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February 6, 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: **Draft Staff Analysis and Proposed Statement of Decision, Schedule for Comments, and Notice of Hearing**
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 draft staff analysis and proposed statement of decision for the above-named matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the draft staff analysis by **February 27, 2014.** You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see http://www.csm.ca.gov/dropbox.shtml on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, March 28, 2014**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about March 14, 2014. 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.

Please contact Giny Chandler at (916) 323-3562 if you have any questions.

Sincerely,

Heather Halsey
Executive Director

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Hearing Date: March 28, 2014
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ITEM ___

TEST CLAIM
DRAFT 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)

Twin Rivers Unified School District, Claimant

Executive Summary

Background

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.

- 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 added or amended the programs and code sections described below.

1) Race to the Top

Race to the Top[1] establishes a process by which, through a memorandum of understanding, the state and local educational agencies that choose to participate in the application for RTTT grant funds, target the RTTT criteria by focusing particularly on persistently low-achieving schools. The state and participating schools, who have signed a memorandum of understanding, are required to develop a plan to address how federal funds from both RTTT and other federal funding sources will provide resources for those identified schools.[2] The plan may address professional development, technical assistance, and partnership with other schools that have successfully transitioned from low performing to higher performing schools.[3]

The state is required to identify schools that meet the statutory definition of persistently lowest-achieving schools.[4]

Once a school is identified by the state as a persistently lowest-achieving school, 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. 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.[5]

[1] Codified in Education Code sections 53100-53203.

[2] Education Code section 53101.

[3] Education Code section 53101(b).

[4] Education Code section 53201.

[5] Education Code section 53202.

The district is then required to select an intervention model and implement that model for an identified persistently lowest-achieving school.[6]

2) Parent Empowerment Act

The Parent Empowerment Act[7] allows parents to petition a school to implement one of the RTTT intervention models described above to improve academic achievement or pupil safety.[8] Parents may file a petition for those schools that are not identified as persistently lowest-achieving, but are subject to corrective action under No Child Left Behind (NCLB), fail to make adequate yearly progress, and have an Academic Performance Index (API) score of less than 800.[9]

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 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. The school district is also required to notify the Superintendent of Public Instruction (SPI) and State Board of Education (SBE) upon receipt of a petition and the district's final disposition of the matter.[10]

3) Open Enrollment Act

The Open Enrollment Act[11] 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.[12] The Open Enrollment Act and title 5, California Code of Regulations, section 4702 impose specified notice, enrollment and related requirements on school districts of residence and school districts of enrollment and grant authority to the districts to take specified actions in furtherance of the program.[13]

4) Education Code section 60601, relating to the STAR test

Former Section 60601, as pled in this test claim, sets the inoperative and repeal date for the Leroy Greene California Assessment of Academic Achievement Act, which created the school STAR

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[6] Education Code section 53202(a).

[7] Codified in Education Code sections 53300-53303.

[8] Education Code section 53300.

[9] Education Code section 53300.

[10] Education Code section 53301.

[11] Codified in Education Code sections *48350*-48361 and implemented by, Title 5, California Code of Regulations, section 4702.

[12] Education Code section 48354.

[13] Education Code sections 48354-48359 and Title 5, California Code of Regulations, section 4702.

testing program. As amended in 2010, Section 60601 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.

Procedural History

Claimant, Twin Rivers Unified School District, filed the test claim on November 23, 2010.[14] On December 22, 2010, Commission on State Mandates (Commission) staff deemed the filing complete and numbered it 10-TC-06. The state has not filed any comments on this test claim. On August 5, 2013, a request for additional information was issued regarding the grant funding that may be applicable to the Race to the Top program. No comments were filed on this request.

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.

Claims

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

[14] 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.

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 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	***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 hearings for each school identified to seek input from staff, parents, and the community regarding

	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.	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. 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 authorize parents of students in a school not identified as persistently lowest-achieving, but subject to corrective action under Title I of NCLB, and 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 that are filed for the purpose of improving academic achievement or pupil safety.	***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 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,	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	***Partially Approve*** The following activities required by Education Code sections 48354, 48356, and 48357 and

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)	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.	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. 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.[15] 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

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

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[16]. 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 Dist*.), downstream requirements triggered by local discretionary decisions are not eligible for reimbursement.[17]

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:

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

[17] *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.

- 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:

  (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.

  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 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 new program or higher level of service upon schools identified as persistently lowest-achieving, regardless of whether the school participates in the federal RTTT application process, is receiving grant funds under Title I of No Child Left Behind, or is voluntarily participating in a prior school improvement program pursuant to Education Code section 52053. The requirements that persistently lowest-achieving schools must implement one of four possible intervention models (turnaround, restart, school closure, or transformation) and hold at least two public hearings before implementation of an intervention model are not found in prior law. These activities provide a service to the public since they are enacted for the purpose of improving academic achievement.

