINDINGS OF FACT

1. In the Fall of 2017, ADLA started regular consultation with LAUSD regarding 2018–2019 Title I equitable services for children attending ADLA schools. These consultations addressed, among other things, pooling and poverty data collection. The poverty data collection was to follow this sequence: a) All ADLA schools had elected to participate by previously submitting an “intent to participate” form; all schools would provide the poverty (comparable) survey or the free and reduced price lunch survey to its students; b) the total number of eligible students in each school (based on the survey results) was to be submitted to LAUSD in summarized form (via spreadsheet) and also via LAUSD's Form A (summary of survey results) and Form B (summary of free and reduced price lunch applications) (to be signed/certified by each school's administration); c) LAUSD would check the eligible student addresses to select those that were in a Title I school attendance area, communicating this to the consortium; d) based on the number of students that met the poverty and residency requirements, a final number of eligible students would be calculated, and used to determine the Title I, Part A proportional share allocation for the ADLA consortium. The deadline for LAUSD to receive this poverty data was changed several times, with the final deadline being set on December 15, 2017. [Exhibit A]

Additionally, throughout the 2017–2018 school year, several discussions arose in regard to the representative role of ADLA, and that the District should not contact, or be contacted by, the ADLA schools directly, but through the ADLA representative. This finding is based on consultation notes and correspondence provided by LAUSD.

2. An undated packet regarding consultation requirements for 2018–2019 provided by LAUSD to private schools contained the following documents: 1) authorization of representative letter on school letterhead (if applicable); 2) 2018–2019 needs assessment and request for services form: a. ELA/Math b. PD c. academic counseling d. PI; 3) School Information Sheet; 4) Additional requirements: a) school calendar 18-19, b) daily school schedule 18-19, c) faculty list 18-19. [Exhibit B]
3. January 25, 2018. A timeline provided by ADLA to CDE in relation to this complaint indicates: Title I Consultation Agenda states that poverty data will be on a new template with 13 columns. Furthermore, schools with missing data may have been providing the proper documentation to an email address of a District employee who had retired in July of 2017. Notes from the consultation by the ADLA indicate that the ADLA was not brought into conversations regarding issues with the Consolidated Application and how private school data is collected for months. LAUSD informed that the Consolidated Application System does not recognize pooling unless students from the schools are participating in services of some kind. Specifically, LAUSD informed that the predecessor at LAUSD had input incorrect information regarding private schools that had historically declined services, but were part of a "pool," in order to move them through the system. No answer had been provided by the U.S. Department of Education at this time. LAUSD further noted that ADLA was not brought into the conversation as they believed it was simply a "tech" issue and should not consult the private schools. Nancy Portillo [ADLA representative] further requested information regarding how many schools had submitted Form A and Form B for the following year, and requested a copy of the budget and expenses.

Of note: these issues with pooling and the Consolidated Application were the subject of a direct state complaint (case number 2018-0226TM_2018-046CCPM) by the Builders of Jewish Education (BJE), which was subsequently appealed to, and addressed by, the United States Department of Education (ED) in its January 25, 2019, decision. Therefore, they will not be further addressed in this report.

4. March 8-12, 2018. LAUSD directly provided Torah Consortium, BJE consortium and ADLA consortium schools, an intent to participate form for 2018–2019 SY with two check boxes (opt in/out), that the District stated it needed to keep for all schools in the consortium; the due date was April 9, 2018. [Exhibit C]. The individual schools in ADLA submitted to LAUSD the intent-to-participate forms at various times, before or after the deadline. Emails between the ADLA and LAUSD pertaining to the intent to participate forms were exchanged regularly into early May 2018.

5. March 26, 2018. Consultation agenda from LAUSD included the following: intent to participate deadline April 9, 2018; boundaries and new schools in ADLA; ADLA indicated that poverty survey Form B, federal meal program, that going to 13 columns was an issue (the formatting currently had 7 columns). This October submission would be difficult using the new format for 2019–2020 but ADLA would be ready to submit.
6. May 15, 2018. Correspondence from ADLA to LAUSD included the needs assessment for the 2018–2019 school year. ADLA informed LAUSD that early May was the first time they were made aware to submit needs assessment for each of their schools, as historically they only submitted one needs assessment form for Title I services. ADLA recapped its understanding of the process and the strategy to accomplish the gathering of needs assessment forms from all schools, with the understanding that any school that does not supply the forms will not be penalized by being removed from the consortium pool and/or will be unable to receive services.
7. June 6, 2018. A timeline provided by ADLA to CDE indicates: “The Consultation Agendas for each of the schools state the poverty data would be collected annually and that the deadline for the 2019–2020 collection is October 31, 2018. The Archdiocese will collect and collate data. The Consultation Agendas state, "Archdiocese feels the switch to funding schools independently would not benefit the students in the program. Will provide more input." The Consultation notes provide that use of free and reduced meal application data and Comparable Survey may be used as methods of sources of data that will be used to determine the number of private school children from low-income families residing in participating public school attendance areas.

Furthermore, a consultation agenda from All Saints School provided by LAUSD [Exhibit D] indicates: “Due to all the issues that have arisen this year surrounding pooling, consortiums, and providing services to only the neediest students, the District is considering funding all schools independently as opposed to pooling funds.” Title I services include math, ELA; District determines proportional share; method and sources: free and reduced meal application data and comparable surveys; deadline for 2019–2020 data is 10-31-18; ADLA will collect and collate data; ADLA does not believe elimination of pooling (funding independent schools only) will benefit students. ADLA will provide more input.”

8. June 11, 2018. Correspondence from LAUSD to ADLA elucidates that intent to participate forms and poverty data for 2018–2019 have been received by LAUSD but that the needs assessment forms have not been received from all schools. Exchanges on this topic continue until mid-June 2018.
9. June 14, 2018. A timeline provided by ADLA to CDE indicates: “Title I Consultation phone call notes from the ADLA, informing that 105 schools had submitted poverty data, but that there were at least twenty-three schools that had not.” When CDE inquired of ADLA in relation to this complaint how many of its schools had submitted intent to participate forms for the for 2018–2019 and

2019–2020 SY, the ADLA responded “Please see attached list identified as Attachment B. To our knowledge, the list changed over time without notice to the ADLA due to the communication from LAUSD not being consistent. LAUSD would have more complete records due to continuous changes in services.”

10. June 18, 2018. A timeline provided by ADLA to CDE mentions correspondence from LAUSD by indicating: “LAUSD confirmed that there were twenty-three remaining schools that had not filed poverty data and that they need to get a Needs Assessment. The ADLA specifically noted that they confirmed with LAUSD that LAUSD would add language about missing needs assessments or anything outstanding would not be punitive. Furthermore, the ADLA noted they would have liked “more time and a timelier process as this was [the] first year collecting Needs and Intent from all schools.” LAUSD to work on the documents to give to ADLA to distribute.”

11. June 18, 2018, correspondence from ADLA to LAUSD indicates “Add this to each consultation agenda for each school: To end pooling requires consultation. It would not be easy to unwind. If schools were funded independently, we would have grave concerns as to how to handle each of our individual requests. It would not benefit students to attend to individually and independently support our schools.”

Of note: The ADLA continued to object to the elimination of pooling on a regular basis throughout the year. This finding is based on correspondence provided by LAUSD and a timeline provided by ADLA.

12. June 25, 2018. Correspondence from ADLA to LAUSD provided by LAUSD [Exhibit E] reads:

On behalf of the Archdiocese of Los Angeles, please include this response for each of our schools for the 2018-2019 school year regarding the Title I part A private schools program 2018-2019 LEA Affirmation of Consultation with Private School Officials: Add this statement to each individual LEA affirmation of consultation: “The ADLA supports a process for procedures and protocols for the purposes of appropriately using Title I funding for students. What has been and continues to be challenging is being provided deadlines from the district and not having ample time in place for such procedures and protocols that are being put in place by LAUSD. Furthermore, some of these are new, again, adding to the challenge. We do not believe that timely and meaningful consultation has occurred or that the program is equitable with respect to eligible private school children.

13. July 2, 2018. Correspondence from LAUSD to ADLA, provided by LAUSD, indicates that income eligibility guidelines have been updated and provides an updated Form A for 2019–2020 with due date of October 31, and comparable survey for 2019–2020 [Exhibit F].

14. July 3, 2018. Correspondence from LAUSD to ADLA provided by LAUSD clarified that Form A for 2019–20 and Family Income Eligibility Survey (FIES) for 2019–2020 and the student addresses spreadsheet is supposed to be sent to ADLA; the Excel data spreadsheet and the Form A and Form B is also to be sent to ADLA; included a clarification that participation in only 1 of the 4 income determination methods was enough to determine eligibility (income, CalWORKs, CalFresh, and Kin-GAP); LAUSD is working with ADLA to revise the Title I Funding Eligibility Form for 2019–2020.
15. July 9, 2018. Correspondence from LAUSD Office of Inspector General (OIG) to ADLA, provided by LAUSD, indicated that OIG informed Our Lady of Loretto School of an upcoming review of Title I funding eligibility. The objectives would be discussed at an entrance conference. ADLA confirmed to CDE that 13 additional schools subsequently received similar notices that they would be reviewed by the OIG.
16. July 13, 2018. Correspondence from LAUSD to ADLA, provided by ADLA, provided the Form B template for the funding of the 2019–2020 school year [Exhibit G].
17. August 17, 2018. A timeline provided by LAUSD indicated that Title I services for the 2018–2019 school year began on August 17.
18. August 23, 2018. Consultation agenda, provided by LAUSD, indicates: “ADLA requested a list of assignments and services; district requests an official letter of represented schools from ADLA; LAUSD indicated “spring packet” includes same documents as last year: intent to participate, needs assessment, and ESS. ADLA asks when will ADLA receive a letter of allocation. LAUSD indicated “no letter of allocation this year; you will receive a letter regarding the proportionate share for private schools.”
19. September 11, 2018. Correspondence from LAUSD OIG to ADLA, provided by LAUSD, informed ADLA that OIG will perform a review of selected school Title I funding eligibility. The objectives of the review will be discussed at the entrance conference.
20. On September 20, 2018, an email from ADLA to LAUSD confirmed receipt of the September 11, 2018, letter; ADLA requested to set up a meeting to better understand the audit, and to give the OIG an understanding of the ADLA.
21. September 25, 2018. OIG review entrance conference notes (provided by LAUSD) indicate the following: ADLA was informed that the special review was requested by the LAUSD Title I office, and its objective was to determine Title I funding eligibility for 10 ADLA schools by reviewing Form As and Form Bs completed in the 2017–2018 school year for funding in the 2018–2019 school year. Of the 10 schools selected for review, 8 would use Form A to report comparable surveys and 2 would use Form B to report free and reduced-price meal applications. The 10 selected schools had reported 1,572 eligible students.

OIG will need to review the 2017–2018 comparable surveys, 2017–2018 applications for free and reduced meals, and proof of school enrollment. The OIG will issue a report to LAUSD Title I office. ADLA asked if they could begin the reviews after October 30, 2018, because the ADLA was in the process of collecting poverty data for the 2019–2020 school year. OIG indicated that it disagreed because it had a deadline to complete the audit.

22. In early October 2018, various ADLA schools, or the ADLA representative, provided to LAUSD Form As, Form Bs, and master data files for individual schools applicable to Title I funding in 2019–2020. Email exchanges pertaining to this data continued until late October. This finding of fact is based on emails provided by both parties.
23. About October 5, 2018, a series of email exchanges between LAUSD’s OIG and the ADLA discussed spreadsheets, and possible audit results for individual schools. These exchanges continued until January 2019. This finding of fact is based on correspondence provided by both parties.
24. October 17, 2018, consultation agendas (provided by ADLA and LAUSD) indicated the following: letter with represented schools was non-deliverable at LAUSD and was returned to ADLA. Pertaining to the audits: Salesian High School collected E-rate surveys, but historically used financial information from scholarships to complete surveys. ADLA inquired about the history of proportionality: was the District using this method in the past? Will this be a possibility in the future? Are there other methods such as CEF [scholarship applications]? LAUSD responded that, historically, ADLA was using surveys and meal applications. LAUSD will follow up. Both consultation agendas showed that ADLA schools were confused about the language in form A. LAUSD agreed to make changes to Form A. ADLA asked that LAUSD provide the “spring packet” as soon as possible and LAUSD agreed.
25. October 19, 2018. A timeline provided by ADLA refers to correspondence from ADLA to CDE that included a list of schools participating in the consortium pool. In response to a question posed by CDE in relation to this complaint, the ADLA confirmed that the last year that the consortium received services provided through pooled Title I funds was 2018–2019.
26. October 31, 2018. Correspondence from ADLA to LAUSD, provided by LAUSD, shows that, on the day of the deadline, ADLA provided LAUSD with the poverty data relative to funding for 2019–2020 as follows: a) Form A (13 column format) for 51 schools and 13 column eligibility spreadsheet [Form A eligibility master data file]; b) 17 column spreadsheet for form B’s; c) 53 pdf copies of form As (2 schools submitted with 0 eligibility, thus only 51 are in the spreadsheet); d) 60 form Bs. Total: 113 Form A’s + Form B’s eligibility forms (for 113 schools). Note: The surveys themselves were not submitted to LAUSD, as LAUSD had requested that poverty data be given to the District in summarized form.

27. In early November 2018, the ADLA and LAUSD corresponded in relation to the 2019–2020 poverty data submitted by October 31, discussing whether data needed to be corrected or was missing. This finding of fact is based on documents provided by LAUSD.
28. A November 5, 2018, email from ADLA to LAUSD OIG, provided by LAUSD, indicated that ADLA was having difficulties conducting the review/audit at the same time they were collecting poverty data for 2019–2020, in addition to having to provide private school affidavits to CDE by October 15. ADLA asked for an extension.
29. November 5, 6, and 9, 2018, emails from LAUSD OIG to ADLA, provided by LAUSD, indicate that the OIG needed specific information from ADLA by November 30 to make the deadline, which cannot be extended.
30. November 19, 2018, consultation agenda, provided by LAUSD, addressed the following: District commending ADLA for timely collection and submission of 2019–2020 poverty data; discussion on the use of UCP corrective action fund usage for services requested: Professional Development (PD), counseling, parent workshops. “Spring package”: want to discuss as soon as possible so principals can get it; they can send poverty surveys with packet for the students. ADLA inquired whether the District has a response to the issue of proportionality and will ADLA get that in writing? LAUSD answered: this is for 20-21, we just collected for 2019–2020; that should be a topic of consultation for next spring. Audits: increased number to 14 schools, ADLA needs clarification: can two schools be federal meal program or does it have to be surveys? ADLA asked, since they had 10 schools with form As and 2 schools with form Bs, can the newly added two schools be form B? LAUSD provided no response but indicated: we are communicating with auditors regarding audit concerns with Salesian High School re: scholarship financial aid forms.

Consultation agenda for the same meeting, provided by ADLA, indicated that ADLA requested that proportionality be used in 2020–2021, and LAUSD inquired as to why was this request being made so early. ADLA responded: “because planning needs to begin now for new systems and survey data still needs to be collected by October 2019.”

31. A November 28, 2018, email from LAUSD OIG to ADLA, provided by LAUSD, informed ADLA that the OIG audit will be adding two additional schools (for a total of 4 additional schools) to the original 10 school review. This review will not include any schools using Form B.
32. A December 11, 2018, email from LAUSD OIG to ADLA, provided by LAUSD, referenced a summary of the OIG’s review of the 14 schools for Title I part A funding eligibility for 2018–2019.
33. December 14, 2018, audit/review exit meeting between LAUSD OIG and ADLA discussed audit findings for 14 schools. The OIG office explained that it will be

reporting their findings to the LAUSD Title I office and may increase the sample size based on number of exceptions found in their review (791 of the 1668 students were found to be not eligible). In a subsequent phone call on December 19, 2018, between the ADLA and OIG, ADLA provided additional information related to Form Bs that needed to be included in the review. At that time, the OIG informed ADLA that the LAUSD Title I office asked that the review be expanded to an additional 10 schools. This finding of fact is based on documentation provided by the District.

