STATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov

March 14, 2014

Mr. Arthur M. Palkowitz
Stutz Artiano Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, CA 92106

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: **Final Staff Analysis and Proposed Statement of Decision**
Race to the Top, 10-TC-06
Education Code Sections 48353 et al.
Statutes 2009-2010, 5th Extraordinary Session, Chapters 2 and 3, SBX5 1 and SBX5 4 et al.
California Code of Regulations, Title 5, Section 4702 (Register 2010, No. 32)
Twin Rivers Unified School District, Claimant

Dear Mr. Palkowitz:

The final staff analysis and proposed statement of decision for the above-named matter is enclosed for your review.

Hearing

This matter is set for hearing on **Friday, March 28, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Heidi Palchik at (916) 323-3562 if you have any questions.

Sincerely,

Heather Halsey
Executive Director

Hearing Date: March 28, 2014
J:\MANDATES\2010\TC\10-TC-06 (Race to the Top)\TC\FSA.docx

ITEM 4

TEST CLAIM
FINAL STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Education Code Section 60601, as added and amended by Statutes 1995, Chapter 975, Section 1 (AB 265); Statutes 1996, Chapter 69, Section 1 (SB 430); Statutes 2001, Chapter 722, Section 2 (SB 233); Statutes 2004, Chapter 233, Section 1 (SB 1448); Statutes 2007, Chapter 174, Section 11 (SB 80); and Statutes 2009-2010, 5th Extraordinary Session, Chapter 2, Section 9 (SBX5 1);

Education Code Sections 48353, 48354, 48355, 48356, 48357, 48358, 48359, 48359.5, 48360 and 48361, as added by Statutes 2009-2010, 5th Extraordinary Session, Chapter 3, Section 1 (SBX5 4);

Education Code Sections 53100, 53101, 53200, 53201, 53201.5, 53202 and 53203, as added by Statutes 2009-2010, 5th Extraordinary Session, Chapter 2, Section 8 (SBX5 1);

Education Code Sections 53300, 53301 and 53303, as added by Statutes 2009-2010, 5th Extraordinary Session, Chapter 3, Section 2 (SBX5 4);

California Code of Regulations, Title 5, Section 4702 (Register 2010, No. 32)

Race to the Top
10-TC-06

Twin Rivers Unified School District, Claimant

Executive Summary

Overview

This test claim addresses state statutes enacted by the Legislature in 2009 and 2010 to make California competitive in the federal Race to the Top (RTTT) education grant program. To assist the reader, there is a glossary at the end of this document.

In February 2009, Congress enacted the American Recovery and Reinvestment Act (ARRA), which provided substantial one-time funds to help struggling states and created competitive grant programs designed to spur education and economic reform. One of the programs created as part of ARRA was the Race to the Top (RTTT) competitive grant program in which states competed for approximately $4.35 billion in federal funds.

The test claim statutes and regulation added or amended sections in four programs (RTTT, the Parent Empowerment Act (PEA), the Open Enrollment Act (OEA) and the Standardized Testing and Reporting (STAR)) to make the state more competitive in the federal RTTT competitive grant

program. These programs generally require various interventions, reforms, notices, public meetings, parental involvement and choice, and student testing to improve the quality of education and to ensure equal educational opportunities. Claimant alleges the requirements imposed by the test claim statutes and regulations are new and impose reimbursable state mandated programs.

Procedural History

Claimant, Twin Rivers Unified School District, filed the test claim on November 23, 2010.[1] On December 22, 2010, Commission on State Mandates (Commission) staff deemed the filing complete and numbered it 10-TC-06. None of the affected state agencies filed comments on the test claim. On August 5, 2013, Commission staff issued a request for additional briefing regarding grant funding that may be applicable to the NCLB and RTTT program. Specifically staff requested a response to whether these grant funds are sufficient to fully fund the costs of the RTTT program, and, whether these funds are required to be applied to the program or authorized to be applied to the program. None of the parties or interested parties responded to this request for information. On February 6, 2014, Commission staff issued the draft staff analysis. On February 27, 2014, the claimant filed comments on the draft staff analysis and proposed statement of decision. On March 4, 2014, the Department of Finance (Finance) filed late comments on the draft staff analysis and proposed statement of decision.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies, including school districts, are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions: all members of the class have the opportunity to participate in the test claim process, and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

[1] Based on the filing date of this test claim and pursuant to Government Code section 17557(e), the potential period of reimbursement for this claim begins July 1, 2009. However, because the effective date of the statutes over which the Commission has jurisdiction is April 12, 2010, any reimbursement requirement under this test claim would not begin until April 12, 2010.

Claims

The following chart provides a summary of the claims and issues raised and staff's recommendation.

Subject	Description	Staff Recommendation
Education Code section 60601, as added and amended by Statutes 1995, chapter 975, section 1 (AB 265); Statutes 1996, chapter 69, section 1 (SB 430); Statutes 2001, chapter 722, section 2 (SB 233); Statutes 2004, chapter 233, section 1 (SB 1448); Statutes 2007, chapter 174, section 11 (SB 80); Statutes 2009-2010, 5th Extraordinary Session, chapter 2, section 9 (SBX5 1)	Education Code section 60601 sets the inoperative and repeal date for the Leroy Greene California Assessment of Academic Achievement Act, which created the school STAR testing program. As last amended in 2010, the statute provides that the STAR testing program shall become inoperative on July 1, 2014, and as of January 1, 2015, is repealed unless a later enacted statute, enacted before January 1, 2015, deletes or extends the dates upon which it becomes inoperative and is repealed.	***Deny*** – The Commission does not have jurisdiction over Education Code section 60601, as enacted in 1995 and amended from 1996 through 2007 because these statutes were the subject of a prior test claim, *Standardized Testing and Reporting (STAR) II and III* (05-TC-02, 05-TC-03, and 08-TC-06), and denied because, as amended by Statutes 2009-2010, 5th Extraordinary Session, chapter 2, this code section sets the date by which the chapter governing the STAR program will become inoperative and then repealed but does not impose any mandated duties on school districts.
Education Code sections 53100, 53101, 53200, 53201, 53201.5, 53202 and 53203, as added by Statutes 2009-2010, 5th Extraordinary Session, chapter 2, section 8 (SBX5 1)	These sections govern the state's Race to the Top legislation. These statutes authorize the state to enter into a memorandum of understanding with a local educational agency to apply for grant funds under the federal RTTT competitive grant fund program. These sections further provide that "participating local educational agencies" shall enter into the memorandum of understanding and obtain signatures from as many as possible of each participating agency's superintendent of schools, president of the local government boards, and leaders of any local collective	***Partially Approve*** – Education Code section 53202(a) and (b) imposes a state-mandated new program or higher level of service, beginning April 12, 2010, on school districts that receive notice that a school or schools within the district have been identified by the SPI as persistently lowest-achieving to (1) hold at least two public

	bargaining unit for teachers. They also require the state to develop a plan with participating school districts to submit as part of the RTTT application process to demonstrate how funds from the federal RTTT program will be used. In addition, these sections require the SPI to establish a list of persistently lowest-achieving schools. School districts on the list are required to hold at least two public hearings for each school identified as a persistently lowest-achieving school to notify staff, parents, and the community of the designation and to seek input from staff, parents, and the community regarding the option or options for interventions most suitable for the school or schools in its jurisdiction. The district is required to select one of the four interventions for turning around the identified persistently lowest-achieving school or schools as described in Appendix C of the of the federal RTTT legislation.	hearings for each school identified to seek input from staff, parents, and the community regarding the option or options for intervention; to conduct a meeting of the governing board to select one of the four interventions for turning around the identified persistently lowest-achieving school or schools as described in Appendix C of the federal legislation; and (2) implement one of the four intervention models for turning around the identified persistently lowest-achieving school or schools. The following schools are exempt from the requirements of Education Code section 53202(a) and (b) and are, therefore, ***not*** mandated by the state to comply with the above activities: (1) Schools identified by the SPI and SBE as already having implemented a reform that conforms to the intervention requirements of the RTTT program, and are showing significant progress in its reform pursuant to Education Code section 53202(a); and (2) Schools listed in Education Code section 53201(e) (i.e., county community schools, juvenile court schools,

		schools that provide educational services exclusively to individuals with exceptional needs, and schools that have experienced academic growth of at least 50 points over the previous five years as measured by the API). In addition, to the extent that School Improvement Grant (SIG) funding has been awarded to a school district to implement one of the intervention models required by section 53202, that funding is offsetting revenue and must be identified and deducted from any reimbursement claim filed. However, sections 53100, 53101, 53200, 53201, 53201.5 and 53203 do not impose any state-mandated activities on school districts.
Education Code sections 53300, 53301 and 53303, as added by Statutes 2009-2010, 5th Extraordinary Session, chapter 3, section 2 (SBX5 4)	Education Code sections 53300-53301 govern the Parent Empowerment Act and authorize parents of students in a school not identified as persistently lowest-achieving, but subject to corrective action under Title I of NCLB, which fails to make adequate yearly progress, and has an API score of less than 800, to petition the governing school district to implement one of the four intervention models described in Education Code section 53202. The school district is generally required to implement the option requested; however, Education Code section 53303 limits this requirement to petitions	***Partially Approve*** – Education Code sections 53300 and 53301 mandate a new program or higher level of service on school districts, beginning April 12, 2010, to perform the following activities: upon receipt of a petition, signed by the specified number of parents: (1) implement the intervention model requested by parents unless, in a regularly

	that are filed for the purpose of improving academic achievement or pupil safety.	scheduled public hearing, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options it will implement in the subsequent school year consistent with the requirements specified in federal regulations and guidelines; (2) notify the SPI and SBE of the receipt of a petition and the final disposition of the petition. If the school district indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the school district shall notify the SPI and SBE that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in NCLB, 20 U.S.C. section 6301 et seq. Section 53303 limits the duties imposed by sections 53300 and 53301 and does not require the performance of any activities by a school district. Therefore, it does not impose a new program or higher level of service.

Education Code sections 48353, 48354, 48355, 48356, 48357, 48358, 48359, 48359.5, 48360 and 48361, as added by Statutes 2009-2010, 5th Extraordinary Session, chapter 3, section 1 (SBX5 4); California Code of Regulations, title 5, section 4702 (Register 2010, Nos. 32 and 49)	These code sections and regulations establish the Open Enrollment Act, which requires the SPI to identify schools as low-achieving by creating a list of 1000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1 in the 2008-2009 school year. A school district that has been identified on the Open Enrollment List is required to notify parents of the option for a student to transfer to a higher-achieving school outside their residence to improve pupil achievement in accordance with the regulations and guidelines for the federal RTTT fund and to enhance parental choice in education.	***Partially Approve*** The following activities required by Education Code sections 48354, 48356, and 48357 and California Code of Regulations, title 5, section 4702, constitute state-mandated new programs or higher levels of service on school districts beginning April 12, 2010: (1) the school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district; (2) upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process; within 60 days of receiving an application from a parent or guardian

		for transfer, the school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. Court, community, community day schools, and charter schools are exempt and ***not*** mandated by the state to comply with the Open Enrollment Act. Activities performed pursuant to sections 48353, 48355, 48358, 48359, 48359.5, 48360 and 48361 and any other activities pled under the Open Enrollment Act are either required of the state or are performed at the discretion of the school district, or do not impose a new program or higher level of service.

Analysis

A. The Commission does not have jurisdiction over Education Code section 60601, as added and amended from 1995 through 2007.

The claimant has pled Education Code section 60601, as originally enacted in 1995 and amended in 1996, 2001, 2004, 2007, and in 2009-2010. The Commission does not have jurisdiction over Education Code section 60601, as enacted in 1995 and amended from 1996 through 2007 because these statutes were the subject of a prior test claim, *Standardized Testing and Reporting (STAR) II and III*, 05-TC-02, 05-TC-03, and 08-TC-06, and denied because the code section does not impose any mandated duties on school districts. A Commission decision that becomes final and

has not been set aside by a court cannot be reconsidered by the Commission.[2] In addition, the statute of limitations for filing a test claim on Education Code section 60601, as added and amended from 1995 to 2007, has expired pursuant to Government Code section 17551(c).

B. Some of the provisions of the remaining test claim statutes and regulation impose a state-mandated new program or higher level of service on school districts.

1. Education Code section 60601 (as amended by Statutes 2009-2010, chapter 2) does not impose a state-mandated program on school districts.

Education Code section 60601 was amended by Statutes 2009-2010, chapter 2, effective April 12, 2010. That amendment set the date by which the chapter governing the STAR program would have become inoperative and then repealed. By its plain language, Education Code section 60601 does not impose any state-mandated activities on school districts.

2. Education Code section 53202 (a) and (b) imposes a state-mandated new program or higher level of service on school districts; however, the remaining code sections governing the state's Race to the Top application and implementation activities do not impose a new program or higher level of service.

Commission staff finds that the Education Code sections 53100 and 53101, governing the state's Race to the Top application, do not impose any state-mandated duties on school districts. These sections authorize the state to enter into a memorandum of understanding (MOU) with a local educational agency in order to apply for grant funds under the federal RTTT competitive grant fund program. They further provide that "*participating* local educational agencies" shall enter into the memorandum of understanding and obtain signatures from as many as possible of each participating agency's superintendent of schools, president of the local government boards, and leaders of any local collective bargaining unit for teachers. In addition, the state is required to develop a plan to submit as part of the RTTT application process to demonstrate how funds from the federal RTTT program will be used to provide resources to the low-achieving and persistently lowest-achieving schools that can be used for professional development, technical assistance, and partnering with schools that have successfully transitioned from low to higher-performing status. School districts that have voluntarily agreed to participate in the MOU and federal RTTT application process are requested to collaborate in the preparation of the plan. In addition, the state is required to contract for an independent evaluation of the plan submitted in the application for the federal competitive grant award[3]. These code sections do not impose any state-mandated activities on school districts. The plain language creates a voluntary program; school districts "may" enter into an MOU with the state to apply for and participate in the federal RTTT grant program. If a school district decides to participate, the district is required to gather the signatures and is encouraged to participate in the development of the state's plan. Those activities, however, are triggered by the district's voluntary decision to participate in the program. Pursuant to the court's decision in *Department of Finance v. Commission on State Mandates (Kern High School*

[2] *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

[3] Education Code section 53102, which is not pled in this test claim.

