



## The State Bar *of California*

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**DATE:** August 23, 2019

**TO:** Members, Eligibility and Budget Review Committee, Legal Services Trust Fund Commission

**FROM:** Elizabeth Hom, Program Supervisor, Office of Access & Inclusion  
Christal Bundang, Senior Program Analyst, Office of Access & Inclusion

**SUBJECT:** Reconsider Advocacy Activities Previously Determined Not Qualified - Request of Public Advocates Inc.

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### **BACKGROUND**

The Legal Services Trust Fund Commission's Eligibility and Budget Review Committee (Committee) met on April 23 and July 19, 2019 to review potentially non-qualifying impact litigation and advocacy activities, as reported by both qualified legal services projects (QLSPs) and support centers (SCs) in the Impact Litigation and Advocacy Work (ILAW) report. Activities found to be non-qualifying need to be deducted from qualified expenditures in the organizations' 2020 IOLTA and EAF grant application. A reduction in the amount of qualified expenditures could result in reducing the allocation of funds to an organization. Staff conducted an initial review of the ILAW reports to assess the qualifying nature of activities according to the requirements for QLSPs and SCs. Where the activity initially appeared to be non-qualifying, staff elevated the issue to the Committee for further review.

State Bar Rule 3.672(A) defines legal services to "include all professional services provided by a member of the State Bar and similar or complementary services of a law student or paralegal under the supervision and control of a member of the State Bar." Business and Professions Code section 6213(a) also requires that the primary purpose of a QLSP be to provide legal services to indigent persons without charge. Business and Professions Code section 6213(d) defines indigent person as someone whose income is 125% or less of the federal poverty threshold, a senior, a person with a developmental disability, or a person who is eligible for Supplemental Security Income. As such, to be considered qualifying, the activities in a QLSP's ILAW report must be legal services and must primarily impact indigent individuals.

Public Advocates Inc., a QLSP, identified 14 impact and advocacy activities in its 2018 ILAW reports that it believed to be qualifying. After staff and Committee review, 12 of the identified activities were found qualifying. At its April 23 meeting, the Committee determined that two

activities, **Equal Access to Fully-Prepared and Effective Teachers** and **Higher Education- Low-Income Student Advocacy Project**, were non-qualifying. These ILAW reports did not provide clear data to demonstrate that the activities were legal services and primarily impacted indigent persons. In addition, staff noted that Public Advocates, Inc. uses the free/reduced lunch as a proxy for indigency for all its Education Equity work, which the Commission approved in March 2011 for a specific activity.

Public Advocates Inc. requested reconsideration of the determination. The Committee determined at its July 19 meeting that an Eligibility Review Conference would be the proper venue for reconsideration. On August 7, 2019, two Committee members and staff met with representatives from Public Advocates Inc. to discuss the non-qualifying ILAW activities.

Following the Eligibility Review Conference, Public Advocates Inc. was given the opportunity to supplement their ILAW reports in writing by August 12. That supplemental information has been received, and the issue is now before the Committee for its consideration.

### **1) EQUAL ACCESS TO FULLY-PREPARED AND EFFECTIVE TEACHERS**

This advocacy activity focused on “federal and state policy with the goal of ensuring students have access to fully-prepared and effective teachers, especially in schools serving high concentrations of low-income students, students of color, and English learners.”

In April, the Committee determined this activity was non-qualifying because it did not appear that this advocacy activity was legal services as defined by State Bar Rule 3.672(A). In its ILAW report, Public Advocates Inc. stated, “During this time of teacher shortage, our advocacy has focused on maintaining our state’s high teacher certification standards while exploring measures and investments to incentivize people to enter and stay in the profession.”

During the ERC, Public Advocates Inc. indicated all its teacher quality work stems from litigation from 1991, which was historically accepted by the State Bar as legal services but not described in its ILAW report.

Following the ERC, the Committee requested that Public Advocates Inc. identify specific legal services that were performed during the 2018 reporting period to determine whether the activities in this report qualified as legal services. Public Advocates Inc. was not able to provide supplemental information in writing by the requested deadline.

Based on the information provided by Public Advocates Inc. during the ERC and lack of supplemental information, staff recommends that the Committee maintain its non-qualifying determination for this activity.

### **2) HIGHER EDUCATION-LOW INCOME STUDENT ADVOCACY PROJECT**

This activity focused on advocating on behalf of low-income and indigent students in California’s public post-secondary colleges and universities.