34. December 17, 2018, consultation notes (provided by ADLA) and consultation agenda (provided by LAUSD) addressed the following: ADLA request for a discussion on proportionality for 2020–2021; ongoing discussions regarding UCP corrective action fund use; LAUSD informed ADLA that the needs assessment forms will be revised; schools will need to prioritize their needs.
35. A December 26, 2018, email from LAUSD's OIG to ADLA, provided by the District, indicated that the OIG had drafted its report for Title I eligibility, but still needed summary statements from the ADLA school principals regarding survey collection processes.
36. A January 1, 2019, email from ADLA to LAUSD, provided by LAUSD, included summary statements for the schools that were either missing a survey or had an incomplete survey for the OIG reviews. The ADLA reported that, after consulting with their schools, they determined the following: "1. Our schools have a small community where faculty and staff know individual family. Therefore, when surveys were submitted, they were marked off by the person collecting them. Thus, being able to check off who was submitting the survey. 2. Surveys were collected as a part of the registration package and checked off when submitted by each family. This made each survey easily identifiable."
37. January 3, 2019, correspondence from LAUSD OIG to ADLA, provided by the District, advised that select ADLA schools will be reviewed.
38. January 4, 2019. Correspondence from LAUSD OIG to ADLA, provided by the District, informed that the audit will increase by 10 more schools, for a total of 24.
39. A January 18, 2019, email from ADLA to LAUSD Title I office and the OIG, provided by the District, discussed multiple attempts by ADLA to obtain details about the audits from OIG; many questions have not been satisfactorily answered. OIG replied on January 25, 2019, indicating that OIG will be happy to answer ADLA's questions. Audit completion deadline is February 22, and OIG would like for the reviews to begin soon.
40. In a January 25, 2019, email from ADLA to both the LAUSD Title I office and the OIG (provided by LAUSD), ADLA inquired about how much was generated in 2017–2018 and 2018–2019 by each school, how the amount was determined, the administrative costs that were reserved, the parent involvement (PI) totals,

and professional development amounts. ADLA also asked that, for the upcoming audit of 10 additional schools, ADLA's questions be answered in writing.

On January 29, 2019, the LAUSD Title I office replied to ADLA's three questions (enumerated above), stating that: 1) the amount is determined based upon the percentage that private school students whose families have been verified as low income (based upon the method determined during the consultation process) and who live in the attendance areas of District's Title I schools, represent in comparison to the number of low income students attending District schools; 2) providing information about the proportional share by consortium is not required under ESEA; 3) After the con-App is submitted, the District will share the set-aside for all private schools with the consortium.

In a January 29, 2019, email from LAUSD OIG to ADLA, the OIG also responded to ADLA's three questions (enumerated above) as follows: 1) Feb 22 is the deadline for completion of audits; 2) Provided a rationale why it is a review and not an audit (an audit will need additional procedures such as consideration of fraud, and testing/identification of weaknesses in internal controls whereas a review is conducted according to government auditing standards for non-audit services; and is carried on 100% of the reported eligible students as opposed to a sample); 3) First review conducted was of 14 ADLA schools, and found only 42% were compliant (report dated January 28, 2019); hence a second review will involve 10 additional schools; 4) LAUSD would like to do more reviews, but due to constraints in budget/resources, they will only be adding the 10 schools; 5) ADLA receives over 10 million dollars per year, money that can otherwise be allocated to LAUSD's schools; therefore, LAUSD has the responsibility to ensure that the monies that are provided are substantially supported; 6) The principal auditor is charge of the day-to-day audit operations but they discuss issues with the OIG office and the Title I office; 7) The review is not funded with Title I funds.

41. A January 28, 2019, audit/review report (marked as received Feb 4, 2019) entitled "Special Review of ADLA Nonpublic Schools Title I Funding Eligibility" [Exhibit H] addressed to the LAUSD Title I office indicates the following: 1) Form As and form Bs for 14 ADLA schools were reviewed for 2018–2019 Title I funding eligibility; 2) 109 ADLA schools reported 12,736 eligible students in all schools, which includes 2,094 eligible students in the 14 schools selected for review; 3) Of the 14 schools reviewed, 1,763 students from 12 schools reflected in form-As; 331 students from 2 schools reflected in form Bs; 4) Of the 14 schools reviewed, the ADLA reported 2,094 eligible students but review found that the schools maintained acceptable eligibility documentation for 877 students (42%); 5) Methodology for the review was to: a) Agree date of birth, and address to surveys or free and reduced lunch applications; b) Review surveys or free and reduced price lunch applications to confirm that income eligibility was supported; c) Recalculate students' age as to October 4, 2017; d) Confirm that students' addresses are within boundaries of a Title I school e) Verify student enrollment for the 2017-18 school year; 6) Eligibility requirements: a) Low income b) Between the ages of 5 and 17; c) Reside within a District's Title I school attendance area that receives title I funding; d) Those submitting form A are

required to collect poverty data by conducting a family survey using the FSEP Family Survey Form and to maintain the survey forms on file; e) Schools opting to use participation in the national school lunch program as the Title I funding eligible student count should submit form B and maintain on file the students' Application for Free and Reduced-Price Meal; 7) Ineligibility reasons: surveys/applications that could not be located; missing data in surveys/applications (grade/address/enrollment verification); duplication; one or more eligibility criteria not met. Please note that grade was an ineligibility factor but was not listed as one of the eligibility criteria.

42. January 31, 2019, OIG entrance conference notes, provided by LAUSD, indicated that the scope of the OIG reviews was to determine whether the 2017–2018 Title I funding form A for 2018–2019 was supported by surveys for the 10 additional schools. It was labeled a "Special Review," not an audit. OIG directed ADLA to request the audit reports from the LAUSD's Title I office.
43. A February 5, 2019, email from LAUSD OIG to ADLA, provided by LAUSD, referenced data from two ADLA schools and provided preliminary audit results. Similar emails continued until late-February in relation to other schools.
44. A February 11, 2019, email from ADLA to LAUSD OIG, provided by LAUSD, informed the District that the ADLA General Counsel may stop in on auditors to better understand the process.
45. February 13, 2019, audit/review exit conference notes, provided by LAUSD, indicated that the General Counsel from ADLA was present. Audit/review results were as follows: 9 schools used Form A, 1 school used Form B (incorrectly submitted Form A); 316 out of 795 students were found eligible. ADLA asked if the Title I office would consider going back to proportionality. OIG referred the question back to the LAUSD Title I office.
46. February 14, 2019. Consultation notes for "February 2019," and a timeline of events provided by ADLA, indicate that ADLA requested information to address its concern that Catapult [service provider/vendor] counseling services were terminated in mid-February and asked LAUSD to continue these services using Title I funding. LAUSD responded that the work order was limited to 14 weeks and that LAUSD would not be extending the work order.
47. February 15, 2019, correspondence from ADLA to LAUSD (provided by both parties) showed that ADLA expressed concerns as follows: 1) LAUSD and the OIG may have a conflict of interest or independent goal; 2) in a January 29 email [Exhibit I] , LAUSD OIG stated "the archdiocese of LA receives over 10 million dollars of Title I funds from the LAUSD every year-- money that could otherwise be allocated to LAUSD schools"... thus, LAUSD has a direct financial incentive to disprove eligibility and allow the reallocation of the funds back to LAUSD schools; 3) LAUSD must ensure that ADLA is given an opportunity to respond to audit findings; and 4) questions in ADLA's January 25th email inquiry re: budgets and expenditures remain unanswered; therefore, ADLA requests again for LAUSD to

provide the data for the current school year, how much [Title I allocation] was generated, how much [Title I allocation] has been spent and how much of it remains. ADLA indicated that consultation on the use of funds as required by ESEA would not be meaningful without this transparency.

48. February 19, 2019. A timeline provided by ADLA points to correspondence from LAUSD to administrators of ADLA schools indicating the following: The purpose of the communication is to discuss services for 2018–2019. The District’s goal is to obtain data as accurate as possible. Comparable surveys and lunch applications were agreed upon in consultation. Since the OIG audit was unable to validate the whole number of eligible students claimed by ADLA, LAUSD will use only the verified numbers from the OIG audit to generate the ADLA set aside for the 2018–2019 school year.
49. February 21, 2019. Correspondence by ADLA to LAUSD, and a timeline provided by ADLA, indicates that LAUSD stated that the funds for providing counseling services have not been cut, and that all schools who requested Catapult counseling received 84 hours for 14 weeks. Additionally, LAUSD indicated that out of 28 schools receiving services, 19 have 7 or fewer students, and that these low numbers do not reflect a true need. Since this is a supplementary service, the District hopes that the ADLA has other resources that the schools can continue to use to support these students.
50. February 25, 2019. Correspondence from ADLA to LAUSD, provided by ADLA, indicated that the consortium and the District had agreed that communication would flow through Nancy Portillo as the consortium director. However, the District bypassed the consortium and provided the information regarding the audit results and funding decisions for 2018–2019 directly to the ADLA schools. In addition, the correspondence from LAUSD to the schools mentioned the audit results; however, the audit report was not provided either to ADLA or its schools.
51. February 25, 2019. A timeline provided by ADLA, and correspondence from LAUSD to ADLA, provided by LAUSD, supplies an additional response to ADLA’s inquiry regarding its request for financial information, as follows: "to be clear, consultation topics under ESEA do not speak about the "identification of funds, allocation for services, expenditures to date, funds remaining." ... Consultation involves discussion of services, not funds... Accordingly, under the above authority, the LEA is not required to share the budget ledger, including the funds expended to date, and/or the funds remaining along with the expiration date."
52. February 28, 2019, consultation agenda, provided by both parties, indicated that work on eligible student spreadsheets for 2019–2020 had begun; teachers were trained in February 2019; ADLA brought up proportionality as a method for determining the proportional share and it requested a formalized response on the topic; LAUSD replied: “this is a topic of consultation for 20–21.”
53. March 11, 2019, audit/review report (marked as received March 22, 2019) entitled “Special Review of ADLA Nonpublic Schools Title I Funding Eligibility”

[Exhibit J] addressed to the LAUSD Title I office indicates the following: 1) Form As and form Bs for 10 ADLA schools were reviewed for 2018–19 Title I funding eligibility; 2) 109 ADLA schools reported 12,736 eligible students in all schools, which includes 799 eligible students in the 10 schools selected for review; 3) of the 10 schools reviewed, 663 students from 9 schools reflected in form As; 136 students from 1 school reflected in form Bs; 4) of the 10 schools reviewed, the ADLA reported 799 eligible students but the review found that the schools maintained acceptable eligibility documentation for 316 students (40%); 5) methodology for the review was to: a) agree date of birth, and address to surveys or free and reduced lunch applications; b) review surveys or free and reduced-price lunch applications to confirm that income eligibility was supported; c) recalculate students' age as to October 4, 2017; d) confirm that students' addresses are within boundaries of a Title I school; e) verify student enrollment for the 2017–18 school year; 6) Eligibility requirements: a) low income; b) between the ages of 5 and 17; c) reside within a District's Title I school attendance area that receives Title I funding; d) those submitting form As are required to collect poverty data by conducting a family survey using the FSEP Family Survey Form and to maintain the survey forms on file; e) schools opting to use participation in the national school lunch program as the Title I funding eligible student count should submit form B and maintain on file the students' Application for Free and Reduced-Price Meal; 7) Ineligibility reasons: surveys/applications that could not be located; missing data in surveys/applications (grade/address/enrollment verification).

In relation to the internal audit report above, in its August 14, 2019 IR to the original complaint, LAUSD summarized the audit results above by providing slightly different figures: The schools opting to utilize the Family Income Eligibility Surveys, reported a combined 672 eligible students. The audit found, of these 672 eligible students: 1) The eligibility of 280 students (42%) was adequately supported; 2) The eligibility of 136 students was not adequately supported—the Family Income Eligibility Survey Forms could not be located for 121 students, and the Family Income Eligibility Survey Forms were incomplete (the students' grades and/or addresses were missing) for 15 students; 3) 256 students were ineligible. Of note, the basis of the ineligibility of these 256 students was not specified. LAUSD did not indicate why the missing student grades/addresses were not obtained during the course of the audit.

54. March 18, 2019. Correspondence from LAUSD to private school administrators, provided by LAUSD, informed the schools that there are now additional requirements for the 2019–2020 school year regarding the following: intent to participate form; needs assessments; school information sheets; authorization of representative; agreement to authorize immediate access to school sites in order for LAUSD to monitor/audit the programs; agreement to submit documents timely; agreement that failure to meet deadline means denial of services.
55. April 3, 2019, consultation agenda [Exhibit K] provided by both parties, discussed the following: consultation team for this meeting also includes Karen Ryback from LAUSD Title I office and CDE ombudsman Sylvia Hanna on the conference call.

ADLA questioned why the District made changes to the “spring package” without consultation [see finding of fact FF # 56 for “spring package” contents] and indicated that the second LAUSD-OIG audit report was not received, requesting a copy. LAUSD indicated that LAUSD’s Title I office received it on March 22 from the OIG; if the ADLA wants to see it, it should make a Public Records Act (PRA) request. ADLA wanted to discuss the review/audit process, inquiring if there was a way to appeal. ADLA claimed that there was no consultation regarding decreased numbers of eligible students and decreased allocation. ADLA was just informed that “a bunch of students were kicked out by auditors using *School Finder* [italics ours] even though data already cleared by ODA [Office of Data and Accountability]”. LAUSD affirmed that the revised numbers for eligible students were entered into the CDE’s February Consolidated Application (ConApp).

56. An April 4, 2019, email from LAUSD to ADLA, provided by LAUSD, in relation to “the spring package” included a zip file containing the following forms: intent to participate, school information sheet, and needs assessment. It also stated that only schools that submitted poverty data received these forms sent by LAUSD to complete for 2019–2020. All schools in and surrounding LAUSD received the candidate letters.
57. An April 7, 2019, email from LAUSD to ADLA, provided by LAUSD, granted access to the LAUSD-OIG audit reports for the second group of ADLA schools [Exhibit L].
58. April 8, 2019, consultation agenda [Exhibit M] provided by LAUSD discussed the following: consultation team for this meeting also includes counsels for both parties; ADLA expressed lack of information, confusion and concerns with the consultation process and the OIG audit. For example, Verbum Dei High School had students that were not counted; Bishop Mora Salesian High School claimed 225 eligible students but only 16 were found eligible by the audit; ADLA believed that 157 students were disqualified because they probably used Catholic Education Foundation (CEF) financial data. ADLA wanted to give the auditors the CEF documents to support family income, which allegedly had been used in the past. ADLA asked if regulations allowed the use of tuition scholarship data, and if so, would it be a problem for LAUSD to accept it. LAUSD replied that a discussion was possible. ADLA wanted to provide financial information that was supposedly missing from the audit and led to the elimination of eligible students. LAUSD indicated to ADLA that there was a loss of “a conservative estimate of \$800,000 [in funding for educational services to ADLA schools]”. ADLA raised concerns about not being informed that the funds would decrease, as it this would have led to different decisions prioritizing services. ADLA inquired about pooling for 2019–20. When CDE inquired of ADLA, in relation to this complaint “Has LAUSD ever explained the supposed \$ 800,000 shortfall originated and how it was calculated?” the ADLA responded “No. LAUSD has never explained the \$800,000 ‘shortfall.’”

59. April 11, 2019, private school orientation meeting sign-in sheets, provided by LAUSD, show 14 attendees including ADLA, and LAUSD staff, as well as representatives from 14 schools, 2 of which belonged to ADLA.
60. April 30, 2019. Correspondence from ADLA to LAUSD, provided by LAUSD, expressed concern that timely and meaningful consultation has not occurred for 2019–2020 and that the agreements reached in the Fall were unilaterally modified. LAUSD’s direct communications with the schools and not ADLA’s representative have caused much confusion and inefficiency. The ADLA was not consulted with language that was added to required forms. ADLA recommended the use of proportionality, as it would streamline the process to determine the number of eligible Title I students and would save both parties time and resources. It would also eliminate the need to collect and maintain forms and paperwork, and there would be no need for audits of records. ADLA also stated that it had been pooling for over 20 years, and this practice, both in the private, as well as in the public schools, allowed for the allocation of services to be directed towards the educationally neediest students regardless of which school they attended. Eliminating pooling would deprive the neediest students of much-needed services. ADLA proposed the use of a single intent-to-participate form indicating which ADLA schools expressed an intent to participate for that year, instead of one form per school. ADLA requested timely and meaningful consultation regarding the past audits; in the future, ADLA would like to see more transparency regarding schools being chosen for audits, the audit process, forms to be reviewed, and the ability to provide alternative documentation to support poverty status if students are found to be ineligible.
61. May 2, 2019. Correspondence from ADLA’s counsel to LAUSD’s counsel, provided by LAUSD, discussed the incorrect disqualification of 111 eligible students at Verbum Dei High School based on Title I school attendance area of a charter school. In its IR (dated August 14, 2019) to the original complaint, LAUSD found itself out of compliance in relation to the above-mentioned student counts, and issued corrective actions.

In its IR, LAUSD also documented an interview with LAUSD, Private Schools Program Staff in which they were asked: *“What training or support did LAUSD provide to the Archdiocese in training principals or schools to complete the forms? Is there a record of an agreement between LAUSD and the Archdiocese to make changes to the forms and to send a packet with the changes to Nancy Portillo, the Archdiocese’s consortium representative? If so, please provide the relevant documentation.”* LAUSD staff responded: “Generally, the District only collaborates and consults with the designated representative for the consortium and not directly with the principals. The schools have delegated their authority to consult with the District to the Archdiocese Consortium Director. The District does not have the opportunity to speak directly with the school site administrators much less provide training on the District’s processes and procedures. The District communicates indirectly with the administrators through the assigned Title I personnel at the school site (emphasis added). The District does share the forms with the assigned personnel and provide training on how

to assist their principals as they complete the District's forms. The District's contact information is on all the forms should the administrators need further clarification or assistance."