Dist.), downstream requirements triggered by local discretionary decisions are not eligible for reimbursement.[4]

Education Code sections 53200-53203 are informally titled "Intervening in the Persistently Lowest-Achieving Schools" and describe the interventions required for persistently lowest-achieving schools identified by the state. Sections 53200, 53201, and 53201.5, impose requirements on the SPI to establish a list of schools persistently lowest-achieving schools. "Persistently lowest-achieving schools" are defined to include the following schools:

- The lowest five percent of the Title 1 schools in improvement, corrective action, or restructuring when measured by the academic achievement of pupils in reading/language arts and mathematics;
- Secondary schools that do not receive Title 1 funds, but whose academic achievement of pupils in reading/language arts and mathematics is in the lowest five percent;
- Any high school that has a graduation rate that is less than 60 percent in each of the previous three years; and
- Any school determined to be included in the list by the SPI and State Board of Education that is a county community school, a juvenile court school, or a school that provides educational services exclusively for special education students.

Education Code sections 53200, 53201, and 53201.5 impose duties on the state, but do not impose any state-mandated activities on school districts.

Commission staff finds, however, that Education Code section 53202(a) and (b) (Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8) imposes a state-mandated new program or higher level of service, beginning April 12, 2010, on school districts that receive notice that a school or schools within the district have been identified by the SPI as persistently lowest-achieving pursuant to section 53200(b), for the following activities:

- Hold at least two public hearings for each school identified as a persistently lowest-achieving school to notify staff, parents, and the community of the designation and to seek input from staff, parents, and the community regarding the option or options most suitable for the applicable school or schools in its jurisdiction. At least one of the public hearings shall be held at a regularly scheduled meeting, if applicable, and at least one of the public hearings shall be held on the site of a school deemed persistently lowest-achieving.
- Conduct a meeting of the governing board to select one of the four interventions for turning around the identified persistently lowest-achieving school or schools as described in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009:

[4] *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355.

(1) The turnaround model.

(2) The restart model.

(3) School closure.

(4) The transformational model.

- Implement one of the four intervention models for turning around the identified persistently lowest-achieving school or schools.

The following schools are exempt from the requirements of Education Code section 53202(a) and (b) and are, therefore, ***not*** mandated by the state to comply with the above activities:

- Schools identified by the SPI and SBE as already having implemented a reform that conforms to the intervention requirements of the RTTT program, and are showing significant progress in its reform pursuant to Education Code section 53202(a); and
- Schools listed in Education Code section 53201(e) (i.e., county community schools, juvenile court schools, schools that provide educational services exclusively to individuals with exceptional needs, and schools that have experienced academic growth of at least 50 points over the previous five years as measured by the API).

The state enacted these requirements to implement a school intervention program that incorporates selection criteria from the federal RTTT legislation to compete for the federal competitive grant award. The federal grant program is voluntary and not mandated by federal law. By contrast, Education Code section 53202(a) and (b) imposes a state-mandated program on those school districts that have schools identified by the SPI and SBE as persistently lowest-achieving and required to comply with these activities.

Staff further finds that the activities required by section 53202(a) and (b) are new for all schools that are identified and receive notice by the SPI and SBE that they are persistently lowest-achieving schools pursuant to Education Code sections 53200(b) and 53201, and are required to comply with section 53202. In this respect, the parties do not dispute that schools which have *not* implemented a reform model under federal law (NCLB) within the two years before the enactment of section 53202, were under no obligation to hold public hearings and implement school improvement under prior state or federal law.

Finance suggests, however, that the mandated activities are not new and do not provide a higher level of service for those Title 1 schools already in corrective or restructuring action under NCLB that have implemented one of the intervention models identified in the RTTT program. Title 1 of NCLB does require some of the same interventions as described in the RTTT program for those schools in corrective or restructuring action. Under NCLB, states are required to identify any elementary or secondary school served by Title 1 that fails to make adequate yearly progress for two consecutive years. When a Title 1 school continues to fail to meet adequate yearly progress goals for four or more consecutive years, the district is required to implement *corrective action*, which includes replacing school staff, implementing new curriculum, decreasing the authority of

the school-level administration, appointing outside experts to advise the school, extending the school year or school day, and restructuring the internal organization of the school.[5]

Some of these activities are similar to those in the turn-around or transformational models of the RTTT program, which also involve replacing the principal, screening and rehiring staff and adopting a new governance structure. When a Title 1 school fails to meet adequate yearly progress goals for five consecutive years, the district is required by NCLB *to prepare a plan to restructure* the school. The restructuring plan must include one of the following alternative governance arrangements: reopen the school as a public charter school; replace all or most of the school staff; enter into a contract to have an outside entity operate the school; arrange for the state to take over operation of the school; or any other major restructuring of the school's governance arrangement.[6] If a Title 1 school fails to meet adequate yearly progress goals for six consecutive years, the district is required *to implement the restructuring plan* developed in the previous year.[7] These interventions are also similar to those in the restart model of RTTT, which involves converting the school to a charter school or hiring an education management company to run the school.

However, the plain language of section 53202(a) provides that schools, determined by the SPI and SBE to have "implemented a reform within the last two years that conforms to the requirements of the interventions required by the [RTTT] program and is showing significant progress," are not required to comply with requirements of section 53202. Thus, the plain language of the statute recognizes the overlap and expressly exempts schools that have implemented a reform within the last two years that conforms with the requirements of RTTT. However, those Title 1 schools that have implemented a reform that has *not* shown significant progress as determined by the SPI and SBE are not exempt from the requirements of section 53202, and are required to take *additional* steps to comply with public hearing and intervention requirements of the test claim statute.[8] Thus, the public hearing and intervention requirements of Education Code section 53202(a) and (b) are new to all persistently lowest-achieving schools selected by the SPI and SBE. These activities are intended to turn around persistently lowest-achieving schools in the state and, thus, provide a new program or higher level service to the public.

Staff further finds that participating in a school-to-school partnership program by working with a mentor school that has successfully transitioned from a low-achieving to a higher-achieving school pursuant to Education Code section 53202(c) is not mandated by the state. Education Code section 53203 requires the regional consortia authorized under Education Code section 53203, in collaboration with the California Department of Education (CDE), to provide technical

---

[5] 20 U.S.C. section 6316(b)(7)(C).

[6] 20 U.S.C. section 6316(b)(8)(A).

[7] 20 U.S.C. section 6316(b)(8)(B).

[8] The legislative history of the test claim statute shows that the RTTT interventions are additional to the requirements of NCLB. The analysis of SBX5 1 by the Senate Appropriations Committee, November 3, 2009, states that "The SBE and SPI would be required to consider not identifying a school for *additional* intervention if that school is showing significant progress under an existing intervention." (Exhibit F.)

assistance and support to school districts with one or more persistently lowest-achieving schools to assist in the implementation of intervention methods adopted by the district from funds obtained in the federal RTTT competitive grant program. A school district's participation in the regional consortia, however, is not required by state law and, thus, section 53203 does not impose any state-mandated activities upon school districts.

3. Education Code sections 53301 and 53303, governing the Parent Empowerment Act, impose a state-mandated new program or higher level of service on school districts.

The Parent Empowerment Act[9] creates a petition process authorizing parents of students in a school not identified as persistently lowest-achieving, but subject to corrective action under Title I of NCLB, fails to make adequate yearly progress, and has an API score of less than 800, to petition the governing school district to implement one of the four intervention models described in Education Code section 53202. NCLB and the federal RTTT do not have a parent petition process as part of the Title I grant funding or the RTTT grant criteria. Under the RTTT selection criteria, states are judged on their "comprehensive approach to educational reform," but no specific parental component is identified.

Staff finds that Education Code sections 53300 and 53301 (Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2) mandate a new program or higher level of service on school districts, beginning April 12, 2010, to perform the following activities upon receipt of a petition, signed by the number of parents specified in section 53300 and for the purpose of improving academic achievement or pupil safety, requesting the implementation of one or more of the four intervention models described in Education Code section 53202 for a school that is not identified as a persistently lowest-achieving school, but is subject to corrective action pursuant to NCLB, continues to fail to make adequate yearly progress, and has an API score of less than 800:

- Implement the intervention model requested by parents unless, in a regularly scheduled public hearing, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options it will implement in the subsequent school year consistent with the requirements specified in federal regulations and guidelines.
- Notify the SPI and SBE of the receipt of a petition and the final disposition of the petition. If the school district indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the school district shall notify the SPI and SBE that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in NCLB, 20 U.S.C. section 6301 et seq.

Section 53302, which is not pled in this test claim, limits the number of schools subject to the petition process, based upon the number of notices provided to the SPI and SBE, to 75 schools.

4. Education Code sections 48354, 48356 and 48357 and California Code of Regulations, title 5, section 4702, which govern the Open Enrollment Act, mandate a new program or higher level of service on school districts.

[9] Education Code sections 53300-53303.

Under the Open Enrollment Act[10], the SPI is required to identify schools as low-achieving by creating a list of 1000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1 in the 2008-2009 school year.[11] A school district that has been identified on the Open Enrollment List is required to notify parents of the option for a student to transfer to a higher-achieving school outside their district of residence to improve pupil achievement in accordance with the regulations and guidelines for the federal RTTT fund and to enhance parental choice in education.

Based on the plain language of the Open Enrollment statutes and regulation, staff finds that the following activities required by Education Code sections 48354, 48356, and 48357 (Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1) and California Code of Regulations, title 5, section 4702 (Register 2010, No. 32), impose a state-mandated program on school districts beginning April 12, 2010:

- The school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district. This notice shall be provided on the first day of instruction. If the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's Web site at http://www.cde.ca.gov/. (Ed. Code, § 48354(b)(1); Cal. Code Regs., tit. 2, § 4702(a).)
- Upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. If the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order in section 48356(d)(1) and (2) to select pupils at random. (Ed. Code, § 48356(d).)
- Within 60 days of receiving an application from a parent or guardian for transfer, the school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. (Ed. Code, § 48357.)

Court, community, community day schools, and charter schools are exempt and ***not*** mandated by the state to comply with the Open Enrollment Act.[12]

---

[10] Education Code sections 48350-48361.

[11] Education Code section 48352.

[12] Education Code section 48352(a)(2)(B) and (C).

Finance argues, however, that when determining if the mandated activities impose a new program or higher level of service, the school-of-choice requirements in Title 1 of NCLB need to be taken into account to determine the "true higher level of service" now imposed on school districts. Finance is correct that existing federal law, under Title 1 of NCLB, requires that all students enrolled in a Title 1 school that has been identified for school improvement, corrective action, or restructuring, shall be offered the opportunity to transfer to a higher achieving school *in* the district,[13] and that the test claim statute, section 48354, also requires the district of residence to provide notice of the option to transfer to another public school if identified on the list of 1,000 schools prepared by the SPI. However, the school of choice provisions under NCLB and the school of choice provisions under the state's Open Enrollment Act are distinct and impose two separate programs. Under NCLB, schools in program improvement are identified based on criteria provided by the federal government. Open Enrollment schools are identified based on the provisions in Education Code section 48352. School districts that receive notice of program improvement under NCLB and notice that one of the schools in the district is also on the Open Enrollment List are required to provide notice to parents and guardians of *both* programs. A parent or guardian, therefore, may exercise either option.[14] Under the Open Enrollment program, a parent may enroll a student in a school within his or her district of residence *or* a school in another district, as long as the school has a higher API score.[15] Thus, a school district's compliance with one program does not excuse the compliance with the other program and there is no overlap in the two programs, as suggested by Finance. Staff finds that the activities mandated by Education Code sections 48354, 48356, and 48357, and section 4702 of the regulations, impose a new program or higher level of service.

In addition, Education Code section 48358 requires the school district of enrollment to accept credits toward graduation that were awarded to the pupil by another school district and to graduate the pupil if that pupil meets the graduation requirements of the school district of enrollment. These requirements, however, are not new and do not provide a higher level of service to the public. Under existing law, minimum graduation standards for English, mathematics, science, social studies, physical education, and visual or performing arts or foreign language, are established by the state for high school graduation. In addition to those courses mandated by the state, school districts have the authority under existing law to adopt other coursework requirements for graduation.[16] Thus, the activity of graduating a pupil if he or she meets the graduation requirements of the district is not new. In addition, requiring the school district of enrollment to accept credits toward graduation that were awarded to the pupil by another school district establishes a lower level of service for the district of enrollment. By accepting credits for courses already taken by the pupil at the district of residence, the number of credits needed to graduate and the number of courses needed to be provided by the district of

[13] 20 U.S.C. section 6316(b)(1)(E), (b)(5)(A), (b)(7)(C)(i), and (b)(8)(A)(i); 34 C.F.R. §200.44(a)(1).

[14] Exhibit F, California Department of Education, Frequently Asked Questions, Open Enrollment Act, Senate Bill 4 of the Fifth Extraordinary Session (SBX5 4).

[15] *Ibid*.

[16] Education Code section 51225.3.

enrollment is reduced. Thus, Education Code section 48358 does not impose a new program or higher level of service on school districts.

Additionally, Education Code sections 48353, 48355, 48359, 48359.5, 48360 and 48361 and any activities pled under the Open Enrollment Act that are not identified in the bullets above, are either required of the state or are performed at the discretion of the school district (including the authority to adopt standards for acceptance and rejection of applications under the Open Enrollment Act, and the encouragement to keep an accounting of all requests made for alternative attendance and records of the disposition of those requests) and, thus, do not impose any state-mandated activities on school districts.

C. The new mandated activities impose costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514.

Government Code section 17564 provides that a test claim may not be filed unless the claim exceeds one thousand dollars. In this case, claimant alleges increased costs mandated by the state in the amount of $450,000 for fourteen schools in the district impacted by the test claim statutes. Staff finds that none of the Government Code section 17556 exceptions to the subvention requirement apply to deny this claim.

However, article XIII B, section 6, does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue. In this respect, federal school improvement grants (SIG) have been awarded to persistently lowest-achieving schools to implement one of the four intervention models for turning a school around pursuant to Education Code section 53202. These funds can be awarded to school districts with persistently lowest-achieving Title 1 schools and to school districts with persistently lowest-achieving secondary schools that are eligible for, but do not receive, Title 1 funding. Funding for SIG is provided by an annual appropriation in the Budget Act in Item 6110-134-0890. The claimant requested funding in September 2010 and funding was awarded to the claimant in the amount of $5,584,828.[17] These funds are specifically intended to fund the implementation of the intervention models required by Education Code section 53202 by a persistently lowest-achieving school and, thus, are required to be identified as offsetting revenue and deducted from the costs claimed by a district.

There is no evidence that funding has been appropriated for the remaining activities, however. Nevertheless, to the extent a district receives any additional federal funding or grant funding and applies those funds to the mandated activities, those funds are required to be identified as offsetting revenue and deducted from the costs claimed by the district.