In April, the Committee determined this activity was non-qualifying because it did not appear that this advocacy activity was legal services as defined by State Bar Rule 3.672(A) or primarily impacted indigent persons as defined by Business and Professions Code section 6213(d). In its ILAW report, Public Advocates Inc. stated, "During this initial year of our initiative, our focus has been on building partnerships with student organizations, creating coalitions with other higher education advocates, completing an analysis of the current policy reform, reaching out to policy makers, and creating a roadmap for our ongoing advocacy." In addition, Public Advocates Inc. used Cal Grant data and free/reduced lunch as a proxy to determine indigency for higher education students, even though that data only applies to K-12 students.

During the ERC, Public Advocates indicated that while there was a focus on building partnerships, this was a necessary step in order to build the foundation for its advocacy work. They also stated that policy work is informed by legal analysis and research. Public Advocates Inc. also indicated that while its reform work was aimed to impact the general student population, they expect that it will also benefit indigent persons. When the Committee asked for alternate data to prove indigency, Public Advocates was unable to provide it due to a general unavailability of data regarding higher education students.

Following the ERC, the Committee requested that Public Advocates Inc. identify specific legal services that were performed during the 2018 reporting period to determine whether the activities in this report qualified as legal services and primarily benefited indigent person. Public Advocates Inc. was not able to provide supplemental information in writing by the requested deadline.

Based on the information provided by Public Advocates Inc. during the ERC and lack of supplemental information, staff recommends that the Committee maintain its non-qualifying determination for this activity.

Public Advocates Inc. has requested the opportunity to make public comment at during the Committee's August 23 meeting.

## **ATTACHMENTS LIST**

- A.** ILAW Report: Equal Access to Fully-Prepared and Effective Teachers
- B.** ILAW Report: Higher Education-Low Income Student Advocacy Project

Organization:	Public Advocates Inc.
1. Advocacy Activity Name:	Equal Access to Fully-Prepared and Effective Teachers
2. Advocacy activity status:	Ongoing
3. Advocacy Type:	Other(explain)
a. Explain Other Advocacy Type:	Administrative and Legislative
4. Advocacy Level:	State
5. Partner Organizations:	<div>Partner Organizations</div> <div>State Bar Grantees</div> <div>Other Organizations</div> <div>The Education Trust-West</div> <div>Teach Plus</div> <div>EdVoice</div> <div>Children Now</div> <div>Californians for Justice</div>

6. Counties Impacted

Check all that apply

\*Statewide

7. Substantive Area

Check all that apply

Miscellaneous

8. Constituencies Impacted

Check all that apply

Children/Youth, Immigrants

## 9. Who benefitted from this advocacy

Low-income students, students of color and students with disabilities.

a. If available, provide the estimated number of total people impacted:

311,021

## 10. Explain how those impacted by this advocacy activity are indigent, as defined in B&P §6213(d)

If the majority of persons impacted are not indigent, type n/a.

Currently, California does not have a data system for tracking the placement of underprepared and misassigned teachers and the number of indigent students being taught by such teachers — creating such a system is a focus of our advocacy. In its place, school-level data provides the best proxy for estimating the number of indigent students impacted by this advocacy. In 2015-16, 12,799 classrooms in California were taught by teachers who are not “highly qualified” (i.e., have bachelor's degree; full state certification; and demonstrated competency in each core academic subject he or she teaches) in high-poverty schools (elementary schools where more than 87.5% of students qualify for the Free and Reduced Lunch Program and secondary schools where more than 84.93% of students so qualify—see details on FRMP data as the proxy for determining indigency in our Educational Equity/Opportunity to Learn Project report). (The federal government has moved past the “highly qualified” standard but new statistics pursuant to updated definitions are not yet available.) The average class size in 2015–16 was 24.3 students, thus approximately 311,021 students in high-poverty schools lack qualified teachers. The percentage of high-poverty classrooms with unqualified teachers is more than twice that in low-poverty schools. Thus, the majority of students impacted by our advocacy for teacher quality are enrolled in high-poverty schools.

## 11. Describe the impact this advocacy activity will have on indigent persons

If available, include the estimated number of total indigent persons impacted and how this was determined.