Section 53203 requires the regional consortia authorized under Education Code section 53203, in collaboration with the California Department of Education (CDE), to provide technical 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[18] 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

[18] Codified at Education Code sections 53300-53303.

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, impose a new program or higher level of service on school districts.

Under the Open Enrollment Act[19], 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.[20] 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 new program or higher level of service on school districts beginning April 12, 2010:

- (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; or

  (b) 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

[19] Codified at Education Code sections 48350-48361.

[20] Education Code section 48352.

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.)

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.[21] 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 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.

[21] Education Code section 51225.3.

Staff finds that none of the Government Code section 17556 exceptions to the subvention requirement apply to deny this claim.

Accordingly, the evidence in the record supports the finding that the claimant has incurred increased costs mandated by the state pursuant to Government Code section 17514. However, to the extent a district receives any 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. Article XIII B, section 6, does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue.[22]

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.)

[22] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 486-487.

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.

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) (1) A 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.; or

(2) 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), Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1; Cal. Code Regs., tit. 2, § 4702(a) (Register 2010, No. 32).)

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.)

All other statutes and activities pled are denied.

Staff Recommendation

Staff recommends that the Commission adopt the attached 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.

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*)

PROPOSED 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.]

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.

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) (1) A 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; or

(2) 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), Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1; Cal. Code Regs., tit. 2, § 4702(a) (Register 2010, No. 32).)

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.)

All other statutes and activities pled are denied.

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.[23]

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

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.

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;

[23] 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.

- 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 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

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

[25] "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.

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;
- 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]

Once a school is identified by the state as a persistently low-achieving school, 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.[30] 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

[27] Education Code section 53101.

[28] Education Code section 53101.

[29] Education Code section 53201.

[30] Education Code section 53202(b).

for promotion and career growth, and retaining staff with the skills necessary to meet the needs of the students.[31]

Unless a school designated as persistently lowest-achieving has implemented a reform within the last two years that is showing significant progress, the district is required by state statute to select and implement one of the intervention models described above.[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 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]

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

[32] Education Code section 53202(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.

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 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

[40] Education Code section 48351.

[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.

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 (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 fund educational programs for disadvantaged students.

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 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

[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).

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]

Once identified for improvement, NCLB requires a school to develop a plan to cover a two-year period that meets specific objectives to strengthen core academic subjects.[54] The plan may involve the use of a comprehensive school reform model to assure students will meet the state's proficient level of academic achievement by 2013-2014.[55] The plan shall also require the expenditure of at least 10 percent of funding on high quality professional development so that the school will be removed from school improvement status, establish measurable objectives to make adequate yearly progress, and explain how the school will provide written notice to parents of the school's identification for improvement.[56] LEAs must provide technical assistance to identified schools to assess data, provide professional development opportunities, instructional strategies, and analyze and revise the school's budget to more effectively allocate resources to increase academic achievement.[57]

If a school fails to make adequate yearly progress by the end of the second year of identification, it is required to develop a system of corrective action and disseminate information regarding the corrective action to the public and parents.[58] In addition to offering students at the identified school the opportunity to transfer to another school within the district, as well as making supplemental educational services available, an LEA must prepare and implement a plan for alternative governance of the school.[59] Alternative governance may include reopening the school as a charter school, replacing all or most of the school staff, entering into a contract with an entity with a demonstrated record of effectiveness to operate the public school, and turning the operation of the school over to a state educational agency if permitted under state law and agreed to by the state.[60] 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.[61]

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,

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

[54] 20 U.S.C. section 6316(b)(3).

[55] 20 U.S.C. section 6316(B)(7).

[56] 20 U.S.C. section 6216(b)(7).

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

[58] 20 U.S.C. section 6316(b)(8).

[59] 20 U.S.C. section 6316(b)(8).

[60] 20 U.S.C. section 6316(b)(8).

[61] 20 U.S.C. section 6316(b)(7).

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.[62] The Public Schools Accountability Act of 1999 establishes the API and intervention programs for underperforming schools for purposes of complying with NCLB.[63]

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.

B. State Agency Position

No state agency has submitted comments on the test claim or responded to Commission staff's request for additional briefing.

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."[64] Thus the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government]…"[65]

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

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[62] 20 U.S.C. section 6311(b)(2).

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

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

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

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform and activity.[66]
2. The mandated activity either:
   a. Carries out the governmental function of providing a service to the public; or
   b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[67]
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.[68]
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.[69]

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.[70] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[71] 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.[72]

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

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

[67] *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.

[68] *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.

[69] *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.

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

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

[72] *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.

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.[73] A Commission decision that becomes final and has not been set aside by a court cannot be reconsidered by the Commission.[74]

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.[75] Section 53100 provides that "The Superintendent and the President of the state

[73] 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, 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.

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

[75] 34 CFR Subtitle B, Chapter II Race to the Top Fund (Federal Register, Volume 74, Number 221, November 18, 2009.

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.