Accordingly, based on the evidence in the record, the Commission finds there are costs mandated by the state pursuant to Government Code section 17514.

[17] Exhibit F, CDE "Funding Results for School Improvement Grant" (SIG) awards. District totals represent the amount awarded for a three year period. (http://www.cde.ca.gov/fg/fo/r16/sigreg09result.asp)

Conclusion

Staff concludes that the test claim statutes and regulation impose a reimbursable state-mandated new program or higher level of service, within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning April 12, 2010, for the following activities only:

1. Race to the Top

   School districts that receive notice that a school or schools within the district have been identified by the SPI as persistently lowest-achieving pursuant to Education Code section 53200(b) are required to perform the following activities:

   a) Hold at least two public hearings for each school identified as a persistently lowest-achieving school to notify staff, parents, and the community of the designation and to seek input from staff, parents, and the community regarding the option or options most suitable for the applicable school or schools in its jurisdiction. At least one of the public hearings shall be held at a regularly scheduled meeting, if applicable, and at least one of the public hearings shall be held on the site of a school deemed persistently lowest-achieving. (Ed. Code, § 53202(b), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)

   b) Conduct a meeting of the governing board to select one of the four interventions for turning around the identified persistently lowest-achieving school or schools as described in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009:

      (1) The turnaround model.

      (2) The restart model.

      (3) School closure.

      (4) The transformational model. (Ed. Code, § 53202, Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)

   c) Implement one of the four intervention models for turning around the identified persistently lowest-achieving school or schools. (Ed. Code, § 53202(a), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)

   The following schools are exempt from the requirements of Education Code section 53202(a) and (b) and are, therefore, ***not*** mandated by the state to comply with the above activities:

   - Schools identified by the SPI and SBE as already having implemented a reform that conforms to the intervention requirements of the RTTT program, and are showing significant progress in its reform pursuant to Education Code section 53202(a); and
   - Schools listed in Education Code section 53201(e) (i.e., county community schools, juvenile court schools, schools that provide educational services

exclusively to individuals with exceptional needs, and schools that have experienced academic growth of at least 50 points over the previous five years as measured by the API).

2. Parent Empowerment Act

School districts that receive a petition, signed by the number of parents specified in Education Code section 53300 and for the purpose of improving academic achievement or pupil safety, requesting the implementation of one or more of the four intervention models described in Education Code section 53202 for a school that is not identified as a persistently lowest-achieving school, but is subject to corrective action pursuant to NCLB, continues to fail to make adequate yearly progress, and has an API score of less than 800, are required to perform the following activities:

a) Implement the intervention model requested by parents unless, in a regularly scheduled public hearing, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options it will implement in the subsequent school year consistent with the requirements specified in federal regulations and guidelines. (Ed. Code, § 53300, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2.)

b) Notify the SPI and SBE of the receipt of a petition and the final disposition of the petition. If the school district indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the school district shall notify the SPI and SBE that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in NCLB, 20 U.S.C. section 6301 et seq. (Ed. Code, § 53301, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2.)

3. Open Enrollment Act

a) The school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district. This notice shall be provided on the first day of instruction. If the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's Web site at http://www.cde.ca.gov/. (Ed. Code, § 48354(b)(1); Cal. Code Regs., tit. 2, § 4702(a).)

b) Upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. If the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be

conducted in the group priority order in section 48356(d)(1) and (2) to select pupils at random. (Ed. Code, § 48356(d), Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1.)

c) Within 60 days of receiving an application from a parent or guardian for transfer, the school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. (Ed. Code, § 48357, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1.)

Court, community, community day schools, and charter schools are exempt and ***not*** mandated by the state to comply with the Open Enrollment Act.[18]

All other statutes and activities pled are denied.

In addition, any federal funding or grant funding appropriated for these mandated activities, including SIG funds (State Budget Act, Line Item 6110-134-0890) appropriated to implement an intervention model pursuant to Education Code section 53202, shall be identified as offsetting revenue and deducted from the costs claimed by the district.

Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision as its test claim decision, to partially approve the test claim, as specified.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed test claim decision following the hearing.

[18] Education Code section 48352(a)(2)(B) and (C).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Section 60601, as added and amended by Statutes 1995, Chapter 975, Section 1 (AB 265); Statutes 1996, Chapter 69, Section 1 (SB 430); Statutes 2001, Chapter 722, Section 2 (SB 233); Statutes 2004, Chapter 233, Section 1 (SB 1448); Statutes 2007, Chapter 174, Section 11 (SB 80); Statutes 2009-2010, 5th Extraordinary Session, Chapter 2, Section 9 (SBX5 1); Education Code Sections 48353, 48354, 48355, 48356, 48357, 48358, 48359, 48359.5, 48360 and 48361, as added by Statutes 2009-2010, 5th Extraordinary Session, Chapter 3, Section 1 (SBX5 4); Education Code Sections 53100, 53101, 53200, 53201, 53201.5, 53202 and 53203, as added by Statutes 2009-2010, 5th Extraordinary Session, Chapter 2, Section 8 (SBX5 1); Education Code Sections 53300, 53301 and 53303, as added by Statutes 2009-2010, 5th Extraordinary Session, Chapter 3, Section 2 (SBX5 4); California Code of Regulations, Title 5, Section 4702 (Register 2010, Nos. 32). Filed on November 23, 2010 By Twin Rivers Unified School District, Claimant.	Case No.: 10-TC-06 *Race to the Top* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted March 28, 2014*)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on March 28, 2014. [Witness list will be included in the final statement of decision.] To assist the reader, a glossary of terms can be found at the end of this document.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision.]

Summary of the Findings

This test claim addresses the state statutes enacted in 2009 and 2010 to make California competitive in the federal Race to the Top (RTTT) education grant program.

The Commission concludes that the test claim statutes and regulation identified below impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning April 12, 2010.

1. Race to the Top

   School districts that receive notice that a school or schools within the district have been identified by the SPI as persistently lowest-achieving pursuant to Education Code section 53200(b) are required to perform the following activities:

   a) Hold at least two public hearings for each school identified as a persistently lowest-achieving school to notify staff, parents, and the community of the designation and to seek input from staff, parents, and the community regarding the option or options most suitable for the applicable school or schools in its jurisdiction. At least one of the public hearings shall be held at a regularly scheduled meeting, if applicable, and at least one of the public hearings shall be held on the site of a school deemed persistently lowest-achieving. (Ed. Code, § 53202(b), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)

   b) Conduct a meeting of the governing board to select one of the four interventions for turning around the identified persistently lowest-achieving school or schools as described in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009:

      (1) The turnaround model.

      (2) The restart model.

      (3) School closure.

      (4) The transformational model. (Ed. Code, § 53202(a), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)

   c) Implement one of the four intervention models for turning around the identified persistently lowest-achieving school or schools. (Ed. Code, § 53202(a), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)

      However, participating in a school-to-school partnership program by working with a mentor school that has successfully transitioned from a low-achieving to a higher-

achieving school pursuant to Education Code section 53202(c) is not mandated by the state.

The following schools are exempt from the requirements of Education Code section 53202(a) and (b) and are, therefore, ***not*** mandated by the state to comply with the above activities:

- Schools identified by the SPI and SBE as already having implemented a reform that conforms to the intervention requirements of the RTTT program, and are showing significant progress in its reform pursuant to Education Code section 53202(a); and
- Schools listed in Education Code section 53201(e) (i.e., county community schools, juvenile court schools, schools that provide educational services exclusively to individuals with exceptional needs, and schools that have experienced academic growth of at least 50 points over the previous five years as measured by the API).

2. Parent Empowerment Act

School districts that receive a petition, signed by the number of parents specified in Education Code section 53300 and for the purpose of improving academic achievement or pupil safety, requesting the implementation of one or more of the four intervention models described in Education Code section 53202 for a school that is not identified as a persistently lowest-achieving school, but is subject to corrective action pursuant to NCLB, continues to fail to make adequate yearly progress, and has an API score of less than 800, are required to perform the following activities:

a) Implement the intervention model requested by parents unless, in a regularly scheduled public hearing, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options it will implement in the subsequent school year consistent with the requirements specified in federal regulations and guidelines. (Ed. Code, § 53300, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2.)

b) Notify the SPI and SBE of the receipt of a petition and the final disposition of the petition. If the school district indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the school district shall notify the SPI and SBE that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in NCLB, 20 U.S.C. section 6301 et seq. (Ed. Code, § 53301, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2.)

3. Open Enrollment Act

a) The school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district. This notice shall be provided on the first day of

instruction. If the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's Web site at http://www.cde.ca.gov/. (Ed. Code, § 48354(b)(1); Cal. Code Regs., tit. 2, § 4702(a).)

b) Upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. If the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order in section 48356(d)(1) and (2) to select pupils at random. (Ed. Code, § 48356(d), Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1.)

c) Within 60 days of receiving an application from a parent or guardian for transfer, the school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. (Ed. Code, § 48357, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1.)

Court, community, community day schools, and charter schools are exempt and ***not*** mandated by the state to comply with the Open Enrollment Act.[19]

All other statutes and activities pled are denied.

In addition, any federal funding or grant funding appropriated for these mandated activities, including SIG funds (State Budget Act, Line Item 6110-134-0890) appropriated to implement an intervention model pursuant to Education Code section 53202, shall be identified as offsetting revenue and deducted from the costs claimed by the district.

COMMISSION FINDINGS

I. Chronology

11/23/2010 Claimant, Twin Rivers Unified School District, filed the *Race to the Top* test claim, 10-TC-06 with the Commission.[20]

12/22/2010 Commission staff issued a notice of complete test claim filing and schedule for comments.

[19] Education Code section 48352(a)(2)(B) and (C).

[20] Exhibit A. Based on the filing date of this test claim and pursuant to Government Code section 17557(e), the potential period of reimbursement for this claim begins July 1, 2009. However, because the effective date of the statutes over which the Commission has jurisdiction is April 12, 2010, any reimbursement requirement under this test claim would not begin until that date.

08/05/2013 Commission staff issued a request to the claimant and state agencies for additional briefing regarding grant funding applicable to the Race to the Top program. No responses were filed on this request.

01/26/2014 Commission staff issued the draft staff analysis and proposed statement of decision, setting the matter for the March 28, 2014 hearing.[21]

02/27/2014 Claimant submitted written comments on the draft staff analysis and proposed statement of decision.[22]

03/04/2014 The Department of Finance submitted late comments on the draft staff analysis and proposed statement of decision.[23]

II. Background

This test claim addresses statutes enacted in 2009 and 2010 to make California competitive in the federal Race to the Top (RTTT) education grant program.

In February 2009, Congress enacted the American Recovery and Reinvestment Act (ARRA), which provided substantial one-time funds to help struggling states and created competitive grant programs designed to spur education and economic reform. One of the programs created as part of ARRA was the RTTT competitive grant program. Under RTTT, states competed for approximately $4.35 billion in funds to encourage and reward states that are creating conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers; and implementing ambitious plans in the following four core education reform areas:

- Adopting standards and assessments that prepare students to succeed in college and the workplace and to compete in the global economy;
- Building data systems that measure student growth and success, and inform teachers and principals about how they can improve instruction;
- Recruiting, developing and rewarding, and retaining effective teachers and principals, especially where they are needed most; and
- Turning around our lowest-achieving schools.[24]

The federal RTTT program initially consisted of two award phases. States could apply in either phase, and if they failed to receive an award in the first phase, they could apply again. In order to be eligible to receive funds under RTTT, a state must meet two requirements: the state application for grant funding must be approved by the U.S. Education Department; and no legal, statutory, or

[21] Exhibit C.

[22] Exhibit D.

[23] Exhibit E.

[24] Exhibit F, Race to the Top Executive Summary, published by the U.S. Department of Education (November 2009).

regulatory barriers can exist at the state level to linking data on student achievement or student growth to teachers and principals for the purpose of teacher and principal evaluation.

California submitted a Phase 1 application to receive $1 billion. California's application, however, finished 27th out of 41 states that applied and, thus, the Phase 1 application was not successful.[25] In May 2010, California applied for an award in the second phase. Although California was selected as a finalist, it did not secure any grant funding. In 2011, the federal Department of Education announced that it would allow the finalists to apply for a share of $200 million added to the program in 2011. California's application, however, was rejected in November 2011. California ultimately received a RTTT Early Learning Challenge grant of $52.6 million in December 2011 and an additional grant of $22.4 million in August 2013.

A. The test claim statutes and regulation; California's response to the federal RTTT program

The state Legislature added article 10 to chapter 2 and added a new chapter 18 to the Education Code specifically to make California's application for RTTT grant funds competitive. Chapter 18 includes Race to the Top (Ed. Code §§ 53100-53203) and the Parent Empowerment Act (Ed. Code sections §§53300-53303) and article 10 to chapter 2 added the Open Enrollment Act (Ed. Code sections 48350-48361). The California Department of Education (CDE) also adopted a regulation (Cal. Code Regs., tit. 5, § 4702) to implement the Open Enrollment Act. These provisions are summarized below.

1) Race to the Top (Ed. Code, §§ 53100-53203)

Education Code sections 53100-53203 establish a process by which, through a memorandum of understanding (MOU), the state and local educational agencies who choose to participate in the application for RTTT grant funds target the RTTT criteria, focusing particularly on persistently low-achieving schools.[26] These code sections require the state and participating schools who have signed a memorandum of understanding to develop a plan to address how federal funds from both RTTT and other federal funding sources will provide resources for those identified schools.[27] The plan may address professional development, technical assistance, and partnership with other schools that have successfully transitioned from low performing to higher performing schools.[28]

They also require identification of schools that meet the definition of persistently lowest-achieving schools. "Persistently Lowest-Achieving Schools" are defined to include:

- The lowest five percent of schools that are Title 1, No Child Left Behind (NCLB), schools in improvement, corrective action, or restructuring when measured by the academic achievement of pupils in reading/language arts and mathematics;

[25] Exhibit F, "Race to the Top: An Update and Key Issues for Phase 2, Legislative Analyst's Office, May 12, 2010.

[26] Education Code sections 53100-53203.

[27] Education Code section 53101.

[28] Education Code section 53101.