62. May 6, 2019. Consultation agenda [Exhibit N], provided by LAUSD, addressed the following: ADLA/LAUSD legal counsel were present in the consultation meeting, as well as representatives from LAUSD OIG; ADLA pointed out many changes in processes and protocols and saw them as an administrative barrier. LAUSD indicated that services have continued after the audit; and audits or review of documents are not a subject of consultation. LAUSD's counsel stated that consultation topics are very specific. ADLA expressed concern that the audit was not a dialogue about really capturing accurate data. ADLA claimed that LAUSD's Office of Data and Accountability had called ADLA's data "dirty data." ADLA argued that if the District had been more communicative regarding the audit process, the ADLA would have been able to provide other documents to support student eligibility, such as the scholarship data that was used in the past. LAUSD indicated that there was no record that ADLA used CEF data for the last five years, or discussed its use in consultation. In addition, LAUSD argued that the provision of other data would not have impacted the numbers of eligible students because the audit methodology was set, and the audits just looked for the evidence that was agreed upon in consultation (comparable surveys and free/reduced price lunch applications). ADLA inquired if proportionality could be used, as it would be equally as or more accurate than surveys, and surveys undercount at some of the ADLA schools. LAUSD indicated that discussion surrounding the data captured from CEF and free/reduced price meal applications was needed to support the validity of proportionality in accurately identifying poverty levels for private school students. LAUSD clarified that this would not constitute agreement with their proposal to use scholarship data. ADLA reminded LAUSD that Cheder Menachem school [formerly part of the Torah consortium and currently in the BJE consortium] used E-Rate surveys.
63. May 17, 2019, was the submission deadline for an undated spring package regarding consultation requirements for 2019–2020 provided by LAUSD to private schools. The package contained the following documents: "1. Signed and completed Intent to Participate Letter 2. Authorization of Representative 3. 2019–2020 Needs assessment a). ELA/Math b). PD [Professional Development] c). Academic counseling (d). PI [Parent Involvement] (e). Other requested Title I services 4. Eligible Student Spreadsheet 5. School Information Sheet 6. School calendar, 7. Daily school schedule, 8. Faculty List, 9. Fall Enrollment total."
64. A May 9, 2019, email from LAUSD to ADLA, provided by LAUSD, presented a revised Intent to Participate form combining multiple federal programs (Title I, A and C, IIA, III A and B).
65. In a May 13, 2019, email from ADLA's counsel to LAUSD's counsel [Exhibit O], provided by LAUSD, ADLA counsel recaps the District's proposal "LAUSD would like to review the actual Catholic Education Fund (CEF) forms for all 103 Archdiocese schools rather than reviewing a summary prepared by the

Archdiocese for the 24 schools that were reviewed earlier this year.” LAUSD had indicated that it is primarily interested in verifying address, family income, grade level and date of birth on the CEF forms. After reviewing the CEF forms and the accompanying spreadsheets, the District would consider the use of proportionality in future years. LAUSD’s counsel responded indicating that the summary of their proposal was accurate and requested the documents no later than June 30, 2019.

66. May 17, 2019, email from ADLA’s counsel to LAUSD’s counsel, provided by LAUSD, stated, “The Archdiocese is reviewing the CEF forms and is taking your offer to resolve the issues surrounding the audit into consideration. The Archdiocese is hoping to complete its review of the CEF forms and provide you with a more detailed response to your offer in the near future.”
67. In a May 17, 2019, email from ADLA to LAUSD, provided by LAUSD, ADLA requested a deadline extension to submit the intent-to-participate forms for 2019–2020 SY, from May 17 to June 11. On May 20, 2019, LAUSD responded by indicating that the request to move the due date was approved to June 3, 2019.
68. May 21, 2019, emails between LAUSD and ADLA, provided by LAUSD, discussed the following: the District indicated that the Archdiocese had issued a directive to its schools not to sign any documents that needed to be submitted to the District. ADLA responded that the District had caused confusion with the schools as a result of new documentation, various timelines, new practices, and due dates; these changes that may potentially remove a school from being eligible to receive services is not timely and meaningful consultation and requested the District’s reasoning for the sudden changes. The forms to collect data for 2019–2020 were supposed to be discussed in consultation and in collaboration with the consortium director. LAUSD indicated that “the Archdiocese was to inform the District of the response from CDE on the use of corrective action funds to ameliorate the current deficit in the District’s Title I budget due to the review conducted by the OIG on the accuracy of the eligible low-income student counts.”
69. In a May 24, 2019, email from ADLA’s counsel to LAUSD’s counsel, provided by LAUSD, ADLA advises that compiling the data has been more complex than expected, as the CEF is a different organization than the ADLA. The ADLA will provide the District with a response to its offer as soon as it is able to compile the data.
70. In a May 29, 2019, email from LAUSD to ADLA, provided by the District, LAUSD informed that it will accept the use of a single attestation form listing all schools, signed by the Archdiocese. The District cannot agree to a further extension to provide the intent-to-participate forms and other documents. The District has requested that CDE’s ombudsman, and CDE’s Title I office, provide on-site technical assistance during the various consultation meetings with the private schools on June 13 and 14.

71. In a May 31, 2019, email from LAUSD's counsel to ADLA's counsel, provided by LAUSD, the District clarifies that the agreement was for the redacted CEF forms themselves to be provided to LAUSD by June 3rd, and that the scholarship data should not be "compiled" otherwise LAUSD will have no choice but to use the data validated by the OIG.
72. June 3-6, 2019, emails between ADLA and LAUSD, provided by LAUSD, contained consultations regarding ESS [eligible student spreadsheet] and attestation forms [a certification of the ESS forms] due on June 24. ADLA indicated that it had requested extensions multiple times, given that "this is a new and different process, as historically, the District has collected documents and reviewed documents; this includes last year. Although the ADLA collected two documents, there was a collective effort during a multi-day process to review and follow up with missing items. It was truly a collaborative effort that ensured services for students, as opposed to the experience which is currently occurring." The District responded:

While we understand that this is a busy time for the Archdiocese schools, we remind you that the documents requested from the Archdiocese schools are not new nor is it a new process. For the last two years, the District has asked for these same documents – the intent to participate, the Needs Assessment, and the School Information sheet.

Additionally, LAUSD has its own internal deadline of June 3, 2019, to ensure a timely start to services. Past the deadline, LAUSD will not accept anything further. The District also informed that it cannot review the forms, as it does not have the time or resources; this task is up to the ADLA. ADLA argued that in the past, the forms and their contents were agreed upon in consultation and that has not occurred this time around. ADLA inquired why the June 3 deadline could not be moved if the consultation meeting was not scheduled until June 14.

73. In its August 14, 2019, IR to the original complaint, in response to the question "*What were the changes to the forms agreed upon between LAUSD and the Archdiocese? Please provide evidence, if applicable, to document the agreement between LAUSD and the Archdiocese,*" the LAUSD's private schools program coordinator answered: "... However, there were no changes discussed nor agreed upon in consultation for the Needs Assessment and Intent to Participate forms prior to the May 6, 2019 consultation meeting. The language on the Intent to Participate only became an issue after the OIG conducted a review of the poverty data submitted by the Archdiocese consortium schools and found numerous instances of over reporting of poverty data. The new Intent to Participate form contained the following language: "To provide immediate access to the school site for LAUSD central staff to audit and monitor the program." The Archdiocese objected to this "immediate access" particularly with regards to an audit. They did not want to allow the auditors access to their school sites but rather go through the Archdiocese. During the May 6, 2019 consultation meeting, the District agreed to create a new Intent to Participate form for 2019–2020 at the

Archdiocese's request. The revised form included all the federal programs and confirmed who is the private school official who would represent the school during consultation with the District. Again, it is important to note that these are the District's forms and not subject to consultation nor permission...

Historically the District's forms were sent directly to the schools and returned to the District office. It was the Archdiocese who made the determination to insert themselves in the process to collect documents from the schools in addition to LAUSD in the 2018–2019 SY. And in 2019–2020 SY, the Archdiocese made the decision to collect the forms from the schools in lieu of the District. Copies of the communication sent to the private schools were provided to the Archdiocese who changed the process of collection by the District. In essence, it is the Archdiocese who created the administrative barrier for themselves."

Similarly, in response to the question "*Did LAUSD agree that Nancy Portillo would forward the forms to the Archdiocese principals? Please provide a record of such agreement if applicable*", LAUSD's private schools program coordinator answered: "The Intent to Participate and Needs Assessments are the District's forms and there was not an agreement for the Archdiocese to forward the forms to the principals. These are part of the District's administrative duties, not subject to consultation nor agreement with the Archdiocese. Furthermore, the District would be placing the burden on the Archdiocese to contact each of their schools, creating an administrative barrier for participation that is contrary to law."

74. A June 10, 2019, email from LAUSD to ADLA, provided by LAUSD, clarified that the deadline for ADLA's submission of "documents i.e. the Needs Assessments and any Intent to Participate, has passed and thus the District cannot accept any additional documents." In addition the District confirmed that "All future communications and documents needing signatures from the school principals will be directed to the Consortium Director [Nancy Portillo] for distribution, collection and submission to the District per the Archdiocese."

75. A June 13, 2019, email from ADLA's counsel to LAUSD's counsel, provided by LAUSD, advised:

While the Archdiocese appreciates LAUSD's proposal to resolve the disagreement over the audit, the Archdiocese cannot agree to your proposal. The Archdiocese is compiling information and when the process is completed, the Archdiocese will contact LAUSD to discuss the matter further.

76. A note of a June 14, 2019, consultation [Exhibit P], provided by LAUSD, that included the CDE ombudsman and CDE Title I office representative shows the following: ADLA affirmed that 123 ADLA schools submitted poverty data. CDE's ombudsman recommended that LAUSD collect all poverty data for and count/verify the surveys, which ADLA schools should send to the District by June 26. In addition, CDE's Title I office representative's recommendation was for the District not to certify the data unless it was verified. ADLA stated "there have

been so many different changes adding up. In one and a half years, all these changes have happened” and “this is a crap show; everything keeps changing and every time there is something new.” LAUSD indicated that the methodology for collecting poverty data would not be proportionality. The District will send the ADLA a letter regarding pooling.

A timeline of events, provided by ADLA, indicated that, in the same consultation meeting, “LAUSD informed that all “Intents” and “Needs Assessments” were now due June 26, 2019, and that the District would not accept other or additional data. LAUSD discussed the discontinuation of pooling, and ADLA’s representative noted that there had been no discussion regarding the discontinuation of pooling to date for the year.”

77. In its August 14, 2019, IR to the original complaint, in response to the question “*Did LAUSD respond to the issues of pooling and proportionality in meetings held since November 2018? What documentation is available to show timely and meaningful consultation on these issues?*” LAUSD’s private schools program coordinator indicated: “The Archdiocese was informed at the consultation meetings held since November 2018 that the issue of pooling and proportionality was to be discussed at the spring consultation meetings for the 2019 – 20 SY... On May 6, 2019, the Archdiocese and the District discussed pooling and proportionality for the 2019 – 20 SY. The District was prepared to address the issue of proportionality, but the Archdiocese requested to provide CEF Tuition applications as evidence to substantiate their claim that proportionality is most appropriate for the consortium. The District was asked and agreed to give consideration to this request based on CEF Tuition applications evidence that the Archdiocese claimed to possess.

Furthermore, if upon review, the District discovered a greater accuracy of the CEF data than the survey data, the District agreed it would 1) revise the low-income counts in the Consolidated Application for the Archdiocese for 2018–2019; 2) hold those same poverty counts for the 2019–2020 school year and; 3) consider allowing the use of proportionality for 2020–2021, if after analysis, the District determined that the low-income numbers, based upon the CEF forms and lunch applications, reflected a poverty level commensurate to that in District schools.”

78. On June 18, 2019, an email from LAUSD’s counsel to ADLA’s counsel (Exhibit Q) stated the following:

We [the District] are disappointed with Archdiocese response . . . This is extremely serious situation and it is difficult to believe that the Archdiocese is acting in good faith . . . it was the Archdiocese who suggested that the District use the scholarship forms . . . we are perplexed by the Archdiocese’s sudden switch that results, not only in a failure to resolve this matter, but also leads to a lack of transparency.

The District added:

Accordingly, the District will move forward with the poverty data, as amended by the OIG audit for the schools that were audited and submitted a timely Intent to Participate/Needs Assessment Form. As you probably know, during consultation, the District also requested that the Archdiocese submit the surveys and documents supporting the surveys for the remaining schools that submitted a timely Intent to Participate/Needs Assessment Form by June 26, 2019.

79. In a June 26, 2019, email from LAUSD to ADLA, provided by ADLA, LAUSD informed the ADLA that June 26 was the deadline for submitting the 2018–2019 poverty data as discussed in the June 14 consultation meeting; however, the District has not yet received the ADLA data.
80. A June 28, 2019, email from ADLA to LAUSD (Exhibit R), provided by ADLA, in response to the June 26 email from the District discusses the following; 1) we [the ADLA] were disappointed and surprised by yet another sudden request by the District along with a statement that failure to provide the documents would result in ineligibility to receive services for 2019–2020; 2) The Archdiocese has always acted in good faith and has made tremendous efforts to adhere to the various unanticipated, and, often unsupported or unexplained changes in processes, deadlines and systems over the last two years. 3) The ADLA reasserts confusion regarding forms leading to administrative barriers; 4) needs assessment forms are now required for each school; 5) on June 14, the District, for the first time, asked us to provide surveys from data submitted in October 2018 by “the new June 26 deadline set unilaterally by the District for some uncertain number of schools (later clarified to be a maximum of 82 and then to 81), most of which were closed or were closing for the summer.” 6) ADLA raised concerns about not receiving the consultation meeting agenda “sufficiently in advance to allow for proper preparation. More importantly, the agenda does not include an item pertaining to the collection and submitting of Family Surveys by June 26.” “Sadly, throughout the 2018–2019 school year, timely and meaningful consultation has not occurred. Furthermore, consultation for the 2019–2020 school year has not been timely or meaningful.”
81. A July 2, 2019, email from LAUSD to ADLA, provided by both ADLA and LAUSD, reads “As the Archdiocese has failed to provide the District with any low-income family surveys, federal meal applications or scholarship applications... the District has no choice other than to submit the District’s Consolidated Application without poverty data from the Archdiocese.”
82. July 12, 2019, consultation agenda, provided by LAUSD, indicated that LAUSD wanted to discuss the following options for 2019–2020: a) In an effort to provide services to the Archdiocese schools in the 2019–2020 school year, the District will use only the verified data from 24 schools reviewed by the OIG for 19-20. b) LAUSD would send the surveys and forms directly to the families; and c) Archdiocese can send LAUSD the free/reduced price lunch applications. ADLA

requested to see the forms but LAUSD indicated that ADLA cannot see the forms but the results of the verification will be shared with the consortium.

83. July 12, 2019. Correspondence from LAUSD to ADLA [Exhibit S], provided by LAUSD, discussed the following: a) The audit results for 24 ADLA schools averaged 57.5% accuracy, thus, the 2018–2019 proportional share was overestimated and carries a negative balance. b) Recaps ADLA’s arguments for the use of proportionality; c) In response to the ADLA’s May 6, 2019, and June 14, 2019, requests to use proportionality.

In order to consider the Archdiocese’s request, the District asked the Archdiocese to provide supporting documentation of the Archdiocese’s claim of predominantly low income families in their consortium schools, by doing any of the following: 1) to provide the CEF data for all the participating Archdiocese’s schools for the District’s review, 2) to submit the District’s Family Income Eligibility survey distributed by the private schools to their families and 3) to submit the Federal Meal Program applications submitted by the families. However, the Archdiocese failed to meet both the June 3rd to submit CEF scholarship applications and the June 26th, 2019 deadline to provide the District’s Family Income Eligibility surveys and the Federal Meal Program applications. As a result, the District was unable to analyze the consortium’s data and validate the accuracy of the Archdiocese’s claim. . . After considering the entirety of the circumstances, the Archdiocese has not demonstrated the applicability of proportionality for their schools. And as and as such, the District believes that the proportionality method is not accurate. Only when poverty data can be verified, the process of continuing to provide high quality, supplemental services can continue. . . The District has determined to continue the use of the Districts’ Family Income Eligibility Survey and/or the Federal Meal Program applications for the 2019–2020 school year.