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.[76] 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.[77] 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.[78] 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 Commission finds 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 "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 Dist*.), downstream requirements triggered by local discretionary decisions are not eligible for reimbursement.[79]

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.

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[76] 34 CFR Subtitle B, Chapter II, Federal Register Volume 74, No. 221.

[77] *Id.*

[78] Education Code section 53101(b).

[79] *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.

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:

- "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 the SPI and SBE determine that an identified school has already implemented interventions within the last two years that show significant progress in turning the school around, then additional intervention is not required for that school. 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 new program or higher level of service on school districts that have schools identified by the SPI 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).

The Commission further finds that these requirements are new and provide a service to the public. Existing federal law, under Title 1 of NCLB, does require corrective action, in the form of the intervention models described above, as a condition of accepting federal grant funding under NCLB.[80] Schools not accepting Title I funding, however, were under no obligation to implement school improvement.[81] In addition, 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.[82] The requirements of this prior law, 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."[83] Thus, schools participating in the state school improvement program in place prior to the enactment of Education Code section 53202 did so voluntarily.

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[80] NCLB, 20 U.S.C. section 6316(c)(7)(10) requires schools identified as not meeting adequate yearly academic progress take corrective action.

[81] Education Code sections 52053, added by Statutes 1999-2000 1st Extraordinary Session, chapter 3, § 1 (S.B.1), established a voluntary program known as the Immediate Intervention/Underperforming Schools Program. 20 U.S.C. section 6311.

[82] Education Code section 52055.

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

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.

By contrast, Education Code section 53202(a) and (b) imposes a state-mandated new program or higher level of service upon schools identified as persistently lowest-achieving pursuant to section 53201, regardless of whether the school participates in the federal RTTT application process, is receiving grant funds under Title I of NCLB, or is voluntarily participating in school improvement pursuant to Education Code section 52053. The requirement that persistently lowest-achieving schools must implement one of four possible intervention models (turnaround, restart, school closure, or transformation) creates a new program mandated by the state. In addition, the requirement to hold at least two public hearings before implementation of an intervention model is not found in prior law. These activities provide a service to the public since they are required to implement the federal RTTT competitive grant program in order to improve academic achievement.

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.
>
> (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 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:

  (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.

  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.

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.[84] 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

[84] Education Code section 52059(a).

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. As part of the federal RTTT application process, sixteen school districts signed letters of intent to participate in the regional consortia early learning challenge.[85]

Because participation in the regional consortia by school districts is voluntary, section 53203 does not impose any state-mandated activities upon school districts.[86]

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 so does not impose 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. 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.

Education Code section 53300 allows parents to petition a school to implement an intervention for 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 API score of less than 800. 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

[85] California Department of Education application for RTTT funding application signed by Governor Brown September 2011.

[86] *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.

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.[87] 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 outside their 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 options to pupils to enroll in public schools throughout the state without regard to the residence of their parents.[88] Claimant alleges that sections 48353-48361 impose a reimbursable new program or higher level of service on school districts.

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.

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

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

[88] Education Code section 48351.

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:

> 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).)
- 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.)
- 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.)

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."[89] The court concluded that, if a state chose to impose costs upon a local government, those costs are mandated by the state.[90] Here, the state enacted the requirements bulleted above in order to compete successfully in a voluntary competitive federal RTTT grant program. The Legislature stated that its purpose in enacting the Open Enrollment Act was to meet the federal RTTT criteria.

All other 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) and, thus, do not impose any state-mandated activities on school districts.

In addition, the first three bulleted activities constitute a new program or higher level of service. These activities are newly required by the state and 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.[91]

However, 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 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

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

[90] *Id.*

[91] Education Code section 48351.

state, school districts have the authority under existing law to adopt other coursework requirements for graduation.[92] 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:

- (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. This notice shall be provided on the first day of instruction; or

  (2) 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.)

[92] Education Code section 51225.3.

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 specifically to fund the costs of the mandated activities in this claim. Thus, Government Code section 17556(e) does not apply to deny this claim.

Accordingly, the evidence in the record supports the finding that the claimant has incurred increased costs mandated by the state pursuant to Government Code section 17514. However, to the extent a district receives any 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. Article XIII B, section 6, does not require reimbursement when the costs are for expenses that are recoverable from sources other than tax revenue.[93]

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.

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[93] *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, 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. CDE shall give first priority to applicants that commit to acquiring, maintaining, and using data, to meet one or both of these objectives. 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.

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:

(5) The turnaround model.

(6) The restart model.

(7) School closure.

(8) 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.

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) (1) A 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; or

(2) 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), Stats. 2009-2010, 5th Ex. Sess., c. 3 (SBX5 4), § 1; Cal. Code Regs., tit. 2, § 4702(a) (Register 2010, No. 32).)

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.)

All other statutes and activities pled are denied.

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 February 6, 2014, I served the:

> **Draft Staff Analysis and Proposed Statement of Decision, Schedule for Comments, and Notice of Hearing**
> *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 February 6, 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.)

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