- Secondary schools that do not receive Title 1 NCLB funds, but whose academic achievement of pupils in reading/language arts and mathematics is in the lowest five percent; and
- Any high school that has a graduation rate that is less than 60 percent in each of the previous three years; and any school determined to be included in the list by the Superintendent of Public Instruction (SPI) and the state Board of Education (SBE) that is a county community school, a juvenile court school, or a school that provides educational services exclusively for special education students.[29]

If the SPI and the SBE determine that a Title I persistently lowest-achieving school has implemented a reform within the last two years that conforms to the interventions identified in the federal Race to the Top program and is showing significant progress, then that school is exempt from the RTTT intervention requirements.[30] Once a school is identified by the SPI and SBE as a persistently low-achieving school, and has not been so exempted, the governing school district is required to hold at least two public hearings to notify staff, parents, and the community of the designation and to seek input regarding the options for implementing one of the four intervention models described in Appendix C of the federal RTTT legislation for turning around the school.[31] These models include the following:

- Turn around model. This includes replacing the principal, screening all staff and rehiring no more than 50 percent of the existing staff and adopting a new governance structure.
- Restart model. This model includes converting to a charter school or hiring an education management company to run the school.
- School closure. This model envisions closing the school down and sending the students to a higher-achieving school.
- Transformation model. This model involves specific interventions including the following: developing and increasing teacher and school leader effectiveness by replacing the principal and using rigorous and equitable evaluation systems for teachers and principals; identifying and rewarding school leaders, teachers, and staff, who have increased student achievement and graduation rates, and identifying and removing those who have not improved their professional practice; providing staff with professional development; and implementing strategies for financial incentives, increased opportunities for promotion and career growth, and retaining staff with the skills necessary to meet the needs of the students.[32]

A persistently lowest-achieving school implementing the turnaround or transformational model may participate in a school-to-school partnership program by working with a mentor school that

[29] Education Code section 53201.

[30] Education Code section 53202(a).

[31] Education Code section 53202(b).

[32] Education Code section 53202, RTTT Appendix C Notice of Final Priorities, Requirements, Definitions, Selection Criteria (Federal Register, Volume 74, Number 221, November 18, 2009).

has successfully transitioned from a low-achieving to a higher-achieving school.[33] If a school-to-school mentor program is used, the principal of the mentor school is required to provide guidance to develop a reform plan for the persistently lowest-achieving school.[34] The mentor school may receive funding to the extent federal funds are made available, for serving as the mentor school.[35]

School districts with one or more persistently lowest-achieving schools are authorized to assist in the implementation of intervention methods adopted by the district from funds obtained in the federal RTTT competitive grant program.[36]

2) Parent Empowerment Act (Ed. Code, §§53300-53303)

The Parent Empowerment Act allows parents to petition a school to implement one of the intervention models described above in order to improve academic achievement or pupil safety. Parents may file a petition for those schools that are not identified as persistently low-achieving, but are subject to corrective action under NCLB, fail to make adequate yearly progress, and have an Academic Performance Index (API) score of less than 800.[37]

Schools are required, following a receipt of a petition filed by parents, to implement the intervention option requested by the parents unless, in a regularly scheduled public hearing of the school district, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and, instead, designates in writing which of the other intervention options it will implement in the subsequent school year that has substantial promise of enabling the school to make adequate yearly progress.[38] The school district is also required to notify the SPI and SBE upon receipt of a petition and the district's final disposition of the matter.[39]

3) Open Enrollment Act (Ed. Code, §§ 48350-48361,Cal. Code of Regs., tit. 5, § 4702)

The Open Enrollment Act is intended to improve the academic achievement of pupils and to enhance parental choice in education by providing pupils enrolled in low-achieving schools with additional options to enroll in higher-achieving public schools throughout the state regardless of the pupil's residence.[40] Education Code section 48354 and section 4702 of the CDE regulations require a school district of residence that has been identified on a list known as the Open Enrollment List to notify parents of the option for a student to transfer to a higher-achieving school by the first day of the school year. The school district of residence may prohibit a transfer if the governing board of the school district determines the transfer would negatively impact a

[33] Education Code section 53202(c).

[34] Education Code section 53202(c).

[35] Education Code section 53202(c).

[36] Education Code section 53202(c).

[37] Education Code section 53300.

[38] Education Code section 53300.

[39] Education Code section 53301.

[40] Education Code section 48351.

court-ordered or voluntary desegregation plan of the district or the racial and ethnic balance of the district, provided that the school district's policy is consistent with state and federal law.[41]

The school district of enrollment is required to prioritize transfers, first providing a period of time for resident pupil enrollment before accepting transfers from pupils residing outside the district of enrollment.[42] The school district of enrollment may develop specific written standards for acceptance or rejection of transfers.[43] The school district of enrollment must ensure a student who transfers from an identified school are enrolled in a school with a higher API and that placement of that student is made through a random, unbiased process.[44] The school district of enrollment has 60 days to notify the applicant parent and school district of residence in writing whether the application is accepted or rejected.[45] The school district of enrollment must accept credits toward graduation awarded by another school district and must graduate the student if the pupil meets the graduation requirements of the school district of enrollment.[46]

The school district of residence and the school district of enrollment are encouraged to keep records of all requests for transfer.[47]

4) Education Code section 60601, relating to the STAR test (as added and amended from 1995 to 2010)

Education Code section 60601, as amended in 2010, sets the inoperative and repeal date for the Leroy Greene California Assessment of Academic Achievement Act, which created a school STAR testing program. As amended in 2010, the statute provided that the STAR testing program shall become inoperative on July 1, 2014, and as of January 1, 2015, is repealed unless a later enacted statute, enacted before January 1, 2015, deletes or extends the dates upon which it becomes inoperative and is repealed. A later enacted statute, Statutes 2013, chapter 489, deleted the provisions establishing the STAR program and replaced them with provisions establishing the Measurement of Academic Performance and Progress (MAPP) program, commencing in the 2013/2014 school year. Statutes 2013, chapter 489 amended section 60601 to provide an inactive date of July 1, 2020 and a repeal date of July 1, 2021.

B. The Federal No Child Left Behind Act

In 2001, Congress enacted the No Child Left Behind Act of 2001 (NCLB), which amended the long standing Elementary and Secondary School Act, first adopted in 1965. Significant grant funding is made available to states through Title I of NCLB (20 U.S.C. sections 6300, *et seq*.) to

[41] Education Code section 48355.

[42] Education Code section 48354.

[43] Education Code section 48356(a).

[44] Education Code section 48356(d).

[45] Education Code section 48357.

[46] Education Code section 48358.

[47] Education Code section 48359.

fund educational programs for disadvantaged students. School districts receiving Title 1 funds are required by NCLB to comply with its requirements.

NCLB created an ambitious long-term goal of proficiency in reading and mathematics to be achieved by school year 2013-2014. To achieve that goal, NCLB requires states that accept Title 1 funding to develop an approved system for implementing the accountability provisions of NCLB, including the creation of a single definition of adequate yearly progress for all schools in the state. Adequate yearly progress is measured by annual targets for academic achievement, participation in assessments, graduation rates for high schools, and other academic indicators for elementary and middle schools.[48]

Before a state receives Title I funding, the state submits a plan, formulated with local education agencies (LEAs), teachers, parents and other personnel that demonstrates the state has developed challenging academic standards and has implemented an accountability system.[49] In addition, any LEA accepting funding under Title I is required to file a local plan with the state that includes assurances the LEA will use high quality student academic assessments in addition to those provided by the state.[50]

NCLB requires states and LEAs that receive funds to annually assess academic progress to ensure each school is making adequate yearly progress as measured by the state academic assessment model and to disseminate the results of the review to parents, teachers, principals, schools and the community. A school is identified for improvement if a school fails, for two consecutive years, to make adequate yearly academic progress as defined in NCLB.[51] An identified school must give notice to all students, no later than the first day of the school year, of the opportunity to transfer to another school or public charter school within the district that is not an identified school, with priority going to the lowest achieving children from low income families.[52] Prior to making a final determination on identifying a school for school improvement, the school has the opportunity to review the evidence in support of the determination, and present evidence to correct any statistical or substantive reason why the school should not be identified as needing improvement. The LEA must publicize the final determination within 30 days of the review period.[53]

When a Title 1 school continues to fail to meet adequate yearly progress goals for four or more consecutive years, the district is required to implement *corrective action*, which includes replacing school staff, implementing new curriculum, decreasing the authority of the school-level administration, appointing outside experts to advise the school, extending the school year or

[48] 20 U.S.C. section 6311.

[49] 20 U.S.C. section 6311.

[50]20 U.S.C. section 6312.

[51] 20 U.S.C. section 6316.

[52] 20 U.S.C. section 6316(b)(1).

[53] 20 U.S.C. section 6316(b)(2).

school day, and restructuring the internal organization of the school.[54] When a Title 1 school fails to meet adequate yearly progress goals for five consecutive years, the district is required by NCLB *to prepare a plan to restructure* the school. The restructuring plan must include one of the following alternative governance arrangements: reopen the school as a public charter school; replace all or most of the school staff; enter into a contract to have an outside entity operate the school; arrange for the state to take over operation of the school; or any other major restructuring of the school's governance arrangement.[55] If a Title 1 school fails to meet adequate yearly progress goals for six consecutive years, the district is required *to implement the restructuring plan* developed in the previous year.[56]

The LEA in need of restructuring must give prompt notice to teachers and parents of the restructuring and must provide both teachers and parents the opportunity to comment and participate in the development of a restructuring plan.[57]

California receives Title 1 NCLB federal funding and has enacted several other statutes to implement the requirements of that federal law, including the STAR program (Ed. Code §§ 60601, 60640, *et seq*.) and the Public Schools Accountability Act of 1999 (Ed. Code, §§ 52050, *et seq*.). The STAR test results are a major component used for calculating each school's API, which measures the growth in academic performance. These results are also used for determining whether elementary and middle schools are making adequate yearly progress in helping pupils become proficient on the California content standards, as required by NCLB.[58] The Public Schools Accountability Act of 1999 establishes the API and intervention programs for underperforming schools for purposes of complying with NCLB.[59]

III. Position of the Parties

A. Claimant's position

The claimant alleges that the test claim statutes and regulation impose a reimbursable state-mandated program for school districts under article XIII B, section 6 and Government Code section 17514. Claimant alleges that implementing intervention programs in fourteen schools in the Twin Rivers School District identified as persistently lowest-achieving, holding at least two public hearings prior to implementing an intervention model, and providing notice of the option to transfer from an identified lowest-achieving school will cost the District approximately $450,000. Claimant alleges that the actual or increased statewide costs to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed to be $5,000,000.

---

[54] 20 U.S.C. section 6316(b)(7)(C).

[55] 20 U.S.C. section 6316(b)(8)(A).

[56] 20 U.S.C. section 6316(b)(8)(B).

[57] 20 U.S.C. section 6316(b)(7).

[58] 20 U.S.C. section 6311(b)(2).

[59] Education Code sections 52050, et seq. (added by Stats. 1999, 1st Extraordinary Session (SBX1 1), ch.6.1, § 1).

In written comments dated February 27, 2014, the claimant alleges that Education Code section 53100 imposes a reimbursable state-mandated program upon school districts to enter into a memorandum of understanding with the state that meets the requirements of the federal RTTT guidelines and is signed by as many as possible of each district's superintendent of schools, president of the governing board, or the leader of any local collective bargaining unit for teachers.

B. State Agency Position

The Department of Finance (Finance) filed late comments on the draft proposed statement of decision, arguing that many of the requirements of the Parent Empowerment Act, Open Enrollment Act, and RTTT overlap with federal requirements in Title 1 of NCLB, and that the state-mandated requirements should be reduced to reflect the true higher level of service required by the state. In particular, Finance asserts that the parental petition process in Education Code section 53300 of the Parent Empowerment Act is not a new program or higher level of service as the petition would impose an intervention that is duplicative of either the turnaround model or the restart model. Finance also asserts that the transfer option in the open enrollment provisions of Education Code section 48350 *et seq.* duplicate Title I transfer options. Finally, Finance identifies Title I School Improvement Grant (SIG) funds that are awarded to a school identified as persistently lowest-achieving and are used by that school to implement an intervention model as offsetting revenue.

IV. Discussion

Article XIII B, section 6 of the California Constitution states:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that article XIII A and XIII B impose."[60] Thus the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government]…"[61]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform and activity.[62]
2. The mandated activity either:
   a. Carries out the governmental function of providing a service to the public; or

[60] *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

[61] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[62] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[63]

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[64]

4. The mandated activity results in the local agency or school district incurring increased cost. However, increased costs are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.[65]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[66] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[67] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.[68]

A. The Commission does not have jurisdiction over Education Code section 60601, as added and amended from 1995 through 2007.

The claimant has pled Education Code section 60601, as originally enacted in 1995 and amended in 1996, 2001, 2004, 2007, and in 2009-2010. The Commission does not have jurisdiction over Education Code section 60601, as enacted in 1995 and amended from 1996 through 2007 because these statutes were the subject of a prior test claim, *Standardized Testing and Reporting (STAR) II and III* (05-TC-02, 05-TC-03, and 08-TC-06), and denied because the code section does not impose any mandated duties on school districts.[69] A Commission decision that becomes final and has not been set aside by a court cannot be reconsidered by the Commission.[70]

---

[63] *San Diego Unified School Dist., supra 33 Cal.4th at 874-875* (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[64] *San Diego Unified School Dist., supra* 33 Cal.4th 859, 874-875, 878*; Lucia Mar Unified School District v. Honig* (1988) 44 Cal 3d 830, 835.

[65] *County of Fresno v. state of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[66] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[67] *County of San Diego, supra,* 15 Cal.4th 68,109.

[68] *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1995) 45 Cal.App.4th 1802, 1817.

[69] 05-TC-02, 05-TC03, and 08-TC-06 addressing Education Code sections 60601 et seq., as added or amended by Statutes 1995, Chapter 975, Statutes 1997, Chapter 735, Statutes 2000, Chapter 576, Statutes 2001, Chapter 722, Statutes 2002, Chapter 1168, Statutes 2003, Chapter 773,

In addition, the statute of limitations for filing a test claim on Education Code section 60601, as added and amended from 1995 to 2007, has expired. Government Code section 17551(c) requires a test claim be filed "not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result or a statute or executive order, whichever is later." As this test claim was filed on November 23, 2010, it is outside the statute of limitations for the initial enactment of section 60601 and for all amendments from 1995 to 2007.

Accordingly, the Commission finds that it does not have jurisdiction over Education Code section 60601, as added and amended in 1995, 1996, 2001, 2004, and 2007.

B. Some of the remaining statutes and test claim regulation impose a state-mandated new program or higher level of service on school districts.

1. Education Code section 60601 (amended by Statutes 2009-2010, chapter 2) does not impose a state-mandated new program or higher level of service on school districts.

Education Code section 60601 as amended by Statutes 2009-2010, chapter 2, effective April 12, 2010, set the date by which the chapter governing the STAR program would become inoperative and then repealed. By its plain language, Education Code section 60601 does not impose any state-mandated activities on school districts.