84. July 16, 2019, Correspondence from LAUSD to ADLA, provided by LAUSD, (Exhibit T) referenced the May 6, 2019, and June 14, 2019, consultation meetings, where the district sought input and perspective from ADLA regarding pooling:

The Archdiocese conveyed their preference to continue the practice of pooling funds from participating Archdiocese schools and stated:

- The Archdiocese is able to utilize services to support the neediest students through pooling.
- Services may not be needed at some schools and therefore, the neediest schools can benefit from additional services.
- More students will be eligible for benefits even though the school isn’t necessarily generating the funds.

- Doing away with pooling will deprive the neediest of students of much needed services.

The District acknowledged “the ADLA’s preference for pooling”, and that “historically, the ADLA schools want all their eligible students to participate and receive title I services regardless of how much is generated by the low-income families at each site. Additionally, Title I services to the “neediest students” is not applied, in fact, it is the opposite-the “neediest students” receive less services under pooling because the District diverts part of the reservation, at the Archdiocese’s request, to provide Title I services to other sites with lower levels of poverty, and at times, a lower number of eligible students.”

The District determined that “for the 2019–2020 school year pooling will not be implemented,” providing the following rationale:

- Link between student achievement and level of poverty has been established by research
- Students raised in poverty are especially subject to stressors that undermine school behavior and performance
- In general, schools that serve students from higher income families educate higher achieving students than schools that serve high concentration of students in poverty
- To dilute the Title I resources that would be apportioned to the higher poverty schools so that “more students would be eligible for benefits at other school sites where their families did not generate funds towards a proportionate share” does not benefit the truly needy students attending higher poverty schools. In fact, it is a contradiction of the purpose of pooling funds...
- Lower SES¹ students often are below average scores in reading, math and science, and demonstrate poor writing skills
- Based on research studies, Lower SES students are the students with the greatest need of assistance to close the achievement gap and reflect the true purpose of Title I
- Resources should be used to ensure that eligible higher risk students receive targeted supplemental services to ameliorate the limited resources from their families.

85. In its complaint to CDE dated August 2, 2019, relative to the above finding of fact, the complainant indicated the following:

¹ Although the District did not include a definition of SES, it appears to refer to social economic status.

The Archdiocese has been advised by LAUSD that it is planning to terminate the pooling of Title I funds that has been the practice for many years. This change was first conveyed to the Archdiocese at a consultation on July 14, 2019, as an apparently unilateral decision. This change in longstanding policy and past practice, to be effective for the 2019–2020 school year, was done without consultation with the Archdiocese. As a result, consultation has not taken place in a timely and meaningful manner as required by federal law and regulations.

The Archdiocese strongly disagrees with the decision by LAUSD to terminate the pooling option that has been in place for decades... By utilizing the pooling option for many years, the Archdiocese and LAUSD have been able to collaborate and make full use of available funds and resources to provide services on a priority basis to the eligible students who are most at risk and in the greatest need of the funded services.

LAUSD has indicated unilaterally that it is ending the long-standing pooling option. The services provided at each school would then depend on the amount of funds generated by that school regardless of whether there is an urgent need for services at that school. Schools that generate only limited funds will likely find it impossible, to provide any services--- and those entitlements will be lost. Under pooling, those smaller amounts have not been lost, but have been pooled and utilized effectively at another Archdiocese school where there is a greater need and more students at risk.

In a July 16, 2019, letter, regarding pooling, LAUSD indicated that one of the reasons LAUSD has decided against pooling funds is its view that Title I funds and services are meant to go to low-income students. LAUSD's statement is not consistent with the requirements of [ESEA].

In summary, the elimination of pooling will undercut the very basic objective of the [ESEA] model, diminish the services provided, reduce our ability to serve students in most need and leave funds unused--or used in a manner that does not fully implement the intention of [ESEA]. Further, to make the decision on a unilateral basis rejects the intention and terms of the regulatory framework and discounts completely the many years of productive educational support that has come from the pooling arrangement.

86. July 16, 2019 correspondence from LAUSD to ADLA Our recap (Exhibit U), provided by LAUSD, memorialized various consultation meetings. In short:

- a) In consultation on April 3 and April 8, 2019, the District discussed the “over-reporting” of the low-income data as determined by the District’s OIG auditors and shared those data findings and the discrepancies against the numbers provided by the Archdiocese schools.

- b) At the May 6, 2019, meeting ADLA requested that the District consider alternative low-income data using the Catholic Education Foundation (CEF), Tuition Assistance Program applications combined with the Federal Meal Program Applications rather than the District's surveys. While the District was hesitant to disregard what both the District and Archdiocese had previously agreed upon in consultation for determining the low-income count for the 2018-19 school year, the District did communicate to the Archdiocese's attorney, Ron Wenkart, that it would agree to review the scholarship forms if submitted to the District by June 3, 2019. . *If upon review, the District found greater accuracy than the survey data, the District agreed it would 1) revise the low-income counts in the Consolidated Application for the Archdiocese for 2018-19; 2) hold the same poverty counts for 2019-20 school year and; 3) consider allowing the use of proportionality for 2020-21, if after analysis, the district determined that the low-income numbers, based upon the CEF forms and lunch applications, reflected a poverty level commensurate to that in the District's schools. [emphasis ours].* Unfortunately the Archdiocese did not provide the CEF forms to the District. . .
- c) At the June 14, 2019 consultation meeting, the District and the Archdiocese discussed how best to collect the surveys and applications from the schools. The District offered to communicate directly with the schools, to drive to the schools to collect the surveys or to have the schools mail the packets directly to the District. The Archdiocese dismissed all of these suggestions and stated that they would communicate with their schools and drop off the packaged copies of the surveys and applications to the District in person by June 26, 2019. The Archdiocese, after failing to meet the June 26, 2019 deadline provided the District with no explanation for why the surveys and applications were not given to the District. The District was aware that some schools were open during the summer as a summer program was being provided. The District is dismayed that the Archdiocese has opted not to cooperate with the District by allowing the District to do its due diligence in verifying low income source data, particularly in light of the inaccurate rate of data submitted to the District for 2018–2019 SY. The Archdiocese's actions, to date, further substantiate the need to validate submitted low-income numbers.

87. When CDE inquired, in relation to this complaint, as to why the ADLA did not submit the CEF forms to the District by the June 26, 2019, deadline, the ADLA indicated to CDE on July 17, 2020, that the ADLA was unaware of the privacy concerns that were later raised by CEF. CEF is a separate organization within the ADLA. CEF indicated that individual releases from parents would be needed to utilize the CEF forms. Obtaining individual parent releases was not feasible. On August 3, 2020, the ADLA added that presenting the CEF forms to LAUSD would necessitate obtaining parent releases, as well as scholarship data, from over 100 schools with thousands of students. This task was not feasible,

especially within the two-week timeframe allowed by the District, at a time when most schools were closed for the summer.

88. A historical review, conducted by CDE in relation to this complaint, of the Title I allocation for LAUSD contained in the ConApp, shows that, in 2016–2017, the private school set-aside amounted to 2.54% (\$6,858,639 out of a total Title I allocation of \$269,765,700). In 2017–2018, the private school set-aside was 2.31% (\$5,991,873 out of a total title I allocation of \$258,908,466). In 2018–2019, the non-public school share was 2.17% (\$7,546,582 out of a total title I allocation of \$346,173,491). Thus, the number of private school students participating in the generation of the Title I allocation was relatively stable (ranging from 2.17-2.54%). However, in 2019–2020, the private school proportional share dramatically decreased to 0.49% (\$1,712,061 out of a total Title I allocation of \$349,400,229) while the District's total Title I allocation had actually increased, when compared to previous years.

ADLA has the largest number of private schools, as well as the highest number of students attending private schools, within LAUSD's Title I school attendance areas. For example, the OIG audit report for 2018–2019 points out that the ADLA had 109 schools reporting 12,736 students. Therefore, the ADLA has consistently received the largest share of LAUSD's Title I allocation set aside for private schools. However, according to ADLA, to the best of its knowledge, the District spent only \$190,990 [or 11% of a private school set-aside of \$1,712,061] to provide Title I services to ADLA schools in the 2019–2020 SY.

89. The CDE reviewed the ConApp entries certified by LAUSD for the 2018–2019 and 2019–2020 school years and determined the following:
- a) Applicable to 2018–2019, the ConApp certified by LAUSD on March 4, 2019, shows that the entries for the 14 ADLA schools that had been audited in the first round, matched the number of eligible students that had been validated by the auditors. The numbers of eligible students for the 10 schools audited in the second round of audits do not match the number of eligible students that had been validated by the auditors. In addition, some non-audited schools were shown as participating and having eligible students, thus, were included in the generation of the Title I allocation proportional share.
 - b) Applicable to 2019–2020, the ConApp certified by LAUSD on February 27, 2020, showed only 17 schools to be participating and having eligible students (as compared to approximately 102 in the 2018–2019 SY). According to ADLA, the 17 schools were part of the 24 audited schools that had been validated as having eligible students by the auditors, which had also shown educational need for services by providing needs assessment forms. Seven schools that, according to ADLA had submitted intent to participate forms (and had been subsequently validated as having eligible students by the audit) but had not indicated a need to receive services in 2019–2020 were shown as non-participating, without eligible students, and were not included in the generation of the Title I allocation proportional share.

- c) The LAUSD-OIG audit included 24 schools out of approximately 102 schools that had submitted intent to participate forms. Only the number of eligible students verified by the audit were entered by LAUSD into the ConApp. The 78 non-audited schools which had submitted intent to participate forms are shown as not-participating, thus, are not reporting any eligible students.
- d) In addition, of the 24 audited schools, seven of the schools that had been verified as having low-income students by the audit showed zero eligible students in the ConApp. For example, Verbum Dei, St. Helen, St. Mary, St. Genevieve Elementary, Mary Immaculate, St. Teresa of Avila and Mary Star of the Sea High School, totaling 333 low-income students verified by the audit) were listed as not participating (thus, not showing any low-income students) in the ConApp certified by LAUSD.
- e) If LAUSD failed to report 333 out of 1193 “audit-verified” low-income students, the reporting failure rate would be approximately 28%. The 860 students that were reported in the ConApp derived from 15 audited schools (2 schools shown as participating had zero students) contributed to approximately 48% of the total low income counts for all participating private schools in LAUSD for 2019–2020. The low-income student numbers for the 78 non-audited ADLA schools were included in the ConApp for 2018–2019, and therefore, did not contribute to the generation of the proportional share allocation for 2019–2020.

90. In its IR (dated August 14, 2019) to the original complaint, LAUSD documents an interview with LAUSD, Private Schools Program Staff in which they were asked *“Did consultation take place prior to providing findings to the CDE?”* LAUSD staff explained, “... After timely and meaningful consultation, the District and the Archdiocese agreed to use the above-mentioned methods as it historically has been done for many years. The Archdiocese provided the District with a summary sheet with the counts of eligible students and the accompanying addresses. The District took their numbers in good faith and used it to calculate the proportional share for equitable service by reporting the low-income data onto the Consolidated Application (ConApp) platform managed by the California Department of Education (CDE). 18/19 The District historically has not consulted with the Archdiocese on the data being inputted into the Consolidated Application (ConApp) (emphasis added). This process and information provided to CDE only became an issue when the OIG reviewed the poverty data submitted by the Archdiocese, found irregularities, and the District submitted the low-income counts validated by the OIG auditors. . . By extension, if the District is required to ensure the accuracy of the information it reports to the federal government and to exercise sufficient internal control to safeguard the federal funds, it has the same obligation to ensure the accuracy of the information it reports. The District’s reporting of poverty data to CDE is an administrative duty and responsibility as the federal award recipient. There is no requirement to consult nor ask for permission on the daily administration and operations of the Title I program.”

Similarly, in response to the question “*Did LAUSD consult with the Archdiocese during the audit process in 2018–2019? Please provide any relevant documents reflecting the consultation process,*” Private Schools Program Staff indicated: “To be clear, the mandated consultation topics for equitable services under ESSA do not include audits/reviews therefore audits/reviews of Title I services are not subject to consultation. Consultation involves discussions on key issues that affect the ability of eligible students to participate equitably in Title I as well as ensuring that the Title I services provided meet the needs of those eligible students. The Office of the Inspector General (OIG) is a separate, autonomous entity in the District. The Title I office has no purview on their work plans, processes, or personnel/auditors. The OIG communicates with the schools, or in this case, the Archdiocese Consortium Director, directly and conducts their reviews according to their guidelines. Therefore, during consultation, the discussion on audits are brief as the OIG is an independent division in the District. The Title I office has no purview on how the OIG conducts their reviews with the Archdiocese. Consultation notes reflect short discussions focused mainly on issues with schools. Emails between the District and the Archdiocese also show the District’s responsiveness to concerns and queries posed by the Archdiocese during the review process.”

On the other hand, the District’s IR also showed that, in response to the question “*How was the scope and sequence of the audit determined?*”, OIG staff provided the following answer: “The OIG met with the Title I staff and the decision was made to initially review 10 Archdiocese schools that used survey forms (form A) from Archdiocese schools with the largest student population. The OIG and the Title I office met again and the number of schools reviewed was expanded to 14 schools based on the findings of the OIG that many students reported as eligible did not meet the eligibility criteria. After reviewing the first set of 14 schools, the OIG determined that over half of the students did not meet the eligibility criteria. The OIG met with the Title I Office and the decision was made to expand the number of schools to 24 by adding 10 additional schools.”

91. After determining the number of eligible students using the survey data collected from ADLA schools, LAUSD did not allow such survey results to be extrapolated, since complete actual data was unavailable, [according to NRG B-11 #2] in order to calculate the final number of eligible students for 2018–2019 and 2019–2020, but instead, used only the numbers validated by the OIG review. The ADLA confirmed to CDE, in relation to this complaint, that the District did not discuss extrapolation with the consortium.
92. When CDE inquired of ADLA in relation to this complaint how many of its schools had received services for the 2018–2019 and 2019–2020 SY, the ADLA responded “Please see attached list identified as Attachment C. To our knowledge, the list changed over time without notice to the ADLA due to the communication from LAUSD not being consistent. LAUSD would have more complete records due to continuous changes in services.” In response to CDE’s question “Have any services been eliminated due to any reduction in proportionate share allocation?”, the ADLA responded “Yes. For the 2019–2020

school year, although ADLA schools indicated an intent to participate in the Title I program, LAUSD decided to report that very few ADLA schools were participating in the Title I program on the Consolidated Application. By not including all ADLA schools that expressed an intent to participate on the Consolidated Application, Title I services were eliminated for all but 17 ADLA schools.

In summary, LAUSD has failed to provide equitable services to ADLA schools, has engaged in a pattern of arbitrary unilateral decisions without consulting with the ADLA, and has made a series of arbitrary decisions in violation of the requirements of federal and state law. For example, LAUSD provides pull-out and push-in Title I services to its students but refuses to provide push-in services for ADLA students.”

I. BACKGROUND

Legal Requirements

Under ESEA Section 1117, a local educational agency (LEA) that receives funds under Title I must, after timely and meaningful consultation with appropriate private school officials, provide educational services and other benefits to eligible private school children.

In general, to be eligible for Title I services, a private school child must reside in a participating Title I public school attendance area and must be identified by the LEA as low-achieving based on multiple, educationally related, objective criteria. (ESEA sections 1115(c)(1)(B) and 1117(a)(1)). Poverty is *not* a criterion for eligibility for services. *Providing Equitable Services to Eligible Private School Children, Teachers, and Families: Updated Non-Regulatory Guidance*, October 7, 2019 (NRG), C-1, emphasis added. See also NRG C-3, “In consultation with private school officials, an LEA must establish multiple, educationally related, objective criteria to determine which private school children are eligible for Title I services, and, within the eligible group, identify those children in greatest academic need who will be served. (ESEA section 1115(a), (c)(1)(B)).”

Educational services and other benefits for private school children must be equitable in two ways:

First, funds expended by an LEA for eligible private school children in the aggregate must be equal to the proportion of funds generated by private school children from low-income families who reside in participating public school attendance areas. 34 C.F.R. § 200.64; ESEA Section 1117(a)(4)(A)(i); 34 C.F.R. § 200.64(a)(1).

Second, services and benefits for private school children must be equitable in comparison to services and other benefits for public school children and provided in a timely manner. ESEA Section 1117(a)(3)(A); 34 C.F.R. § 200.64(b). Among other equity criteria, services must also meet the equal expenditure requirement. *Id.*

Equitable Funding

An LEA must determine the proportional share of funds available for services for eligible private school children based on the total amount of Title I funds received by the LEA prior to any allowable expenditures or transfers by the LEA. ESEA Section 1117(a)(4)(A)(ii); 34 C.F.R. § 200.64(a)(2).