The central goal of this advocacy is to address the disproportionate number of underprepared and misassigned teachers serving in classrooms of predominantly low-income and indigent students. Quantitative analyses indicate that measures of teacher preparation and certification are by far the strongest correlates of student achievement in reading and mathematics, both before and after controlling for student poverty and language status. Yet, California has a critical shortage of qualified teachers. A recent survey of 211 school districts found that 75% of districts struggled to find teachers for the 2016–17 school year. The number of emergency-style teaching permits issued has more than doubled since 2012–13. These unqualified teachers are concentrated in schools with low-income students, students of color, and English Learners — at least 311,021 of whom are indigent as noted above. Special education students are also disproportionately impacted; a shocking 64% of their teachers lacking proper qualifications. Public Advocates' education work is guided by the long-term goal of providing all children a high-quality education that will prepare them for college, career, and civic participation. The success of our advocacy to improve the access of low-income and indigent students to fully-prepared and effective teachers impacts their educational outcomes, readiness for post-secondary college and career training, and their subsequent job opportunities and earning potential.

## 12. Briefly describe the advocacy activity and the overall goal(s)

Include specific legislation, regulations, or agencies involved.

In 2018, our activities included advocacy focused on federal and state policy with the goal of ensuring students have access to fully-prepared and effective teachers, especially in schools serving high concentrations of low-income students, students of color, and English learners. During this time of teacher shortage, our advocacy has focused on maintaining our state's high teacher certification standards while exploring measures and investments to incentivize people to enter and stay in the profession. At the state level, we monitor the work of California Commission on Teacher Credentialing (CTC), the state agency charged with establishing and enforcing educator licensing standards. We also conducted legislative and budget advocacy to improve teacher data and invest in programs to address California's teacher shortage. At the local level, we did educator workforce in both Oakland and West Contra Costa Unified, where we collaborated with community organizations and the districts themselves to bring to light critical teacher quality data and engage in discussions to improve teaching conditions in these high-need districts.

## 13. List the outcomes achieved or expected to achieve

If ongoing, highlight accomplishments (if any) achieved during the evaluation year.

At CTC meetings, we consistently raised the need for teacher data to inform local practice, diversity in the profession, and the need to support and retain new teachers. We successfully closed a loophole which allowed intern teachers (teaching while completing a teacher preparation program) to opt out of a teacher preparation program without having passed the relevant assessments.

At the legislature, we worked with stakeholders to improve the CTC's proposal for a new online database of teacher assignments. Such a system would make possible, for the first time, the annual monitoring and correction of all teacher assignments in all California schools. While the legislative effort continues into 2019, our advocacy last year helped support a 2018 budget allocation for an automated monitoring system through interagency cooperation between CTC and CDE and an initial pilot.

We also partnered with Californians for Justice and 15 other grassroots and advocacy organizations to advocate in the Governor's budget for teacher residency programs; professional development for bilingual teachers and early childhood educators; and scholarships for teaching in high shortage fields— initiatives that will have significant impact for indigent and special education students. The final budget included \$75 million for preparing and retaining special education teachers and \$25 million aimed at bilingual and STEM teachers.

In West Contra Costa Unified, our advocacy to the district and the Contra Costa County Office of Education caused the district to better explain its investments in teacher professional development and set diverse goals for teacher quality moving forward.

#### 14. Describe any economic benefit achieved or anticipated economic benefit

If the activity is ongoing, but there is an expected future economic benefit, describe the estimated benefit. Report the information you have available (e.g., estimated range). Do not extrapolate.

Organization:	Public Advocates Inc.
1. Advocacy Activity Name:	Higher Education — Low-Income Student Advocacy Project
2. Advocacy activity status:	Ongoing
3. Advocacy Type:	Other(explain)
a. Explain Other Advocacy Type:	Administrative and Legislative
4. Advocacy Level:	State
5. Partner Organizations:	<div>Partner Organizations</div> <div>State Bar Grantees</div> <div>Other Organizations</div> <div>The Affordability Coalition (convened by The Institute for College Access and Success) Education Trust-West Campaign for College Opportunity California Competes California Edge Coalition The Institute for College Access and Success University of California Students Association California State Students Association Student Senate of the Community Colleges Families in Schools</div>

6. Counties Impacted

Check all that apply

\*Statewide

7. Substantive Area

Check all that apply



Miscellaneous

**8. Constituencies Impacted**

Check all that apply

Children/Youth, Immigrants

**9. Who benefitted from this advocacy**

Low-income and indigent students, students from immigrant families, and working adults who attend California's public post-secondary colleges and universities

a. If available, provide the estimated number of total people impacted:

1,800,000

**10. Explain how those impacted by this advocacy activity are indigent, as defined in B&P §6213(d)**

If the majority of persons impacted are not indigent, type n/a.