2. Education Code section 53202(a) and (b) imposes a state-mandated new program or higher level of service on school districts; however, the remaining code sections governing the state's Race to the Top application and implementation activities do not impose a new program or higher level of service.

a) Education Code sections 53100 and 53101 do not impose any state-mandated activities on school districts.

Education Code sections 53100 and 53101 contain the framework of the RTTT application process. The federal RTTT statute required states filing an application for grant funds to enter into a memorandum of understanding with LEAs in order to be eligible to apply for the federal grant funds.[71] Section 53100 provides that "The Superintendent and the President of the state board *may* enter into a memorandum of understanding with a local educational agency" in order to apply for grant funds under the federal RTTT competitive grant fund program. This section further provides that "participating local educational agencies" shall enter into the memorandum of understanding and obtain signatures from as many as possible of each participating agency's superintendent of schools, president of the local government boards, and leaders of any local collective bargaining unit for teachers. Section 53100 states the following:

Statutes 2004, Chapter 183, Statutes 2004, Chapter 233, Statutes 2005, Chapter 676, Statutes 2007, Chapter 174, Statutes 2007, Chapter 730, Statutes 2008, Chapter 473, and Statutes 2008, Chapter 757.

[70] *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

[71] 34 CFR Subtitle B, Chapter II Race to the Top Fund (Federal Register, Volume 74, Number 221, November 18, 2009.

For the purposes of implementing the federal Race to the Top program established by the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5):

(a) The Superintendent and the President of the state board may enter into a memorandum of understanding with a local educational agency.

(b) Participating local educational agencies shall enter into a memorandum of understanding with the Superintendent and the President of the state board, that meets the requirements expressed in the Race to the Top guidelines and that is signed by as many as possible of each participating local educational agency's:

(1) Superintendent of schools, or their equivalents.

(2) President of the local governing boards, or their equivalents.

(3) Leader of any local collective bargaining unit for teachers, if applicable.

The federal RTTT program requires states applying for grant funds to have in place a plan to implement the priorities articulated in the grant fund.[72] To meet that requirement, California Education Code section 53101 requires the state to develop a plan to submit as part of the RTTT application process.[73] The plan must demonstrate how funds from the federal RTTT program, as well as any other available federal funds, will be used to provide resources to the low-achieving and persistently lowest-achieving schools that can be used for professional development, technical assistance, and partnering with schools that have successfully transitioned from low to higher-performing status.[74] Section 53101(a) states that "the Governor, the Superintendent, and the state board shall jointly develop a single high-quality plan or multiple plans, *in collaboration with participating local educational agencies*, as necessary, to submit as part of an application for federal Race to the Top funds, authorized under the American Recovery and Reinvestment Act of 2009 (Public Law 111-5)." Thus, school districts that have voluntarily agreed to participate in the MOU and federal RTTT application process are requested to collaborate in the preparation of the plan.

The claimant argues that school districts are mandated by comply with these requirements.[75] The Commission finds, however, that Education Code sections 53100 and 53101 do not impose any state-mandated activities on school districts. The plain language of the RTTT provisions pled creates a voluntary program; school districts shall enter into an MOU with the state to apply for and participate in the federal RTTT grant program only if they decide to "participate" in the program. If a school district decides to participate, the district is then required to gather the signatures and is encouraged to participate in the development of the state's plan. These activities

[72] 34 CFR Subtitle B, Chapter II, Federal Register Volume 74, No. 221.

[73] *Id.*

[74] Education Code section 53101(b).

[75] Exhibit D, Claimant's comments on draft staff analysis and proposed decision.

are triggered by the district's voluntary decision to participate in the program to compete for federal funds. Pursuant to the court's decision in *Department of Finance v. Commission on State Mandates (Kern High School Dist*.), downstream requirements triggered by local discretionary decisions are not eligible for reimbursement.[76]

Accordingly, the Commission finds that Education Code sections 53100 and 53101 do not impose any state-mandated activities on school districts.

b) Education Code section 53102, which addresses the independent evaluation of the state's plan for RTTT funds, imposes duties on state agencies, but does not impose any state-mandated activities on local school districts.

Section 53102(a) requires that, by January 1, 2011, the Superintendent of Public Instruction (SPI) "shall contract for an independent evaluation of the implementation and impact of the state plan submitted in an application for a federal Race to the Top competitive grant award." As part of the independent evaluation, section 53102(b) requires the SPI to convene a working group consisting of staff representing the policy and fiscal committees of both houses of the Legislature, the Legislative Analyst's Office, the Department of Finance, the Governor, the State Board of Education (SBE), and the Department of Education (CDE) to jointly develop the parameters of the evaluation, and make recommendations regarding development of any requests for proposals or request for applications used to solicit contract proposals, and the selection of the independent evaluator.

Section 53102(c) requires the SPI to provide to the Legislature, the Governor, and SBE an interim evaluation report on or before June 1, 2012, and a final evaluation report on or before June 1, 2014.

Section 53102(d) states "[t]he department shall use federal funds made available from the Race to the Top Fund and detailed in the expenditure plan required pursuant to subdivision (c) of Section 53101 for the purpose of contracting for this evaluation."

Accordingly, the Commission finds that Education Code section 53102 requires activities of the state, but imposes no state-mandated activities on school districts.

c) Education Code sections 53200, 53201, 53201.5, which require the identification of persistently lowest-achieving schools, do not impose any state-mandated activities on school districts.

Education Code section 53200-53203 are informally titled "Intervening in the Persistently Lowest-Achieving Schools" and describe the interventions required for persistently lowest-achieving schools that are identified by the state. Section 53200 provides the following definitions for the article:

[76] *City of Merced v. State of California* (1984) 153 Cal.App.3d 777; *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355.

- "Lowest-achieving school" means "a school described in subdivision (a) of section 53201." Section 53201(a) identifies schools that are Title 1 schools in improvement, corrective action, or restructuring under NCLB.
- "Persistently lowest-achieving school" means "a school identified pursuant to subdivisions (a) to (f) inclusive, of Section 53201." These schools include the lowest five percent of the Title 1 schools in improvement, corrective action, or restructuring when measured by the academic achievement of pupils in reading/language arts and mathematics; secondary schools that do not receive Title 1 funds, but whose academic achievement of pupils in reading/language arts and mathematics is in the lowest five percent; any high school that has a graduation rate that is less than 60 percent in each of the previous three years; and any school determined to be included in the list by the SPI and SBE that is a county community school, a juvenile court school, or a school that provides educational services exclusively for special education students.

Education Code section 53201 requires the SPI and SBE to establish a list of the lowest-achieving and persistently lowest-achieving schools as follows:

(a) Identify any Title I school in improvement, corrective action, or restructuring.

(b) Identify the lowest 5 percent of schools in subdivision (a) as measured by academic achievement of all pupils in a school in terms of proficiency on the state's assessment under section 1111(b)(3) of the federal Elementary and secondary Education Act (20 U.S.C. Sect. 6301 et seq.) in reading/language arts and mathematics, combined pursuant to subdivision (h).

(c) Identify any secondary school that is eligible for, but that does not receive, Title I funds and is in the lowest 5 percent of secondary schools as measured by the academic achievement of all pupils in a school in terms of proficiency on the state's assessment under Section 1111(b)(3) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.) in reading/language arts and mathematics, combined pursuant to subdivision (h).

(d) Add to the schools identified pursuant to subdivisions (a) to (c), inclusive, any high school that has a graduation rate, as defined in Section 200.19(b) of Title 34 of the Code of Federal Regulations, that is less than 60 percent in each of the previous three years.

(e) To the extent allowable under federal law, exclude from the schools identified pursuant to subdivisions (a) to (d), inclusive, a school that meets any of the following, except as provided in subdivision (f):

1. The school is a county community school operated pursuant to Chapter 6.5 (commencing with Section 1980) of Part 2 of Division 1 of Title 1.
2. The school is a juvenile court school operated pursuant to Article 2.5 (commencing with Section 48645) of Chapter 4 of part 27.
3. The school provides educational services exclusively to individuals with exceptional needs as defined in Section 56-26.

4. The school has experience academic growth of at least 50 points over the previous five years as measured by the Academic Performance Index, using the most recent data available.

(f) Notwithstanding subdivision (e), a school that meets any of the criteria in subdivision (e) shall not be excluded from the schools identified pursuant to subdivisions (a) to (d), inclusive if both the Superintendent and the state board find cause not to exclude the school.

(g) To the extent allowable under federal law, a community day school, operated pursuant to Article 3)commencing with Section 48660) of Chapter 4 or Part 27, may be excluded from the schools identified pursuant to subdivisions (a) to (d), inclusive, if both the Superintendent and the state board find cause to exclude the school.

(h) For the purposes of identifying the lowest 5 percent of schools pursuant to subdivisions (b) and (c), the Superintendent and the state board may use a methodology consistent with the methodology used to calculate the Academic Performance Index in order to create composite results across content areas and grade levels in reading/language arts and mathematics pursuant to subdivisions (b) and (c), unless the Superintendent and the state board develop a more appropriate methodology to meet the requirements of subdivisions (b) and (c).

(i) Prior to the implementation of subdivision (h), the Superintendent and the state board shall notify the appropriate policy and fiscal committees of the Legislature.

Education Code section 53201.5 then requires that the "[t]he Superintendent shall notify the governing board of a school district, county superintendent of schools, or the governing body of a charter school or its equivalent, that one or more of the schools in its jurisdiction have been identified as a persistently lowest-achieving school."

The Commission finds that Education Code sections 53200, 53201, and 53201.5 impose duties on the state, but do not impose any state-mandated activities on school districts.

d) Education Code section 53202 imposes a state-mandated new program or higher level of service on identified school districts with persistently lowest-achieving schools to hold hearings and implement an intervention model.

Education Code section 53202 requires those school districts notified by the SPI that one or more of the schools in its jurisdiction has been identified as a persistently lowest-achieving school, to select and implement one of the four interventions identified in the federal RTTT program for turning around persistently lowest-achieving schools. If, however, the SPI and SBE determine that an identified school has already implemented a reform under federal law within the last two years that conforms to the requirements of the interventions required by the RTTT program, and the reform measures show significant progress in turning the school around, then that school is not required to comply with section 53202. Education Code section 53202(a) states the following:

> For purposes of implementing the federal Race to the Top program established by Sections 14005 and 14006 of Title XIV of the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), the governing board of a school

district, county superintendent of schools, or the governing body of a charter school or its equivalent, *shall implement*, for any school identified by the Superintendent as persistently lowest-achieving pursuant to subdivision (b) of Section 53200*, unless the Superintendent and the state board determines, to the extent allowable under federal law, that the school has implemented a reform within the last two years that conforms to the requirements of the interventions required by the Race to the Top program and is showing significant progress*, one of the following four interventions for turning around persistently lowest-achieving schools as described in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009:

(1) The turnaround model.

(2) The restart model.

(3) School closure.

(4) The transformational model. (Emphasis added.)

Before the school district selects one of the four intervention models, the district is required by section 53202(b) to hold at least two public hearings to seek input from staff, parents, and the community. Section 53202(b) states the following:

> Prior to the governing board meeting to select one of the four interventions described in subdivision (a), the governing board of a school district, county superintendent of schools, or the governing body of a charter school or its equivalent, with one or more persistently lowest-achieving schools *shall hold at least two public hearings* to notify staff, parents and the community of the designation and to seek input from staff, parents, and the community regarding the option or options most suitable for the applicable school or schools in its jurisdiction. At least one of those public hearings shall be held at a regularly scheduled meeting, if applicable, and at least one of the public hearings shall be held on the site of a school deemed persistently lowest-achieving. (Emphasis added.)

The Commission finds that section 53202(a) and (b) impose a state-mandated program on school districts that have schools identified by the SPI and SBE as a persistently lowest-achieving school to select and implement one of the four intervention models identified in the federal RTTT program and, prior to the governing board meeting to select of one of the four intervention models, to hold at least two public hearings as specified in section 53202(b). In *Hayes v. Commission on State Mandates,* the court addressed the issue of the state imposing new or increased requirements on local agencies in order to implement a federal program. The court concluded that when a state "freely chose to impose the costs upon a local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless of whether the costs were imposed upon the state by the federal government." Here, the state has enacted a school intervention program that incorporates selection criteria from the federal RTTT; a federal competitive grant program. School district participation in the federal grant program is voluntary and not mandated by federal law.

The Commission further finds that the activities required by section 53202(a) and (b) are new for all schools that are identified and receive notice by the SPI and SBE that they are persistently lowest-achieving schools pursuant to Education Code sections 53200(b) and 53201, and are required to comply with section 53202. In this respect, the parties do not dispute that schools which have *not* implemented a reform model under federal law (NCLB) within the two years before the enactment of section 53202, were under no obligation to hold public hearings and implement school improvement under prior state or federal law.

Under prior state law, schools identified as having failed to meet their API and scoring under the 50th percentile on the API were invited to participate in the Immediate Intervention/Underperforming Schools Program. Once enrolled in the program, school districts were required to implement measures to meet academic improvement targets.[77] The requirements of the Immediate Intervention/Underperforming Schools Program, however, are not mandated by the state. As the court ruled in *Department of Finance v. Commission on State Mandates* (*Kern High School Dist*.), " if a school district elects to participate in …any underlying *voluntary* program, the district's obligation to comply with [the program] does not constitute a reimbursable state mandate."[78] Thus, schools participating in the state school improvement program in place prior to the enactment of Education Code section 53202 did so voluntarily.

Finance suggests, however, that the mandated activities are not new and do not provide a higher level of service for those Title 1 schools already in corrective or restructuring action under NCLB that have implemented one of the intervention models identified in the RTTT program. Title 1 of NCLB does require some of the same interventions as described in the RTTT program for those schools in corrective or restructuring action. Under NCLB, states are required to identify any elementary or secondary school served by Title 1 that fails to make adequate yearly progress for two consecutive years. When a Title 1 school continues to fail to meet adequate yearly progress goals for four or more consecutive years, the district is required to implement *corrective action*, which includes replacing school staff, implementing new curriculum, decreasing the authority of the school-level administration, appointing outside experts to advise the school, extending the school year or school day, and restructuring the internal organization of the school.[79] Some of these activities are similar to those in the turn-around or transformational models of the RTTT program, which also involve replacing the principal, screening and rehiring staff and adopting a new governance structure. When a Title 1 school fails to meet adequate yearly progress goals for five consecutive years, the district is required by NCLB *to prepare a plan to restructure* the school. The restructuring plan must include one of the following alternative governance arrangements: reopen the school as a public charter school; replace all or most of the school staff; enter into a contract to have an outside entity operate the school; arrange for the state to take over operation of the school; or any other major restructuring of the school's governance arrangement.[80] If a Title 1 school fails to meet adequate yearly progress goals for six consecutive

[77] Education Code section 52055.