To make this determination, the LEA is required to obtain an *accurate count* of private school children from low-income families who reside in participating public school attendance areas. ESEA Section 1117(c)(1); 34 CFR § 200.64(a)(3)(i). To obtain this count, the LEA may:

- (A) Use the same poverty data the LEA uses to count public school children;
- (B)(1) Use comparable poverty data from a survey of families of private school students that, to the extent possible, protects the families' identity; and (2) Extrapolate data from the survey based on a representative sample if complete actual data are unavailable;
- (C) Use comparable poverty data from a different source, such as scholarship applications;
- (D) Apply the low-income percentage of each participating public school attendance area to the number of private school children who reside in that school attendance area; or
- (E) Use an equated measure of low income correlated with the measure of low income used to count public school children.

Id.

Each of these methods is thus an acceptable way to achieve an “accurate count.” In other words, although different, one method is as “accurate” as the others.

Provided there is “timely and meaningful consultation,” the ESEA provides an LEA with “final authority,” to choose from among these poverty measures. (ESEA Section 1117(c)(1); 34 C.F.R. § 200.64(a)(3)(i)). However, this authority to choose the poverty measure does not override the LEA’s overall statutory duty to obtain an accurate count of children from low-income families. If the chosen method is inadequate or unable to achieve the required count, one or more other measures must be used.

Of relevance here, if a family survey is used, the LEA must extrapolate data from the survey based on a representative sample if complete actual data are unavailable. If extrapolation is not used, one or more other methods must be employed to obtain an accurate count of children from low-income families. “[I]t may be necessary for an LEA, after consultation with appropriate private school officials, to use more than one method of collecting data on children living in poverty among private schools or within a single school.” NRG B-13; *Builders of Jewish Education v. LAUSD*, United States Department of Education’s (ED) decision dated December 16, 2020, regarding implementation of corrective action – if LAUSD “is unable to extrapolate, it may not use a comparable survey. Instead, LAUSD must use a different measure to determine the number of students from low-income families, *which may include one or a combination of those*

measures listed under ESEA section 1117(c)(1) and 34 C.F.R. § 200.64(a)(3)(i)."
Emphasis added.

NRG B-11 also shines relevant light on the LEA's responsibility to count the number of children living in poverty, and the use of surveys and comparable poverty data from a different source:

The ESEA requires an LEA to determine an accurate count of children from low-income families who attend public and private schools and reside in participating Title I public school attendance areas in order to allocate the proportional share. With respect to private school students, the ESEA permits an LEA, based on timely and meaningful consultation, to use:

- ...
2. Comparable poverty data from a survey and allowing such survey results to be extrapolated if complete actual data are unavailable. An LEA may use a survey to obtain poverty data comparable to those used for public school students. To the extent possible, the survey must protect the identity of families of private school students. (ESEA section 1117(c)(1)(B)). An LEA should not require that the private school officials give the names of low-income families. The only information necessary for an LEA to collect from such a survey of private school children is—
 - (1) verification of residence in a participating Title I public school attendance area;
 - (2) grade level and age of each child; and
 - (3) income level of parents.

If, based on consultation with private school officials (see A-9), an LEA chooses to extrapolate the survey results to the private school's entire enrollment, the LEA will also need the private school's enrollment. For example, in a private school with an enrollment of 400, if an LEA receives survey data for 300 children that indicate that 150 children are from low-income families (50 percent), to extrapolate the results the LEA would multiply 400 by 0.5 to determine that there are 200 children in the school from low-income families.

3. Comparable poverty data from a different source. An LEA may use poverty data for private school children that are from a different source than the data it uses for public school children so long as the income threshold in both sources is generally the same. For example, an LEA uses FRPL data, but private school children do not participate in the free and reduced-price lunch program; however, private school officials are able to provide an LEA with a count of children who are from low-income families using other comparable sources of poverty data such as eligibility for means-tested tuition scholarship programs.

As previously noted, poverty is not a criterion for eligibility for services and the collection of poverty data to calculate the proportional share should not be conflated with or made conditional upon a needs assessment. NRG C-1, *supra*.

Finally, NRG B-12 notes, “ESEA section 1117(a)(4)(D) permits an LEA to determine the number of children from low-income families who attend private schools every year or every two years. Section 1117(b)(1)(F) requires an LEA to consult with appropriate private school officials about the availability of poverty data on private school children, and an LEA can determine whether it would be more feasible to collect biennially.”

Equitable Services

Under 34 C.F.R. § 200.64:

(b) Services on an equitable basis.

(1) The services that an LEA provides to eligible private school children must be equitable in comparison to the services and other benefits that the LEA provides to public school children participating under subpart A of this part.

(2) Services are equitable if the LEA -

(i) Addresses and assesses the specific needs and educational progress of eligible private school children on a comparable basis as public school children;

(ii) Meets the equal expenditure requirements under paragraph (a) of this section; and

(iii) Provides private school children with an opportunity to participate that -

(A) Is equitable to the opportunity provided to public school children; and

(B) Provides reasonable promise of the private school children achieving the high levels called for by the State's student academic achievement standards or equivalent standards applicable to the private school children.

Again, provided there is timely and meaningful consultation, the LEA must make the final decisions with respect to the services it will provide to eligible private school children. *Id.*, subs. (b)(4).

Consultation

Under ESEA and its implementing regulations, timely and meaningful consultation with private school officials is at the heart of providing equitable services. To receive a subgrant under ESEA, an LEA must give an assurance to the State educational agency that it will provide services to private school children under Section 1117 and engage in timely and meaningful consultation with private school officials regarding such services. ESEA Section 1112(c)(2).

ESEA Section 1117(b) provides, in relevant part:

CONSULTATION.—

(1) IN GENERAL.—To ensure timely and meaningful consultation, a local educational agency shall consult with appropriate private school officials during the design and development of such agency's programs under this part. Such agency and private school officials shall both have the goal of reaching agreement on how to provide equitable and effective programs for eligible private school children, the results of which agreement shall be

transmitted to the ombudsman designated under subsection (a)(3)(B). Such process shall include consultation on issues such as—

- (A) how the children’s needs will be identified;
- (B) what services will be offered;
- (C) how, where, and by whom the services will be provided;
- (D) how the services will be academically assessed and how the results of that assessment will be used to improve those services;
- (E) the size and scope of the equitable services to be provided to the eligible private school children, the proportion of funds that is allocated under subsection (a)(4)(A) for such services, and how that proportion of funds is determined;
- (F) the method or sources of data that are used under subsection (c) and section 1113(c)(1) to determine the number of children from low-income families in participating school attendance areas who attend private schools;
- (G) how and when the agency will make decisions about the delivery of services to such children, including a thorough consideration and analysis of the views of the private school officials on the provision of services through a contract with potential third-party providers;
- (H) how, if the agency disagrees with the views of the private school officials on the provision of services through a contract, the local educational agency will provide in writing to such private school officials an analysis of the reasons why the local educational agency has chosen not to use a contractor;
- (I) whether the agency shall provide services directly or through a separate government agency, consortium, entity, or third-party contractor;
- (J) whether to provide equitable services to eligible private school children—
 - (i) by creating a pool or pools of funds with all of the funds allocated under subsection (a)(4)(A) based on all the children from low-income families in a participating school attendance area who attend private schools; or
 - (ii) in the agency’s participating school attendance area who attend private schools with the proportion of funds allocated under subsection (a)(4)(A) based on the number of children from low-income families who attend private schools;
- (K) when, including the approximate time of day, services will be provided; and
- (L) whether to consolidate and use funds provided under subsection (a)(4) in coordination with eligible funds available for services to private school children under applicable programs, as defined in section 8501(b)(1) to provide services to eligible private school children participating in programs.

(2) **DISAGREEMENT.**—If a local educational agency disagrees with the views of private school officials with respect to an issue described in paragraph (1), the local educational agency shall provide in writing to such private school officials the reasons why the local educational agency disagrees.

(3) **TIMING.**—Such consultation shall include meetings of agency and private school officials and shall occur before the local educational agency makes any decision that affects the opportunities of eligible private school children to participate in programs under this part. Such meetings shall continue

throughout implementation and assessment of services provided under this section.

The enumerated topics of consultation are not exclusive or exhaustive (“Such process shall include consultation *on issues such as...*”); similarly, 34 C.F.R. § 200.63 (“(b) *At a minimum*, the LEA must consult on the following...”). With respect to the method or sources of data that the LEA will use to determine the number of private school children from low-income families, § 200.63(b)(7) clarifies that consultation includes “whether the LEA will extrapolate data if a survey is used.”

The NRG from the outset emphasizes the crucial importance of timely and meaningful consultation. Section A-1 provides in relevant part, emphasis added:

Timely and meaningful consultation with appropriate private school officials is an essential requirement in an LEA’s implementation of an effective Title I program for eligible private school children, their teachers, and their families. Consultation involves discussions between public and private school officials on key topics that affect the ability of eligible private school students to participate equitably in Title I programs. Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered. Successful consultation establishes positive and productive working relationships, makes planning effective, continues throughout implementation of equitable services, and serves to ensure that the services provided meet the needs of eligible students and teachers. A unilateral offer of services by an LEA with no opportunity for discussion, or the application of a blanket rule, is not adequate consultation. Only after discussing key topics relating to the provision of Title I equitable services should an LEA make its final decisions with respect to those services.

The NRG A-10 also addresses what “the goal of reaching agreement” in ESEA Section 1117(b) entails:

The “goal of reaching agreement” (ESEA section 1117(b)(1)) between an LEA and appropriate private school officials is predicated on the good faith efforts of all parties to reach agreement regarding the provision of equitable services. Meaningful consultation that results in agreement begins well before the decisions are made or services are implemented and provides a genuine opportunity for all parties to express their views, to have their views given serious, due consideration, and to discuss viable options for ensuring equitable participation of eligible private school students, teachers and other education personnel, and families. In the event of disagreement during the consultation process, an LEA and/or the appropriate private school officials may wish to contact the State ombudsman to help facilitate agreement.

Finally, regarding pooling, which is one subject of ADLA’s complaints, ESEA Section 1117(b)(1)(J) provides for consultation “whether to provide equitable services to eligible private school children—(i) by creating a pool or pools of funds with all of the funds

allocated under subsection (a)(4)(A) based on all the children from low-income families in a participating school attendance area who attend private schools.”

NRG B-9 emphasizes that an LEA may not unilaterally decide to pool funds. The general rule is that “an LEA must provide equitable services to eligible low-achieving students in a given school commensurate with the Title I funds generated by students from low-income families in the school.” Pooling is an alternative to this general rule. However, following timely and meaningful consultation with private school officials, the parties may agree to pooling. If an LEA pools Title I funds, it may serve, based on uniform criteria of educational need, eligible low-achieving children among all schools in the group without regard to how much funding students from low-income families within a school generate towards the pool. This flexibility allows services to be directed, in consultation, to those students educationally most in need. By the same token, some otherwise potentially eligible students may not receive services.

II. DISCUSSION

ADLA’s complaints comprise allegations that LAUSD failed to obtain an accurate count of children in poverty for both the 2018–2019 and 2019–2020 school years (ESEA sections 1117(b)(1) 1117(c) and 8503) and failed to engage in timely and meaningful consultation with respect to those and related matters (ESEA Section 1117(b)(6)). Because these allegations are closely related, they will necessarily be discussed together rather than separately.

ADLA is a consortium of parochial schools operating under the Archdiocese of Los Angeles comprising over 100 schools and 12,000 students within the LAUSD boundaries². ADLA, through its Executive Director, Nancy Portillo, acts as representative for all schools in the consortium. Although the events in this matter occurred before the revised 2019 NRG’s adoption of guidance concerning private school representation (A-8), the parties understood that Ms. Portillo was the primary contact for ADLA schools for Title I consultation under ESEA and communications with the schools should flow through her. FF 1, 50. LAUSD agreed that the schools had delegated their authority to consult with the District to Nancy Portillo. FF 61³.

Consultation began in the Fall of 2017 regarding, inter alia, collection of poverty data for the 2018–2019 school year using a comparative survey and free and reduced-price

² The exact number of ADLA schools and students is unclear. At various times, the number of schools has been reported as “at least” 128 (Finding of Fact (FF) 9); 113 (FF 26); 109 schools and 12,736 students (FF 41); and 103 (FF 65). Over 100 schools and 12,000 students is a safe generalization.

³ The District later claimed that the intent to participate and needs assessment forms were District forms and there was no agreement for ADLA to distribute the forms to school principals – their distribution was an “administrative matter” for the District. FF 73. Similarly, the District sent the results of its audit (but not the reports) and funding decisions for the 2018-2019 school year directly to the schools but not ADLA. It did not share the audit reports with either the schools or ADLA. FF 50, *supra*. ADLA also claimed that the District’s direct communication with schools had caused much confusion and inefficiency; and that the District had added language to the forms without consultation. FF 60. Contrary to the District, all these matters were properly within the scope of consultation as they related to the collection of poverty data, the determination of the proportional share, and the assessment and provision of services.

meals data, and pooling⁴. FF 1. LAUSD would collect poverty data annually (ESEA Section 1117(a)(4)(D)). FF 7. Poverty data for 2019-2020, by way of comparative survey and free and reduced-price meals data, was to be collected and collated by ADLA, with a deadline of October 31, 2018. *Id.*

The comparative survey (family income eligibility survey) for both 2018-2019 and 2019-2020 define “family size” as “*all* adults and children living with you,” emphasis added. FF 13, Ex. F. requires the respondent to “determine *all income generated by individual family members* and calculate the total amount of income for the family.” Emphasis added. This definition is contrary to NRG B-11, which provides, “The only information necessary for an LEA to collect from such a survey of private school children is—...(3) income level of *parents*.” Emphasis added. If non-parental income is included, there is potential for some children to be excluded who would otherwise qualify based on parental income alone. Therefore, Ex. F’s ability to achieve an accurate count of income-qualifying children is in question.⁵ ESEA Section 1117(b)(1)(F) requires an LEA to consult with appropriate private school officials about sources of poverty data in determining the number of children from low-income families. There is no evidence that consultation with ADLA occurred over the definition of family income versus parental income in the survey.

LAUSD also conflated the intent to participate form with a concurrent requirement to provide a needs assessment form, implying that both were necessary to generate proportional share. This became an issue in early May 2018, when ADLA learned for the first time that LAUSD required each ADLA school to complete and submit a needs assessment form – historically, only one single, global needs assessment form for Title I services was submitted. FF 6. ADLA’s expressed understanding to LAUSD was that any school that did not supply the needs assessment form would not be penalized by removal from the consortium pool or would otherwise be unable to receive services. *Id.* Later, in June 2018, ADLA confirmed that 105 schools had submitted poverty data and 23 had not. FF 9. LAUSD asserted that the 23 schools also needed to submit a needs assessment. Again, ADLA specifically confirmed with LAUSD that LAUSD would add language to the forms that missing needs assessments would not be penalized. ADLA

⁴ Pooling of Title I funds continued during the 2018-2019 school year. FF 25. It was ended by LAUSD for the 2019-2020 school year, and this is the subject of one of ADLA’s complaints.

⁵ The application for free and reduced-price meals requires applicants to state the income for “all adult members in your household who are living with you and share income and expenses, even if they are not related and even if they do not receive income of their own.” See application instructions at <https://www.fns.usda.gov/cn/applying-free-and-reduced-price-school-meals>. However, free and reduced-price meals are a direct monetary and specific benefit to the parents. In contrast, funding for equitable services remains under public control and provides eligible private school children in general with the same educational benefits as their public-school counterparts. For this reason, ESEA adopts a broader, more inclusive approach to calculating the allocation, for example, allowing the use of proportionality and survey extrapolation. NRG’s reference to parental income in surveys also reflects this approach and the goal of bringing remedial education to as many eligible children as possible. Similarly, ESEA permits the use of “an equated measure of low income correlated with the measure of low income used to count public school children.” As an example, NRG gives poverty data from eligibility for means-tested tuition scholarship programs, which may have different methods of determining means. Nothing in ESEA requires other methods for collecting poverty data, such as surveys or tuition scholarship programs, to be an exact analogue of applications for free and reduced-price meal benefits.

also informed LAUSD that it would have appreciated more time and a timelier process to consult over this issue as it was the first year that LAUSD required the collection of needs assessment forms with the intent to participate forms. FF 10. In August 2018, LAUSD informed ADLA that the “spring packet” for the upcoming 2019-2020 school year would include the same needs assessment and intent to participate forms. FF 18.

LAUSD’s decision requiring the return of the needs assessment form with the intent to participate form was made without prior consultation with ADLA. Timely and meaningful consultation was required because the issue was reasonably related to the identification and assessment of educational need, and the determination of the number of low-income children. It was a material change in procedure from prior years. ADLA expressed legitimate concerns about the potential conflation of the intent to participate with the needs assessment, and the elimination of schools from participation if the needs assessment form were not returned. ADLA wanted language included in the forms making it clear that schools not submitting needs assessment forms would not be penalized⁶. Timely and meaningful consultation before the decision was made would have provided sufficient time to explain and discuss LAUSD’s reasons for making this change and its relation to determining the number of children in poverty. In June 2018, ADLA requested that a statement be added to the affirmation of consultation that it did not believe there had been timely and meaningful consultation and that the program was not equitable with respect to eligible private school children. FF 12.