The best available data regarding income-level of California students in the state's three higher education segments is provided by the annual awardees report of the Cal Grant Program through the California Student Aid Commission. Of the 282,374 students who received Cal Grants in 2017-18 whose parents are low income as defined by HUD's statewide income limits for California, 135,676 come from families with parental income less than \$24,000, which is below the B&P §6213(d) indigency level for a family of four (the average family size in California is 3.47). The next higher income level in the available data, \$24,000-\$35,999, also includes more students whose parental income qualifies as indigent for a family of three (\$25,9075) and a family of four (\$31,375). In addition, because of chronic underfunding, many indigent students at community colleges do not receive a Cal Grant. So, 135,676 is conservative estimate of the number of indigent students impacted. We are confident that the majority of those impacted by this advocacy are indigent.

**11. Describe the impact this advocacy activity will have on indigent persons**

If available, include the estimated number of total indigent persons impacted and how this was determined.

Public Advocates shifted the focus somewhat of its advocacy on higher education in 2018. Instead of largely focusing on protecting low-income students from abuses by for-profit postsecondary schools, we now primarily are concerned with the success of low-income students at California's public higher education institutions. Our higher education advocacy seeks to address the obstacles that low-income and indigent students face in accessing and succeeding in the state's public colleges and universities. Skyrocketing tuition costs are placing college opportunity out of reach for these students, and those that gain access to the state's post-secondary institutions struggle with housing and food insecurity, and a lack of academic and social supports. As many as 52% of California's community college students never graduate or transfer to four-year colleges. Seventy-five percent of students entering community colleges and 43 % of those entering CSU require remediation in one or more subjects, but large majorities of students placed into remedial classes never go on to take college-level courses or graduate. We advocate for and work alongside students in to win legislative and policy solutions that address the college affordability crisis, increase access to college opportunity, and improve postsecondary success removing barriers to college graduation for California's lowest income, indigent students.

## 12. Briefly describe the advocacy activity and the overall goal(s)

Include specific legislation, regulations, or agencies involved.

In 2018, Public Advocates received new funding to expand its capacity to advocate on behalf of low-income and indigent students in California's public post-secondary colleges and universities (University of California, California State University, and California Community Colleges). The goal of our advocacy includes elevating student voice into policy discussions at the institutional level and before state policy makers; advancing policy initiatives to address the need for a comprehensive longitudinal data system that identifies disparities in access and outcomes for low-income and indigent students; advancing funding reforms to address the affordability crisis, improving graduation rates, closing attainment gaps; improving transfer pathways to ensure that low-income and indigent students who enter public universities and colleges receive the supports they need to successfully complete degree programs; and addressing the housing, food, transportation and mental and physical health needs of low-income and indigent students.

During this initial year of our initiative, our focus has been on building partnerships with students organizations, creating coalitions with other higher education advocates, completing an analysis of the current policy landscape for higher education reform, reaching out to policy makers, and creating a roadmap for our ongoing advocacy. We have also undertaken initial advocacy to elevate student voice and engage in conversations around legislative proposals.

## 13. List the outcomes achieved or expected to achieve

If ongoing, highlight accomplishments (if any) achieved during the evaluation year.

Key outcomes achieved in 2018 include the following.

- Project staff hired and Sacramento office expanded
- Co-convening of California Higher Education Equity Coalition; development of shared equity principles; creation of and leading of a Data subcommittee to focus on Statewide Longitudinal Data System advocacy
- Outreach and partnership building for advocating for a statewide longitudinal data system
- Outreach and partnership building in advocating for Cal Grant financial aid reform
- Outreach to and partnership building with each of the three public systemwide student body governance organizations and organizations representing low-income students of color
- Research and surveys to identify student needs and barriers to graduation
- Completion of a comprehensive landscape analysis and roadmap to guide ongoing advocacy
- Co-convening, supporting, and participating in seven forums with gubernatorial and superintendent of public instruction candidates to raise candidate and public awareness of equity issues in higher education
- Supporting efforts by the University of California Student Association and the University Council of Student Body Presidents to ensure that student voices are heard (and state constitutional requirements are followed) in appointments to the UC Board of Regents

#### 14. Describe any economic benefit achieved or anticipated economic benefit

If the activity is ongoing, but there is an expected future economic benefit, describe the estimated benefit. Report the information you have available (e.g., estimated range). Do not extrapolate.