[78] *Kern High School Dist., supra*, 30 Cal.4th 727, 742.

[79] 20 U.S.C. section 6316(b)(7)(C).

[80] 20 U.S.C. section 6316(b)(8)(A).

years, the district is required *to implement the restructuring plan* developed in the previous year.[81] These interventions are also similar to those in the restart model of RTTT, which involves converting the school to a charter school or hiring an education management company to run the school.

However, the plain language of section 53202(a) provides that schools, determined by the SPI and SBE to have "implemented a reform within the last two years that conforms to the requirements of the interventions required by the [RTTT] program and is showing significant progress," are not required to comply with requirements of section 53202. Thus, the plain language of the statute recognizes the overlap and expressly exempts those school districts which have implemented a reform in the last two years that conforms to the requirements of RTTT from complying with the mandated activities. Those Title 1 schools that have implemented a reform that has *not* shown significant progress as determined by the SPI and SBE are not exempt from the requirements of section 53202, and are required to take *additional* steps to comply with public hearing and intervention requirements of the test claim statutes.[82]

Thus, the public hearing and intervention requirements of Education Code section 53202(a) and (b) are new to all persistently lowest achieving schools selected by the SPI and SBE. These activities are intended to turn around persistently lowest achieving schools in the state and, thus, provide a new program or higher level service to the public.

Section 53202(c), however, does not impose any state-mandated activities on school districts. Section 53202(c) provides authority for a persistently lowest-achieving school implementing the turnaround or transformational model to participate in a school-to-school partnership program by working with a mentor school that has successfully transitioned from a low-achieving to a higher-achieving school. Section 53202(c) states the following:

> In addition to meeting the requirements in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009, a persistently lowest-achieving school implementing the turnaround or transformational model *may* participate in the school-to school partnership program by working with a mentor school that has successfully transitioned from a low-achieving school to a higher-achieving school.
>
> (1) For purposes of this article, a mentor school is a school that meets either of the following:
>
> (A) The school has exited Program Improvement pursuant to the No Child Left Behind Act.

[81] 20 U.S.C. section 6316(b)(8)(B).

[82] The legislative history of the test claim statute shows that the RTTT interventions are additional to the requirements of NCLB. The analysis of SBX5 1 by the Senate Appropriations Committee, November 3, 2009, states that "The SBE and SPI would be required to consider not identifying a school for *additional* intervention if that school is showing significant progress under an existing intervention." (Exhibit F.)

(B) The school has increased, in the statewide rankings based upon the Academic Performance Index, by two or more deciles over the last five years, using the most recent data available.

(2) The principal and, at the discretion of the principal, the staff of a mentor school shall provide guidance to a lowest-achieving school to develop a reform plan for the school using the required elements of the turnaround or transformation model, and provide guidance and advice on how the mentor school was able to transform the culture of the school from low-achieving to higher-achieving and how that transformation could be replicated at the school implementing a turnaround or transformational model.

(3) To the extent federal funds are made available for this purpose pursuant to subdivision (c) of Section 53101, the mentor school shall receive funds for serving as the mentor school. As a condition of receipt of funds, the principal and, at the principal's discretion, the staff, of a mentor school shall meet regularly with the assigned persistently lowest-achieving school for a period of at least three years. (Emphasis added.)

While section 53202 requires a school district that has a persistently lowest-achieving school in the district to select and implement an intervention model, the statute does not require the school district or school site to participate in the school-to-school partnership, or require the higher-achieving school to provide guidance. The plain language of section 53202(c) authorizes, but does not require, these activities.

Accordingly, the Commission finds that Education Code section 53202(a) and (b) (Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8) imposes a state-mandated new program or higher level of service, beginning April 12, 2010, on those school districts that receive notice that a school or schools within the district have been identified by the SPI and SBE as persistently lowest-achieving pursuant to section 53200(b), for the following activities:

- Hold at least two public hearings for each school identified as a persistently lowest-achieving school to notify staff, parents, and the community of the designation and to seek input from staff, parents, and the community regarding the option or options most suitable for the applicable school or schools in its jurisdiction. At least one of the public hearings shall be held at a regularly scheduled meeting, if applicable, and at least one of the public hearings shall be held on the site of a school deemed persistently lowest-achieving.
- Conduct a meeting of the governing board to select one of the four interventions for turning around the identified persistently lowest-achieving school or schools as described in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009:

  (1) The turnaround model.

  (2) The restart model.

  (3) School closure.

  (4) The transformational model.

- Implement one of the four intervention models for turning around the identified persistently lowest-achieving school or schools.

The following schools are exempt from the requirements of Education Code section 53202(a) and (b) and are, therefore, ***not*** mandated by the state to comply with the above activities:

- Schools identified by the SPI and SBE as already having implemented a reform that conforms to the intervention requirements of the RTTT program, and are showing significant progress in its reform pursuant to Education Code section 53202(a); and
- Schools listed in Education Code section 53201(e) (i.e., county community schools, juvenile court schools, schools that provide educational services exclusively to individuals with exceptional needs, and schools that have experienced academic growth of at least 50 points over the previous five years as measured by the API).

e) Education Code section 53203, requiring regional consortia to aid in school improvement, does not impose a state-mandated activity on school districts.

Education Code section 53203 requires the regional consortia authorized under Education Code section 53203, in collaboration with CDE, to provide technical assistance and support, as specified in the statute, to school districts with one or more persistently lowest-achieving schools to assist in the implementation of intervention methods adopted by the district from funds obtained in the federal RTTT competitive grant program. Education Code section 53203 states the following:

(a) The regional consortia authorized under Section 52059, in collaboration with the department, from funds provided for this purpose pursuant to subdivision (c) of Section 53101, shall provide, at a minimum, technical assistance and support to local educational agencies with one or more persistently lowest-achieving schools to assist with the implementation of the duties specified for any of the four interventions for persistently lowest-achieving schools pursuant to Section 53202.

(b) Funds for the regional consortia shall be distributed based on the number of persistently lowest-achieving schools identified pursuant to this section and the pupil enrollment of these schools.

(c) It is the intent of the Legislature that the regional consortia coordinate the duties described in subdivision (a) with the duties performed pursuant to Section 52059 as it relates to schools and districts identified in program improvement pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(d) The areas of technical assistance and support pursuant to this section may include, but are not limited to, any of the following:

(1) Identifying strategies that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the pupils at the school, including financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions.

(2) Identifying strategies that provide increased instructional time.

(3) Implementing any of the professional development activities authorized in the state's plan or application submitted for the federal Race to the Top program.

(4) Developing a new governance structure that may include the establishment of a new turnaround office, located within the local educational agency or the department, that a school implementing the turnaround model will report to.

(5) Developing social-emotional and community-oriented services, including strategies for parental involvement and services that can be located at the schoolsite.

(6) Identifying, reviewing, and recommending quality charter school operators, charter management organizations, or education management organizations that can operate a persistently lowest-achieving school.

(7) Identifying higher-achieving schools in the school district, including charter schools, to relocate pupils attending a school that is scheduled for closure.

(8) Developing, in consultation with teachers and principals, a rigorous, transparent, and equitable evaluation system for teachers and principals that includes the use of pupil growth data and other factors such as multiple observation-based assessments that all schools implementing the turnaround or transformation model may use.

(9) Identifying strategies to identify and reward school leaders, teachers, and other staff who, in implementing the transformation model, have increased pupil achievement and high school graduation rates and have identified and removed those, who, after ample opportunities, have been provided for them to improve their professional practice, have not done so.

(10) Identifying and approving mentor schools pursuant to subdivision (c) of Section 53202. The regional consortia shall first seek eligible mentor schools located within the district of each of the schools implementing the turnaround or transformation model.

(11) Consistent with the collective bargaining agreement, assisting a local educational agency in doing any of the following:

(A) Meeting federal guidelines under Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the federal Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009, which encourages the state to ensure that persistently lowest-achieving schools are not required to accept a teacher without mutual consent of the teacher and principal, regardless of the teacher's seniority.

(B) Implementing schoolsite-based teacher hiring decisions.

(C) Giving persistently lowest-achieving schools first priority in selecting from the qualified district applicant pool, among those teachers who have specifically applied to work at the school.

The Commission finds that Education Code section 53203 does not impose a state-mandated program on school districts. The code section adds requirements to the regional consortia established under Education Code section 52059, which created regional consortia as part of the grant fund requirements of NCLB. Section 52059 requires CDE to establish a statewide system of intensive and sustained support and technical assistance for schools identified as being in need of improvement pursuant to NCLB (20 U.S.C. section 6316). The system developed in accordance with section 53209 "shall consist of regional consortia as well as district assistance and intervention teams and other technical assistance providers.[83] While the CDE is required to establish the statewide system of school support, nothing in the plain language of the section requires local school districts to participate in the regional consortia or intervention team. Section 53203 takes the existing regional consortia, whose participation at the local district level is voluntary, and adds requirements for technical aid and assistance in the RTTT program for persistently lowest-achieving schools. Because participation in the regional consortia by school districts is voluntary, section 53203 does not impose any state-mandated activities upon school districts.[84]

3. Education Code sections 53300 and 53301, governing the Parent Empowerment Act, impose a state-mandated new program or higher level of service on school districts; however, section 53303 does not impose any new activities on school districts and does not constitute a state-mandated new program or higher level of service.

The Parent Empowerment Act creates a petition process by which parents of students in a school not identified as persistently lowest-achieving, but subject to corrective action under Title I of NCLB, may petition the governing school district to implement one of the four intervention models described in Education Code section 53202. Education Code section 53300 provides as follows:

> For any school not identified as a persistently lowest-achieving school under Section 53201 which, after one full school year, is subject to corrective action pursuant to paragraph (7) of Section 1116(b) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.) and continues to fail to make adequate yearly progress, and has an Academic Performance Index score of less than 800, and where at least one-half of the parents or legal guardians of pupils attending the school, or a combination of at least one-half of the parents or legal guardians of pupils attending the school and the elementary or middle schools that normally matriculate into a middle or high school, as applicable, sign a petition requesting the local educational agency to implement one or more of the four interventions identified pursuant to paragraphs (1) to (4), inclusive of subdivision (a) of Section 53202 or the federally mandated alternative governance arrangement pursuant to Section 6316(b)(8)(B)(v) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.), the local educational agency shall implement the option requested by the parents unless, in a regularly scheduled public hearing, the local educational agency makes a finding in writing

[83] Education Code section 52059(a).

[84] *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 742.

stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options described in this section it will implement in the subsequent school year consistent with requirements specified in federal regulations and guidelines for schools subject to restructuring under Section 1116(b)(8) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.) and regulations and guidelines for the four interventions.

The plain language of Education Code section 53300 requires a school, following a receipt of a petition filed by parents, to implement the intervention option requested by the parents unless, in a regularly scheduled public hearing, the school makes a finding in writing stating the reason it cannot implement the specific recommended option and, instead, designates in writing which of the other options described in this section it will implement in the subsequent school year. The option selected must be consistent with requirements specified in federal regulations and guidelines for schools subject to restructuring under section 1116(b)(8) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.) and regulations and guidelines for the four interventions. These activities are not required, however, if the petition request is filed for reasons other than improving academic achievement or pupil safety. Education Code section 53303 states: "A local educational agency shall not be required to implement the option requested by the parent petition if the request is for reasons other than improving academic achievement or pupil safety."

Education Code section 53301 also requires a school district to notify the SPI and SBE upon receipt of a petition and the district's final disposition of the matter as follows:

(a) The local educational agency shall notify the Superintendent and the state board upon receipt of a petition under Section 53300 and upon its final disposition of that petition.

(b) If the local educational agency indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the local educational agency shall notify the Superintendent and the state board that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in the federally mandated state plan under Section 1111(b)(2) of the federal Elementary and Secondary Education Act (20 U.S.C. Sec. 6301 et seq.).

These requirements are new and provide a service to the public with the goal of improving academic success. Under existing law, neither the federal RTTT nor the provisions of NCLB have a parent petition process. Under the federal RTTT selection criteria, states are judged on their "comprehensive approach to educational reform," but no specific parental component is identified. Under NCLB, if a school is identified for school improvement and continues to fail to meet adequate yearly progress by the end of the second full school year after identification, the school is required to take corrective action. But NCLB gives discretion to the school district to

determine which intervention model to impose as part of the corrective action and does not allow the parents to petition for any new intervention.[85]

Accordingly, the Commission finds that Education Code sections 53300 and 53301 (Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2) mandate a new program or higher level of service on school districts, beginning April 12, 2010, to perform the following activities upon receipt of a petition, signed by the number of parents specified in section 53300 and for the purpose of improving academic achievement or pupil safety, requesting the implementation of one or more of the four intervention models described in Education Code section 53202 for a school that is not identified as a persistently lowest-achieving school, but is subject to corrective action pursuant to NCLB, continues to fail to make adequate yearly progress, and has an API score of less than 800:

- Implement the intervention model requested by parents unless, in a regularly scheduled public hearing, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options it will implement in the subsequent school year consistent with the requirements specified in federal regulations and guidelines.
- Notify the SPI and SBE of the receipt of a petition and the final disposition of the petition. If the school district indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the school district shall notify the SPI and SBE that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in NCLB, 20 U.S.C. section 6301 et seq.

Section 53302, which was not pled in this test claim, limits the number of schools subject to the petition process, based upon the number of notices provided to the SPI and SBE, to 75 schools. Additionally, as stated above, section 53303 limits the requirement to implement the requested option to where the petition is filed for the purpose of improving academic achievement or pupil safety. Since section 53303 imposes no requirements on school districts, the Commission finds that it does not impose a new program or higher level of service.

4. Education Code sections 48354, 48356, and 48357 and California Code of Regulations, title 5, section 4702, which govern the Open Enrollment Act, impose a state-mandated new program or higher level of service on school districts.

As part of the additions to the Education Code enacted to compete successfully for federal RTTT grant funds, the Legislature enacted the Open Enrollment Act; Education Code sections 48350-48361.[86] Under the Act, a school district that has been identified on a list known as the Open Enrollment List is required to notify parents of the option for a student to transfer to a higher-achieving school either inside or outside the school district of residence. The stated purpose of the Open Enrollment Act is to improve pupil achievement in accordance with the regulations and guidelines for the federal RTTT fund and to enhance parental choice in education by providing

[85] 20 U.S.C. section 6316(b)(7).