ADLA’s concerns were in fact well-founded. As discussed below, 7 of 24 schools that were later reviewed by LAUSD’s Office of Inspector General (OIG) as having “validated” students from low-income families and had returned intent to participate forms but had not provided a needs assessment form in 2019–2020 were shown in LAUSD’s ConApp as nonparticipating, without eligible students, and were incorrectly excluded from the calculations for the generation of the Title I allocation proportional share for the 2019-2020 school year. FF 89(b).

Review by LAUSD’s Office of Inspector General

In July 2018, 10 ADLA schools received notice directly from OIG of an upcoming review of Title I funding for school year 2018-2019 by reviewing comparable surveys and free and reduced price meal applications.⁷ Subsequently, 4 additional schools were added to the review, making a total of 14. In December 2018, the review was expanded to 10 additional schools, for a combined total of 24. FF 15, 30, 31, 33. This review was requested by LAUSD’s Title I office (FF 21) and was used to determine the amounts allocated for services for both the 2018-2019 and 2019-2020 school years. The results of the review were properly subject to consultation, otherwise an LEA could circumvent the consultation requirements under the guise of an “audit” or “review.”

LAUSD subsequently claimed that the results of the OIG review were not subject to consultation because the mandated consultation topics for equitable services under

⁶ It is not clear whether LAUSD ever added such language.

⁷ Although LAUSD and ADLA typically referred to the review as an “audit,” it was a review and referred to as such by OIG. Any stray references to “audit” herein should be understood as referring only to a review.

ESEA do not include audits/reviews. FF 90. While this may be a true statement, it fails to fully explain that the enumerated topics of consultation are not framed in exclusive but inclusive terms. More particularly, under ESEA Sections 1117(b)(E) and (F), respectively, the proportion of funds that is allocated under subsection (a)(4)(A) for equitable services, and how that proportion of funds is determined; and the method or sources of data that are used to determine the number of children from low-income families, are subject to consultation. Since the review directly affected the determination of the amounts allocated for services for both the 2018-2019 and, subsequently, the 2019-2020 school years, the review was properly a subject of consultation.

Although LAUSD claimed that OIG “is a separate, autonomous entity in the District,” LAUSD’s Title I office requested the review and admitted to working hand-in-glove with OIG:

The OIG met with the Title I staff and the decision was made to initially review 10 Archdiocese schools that used survey forms (form A) from Archdiocese schools with the largest student population. The OIG and the Title I office met again and the number of schools reviewed was expanded to 14 schools based on the findings of the OIG that many students reported as eligible did not meet the eligibility criteria. After reviewing the first set of 14 schools, the OIG determined that over half of the students did not meet the eligibility criteria. The OIG met with the Title I Office and the decision was made to expand the number of schools to 24 by adding 10 additional schools. FF 90.

In a January 29, 2019, email to ADLA, OIG stated that, “ADLA receives over 10 million dollars per year, money that can otherwise be allocated to LAUSD’s schools; therefore, LAUSD has the responsibility to ensure that the monies that are provided are substantially supported.”⁸ FF 40. ADLA thereafter argued OIG had a conflict of interest, because “LAUSD has a direct financial incentive to disprove eligibility and allow the reallocation of the funds back to LAUSD schools.” FF 47.

LAUSD used the results of the review to claim that there was a loss of “a conservative estimate of \$800,000 [in funding for educational services to ADLA schools]” for the 2018-2019 school year and LAUSD “will be seeking any available means to recover it.” FF 58, 78. Moreover, based on LAUSD’s contention that audits/reviews are not subject to consultation, in February 2019, LAUSD unilaterally used the review results to enter into the CDE’s Consolidated Application (ConApp) Reporting System (CARS), and in March 2019 certify, amended student numbers for the 2018-2019 school year for the 24 reviewed schools that OIG had validated as having low-income students. FF 55⁹. See *also* FF 89(a).

Moreover, as discussed below, at the end of June 2019, LAUSD entered *only* the 24 reviewed schools for the 2019-2020 school year, showing only 17 schools as participating and having eligible students (compared to the approximately 103 schools

⁸ The funding allocated for Title I services is not “received” by the private school but must remain under public control. ESEA Section 1117(d).

⁹ LAUSD did not amend the numbers for the remaining unaudited schools.

in the 2018-2019 school year) *and* which had also shown educational need for services by providing needs assessment forms. Seven schools that had submitted intent to participate forms (and which OIG had validated as having low-income students) but had *not* indicated a need to receive services in 2019–2020, were shown as non-participating, without any low-income students, and were not included in the generation of the Title I proportional share. FF 89(b). As noted above, poverty is not a criterion for eligibility for services and students from low-income families should have been counted towards the proportional share calculation regardless of their need for academic services.

Title I services for the 2018-2019 school year began on August 17, 2018. FF 17. In an August 23, 2018, consultation, ADLA asked LAUSD for a letter of allocation of Title I funds for ADLA. LAUSD responded that “this year” ADLA would only receive a letter giving the total proportionate share for *all* private schools, a position LAUSD reiterated in January 2019. FF 18, 40. The duty to consult includes the proportion of funds that is allocated for Title I services, and how that proportion of funds is determined. ESEA 1117(b)(1)(E). LAUSD had an obligation to give ADLA the requested information. LAUSD’s hide-the-ball approach breached both the spirit and the letter of the duty to consult.

In September 2018, OIG met with ADLA and confirmed the review was requested by LAUSD’s Title I office. OIG explained that the review’s objective was to determine “funding eligibility” for 10 ADLA schools for the 2018-2019 school year, by reviewing surveys and free and reduced-price meal applications. FF 21. According to NRG B-14:

If private school officials assist an LEA in obtaining data necessary for the LEA to determine the proportional share—e.g., by providing data on children from low-income families who reside in a participating Title I public school attendance area and attend the private school—they must maintain relevant data not provided to the LEA in their files. If LEA officials or auditors, as appropriate, wish to review the data, they may do so at the private school. The type of data will depend on the method an LEA decides to use, after timely and meaningful consultation with private school officials, to determine the poverty count of private school children. Examples of data might include student addresses, survey forms completed by families, or scholarship information.

Under ESEA Section 1117(c)(1)(B), the results of a survey must, to the extent possible, protect the identity of families of private school students. Analogously, reviewing free and reduced-price meal *applications* raises privacy concerns. All that is required is verification the student numbers given on Form B receive free and reduced-price meals, not a review of the student’s underlying entitlement to that benefit. ADLA asked OIG to delay the review until after October 30, 2018, as ADLA was in the process of collecting poverty data for the 2019-2020 school year. OIG refused, stating that it had a “deadline.”

Nonetheless, by October 30, 2018, ADLA provided LAUSD with poverty data for the 2019-2020 school year for 113 schools, 2 of which were submitted with no eligibility. FF 26. The surveys themselves were not submitted to LAUSD, as LAUSD had requested

that poverty data be given to the District in summarized form. *Id.* In early November 2018, ADLA and LAUSD corresponded in relation to the submitted poverty data, discussing whether data needed to be corrected or was missing. FF 27.

By the end of November 2018, LAUSD added an additional 4 schools to the original 10 selected for review, making a total of 14 schools. FF 30, 31. On December 14, 2018, OIG informed ADLA that it would be reporting its findings to LAUSD's Title I office and may increase the sample size based on the number of "exceptions" – OIG found 791 of the 1688 students "not eligible." FF 33. On December 19, 2018, OIG informed ADLA that the LAUSD Title I office had requested the review be expanded to an additional 10 schools. *Id.* FF 38. Again, there was no prior consultation around this decision, or concerning the results of the first review and how ADLA could resolve the alleged "exceptions." ADLA later made multiple attempts to obtain details about the review from OIG, but its questions were not satisfactorily answered. FF 39.

The issues raised by the first review and its extension to a further 10 schools led, in late January 2019, to ADLA asking LAUSD to provide the following information, in writing: how much funding was generated by each school in the 2017-2018 and 2018-2019 school years; how the amount was determined; the administrative costs reserved; the parent involvement totals; and professional development amounts. FF 40. LAUSD did not provide the requested information. It claimed that providing information about the proportional share by consortium is not required under ESEA. In later correspondence with ADLA, LAUSD confirmed its position that, "to be clear, consultation topics under ESEA do not speak about the 'identification of funds, allocation for services, expenditures to date, funds remaining.' ... Consultation involves discussion of services, not funds ... Accordingly, under the above authority, the LEA is not required to share the budget ledger, including the funds expended to date, and/or the funds remaining along with the expiration date." FF 51. However, as noted above, the duty to consult includes the proportional share and how that share is determined. ESEA Section 1117(b)(1)(E).

Where, as here, the LEA accepts the representative role of the consortium on behalf of its constituent schools, the LEA has a duty to provide the representative with information concerning the proportional share attributable to each school and thus the consortium, and how that share is calculated, including expenditures and funds remaining, which are directly relevant to the ongoing provision of services. The duty to consult continues throughout implementation and assessment of services. ESEA Section 1117(b)(3). Information as to the consortium's share was previously provided (FF 18, *supra*) and it should have been provided, along with the other information ADLA requested, as a matter of right. This is particularly so given LAUSD's claim that it suffered an \$800,000 "loss" on ADLA's 2018-2019 Title I funding and "will be seeking any available means to recover it." FF 58, 78, *supra*.

OIG's Review Reports

OIG issued two reports, the first, dated January 28, 2019, for the initial 14 schools, the second, dated March 11, 2019, for the additional 10. See Exs. H and J. OIG did not share the reports with ADLA. Instead, OIG directed ADLA to obtain the reports from LAUSD's Title I office. OIG did also respond to ADLA's late January questions to

LAUSD (FF 40, *supra*). There, OIG discussed the differences between an audit and a review, one difference being that an audit is conducted on 100% of eligible students not a sample, as here. OIG did disclose that only 42% of the 14 schools were “compliant.” OIG also explicitly mentioned the more than 10 million dollars per year apportioned to ADLA’s services, money that could otherwise be allocated to LAUSD’s schools, *supra*.

It is unclear when ADLA received a copy of the first report. As of February 25, 2019, nearly a month later, LAUSD had not provided a copy to either ADLA or its schools. The *results* were apparently communicated to the ADLA schools in question but not to ADLA, the consortium representative. FF 50. An April 5, 2019, email from Nancy Portillo to LAUSD requested a copy of the “most recent,” i.e., second report, implying ADLA had a copy of the first report, but “we hadn’t received *any* of the reports from Title I or OIG.” Ex. L, emphasis added. In response, LAUSD indicated that *both* reports were available on OIG’s web site. *Id.*

At the April 3, 2019, consultation meeting referenced in Ex. L., LAUSD told Nancy Portillo that if she wanted to see the report, she should file a Public Records Act (PRA) request. FF 55. ADLA wanted to discuss the audit/review process, inquiring if there was a way to appeal. ADLA claimed that there was no consultation regarding decreased numbers of eligible students and decreased allocation. Instead, ADLA was just informed that “a bunch of students were kicked out by reviewers using School Finder even though data already cleared by [Office of Data and Accountability]”. LAUSD affirmed that it had already entered the revised figures for the 24 schools for the 2018-2019 school year into the ConApp on February 27, 2020. *Id.* FF 89(b).

On the one hand, therefore, OIG told ADLA to request copies of the reports from the Title I office; on the other, the Title I office did not provide copies of the reports but ultimately directed ADLA to get copies from OIG’s web site. This furthered LAUSD’s pretense that OIG was acting independently and supported LAUSD’s erroneous assertion that audits/reviews were not subject to consultation – despite their substantial impact on ADLA’s allocation of funds for both the 2018-2019 and 2019-2020 school years.

In the first review report, Ex. H, OIG noted that 109 ADLA schools reported 12,736 “funding eligible” students. OIG covered 14 of the 109 Archdiocese schools, which reported 2,094 eligible students: 1,763 eligible students were reported by 12 schools that submitted Form A (income surveys), and 331 eligible students were reported by 2 schools that submitted Form B (free and reduced-price lunch). Of the Form A students, “661 students’ eligibility was supported by Family Survey Forms that are acceptable to the District.” “Acceptable to the District” is not defined. However, as discussed above, the District’s survey form includes income beyond that of the parents, contrary to NRG B-11, *supra*, calling into question the entire reliability of the surveys. Of the remaining 1,102 students, the survey forms of 621 students were missing and survey forms of 75 students were incomplete because the grade and/or address was missing. Of the Form B students, 2 students’ applications were missing and 113 did not meet one or more eligibility criteria, including “low-income eligibility guideline.” This number is not further broken down between the criteria. However, since receipt of free and reduced-price meals is a qualifying measure of poverty, it is unclear how the low-income eligibility was

determined, and the guideline is not stated. OIG informed ADLA that of the reported total of low-income students in the 14 schools, only 42% were compliant. FF 40, 41.

In the second report, Ex. J, OIG covered 10 schools and 795 students¹⁰. Of the 663 Form A students, OIG affirmed the eligibility of 280; found that the surveys of 115 students were missing and those of 15 others were incomplete - missing grades and/or addresses. Of the 123 Form B students, 36 were found eligible, 4 students' applications were missing, and 83 were "ineligible" for unspecified reasons.

Effect of Review on Funding for Equitable Services

LAUSD essentially weaponized the review by refusing to allow ADLA to consult regarding the review findings or to challenge or correct them, by, for example, providing missing surveys, supplying missing grades and/or addresses, or providing alternative sources of poverty data¹¹. LAUSD even told ADLA that if it wanted copies of the review reports it should file a PRA request, *supra*. Yet, LAUSD used the review results to drastically reduce the funding for ADLA's equitable services for 2018-2019 and then 2019-2020, without timely and meaningful consultation or recourse.

At an April 8, 2019, consultation, ADLA expressed a lack of information, confusion and concerns with the consultation process and the OIG review. FF 58¹². Ex. H shows, for example, that the survey forms of 621 students were missing and 75 students' forms were incomplete because the grade and/or address was missing. ADLA pointed out that Bishop Mora Salesian High School claimed 225 eligible students, but only 16 were found eligible. *Id.* ADLA believed that 157 students were disqualified because they probably used Catholic Education Foundation¹³ (CEF) financial data. NRG B-11 permits the use of comparable sources of poverty data such as eligibility for means-tested tuition scholarship programs. ADLA wanted to give the reviewers the CEF data to support family income. ADLA should have been provided, in consultation, an opportunity to provide the missing forms and information. The same consideration applies to the missing Form B applications. There should also have been consultation regarding the 113 remaining Form B students to clarify the actual basis of ineligibility and an opportunity to supply or correct missing or incorrect information.

Similarly, Ex. J shows that the surveys of 115 students were missing and 15 were missing grades and/or addresses. Four students' free and reduced-price lunch applications were missing and 83 were "ineligible" for reasons that were never specified. Again, LAUSD should have timely and meaningfully consulted with ADLA regarding

¹⁰ The exact number of students is unclear, in that the eligibility list for Form A apparently contained 9 more than reported and that for Form B 13 less than reported. Ex. J.

¹¹ In a May 6, 2019, consultation, LAUSD argued that the provision of other data, such as Catholic Education Foundation scholarship data, suggested by ADLA, would not have affected the audit results, because the audit methodology was "set" and was only looking for comparable surveys and free and reduced-price meal applications, *infra*. FF 62. However, under ESEA, the LEA must use alternative poverty measures, such as means-tested scholarship data, to obtain an accurate count.

¹² The issue with Verbum Dei High School was voluntarily corrected by LAUSD.

¹³ Catholic Education Foundation of Los Angeles is an independent charitable trust. CEF provides tuition assistance to the most financially deserving students attending Catholic schools within the Archdiocese of Los Angeles. <https://www.cefdn.org/>

missing information identified by the review, and consulted with ADLA to resolve the unspecified ineligibility reasons for the remaining 83 students. On April 30, 2019, ADLA again requested timely and meaningful consultation regarding the review, more transparency regarding schools chosen for review, the review process, forms to be reviewed and the ability to provide alternative documentation to support poverty status if students were found to be ineligible. FF 60.

At a May 6, 2019, consultation, LAUSD yet again wrongly asserted that, “audits or review of documents are not a subject of consultation.” FF 62. ADLA expressed concern that that “the review was not a dialogue about capturing accurate data.” *Id.* ESEA above all requires the LEA to provide *an accurate count of children in poverty* and to use alternative methods to that end if one method is inadequate. ADLA claimed that LAUSD’s Office of Data and Accountability had called ADLA’s data “dirty data.” ADLA plausibly argued that if the District had been more communicative regarding the review process, ADLA would have been able to provide other documents to support student eligibility, such as the CEF scholarship data. However, LAUSD asserted that the provision of other data, such as CEF scholarship data, would not have affected the review results, because the review methodology was “set” and was only looking for comparable surveys and free and reduced-price meal applications. *Id.*

However, discussions around the use of CEF data continued in the context of ADLA’s request for the use of proportionality rather than surveys. ADLA first raised proportionality in October 2018. FF 24. In November 2018, ADLA asked LAUSD for a response to the proposed use of proportionality for the 2020-2021 school year. LAUSD inquired why the issue was being raised at such an early stage, to which ADLA pointed out, “because planning needs to begin now for new systems and survey data still needs to be collected by October 2019.” FF 30. ADLA continued to raise proportionality on several further occasions. FF 34, 45, 52, 60.

At the May 6 consultation, ADLA again inquired about the use of proportionality as an accurate or even more accurate poverty measure than surveys, which undercount at some of the ALDA schools. FF 62. LAUSD responded that discussion surrounding the CEF data and free and reduced price meal applications was needed to support the validity of proportionality in accurately identifying poverty levels for private school students, somehow suggesting that *ADLA* bore the burden of justifying LAUSD’s use of proportionality.

This is contrary to ESEA Section 1117(c)(1)(C), under which proportionality means, “(C) applying the low-income percentage of each participating public school attendance area, determined pursuant to this section, to the number of private school children who reside in that school attendance area.” NRG B-11 describes how this is accomplished: “To do this, an LEA will need the addresses, grade levels, and ages of those students attending private schools. For example, if the percentage of poverty in a public school attendance area is 60 percent and there are 50 private school children residing in the public school attendance area, the LEA would derive 30 private school children from low-income families who reside in the attendance area.” In other words, it is a straight percentage calculation. Indeed, while ESEA requires an “accurate” count, it permits broad rather than precise, student-pinpoint counting methods: both proportionality and

survey extrapolation (subs. (c)(1)(B)) are broad approaches that reflect a legislative determination that they are sufficiently accurate, in context, for calculating the allocation of funding for equitable services.

At this point, in a May 13, 2019, email from ADLA's counsel to LAUSD's counsel, ADLA recapped the District's proposal: "LAUSD would like to review the actual Catholic Education Fund (CEF) forms for all 103 Archdiocese schools to provide CEF's [financial aid forms] for the 103 schools participating in Title I, rather than reviewing a summary prepared by the Archdiocese for the 24 schools that were reviewed earlier this year." FF 65. LAUSD had indicated that it was primarily interested in verifying address, family income, grade level and date of birth on the CEF forms. After reviewing the data from the CEF forms, the District would consider the use of proportionality in future years. In making this proposal, the District had apparently not considered the issue of privacy regarding the release of the forms from CEF, an independent entity from ADLA. See fn.12, *supra*. However, LAUSD indicated that all CEF forms must be received by June 30 [sic – this is apparently a typo for June 3].

The District later clarified in a May 31 email that redacted CEF forms themselves were due by June 3, and the scholarship data should not be "compiled," *otherwise LAUSD will have no choice but to use the data validated by the OIG*. FF 71, emphasis added.

It is important to recap two points here: 1. At the end of October 2018, ADLA had submitted to LAUSD for the 2019-2020 school year the poverty data for 103 schools – 53 Form As (summarizing survey eligibility results) and 60 Form Bs (summarizing eligibility based on free and reduced-price meals). LAUSD's review only reviewed 2018-2019 data for 24 schools (FF 26); and 2. Irrespective of LAUSD's CEF proposal, LAUSD had a statutory duty to *accurately count the number of students in poverty for the 2019-2020 school year*.

ADLA had been confronted by LAUSD with the results of a review, claiming, as a fait accompli, that only 42 percent of 2018-2019 surveys¹⁴ were "compliant," with no opportunity for ADLA to challenge or correct this claim; told by LAUSD's Office of Data and Accountability that ADLA data was "dirty data;" and that, as a conservative estimate, there was a "loss" of \$800,000 in funding for equitable services for ADLA schools, which LAUSD would use "any available means" to recover. Confronted with the specter of a significant loss of funding for its schools, it is perhaps not surprising that ADLA was willing to consider LAUSD's proposal to use CEF data, instead of simply insisting that LAUSD perform its statutory duty of counting the number of eligible students for the 2019-2020 school year based on the data ADLA submitted at the end of October 2018¹⁵.

¹⁴ In a June 14 consultation, LAUSD contended the "accuracy rate of poverty data" of the first 10 schools reviewed was 61.84 percent and for the additional 14 schools it was 53.18 percent. LAUSD subsequently took the average of these numbers, 57.5 percent, as the "accuracy rate." FF 83, 86; Ex. S.

¹⁵ LAUSD's intimidation tactics were the antithesis of a good faith effort to reach agreement regarding the provision of equitable services. NRG A-10. It should also be stressed that the issue of "family" versus "parental" income in those surveys remains unresolved.

At the same time, ADLA also complained that LAUSD had, without consultation, made changes to the “spring package” sent to ADLA schools. The “spring package” contained various forms, including intent to participate and needs assessment forms, and a school information sheet. In particular, a May 9, 2019, email from LAUSD to ADLA presented a revised intent to participate form combining multiple federal programs, including Title I A and C; Title II A, and Title III A and B. ADLA contended this was confusing to its schools. The form also contained controversial new language inserted by LAUSD, without consultation, by which the school agreed: “To provide immediate access to the school site for LAUSD central staff to review and monitor the program.” ADLA objected to this “immediate access” particularly regarding a review. It did not want to allow the reviewers access to its school sites but rather to go through ADLA. FF 73.

May 17 was the deadline for return of these forms. FF 55, 56, and 63. On May 17, ADLA requested an extension to submit the intent to participate forms for the 2019–2020 school year, from May 17 to June 11. However, LAUSD only granted an extension to June 3. FF 67¹⁶. Timely and meaningful consultation regarding the forms, their contents, distribution and collection could have avoided ADLA’s complaints regarding confusion and consequent delays in returning them. However, LAUSD repeatedly took the position that the various forms, including intent to participate and needs assessment forms, are the District’s forms and not subject to consultation or permission, even blaming ADLA itself for creating “administrative barriers” by intervening in the forms’ distribution and collection process. FF 72, 73.

On June 13, 2019, ADLA’s counsel advised LAUSD’s counsel that ADLA could not agree to the proposal to provide redacted CEF forms. ADLA later clarified that because CEF is a separate organization (fn. 12, *supra*), CEF had indicated that individual releases from parents would be needed to utilize the CEF forms. Obtaining individual parent releases was simply not feasible, especially given over 100 schools and more than 12,000 students, and certainly not by the original June 3 or even June 26 deadlines imposed by LAUSD. FF 75, 76, 87.

A summary by LAUSD of a June 14, 2019, consultation (Ex. P), also attended by CDE’s ombudsman (Sylvia Hanna) and a Title I office representative (Kimberly Born), indicates that ADLA (Nancy Portillo) confirmed that 123 schools submitted poverty data.¹⁷ Ex. P reflects a recommendation by Ms. Hanna for LAUSD to collect the poverty data and “collect/verify” the underlying surveys; it also records (Ex. P, p. 2) an “Agreement Re: Poverty Data Collection-June 26, 2019 deadline.” Kevin Baxter (ADLA) commented that, “Our schools are very autonomous. Some of the schools are closed.” Nancy Portillo stated, “This is causing more pressure. We can make our best effort.” Mr. Baxter expressed ADLA’s frustration with the entire process, including the review, “This has been a crap show. Everything keeps changing and every time there is something new. We asked if there was an audit and we didn’t get an answer.”

¹⁶ LAUSD later contended that June 3 was an “internal deadline” that could not be extended. FF 72, 74.

¹⁷ It is difficult to reconcile this number with either 2018-2019 (109 schools according to OIG) or 2019-2020 (113 schools reported by ADLA at the end of October 2018 for 2019-2020). It is possibly a typo for 113, which is consistent with the number reported by ADLA.

It is not clear from Ex. P that ADLA agreed to the June 26 deadline. Indeed, in a June 28 email, ADLA's counsel commented that on June 14 the District, *for the first time*, asked ADLA to provide surveys from data submitted in October 2018 by "the new June 26 deadline *set unilaterally by the District* for some uncertain number of schools (later clarified to be a maximum of 82 and then to 81), most of which were closed or were closing for the summer." Emphasis added. He also complained that the agenda for the June 14 consultation did "not include an item pertaining to the collection and submitting of Family Surveys by June 26." FF 80.

Ms. Hanna referred to June 30, which is the closing date for entry of the ConApp data in CARS. However, an LEA may request CDE to reopen CARS after June 30 for good cause, so it is not a "hard" deadline, as LAUSD should have been well aware.¹⁸ Despite this, LAUSD insisted on a hard deadline of June 26 for ADLA to produce in 12 days all underlying surveys for 123 schools and over 12,000 funding-eligible students.¹⁹ The District was effectively requesting a full census (equivalent to a 100 percent review) of all ADLA schools, with 12 calendar days to comply, during summer break when most schools were closing or closed. FF 80.

In a June 18 email, apparently responding to that of June 13 from ADLA's counsel regarding the CEF forms (FF 75, *supra*), LAUSD's counsel expressed disappointment and stated, "Accordingly the District will move forward with the poverty data, as amended by the OIG audit for the schools that were audited and submitted a timely Intent to Participate/Needs Assessment Form. As you probably know, during consultation, the District also requested that the Archdiocese submit the surveys and documents supporting the surveys for the remaining schools that submitted a timely Intent to Participate/Needs Assessment Form by June 26, 2019." FF 78. In a June 26 email, LAUSD noted that "June 26 was the deadline for submitting the 2018–2019 poverty data as discussed in the June 14 consultation meeting; however, the District has not yet received the ADLA data."²⁰ FF 79.

In his above-referenced June 28 email (FF 80), ADLA's counsel pushed back strongly in response to LAUSD's June 26 email. Apart from the unilateral June 26 deadline to produce 100 percent of income surveys in 12 days, he complained about the threat to services for 2019-2020; the various unanticipated and often unsupported or unexplained changes in processes, deadlines and systems over the last two years; the confusion regarding forms leading to administrative barriers; the requirement for needs assessment forms for each school; and the lack of timely and meaningful consultation for 2018-2019 and 2019-2020.

¹⁸ See *Builders of Jewish Education v. LAUSD*, Decision on Appeal dated January 25, 2019 (amended May 25, 2019) and corrective action re: CARS.

¹⁹ OIG's audit reported 109 schools with 12,736 funding-eligible students. Ex. H. There is no reason to believe that 123 (or 113) schools would have fewer eligible students.

²⁰ LAUSD's note of the June 14 consultation is unclear whether LAUSD was referring to the poverty data for 2018-2019 or for 2019-2020. ADLA's understanding was that the data requested was for 2019-2020. FF 81. LAUSD's statutory obligation under ESEA was to count the number of students in poverty for 2019-2020, for which ADLA had already submitted the required data by the end of October 2018.

A July 12 consultation agenda indicated that, “In an effort to provide services to the Archdiocese schools in the 2019–2020 school year, the District will use *only the verified data from 24 schools reviewed by the OIG for 19-20.*” Emphasis added. In a concurrent July 12 letter, the District rejected ADLA’s request for the use of proportionality, assertedly based on ADLA’s “failure” to meet both the June 3rd and June 26 deadlines to submit, respectively, the CEF scholarship applications and the District’s family income surveys and reduced-price school meals applications; and the OIG review results for the 24 schools. However, as discussed above, ADLA was not required to justify the LEA’s use of proportionality.

Pooling

As discussed above, pooling is an alternative to the general rule that an LEA must provide equitable services to eligible low-achieving students in a given school commensurate with the Title I funds generated by students from low-income families in the school. For this reason, pooling may only be implemented with the agreement of the parties and is subject to consultation. ESEA Section 1117(b)(1)(J). In a June 6, 2018, consultation, LAUSD first suggested it was considering funding all schools independently as opposed to pooling funds. The reasons given were vague: “Due to all the issues that have arisen this year surrounding pooling, consortiums, and providing services to only the neediest students.” ADLA indicated that it did not believe ending pooling would benefit students. FF 7. In a June 18, 2018, letter, ADLA requested LAUSD to add a statement to the consultation agenda for each school: “To end pooling requires consultation. It would not be easy to unwind. If schools were funded independently, we would have grave concerns as to how to handle each of our individual requests. It would not benefit students to attend to individually and independently support our schools.” FF 11. Pooling continued during the 2018-2019 school year. See footnote 3, *supra*.

ADLA inquired about pooling for 2019-2020 in April 2019. FF 58. In a letter dated April 30, 2019, to LAUSD, ADLA expanded on its objections to ending pooling. Pooling had been in effect for over 20 years. It allowed for the allocation of services to be directed towards the educationally neediest students regardless of which school they attended. Eliminating pooling would deprive the neediest students of much needed services. FF 60.

In the June 14, 2019, consultation, *supra*, LAUSD indicated it was planning to end pooling. ADLA’s representative noted that there had been no discussion regarding the discontinuation of pooling to date for the year.²¹ According to ADLA, this change was first conveyed to ADLA on June 14 as an apparently unilateral decision, without consultation. FF 76, 85.

In a July 16, 2019, letter, LAUSD informed ADLA that it was discontinuing pooling for the 2019-2020 school year. FF 84, Ex. T. The District essentially argued that the

²¹ LAUSD later claimed that pooling was discussed in the May 6, 2019, consultation, at which both parties’ counsel were present. FF 77, 62, 84. However, LAUSD gives no details of the discussion, and the May 6 agenda makes no reference to pooling. At the June 14 meeting, ADLA’s representative stated there had been no consultation about pooling.

“neediest students” are not the “academically needy” but the “economically needy.” Be this as it may, it is contrary to ESEA sections 1115(c)(1)(B) and 1117(a)(1), under which a child’s eligibility for services must be based on multiple, educationally-related, objective criteria. Poverty is not a criterion for eligibility for services. NRG C-1, C-3.

ADLA strongly disagreed with LAUSD’s decision to end pooling that had been in place for many years, and gave these reasons to us, FF 85:

By utilizing the pooling option for many years, the Archdiocese and LAUSD have been able to collaborate and make full use of available funds and resources to provide services on a priority basis to the eligible students who are most at risk and in the greatest need of the funded services.

LAUSD has indicated unilaterally that it is ending the long-standing pooling option. The services provided at each school would then depend on the amount of funds generated by that school regardless of whether there is an urgent need for services at that school. Schools that generate only limited funds will likely find it impossible, to provide any services---and those entitlements will be lost. Under pooling, those smaller amounts have not been lost, but have been pooled and utilized effectively at another Archdiocese school where there is a greater need and more students at risk.

In a July 16, 2019, letter, regarding pooling, LAUSD indicated that one of the reasons LAUSD has decided against pooling funds is its view that Title I funds and services are meant to go to low-income students. LAUSD’s statement is not consistent with the requirements of [ESEA].

In summary, the elimination of pooling will undercut the very basic objective of the [ESEA] model, diminish the services provided, reduce our ability to serve students in most need and leave funds unused--or used in a manner that does not fully implement the intention of [ESEA]. Further, to make the decision on a unilateral basis rejects the intention and terms of the regulatory framework and discounts completely the many years of productive educational support that has come from the pooling arrangement.

If LAUSD wished to end pooling, particularly after many years, it had a duty to engage in timely and *meaningful* consultation with ADLA. ESEA Section 1117(b)(1)(J) requires consultation concerning “(J) whether to provide equitable services to eligible private school children—(i) by creating a pool or pools of funds...” This necessarily includes whether to *end* an existing pooling arrangement, as LAUSD appears to have recognized. According to ADLA, LAUSD’s proposal to end pooling was first presented at the June 14, 2019, consultation as a unilateral decision, with no consultation. In May 2018, LAUSD had changed from a single, global needs assessment form to requiring one from each school in the consortium, from which it can be inferred LAUSD was already considering ending pooling. FF 6.

Any consultation that did take place was clearly quite perfunctory and did not satisfy either the timely or, especially, the meaningful element. LAUSD’s July 16 letter

characterized ADLA's position as a mere "preference" for pooling, rather than an arrangement over many years in which ADLA was strongly invested and which had worked very well in serving the consortium's students most in need. From the LEA's standpoint, pooling does not affect the allocation amount, only the way in which services are delivered. The private school is surely in a better position to determine the most effective way of providing services to its neediest students. Moreover, LAUSD's letter fails to address ADLA's detailed arguments in support of pooling and relies on an asserted link between poverty and academic need which is contrary to ESEA, thus further demonstrating an absence of meaningful consultation.

Review of CARS

For the purposes of analyzing this complaint, we carried out a review of ConApp entries certified by LAUSD in CARS for the 2018-2019 and 2019-2020 school years. Our detailed findings are set out in detail in FF 88 and 89.