[86] Added by Statutes 2009-2010, 5th Extraordinary Session, chapter 3 (S.B.4) § 1, effective April 12, 2010.

options to pupils to enroll in public schools throughout the state without regard to the residence of their parents.[87]

The process starts with Education Code section 48352, which requires the SPI to identify schools as low-achieving by creating a list of 1000 schools ranked by increasing API with the same ratio of elementary, middle, and high schools as existed in decile 1 in the 2008-2009 school year. The SPI is required to ensure that no more than 10 percent of a district's schools are on the list. Court, community, community day schools, and charter schools shall not be on the list.[88] According to CDE, the list of low-achieving schools in California consisted of 687 elementary schools, 165 middle schools, and 148 high schools and was created using with the lowest API scores as follows:

> Creating the list starts with identification of the 687 elementary schools, 165 middle schools, and 148 high schools that have the lowest API scores within the criteria described above. This list is ranked from lowest API score to highest API score. When an LEA on the list has reached its "10 percent" cap, subject to the roundup provision, . . . the LEA's schools with the highest API scores are dropped from the list until the LEA has no more than its "10 percent" number of schools on the list. Schools with the next lowest API scores remaining in the pool are then added to create the next list of 1,000 schools that maintains the required ratio of schools. This process continues until a final list of 1,000 schools is achieved that both maintains the ratio of 68.7 percent elementary schools, 16.5 percent middle schools, and 14.8 percent high schools and does not exceed any LEA's "10 percent" number of schools.[89, 90]

Education Code section 48354(b)(1) and section 4702(a) of the title 5 regulations then require the school district that receives notice that one or more of its schools are on the list created by the SPI, to provide notice to parents and guardians of the option to transfer to another public school served by the school district of residence or another school district. Education Code section 48354(b)(1), which became effective on April 12, 2010, states that "the district of residence shall provide the parents and guardians of all pupils enrolled in a school determined [to be low-achieving] with notice of the option to transfer to another public school served by the district of residence or another school district." Section 4702(a) of the regulations was adopted as an emergency regulation effective in August 2010 to implement the notice requirement and states the following:

---

[87] Education Code section 48351.

[88] Education Code section 48352(a)(2)(B) and (C).

[89] Exhibit F, California Department of Education, Frequently Asked Questions, Open Enrollment Act, Senate Bill 4 of the Fifth Extraordinary Session (SBX5 4).

[90] Exhibit F, The list of schools on the Open Enrollment List for 2012-2013, 2013-2014, and 2014-2015 found on CDE's website at: http://www.cde.ca.gov/sp/eo/op/ (accessed March 10, 2014).

> The district of residence shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer. This notice shall be provided on the first day of instruction; if the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's Web site at http://www.cde.ca.gov/.

Pursuant to Education Code section 48354(a) and (b), the parent of a pupil enrolled in a low-achieving school on the list may submit an application for the pupil to transfer to a school, other than the school in which the parent of the pupil resides, prior to January 1 of the school year preceding the school year for which the pupil is requesting to transfer.

Pursuant to Education Code section 48355, the school district of residence and the school district of enrollment may prohibit the transfer of pupils under the Act if the governing board of the district determines that the transfer would negatively impact a court-ordered or voluntary desegregation plan of the district, or the racial and ethnic balance of the district, provided that any policy adopted pursuant to this statute is consistent with federal and state law. Section 48356(a) also authorizes a school district of enrollment to adopt standards for acceptance and rejection of applications pursuant to the Open Enrollment Act, which may include consideration of the capacity of a program, class, grade level, school building, or adverse financial impact. The standards shall not consider a pupil's previous academic achievement, physical condition, proficiency in the English language, family income, or other individual characteristics. In addition, a school district of residence is prohibited by section 48355 from adopting any policies that prevent or discourage pupils from applying for a transfer to a school district of enrollment. All communications to parents by districts shall be factually accurate and not target individual parents or guardians or residential neighborhoods on the basis of a child's actual or perceived academic or athletic performance.

Section 48356(d) requires the school district of enrollment to ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled. Section 48356(d) also requires the school district of enrollment to ensure that pupils are selected through a random, unbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. Pupils applying for a transfer shall be assigned priority for approval as follows: first priority for the siblings of children who already attend the desired school; second priority for pupils transferring from a program improvement school ranked in decile 1 on the API; and if the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order to select pupils at random. Pursuant to section 48356(e), the initial application of a pupil for transfer to a school within the school district of enrollment shall not be approved if the transfer would require the displacement from the desired school of any other pupil who resides within the attendance area of that school or is currently enrolled in that school. In this respect, section 48354(b)(6) requires the school district of enrollment to establish a period of time for resident pupil enrollment before accepting transfer applications under this Act.

Within 60 days of receiving an application from a parent or guardian for transfer, section 48357 requires the school district of enrollment to notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. If a pupil's transfer is accepted, the school district of enrollment is required by section 48358 to accept credits toward graduation that were awarded to the pupil by another school district and shall graduate the pupil if that pupil meets the graduation requirements of the school district of enrollment.

Each school district is encouraged by section 48359 to keep an accounting of all requests made for alternative attendance under this Act and records of the disposition of those requests.

Education Code section 48359.5 describes the apportionment of state funds for average daily attendance for basic aid schools and how those funds shall be credited to a school district of enrollment that accepts a transfer pupil. Section 48360 requires the SPI to contract for an independent evaluation of the open enrollment program from federal funds appropriated. And, section 48361 states the following: "No exercise of discretion of enrollment in its administration of this article shall be overturned absent a finding as designated by a court of competent jurisdiction that the district governing board acted in an arbitrary and capricious manner."

Based on the plain language of these statutes and regulation, the Commission finds that the test claim statutes and regulation require school districts to perform the following activities:

- The school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district. This notice shall be provided on the first day of instruction. If the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's Web site at http://www.cde.ca.gov/. (Ed. Code, § 48354(b)(1); Cal. Code Regs., tit. 2, § 4702(a).)[91]
- Upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. If the number of pupils requesting a particular school exceeds the number

[91] According to CDE, a template notification letter for school districts has not been provided by the state. Instead, school districts "can best determine the most appropriate method and language for accomplishing parent notification." (Exhibit F, California Department of Education, Frequently Asked Questions, Open Enrollment Act, Senate Bill 4 of the Fifth Extraordinary Session (SBX5 4).)

of spaces available at that school, a lottery shall be conducted in the group priority order in section 48356(d)(1) and (2) to select pupils at random. (Ed. Code, § 48356(d).)

- Within 60 days of receiving an application from a parent or guardian for transfer, the school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. (Ed. Code, § 48357.)
- If a pupil's transfer is accepted, the school district of enrollment shall accept credits toward graduation that were awarded to the pupil by another school district and shall graduate the pupil if that pupil meets the graduation requirements of the school district of enrollment. (Ed. Code, § 48358.)

The Commission finds that the activities identified in the bullets above are mandated by the state. In *Hayes v. Commission on State* Mandates (1992) 11 Cal.App.4th 1593, the court framed the issue of state imposition of a federal program upon local agencies as whether the state "freely chose to impose costs upon a local agency as a means of implementing a federal program."[92] The court concluded that, if a state chose to impose costs upon a local government, those costs are mandated by the state.[93] Here, the state enacted the requirements bulleted above in order to compete successfully in a voluntary competitive federal RTTT grant program.

The remaining code sections and activities in the Open Enrollment Act that are not identified in the bullets above, are either required of the state or are performed at the discretion of the school district (including the authority to adopt standards for acceptance and rejection of applications under the Open Enrollment Act, and the encouragement to keep an accounting of all requests made for alternative attendance and records of the disposition of those requests). These remaining activities do not impose any state-mandated activities on school districts. Finance argues, however, that when determining if the mandated activities impose a new program or higher level of service, the school-of-choice requirements in Title 1 of NCLB need to be taken into account to determine the "true higher level of service" now imposed on school districts. Finance states the following:

> Consistent with Section 1116(b)(1)(E) of the ESEA, the state Open Enrollment Act requires that on or before the first day of the school year, any district of residence identified by the State Department of Education as being a low-achieving school, shall provide the parents and guardians of all pupils with notification of the option to transfer to another public school. The extent to which schools are identified using federal criteria of low-achievement (which could overlap with state criteria), would reflect a requirement of federal law. Any other schools that are only identified by state criteria would reflect a requirement of the state. Thus, the increment that state law goes beyond federal law and imposes additional requirements reflects the true higher level of service required by the state.

---

[92] *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th1564, 1593.

[93] *Id.*

> In addition, federal regulations require that notifications sent to parents include information on how other schools compare in terms of academic achievement. [Footnote omitted.] This federal requirement could reduce the workload required to fulfill the state requirement that the school district from which a student transfers, ensures that the student is transferring to a school with a higher Academic Performance Index score. Therefore, the increment that state law goes beyond federal law and imposes additional requirements reflects the true higher level of service required by the state.[94]

Finance is correct that existing federal law, under Title 1 of NCLB, requires that all students enrolled in a Title 1 school that has been identified for school improvement, corrective action, or restructuring, shall be offered the opportunity to transfer to a higher achieving school *in* the district,[95] and that the test claim statute, section 48354, also requires the district of residence to provide notice of the option to transfer to another public school if identified on the list of 1,000 schools prepared by the SPI. However, the school of choice provisions under NCLB and the school of choice provisions under the state's Open Enrollment Act are distinct and impose two separate programs. Under NCLB, schools in program improvement are identified based on criteria provided by the federal government. Open Enrollment schools are identified based on the provisions in Education Code section 48352. School districts that receive notice of program improvement under NCLB and notice that one of the schools in the district is also on the Open Enrollment List are required to provide notice to parents and guardians of *both* programs. A parent or guardian, therefore, may exercise either option.[96] In addition, under NCLB, a student can attend a higher performing school in his or her district of residence. Under the Open Enrollment program, a parent may enroll a student in a school within his or her district of residence *or* a school in another district, as long as the school has a higher API score.[97] Thus, a school district's compliance with one program does not excuse the compliance with the other program and there is no overlap in the two programs, as suggested by Finance.

Rather, the first three bulleted activities are newly required by the state and constitute a new program or higher level of service. These activities provide a service to the public to carry out the states' purpose of the Act to improve pupil achievement in accordance with the regulations and guidelines for the federal RTTT fund and to enhance parental choice in education by providing options to pupils to enroll in public schools throughout the state without regard to the residence of their parents.[98]

---

[94] Exhibit E.

[95] 20 U.S.C. section 6316(b)(1)(E), (b)(5)(A), (b)(7)(C)(i), and (b)(8)(A)(i); 34 C.F.R. §200.44(a)(1).

[96] Exhibit F, California Department of Education, Frequently Asked Questions, Open Enrollment Act, Senate Bill 4 of the Fifth Extraordinary Session (SBX5 4).

[97] *Ibid*.

[98] Education Code section 48351.

The activities in the last bullet from Education Code section 48358 -- requiring the school district of enrollment to accept credits toward graduation that were awarded to the pupil by another school district and to graduate the pupil if that pupil meets the graduation requirements of the school district of enrollment – are not new, however, and do not provide a higher level of service to the public. Under existing law, minimum graduation standards for English, mathematics, science, social studies, physical education, and visual or performing arts or foreign language, are established by the state for high school graduation. In addition to those courses mandated by the state, school districts have the authority under existing law to adopt other coursework requirements for graduation.[99] Thus, requiring the district of enrollment to graduate a pupil if he or she meets the graduation requirements of the district, is not new. In addition, requiring the school district of enrollment to accept credits toward graduation that were awarded to the pupil by another school district establishes a lower level of service for the district of enrollment. By accepting credits for courses already taken by the pupil at the district of residence, the number of credits needed to graduate and the number of courses needed to be provided by the district of enrollment is reduced. Thus, Education Code section 48358 does not impose a new program or higher level of service on school districts.

Accordingly, the Commission finds that the following activities required by Education Code sections 48354, 48356, and 48357 (Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1) and California Code of Regulations, title 5, section 4702 (Register 2010, No. 32)., constitute state-mandated new programs or higher levels of service on school districts beginning April 12, 2010:

- The school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district. This notice shall be provided on the first day of instruction. If the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's Web site at http://www.cde.ca.gov/. (Ed. Code, § 48354(b)(1); Cal. Code Regs., tit. 2, § 4702(a).)

- Upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. If the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order in section 48356(d)(1) and (2) to select pupils at random. (Ed. Code, § 48356(d).)

- Within 60 days of receiving an application from a parent or guardian for transfer, the school district of enrollment shall notify the applicant parent and the school district of

[99] Education Code section 51225.3.

residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. (Ed. Code, § 48357.)

Court, community, community day schools, and charter schools shall not be on the list and are ***not*** mandated by the state to comply with the Open Enrollment Act.[100]

C. Do the new mandated activities impose costs mandated by the state within the meaning of article XIII B, section 6 and Government Code section 17514?

Government Code section 17514 provides that "'[c]osts mandated by the state' means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution." Government Code section 17564 provides that "[n]o claim shall be made pursuant to Sections 17551, 17561, or 17573, nor shall any payment be made on claims submitted pursuant to Sections 17551, or 17561, or pursuant to a legislative determination under Section 17573, unless these claims exceed one thousand dollars."

Claimant alleges increased costs mandated by the state in the amount of $450,000 for fourteen schools in the district impacted by the test claim statutes, which exceeds the $1000 minimum claim amount articulated in Government Code section 17564(a).

Government Code section 17556(e) states that there are no costs mandated by the state if additional revenue specifically intended to fund the costs of the mandated activities, in an amount sufficient to fund the cost of the state-mandated activities, has been appropriated in a Budget Act or other bill. There is no evidence that additional revenue has been appropriated "in an amount sufficient" to fund the cost of all the state-mandated activities in this claim. Thus, Government Code section 17556(e) does not apply to deny this claim.

Finance has noted, however, that federal school improvement grants (SIG) have been awarded to persistently lowest-achieving schools to implement one of the four intervention models for turning a school around pursuant to Education Code section 53202. These funds can be awarded to school districts with persistently lowest-achieving Title 1 schools and to school districts with persistently lowest-achieving secondary schools that are eligible for, but do not receive, Title 1 funding. Funding for SIG is provided by an annual appropriation in the Budget Act in Item 6110-134-0890. The claimant requested funding in September 2010 and funding was awarded to the claimant in the amount of $5,584,828.[101] These funds are specifically intended to fund the implementation of the intervention models required by Education Code section 53202 by a persistently lowest-achieving school and, thus, are required to be identified and deducted as offsetting revenue and deducted from the costs claimed by a district.