In broad terms, the review showed that for the 2018-2019 school year, on March 4, 2019, LAUSD certified the student numbers in the ConApp for the first 14 schools in the review in line with the number of students validated by the review. The results for the remaining 10 reviewed schools are less clear, in that the student numbers do not match the review numbers, and some non-reviewed schools are shown as participating with eligible students. FF 89(a). LAUSD claimed that the "accuracy rate of poverty data" of the first 10 schools reviewed was 61.8 percent and the remaining 14 schools was 53.18 percent. Ex. S. The average is 57.5 percent. "As a result, the District overestimated the proportional share for equitable services for the 2018-19 school year and carries a negative balance for the Archdiocese reservation." *Id.* LAUSD claimed that this "negative balance" was \$800,000. LAUSD never explained how this amount was calculated. However, it can be plausibly speculated that LAUSD reduced the allocation for 2018-2019 by 42.5 percent, or \$800,000, making the original allocation approximately \$1,832,352.

For the 2019-2020 school year, the situation is particularly egregious. On February 27, 2020, LAUSD certified the ConApp, showing only 17 schools to be participating and having eligible students (as compared to approximately 102 in the 2018-2019 school year). According to ADLA, the 17 schools were part of the 24 reviewed schools that had been validated as having eligible students by the OIG reviewers, which had also shown educational need for services by providing needs assessment forms. Seven schools that, according to ADLA, had submitted intent to participate forms (and had been subsequently validated as having eligible students by the review) but had not indicated a need to receive services in 2019-2020 were shown as non-participating, without eligible students, and were not included in the generation of the Title I allocation proportional share. As noted *passim*, LAUSD had threatened only to enter the data for the 24 reviewed schools in the ConApp. In fact, LAUSD only entered data for 17 of those schools. Seven schools totaling 333 low-income students were shown as non-participating, presumably because they had not submitted a needs assessment form by June 26, 2019. FF 78.

The CDE's historical review (FF 88) of LAUSD's Title I allocation supports a drastic reduction in ADLA's proportional share of Title I funds. ADLA has the largest number of private schools, as well as the highest number of students attending private schools, within LAUSD's Title I school attendance areas. For example, the OIG review report for 2018–2019 records ADLA had 109 schools with 12,736 Title I funding eligible students. Ex. J. Therefore, ADLA has consistently received the largest share of LAUSD's Title I allocation set-aside for private schools. Yet, compared with prior years, the total private school allocation for 2019-2020 decreased from 2.17-2.54 percent of LAUSD's total Title I allocation to 0.49 percent (\$1,712,061 out of a total Title I allocation of \$349,400,229) while the District's total Title I allocation had actually increased, when compared to previous years. According to ADLA, to the best of its knowledge, the District spent only \$190,990 (or 11% of a private school set-aside of \$1,712,061) to provide Title I services to ADLA schools in the 2019–2020 school year. As ADLA succinctly put it, "Title I services were eliminated for all but 17 ADLA schools." FF 92.

III. CONCLUSIONS

ADLA's complaint is sustained in its entirety.

Allegation 1: LAUSD Failed to Accurately Count the Number of School Children From Low-Income Families for the 2018-2019 and 2019-2020 School Years Who Reside in the Participating Public School Attendance Areas.

LAUSD's primary statutory duty was to accurately count the number of children from low-income families. Regarding the 2018-2019 school year, there has been no dispute raised about the initial count made by LAUSD or the calculation of the allocation. However, during the course of the 2018-2019 school year when LAUSD's Title I office requested the OIG carry out a review of 24 ADLA schools' surveys and free and reduced price meal applications, and drew conclusions based on the alleged deficiencies in record keeping, LAUSD still had an obligation to comply with the provisions of ESEA.²²

Had a consultation process been adhered to, many of the issues identified by OIG were capable of being remedied by ADLA's providing alternative sources of poverty information (for example, CEF scholarship data, which ADLA claims had been used historically, as a method to supplement other data), locating missing surveys and supplying grade and address information where applicable.

The lack of timely consultation prevented ADLA from executing a realistic strategy to capture the poverty data and provide it to LAUSD as mitigation for the poor review results. LAUSD, however, insisted that the results of audits and reviews were not subject to consultation because not mentioned specifically in ESEA Section 1117(b)(1). However, where an audit or review and its results, as here, have a potential and actual impact on the calculation of the proportion of funds allocated for equitable services, the

²² If, as appears to be the case, students had been determined to be eligible for the free/reduced price meal benefit, it was not open to LAUSD/OIG to review the application and determine otherwise, and potentially a violation of the family's privacy.

results are subject to consultation under ESEA sections 1117(b)(1)(E) and (F). LAUSD claimed at one point that it could not consider alternative sources of poverty information because the review methodology was “set.” This is flatly contrary not only to the ESEA requirement, but also to the intent of ESEA to provide equitable services to the students most in need. While there was later discussion around the use of CEF data that included the 24 schools, this was in the context of discussions concerning the use of proportionality, which morphed into LAUSD’s demand for poverty information, whether CEF data or surveys, for *all* ADLA schools within totally unreasonable and unilaterally established time limits at the beginning of summer break. In any case, LAUSD, as confirmed by our review of the ConApp, had already certified the review results in CARS in early March 2019.

Regarding the 2019-2020 school year, LAUSD failed to meet its statutory duty under ESEA to accurately count the number of children from low-income families in 113 ADLA schools in its Title I attendance areas.

At the end of October 2018, following consultation, ADLA submitted Form As (summaries of surveys) and Form Bs (summaries of students receiving free and reduced price meals) for 113 schools to LAUSD. LAUSD was not at liberty to ignore that information. In *Builders of Jewish Education v. LAUSD*, ED addressed this obligation as follows:

Refusing to accept data provided by private school officials that an LEA believes may be inaccurate, however, does not relieve the LEA of its responsibility to calculate the number of children who are from low-income families and attend private schools in order to provide equitable services. Under such circumstances, the LEA must, after timely and meaningful consultation with private school officials, identify alternative data sources because it, and it alone, has the statutory responsibility to calculate the proportional share of Title I funds necessary to enable the LEA to provide equitable services to eligible private school children. 20 U.S.C. § 6320(a)(1), (4) [ESEA sections 1117(a)(1), (4); 34 C.F.R. §§ 200.62(a)(1), 200.64(a)(2) (2019).

Decision dated June 14, 2021, pp. 8-9.

LAUSD apparently chose simply to ignore the data submitted by ADLA for 2019-2020 based on the OIG review results for the 2018-2019 school year for the 24 schools. On its face, that was unlawful. It was also doubly flawed, because LAUSD refused to consult concerning the review results and provide ADLA with an opportunity to provide alternative sources of poverty information, locate missing surveys, provide missing grades and/or addresses, or otherwise to challenge or mitigate the results.

Thereafter, LAUSD demanded ADLA produce first, CEF data and then the income surveys for all ADLA schools within unrealistic time limits, when schools were closed or closing for the summer break. Moreover, June 30 is not a hard deadline. CARS can be reopened at any time for good cause, such as submitting accurate and complete Title I data, as LAUSD should have known. When ADLA was unable to comply with these demands, LAUSD, in a kind of reverse extrapolation, entered the review data for only

the 24 schools in the ConApp. However, 7 of these schools with 333 students found to be eligible by the review were not included in CARS, as those 7 schools were input as “nonparticipating.” This is not consistent with ESEA. These schools may have been eliminated because they had not provided LAUSD with “needs assessments” even though they apparently had submitted intent to participate forms. This is again an unlawful conflation of requiring “participation,” meaning receipt of services, with the contribution to the proportional share allocation of students from low-income families.

Furthermore, given that LAUSD had identified the 17 schools for 2019–2020 and knowing that there were eligible students in the rest of the consortium, LAUSD decided not to extrapolate from the number of eligible students whose surveys/meal applications were “verified to be eligible by the review” and did not use the extrapolated amount to determine the final amount of eligible students for 2019–2020. NRG B-15 clearly states²³ that if an LEA has poverty data in a private school regardless of whether the school “participates” in Title I, the LEA must include the children from those low-income families in the calculation of the proportional share. This is another administrative barrier that LAUSD erected (the use of needs assessments or other documents purported to be required to show “participation” in the generation of the proportional share) which are not required in ESEA nor consistent with NRG.

ADLA has confirmed that LAUSD eliminated Title I services for all but 17 ADLA schools, out of 113 which submitted poverty data. FF 92. Our own historical review of LAUSD’s Title I allocation in the ConApp shows a dramatic reduction in the total private school allocation for equitable services for the 2019-2020 school year, which can only be explained by a significant fall in ADLA’s share, which traditionally has been the largest.

Allegation 2: LAUSD Failed to Engage in Timely and Meaningful Consultation

(a) and (b): LAUSD Failed to Consult During the 2018-2019 School Year Regarding: Determination of the Number of Children From Low-Income Families; and OIG’s Review

These allegations are related. No one disputes the right of LAUSD to review the surveys underlying the summaries provided by ADLA or to verify that the students reported as receiving free and reduced price meals are actually receiving this benefit. NRG B-14. It is unnecessary to decide whether there is a duty to consult around the scope and sequence of or during the review. LAUSD undoubtedly had a duty to consult concerning the *results* of the review in circumstances where, as here, those results were used by LAUSD to reduce the funds allocated to provide equitable services to ADLA for the 2018-2019 school year, and subsequently to determine the allocation of funds for the 2019-2020 school year. LAUSD persistently refused to consult regarding the results of the review on the grounds that audits/reviews are not within the topics of consultation in ESEA Section 1117(b)(1). We have already determined that consultation is required under such circumstances. Therefore, these allegations are sustained.

²³ B-15 If an LEA has poverty data for children in a private school, regardless of whether the private school participates in Title I, does the LEA include the poverty data in calculating the proportional share? Yes....

(c) and (d): LAUSD Failed to Consult Regarding Its Forms and Information Concerning ADLA's Proportional Share

LAUSD generally took the position that its Title I forms and their contents were an administrative matter and not subject to consultation. In general, if changes in forms or their contents reasonably relate to or implicate the determination of the number of low-income children, or the identification and assessment of educational need, consultation is required. ESEA sections 1117(b)(1)(D), (E), (F). In May 2018, ADLA became aware that LAUSD was changing from requiring a single needs assessment form applicable to all ADLA schools to requiring a needs assessment form from each school. This change was made without consultation. At the very least, it implicated LAUSD's continued commitment to pooling and raised legitimate concerns by ADLA that schools not returning the needs assessment form along with the intent to participate form would be penalized by removal from the pool or denial of services. It is possible that consultation would have provided an indication of LAUSD's thinking and opened a dialogue regarding the future of pooling, for example. Consultation could also have addressed ADLA's desire to add language to the needs assessment regarding its relationship to the intent to participate form. We are not saying what the outcome of consultation should have been, only that there should have been consultation regarding this change. It is also worth noting that if an LEA disagrees with the views of a private school official about a required consultation issue, it must give written reasons for the disagreement. ESEA Section 17111(b)(2).

Another major bone of contention occurred in May 2019, when LAUSD presented a revised intent to participate form combining multiple federal programs, including Title I A and C; Title II A, and Title III A and B. ADLA contended this was confusing to its schools. The form also contained controversial new language inserted by LAUSD, without consultation, by which the school agreed: "To provide immediate access to the school site for LAUSD central staff to review and monitor the program." ADLA objected to this "immediate access" particularly regarding a review. It did not want to allow the reviewers access to its school sites but rather to go through ADLA, as consortium representative. Again, to the extent these changes had the potential to cause confusion, by referring to multiple federal programs in the intent to participate form, consultation was required before the decision was made. Additionally, as ADLA was the accepted representative of the consortium schools, the "immediate access" language had the potential to undermine ADLA's representative role and should not have been added without prior consultation with ADLA.

Finally, in late January 2019, ADLA asked LAUSD to provide the following information, in writing: how much funding was generated by each school in the 2017-2018 and 2018-2019 school years; how the amount was determined; the administrative costs reserved; the parent involvement totals; and professional development amounts. This request was made in response to OIG's review. LAUSD refused to provide the requested information on the grounds that consultation only involves discussion of services not funds. This is patently incorrect under ESEA. For reasons discussed above, the requested information should have been provided.

(e): **LAUSD Failed To Consult Regarding LAUSD's Decision To End Pooling**

Pooling in the ADLA consortium had been in effect for over 20 years prior to LAUSD's decision to terminate pooling for 2019-2020. Pooling is a mandatory subject of consultation. ESEA Section 1117(b)(1)(J). ADLA contends it only learned of LAUSD's intent to end pooling in June 2019, and had the impression it was already decided, without consultation.

Consultation must be both timely and meaningful. According to NRG A-1: "Effective consultation provides a genuine opportunity for all parties to express their views and to have those views considered." If there were any consultation, it was perfunctory and not meaningful in relation to such a momentous change in the delivery of services.

LAUSD's move in May 2018 from a single needs assessment form encompassing all ADLA schools to requiring a needs assessment form for each school (FF 5) suggests an inference that it was already intending to eliminate pooling at some stage. LAUSD's July 16 letter dismissed ADLA's desire to continue pooling as a mere "preference," and did not address ADLA's significant reasons for its retention. On the contrary, LAUSD founded its decision mainly on the equating of poverty with educational need. However, ESEA specifically separates poverty from the provision of services, thus invalidating LAUSD's rationale. Consultation over pooling was neither timely, in the sense that enough time was made available to discuss the issue in detail and consider ADLA's views, and not meaningful, in that ADLA's detailed views were neither solicited nor carefully considered.

IV. CORRECTIVE ACTIONS

We require LAUSD to take the following corrective actions:

1. Consult with ADLA regarding the results of OIG's review of ADLA's 2018–2019 funding eligibility for the 24 schools and, through consultation, establish a method permitting ADLA to correct deficiencies reported by OIG by providing missing surveys and required survey information, such as grades and/or addresses, and proof of children's receipt of free and reduced price meals, and/or providing other acceptable sources of poverty data, such as tuition scholarship information.
2. Based on the results of the corrections, recalculate the numbers of students from low-income families for 2018–2019 for the 24 schools subject to review.
3. Review the Form As and Form Bs submitted by ADLA at the end of October 2018 and recalculate ADLA's proportional share for the 2019–2020 school year based on the submitted data or alternative sources or methods of calculating poverty data identified in consultation with ADLA, without regard to whether needs assessment forms were provided by ADLA schools.
4. Through consultation with ADLA, identify the services LAUSD will provide to ADLA using the recalculated proportional share above and beyond those services LAUSD is otherwise required to provide for the 2021–2022 school year.

5. Provide the agreed-upon services to eligible ADLA students beginning by the start of the 2021-2022 school year.
6. Provide information to ADLA of the amount of the recalculated proportional share for 2019-2020 and how said amount was calculated.
7. Engage in timely and meaningful consultation with ADLA regarding pooling, including full and careful consideration of ADLA's reasons for maintaining pooling and its objections to the termination of pooling. If, after such consultation, LAUSD decides to terminate pooling, it must give written reasons for its decision that respond in detail to reasons advanced by ADLA for its retention.
8. Consult with ADLA regarding the form and content of family income eligibility survey forms, intent to participate forms, and any other forms that bear upon or relate to the calculation of the proportional share and provision of equitable services, and prior to making any changes thereto.
9. To avoid future confusion, conduct any and all communications regarding equitable services and reviews of poverty data through ADLA's Executive Director in a representative capacity and not communicate directly with ADLA schools individually.

LAUSD must provide a status in writing to the CDE of its compliance with the above corrective actions no later than 60 days from the date of this report.

Virginia Jo Dunlap, *Assistant General Counsel*
Legal and Audits Branch
Categorical Programs Complaint Management Office

VJD:rc

Evidence of required corrective actions or questions regarding corrective actions shall be directed to:

John Widdifield, Consultant
Raquel Castellon, Consultant
CPCM Office
California Department of Education
1430 N Street, Suite 6308
Sacramento, CA 95814
916-319-0929 Phone
916-319-0152 Fax

RECONSIDERATION AND APPEAL NOTICES

Pursuant to *California Code of Regulations*, Title 5, Section 4665, either party may request reconsideration:

Within 35 days of receipt of the Department investigation 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. . . . Pending the Superintendent's reconsideration, the Department report remains in effect and enforceable.

Celina Arias-Romero, Administrator
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Pursuant to *ESSA* Section 8503 (b):

APPEALS TO SECRETARY.-The resolution may be appealed by an interested party to the Secretary no later than 30 days after the State educational agency resolves the complaint or fails to resolve the complaint within the 45 day time limit. The appeal shall be accompanied by a copy of the State educational agency's resolution, and a complete statement of the reasons supporting the appeal. The Secretary shall investigate and resolve the appeal not later than 90 days after receipt of the appeal.