---

[100] Education Code section 48352(a)(2)(B) and (C).

[101] Exhibit F,CDE "Funding Results for School Improvement Grant" (SIG) awards. District totals represent the amount awarded for a three year period. (http://www.cde.ca.gov/fg/fo/r16/sigreg09result.asp)

There is no evidence the other funds have been appropriated specifically for the remaining activities. To the extent a district receives any additional federal funding or grant funding, however, and applies those funds to the mandated activities, those funds are required to be identified as offsetting revenue and deducted from the costs claimed by the district. Article XIII B, section 6, does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue.[102]

Accordingly, based on the evidence in the record, the Commission finds there are costs mandated by the state pursuant to Government Code section 17514.

V. CONCLUSION

The Commission concludes that the test claim statutes and regulation identified below impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, beginning April 12, 2010.

1. Race to the Top

   School districts that receive notice that a school or schools within the district have been identified by the SPI as persistently lowest-achieving pursuant to Education Code section 53200(b) are required to perform the following activities:

   a) Hold at least two public hearings for each school identified as a persistently lowest-achieving school to notify staff, parents, and the community of the designation and to seek input from staff, parents, and the community regarding the option or options most suitable for the applicable school or schools in its jurisdiction. At least one of the public hearings shall be held at a regularly scheduled meeting, if applicable, and at least one of the public hearings shall be held on the site of a school deemed persistently lowest-achieving. (Ed. Code, § 53202(b), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)

   b) Conduct a meeting of the governing board to select one of the four interventions for turning around the identified persistently lowest-achieving school or schools as described in Appendix C of the Notice of Final Priorities, Requirements, Definitions, Selection Criteria for the Race to the Top program published in Volume 74 of Number 221 of the Federal Register on November 18, 2009:

      (1) The turnaround model.

[102] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487. For example, the 2010-2011 Budget Act (Stats. 2010, ch. 712), line item 6110-180-0890, provision 5, also allocates federal ARRA competitive grant funding to CDE to award those eligible districts that commit to using education data and technology to improve college and career readiness or the high school graduation rate. Approved applicants may use competitive grant funds to purchase digital equipment and materials to help participants meet the program's objective. To the extent a district receives this grant funding and applies the grant funds to the costs of implementing one of the four intervention models for turning around an identified persistently lowest-achieving school, then those grant funds are required to be identified as offsetting revenue.

(2) The restart model.

(3) School closure.

(4) The transformational model. (Ed. Code, § 53202(a), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)

c) Implement one of the four intervention models for turning around the identified persistently lowest-achieving school or schools. (Ed. Code, § 53202(a), Stats. 2009-2010, 5th Ex. Sess., c. 2 (SBX5 1), § 8.)

The following schools are exempt from the requirements of Education Code section 53202(a) and (b) and are, therefore, ***not*** mandated by the state to comply with the above activities:

- Schools identified by the SPI and SBE as already having implemented a reform that conforms to the intervention requirements of the RTTT program, and are showing significant progress in its reform pursuant to Education Code section 53202(a); and
- Schools listed in Education Code section 53201(e) (i.e., county community schools, juvenile court schools, schools that provide educational services exclusively to individuals with exceptional needs, and schools that have experienced academic growth of at least 50 points over the previous five years as measured by the API).

2. Parent Empowerment Act

School districts that receive a petition, signed by the number of parents specified in Education Code section 53300 and for the purpose of improving academic achievement or pupil safety, requesting the implementation of one or more of the four intervention models described in Education Code section 53202 for a school that is not identified as a persistently lowest-achieving school, but is subject to corrective action pursuant to NCLB, continues to fail to make adequate yearly progress, and has an API score of less than 800, are required to perform the following activities:

a) Implement the intervention model requested by parents unless, in a regularly scheduled public hearing, the school district makes a finding in writing stating the reason it cannot implement the specific recommended option and instead designates in writing which of the other options it will implement in the subsequent school year consistent with the requirements specified in federal regulations and guidelines. (Ed. Code, § 53300, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2.)

b) Notify the SPI and SBE of the receipt of a petition and the final disposition of the petition. If the school district indicates in writing that it will implement in the upcoming school year a different alternative governance arrangement than requested by the parents, the school district shall notify the SPI and SBE that the alternative governance option selected has substantial promise of enabling the school to make adequate yearly progress as defined in NCLB, 20 U.S.C. section 6301 et seq. (Ed. Code, § 53301, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 2.)

3. Open Enrollment Act

   a) The school district of residence that receives notice that one or more of its schools are low-achieving and on the list created by the SPI, shall notify the parent(s) or guardian(s) of each pupil enrolled in a school included on the most recent Open Enrollment List of the option to transfer to another public school served by the district of residence or another school district. This notice shall be provided on the first day of instruction. If the district has not been notified of whether its school(s) is on the list, the notification shall be provided no later than 14 calendar days after the Open Enrollment List is posted on the CDE's Web site at http://www.cde.ca.gov/. (Ed. Code, § 48354(b)(1); Cal. Code Regs., tit. 2, § 4702(a).)

   b) Upon receipt of a transfer application, the school district of enrollment shall ensure that pupils who transfer pursuant to the Open Enrollment Act are enrolled in a school with a higher API than the school in which the pupil was previously enrolled, and are selected through a random, nonbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based on his or her individual academic or athletic performance, physical condition, proficiency in the English language, family income, or other individual characteristics. If the number of pupils requesting a particular school exceeds the number of spaces available at that school, a lottery shall be conducted in the group priority order in section 48356(d)(1) and (2) to select pupils at random. (Ed. Code, § 48356(d), Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1.)

   c) Within 60 days of receiving an application from a parent or guardian for transfer, the school district of enrollment shall notify the applicant parent and the school district of residence in writing whether the application has been accepted or rejected. If an application is rejected, the school district of enrollment shall state in the notification the reasons for the rejection. (Ed. Code, § 48357, Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1.)

   Court, community, community day schools, and charter schools are exempt and ***not*** mandated by the state to comply with the Open Enrollment Act.[103]

All other statutes and activities pled are denied.

In addition, any federal funding or grant funding appropriated for these mandated activities, including SIG funds (State Budget Act, Line Item 6110-134-0890) appropriated to implement an intervention model pursuant to Education Code section 53202, shall be identified as offsetting revenue and deducted from the costs claimed by the district.

[103] Education Code section 48352(a)(2)(B) and (C).

Glossary of Frequently Used Terms and Acronyms

Academic Performance Index (API)	The API is a single number, ranging from a low of 200 to a high of 1000, which reflects a school's, an LEA's, or a student group's performance level, based on the results of statewide assessments.
American Recovery and Reinvestment Act (ARRA)	Federal law providing one time funding to help struggling states. ARRA included the competitive grant funding in the federal Race to the Top.
California Department of Education (CDE)	California Department of Education
Local Educational Agency (LEA)	A School District or County Office of Education.
Memorandum of Understanding (MOU)	A bilateral or multilateral agreement between two or more parties. It expresses a convergence of will between the parties, indicating an intended common line of action. It is often used in cases where parties do not imply a legal commitment, cannot create a legally enforceable agreement, or as a preliminary step in the contracting process. Whether or not an MOU constitutes a binding contract depends only on the presence or absence of the well-defined legal elements for a contract: offer, consideration, intention, and acceptance. The specifics can differ slightly depending on whether the contract is for goods (falls under the Uniform Commercial Code) or services (falls under the common law of the state).
Race to the Top (RTTT)(federal)	Federal competitive grant program to encourage academic improvement.
Race to the Top (RTTT)(state)	State statutes enacted to make California competitive in the federal RTTT competitive grant process.
Standardized Testing and Reporting (STAR)	State testing process to measure academic achievement.

State Board of Education (SBE)	The SBE sets K-12 education policy in the areas of standards, curriculum, instructional materials, assessment, and accountability. The SBE adopts instructional materials for use in grades kindergarten through eight. T The SPI, who heads the CDE, also serves as SBE's executive officer and secretary
State Educational Agency	Any state level educational agency.
Superintendent of Public Instruction (SPI)	A California Constitutional Officer, elected every four years to head the California Department of Education. The SPI directs all functions of the Department of Education, executes policies set by the California State Board of Education, serves as the state's chief spokesperson for public schools, provides education policy and direction to local school districts, and also serves as an ex officio member of governing boards of the state's higher education system.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Solano and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 14, 2014, I served the:

Final Staff Analysis and Proposed Statement of Decision
Race to the Top, 10-TC-06
Education Code Sections 48353 et al.
Statutes 2009-2010, 5th Extraordinary Session, Chapters 2 and 3, SBX5 1 and SBX5 4 et al.
California Code of Regulations, Title 5, Section 4702 (Register 2010, No. 32)
Twin Rivers Unified School District, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 14, 2014 at Sacramento, California.

Heidi J. Palchik
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 1/28/14

Claim Number: 10-TC-06

Matter: Race to the Top

Claimant: Twin Rivers Unified School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-7522
SAquino@sco.ca.gov

Harmeet Barkschat, *Mandate Resource Services,LLC*
5325 Elkhorn Blvd. #307, Sacramento, CA 95842
Phone: (916) 727-1350
harmeet@calsdrc.com

Lacey Baysinger, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
lbaysinger@sco.ca.gov

Carol Bingham, *California Department of Education (E-08)*
Fiscal Policy Division, 1430 N Street, Suite 5602, 1430 N Street, Suite 5602, Sacramento, CA 95814
Phone: (916) 324-4728
cbingham@cde.ca.gov

Mike Brown, *School Innovations & Advocacy*
5200 Golden Foothill Parkway, El Dorado Hills, CA 95762
Phone: (916) 669-5116
mikeb@sia-us.com

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

J. Bradley Burgess, *MGT of America*
895 La Sierra Drive, Sacramento, CA 95864
Phone: (916)595-2646
Bburgess@mgtamer.com

Gwendolyn Carlos, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
gcarlos@sco.ca.gov

Giny Chandler, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA
Phone: (916) 323-3562
giny.chandler@csm.ca.gov

David Cichella, *California School Management Group*
3130-C Inland Empire Blvd., Ontario, CA 91764
Phone: (209) 834-0556
dcichella@csmcentral.com

Marieta Delfin, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-0706
mdelfin@sco.ca.gov

Andra Donovan, *San Diego Unified School District*
Legal Services Office, 4100 Normal Street, Room 2148, 4100 Normal Street, Room 2148, San Diego, CA 92103
Phone: (619) 725-5630
adonovan@sandi.net

Chris Ferguson, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Ferguson@dof.ca.gov

Susan Geanacou, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-3274
susan.geanacou@dof.ca.gov

Paul Golaszewski, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8341
Paul.Golaszewski@lao.ca.gov

Ed Hanson, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
ed.hanson@dof.ca.gov

Mark Ibele, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Mark.Ibele@sen.ca.gov

Jill Kanemasu, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 322-9891
jkanemasu@sco.ca.gov

Jillian Kissee, *Department of Finance*
915 L Street, Sacramento, Ca
Phone: (916) 445-0328
jillian.kissee@dof.ca.gov

Jennifer Kuhn, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8332
Jennifer.kuhn@lao.ca.gov

Jay Lal, *State Controller's Office (B-08)*
Division of Accounting & Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0256
JLal@sco.ca.gov

Veronica Lanto, *San Jose Unified School District*
855 Lenzen Avenue, San Jose, CA 95126-2736
Phone: (408) 535-6572
Veronica_Lanto@sjusd.org

Kathleen Lynch, *Department of Finance (A-15)*
915 L Street, Suite 1280, 17th Floor, Sacramento, CA 95814
Phone: (916) 445-3274
kathleen.lynch@dof.ca.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Yazmin Meza, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Yazmin.meza@dof.ca.gov

Robert Miyashiro, *Education Mandated Cost Network*
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
robertm@sscal.com

Keith Nezaam, *Department of Finance*
915 L Street, 8th Floor, Sacramento, CA 95814
Phone: (916) 445-8913
Keith.Nezaam@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Christian Osmena, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
christian.osmena@dof.ca.gov

Arthur Palkowitz, *Stutz Artiano Shinoff & Holtz*
Claimant Representative
2488 Historic Decatur Road, Suite 200, San Diego, CA 92106
Phone: (619) 232-3122
apalkowitz@stutzartiano.com

Keith Petersen, *SixTen & Associates*
P.O. Box 340430, Sacramento, CA 95834-0430
Phone: (916) 419-7093
kbpsixten@aol.com

Mark Rewolinski, *MAXIMUS*
625 Coolidge Drive, Suite 100, Folsom, CA 95630
Phone: (949) 440-0845
markrewolinski@maximus.com

Sandra Reynolds, *Reynolds Consulting Group,Inc.*
P.O. Box 894059, Temecula, CA 92589
Phone: (951) 303-3034
sandrareynolds_30@msn.com

Kathy Rios, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-5919
krios@sco.ca.gov

Robert Roach, *Twin Rivers Unified School District*
3222 Winona Way, North Highlands, CA 95660
Phone: (916) 566-1600
rob.roach@twinriversusd.org

Matthew Schuneman, *MAXIMUS*
900 Skokie Boulevard, Suite 265, Northbrook, Il 60062
Phone: (847) 513-5504
matthewschuneman@maximus.com

Nicolas Schweizer, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
nicolas.schweizer@dof.ca.gov

David Scribner, *Max8550*
2200 Sunrise Boulevard, Suite 240, Gold River, CA 95670
Phone: (916) 852-8970

dscribner@max8550.com

Steve Shields, *Shields Consulting Group,Inc.*
1536 36th Street, Sacramento, CA 95816
Phone: (916) 454-7310
steve@shieldscg.com

Jim Spano, Chief, Mandated Cost Audits Bureau, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 323-5849
jspano@sco.ca.gov

Dennis Speciale, *State Controller's Office*
Division of Accounting and Reporting, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-0254
DSpeciale@sco.ca.gov

Meg Svoboda, *Senate Office of Research*
1020 N Street, Suite 200, Sacramento, CA
Phone: (916) 651-1500
meg.svoboda@sen.ca.gov

Jolene Tollenaar, *MGT of America*
2001 P Street, Suite 200, Suite 200, Sacramento, CA 95811
Phone: (916) 443-9136
jolene_tollenaar@mgtamer.com

Jennifer Troia, *Senate Budget and Fiscal Review Committee*
State Capitol, Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
Jennifer.Troia@sen.ca.gov

Brian Uhler, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8328
brian.uhler@lao.ca.gov