

**ITEM 2**  
**TEST CLAIM**  
**PROPOSED DECISION**

Education Code Section 48000

Statutes 2021, Chapter 44, Section 60 (AB 130)

Effective July 9, 2021

*Transitional Kindergarten*

23-TC-02

Hope Elementary School District and Sunnyvale School District, Claimants

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**EXECUTIVE SUMMARY**

**Overview**

This Test Claim addresses changes to the transitional kindergarten (TK) program arising out of Statutes 2021, chapter 44, section 60 (AB 130).<sup>1</sup> Transitional kindergarten programs are defined as “the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate.”<sup>2</sup> Under prior law, school districts and charter schools were required, as a condition of receipt of apportionment of funds for students in a TK program, to provide a TK program for pupils who would have their fifth birthday between September 2 and December 2. The test claim statute expands the range of eligible birthdates gradually over several years, until by the 2025-2026 school year onwards all pupils who will have their fourth birthday by September 1 are eligible for TK.<sup>3</sup> The test claim statute also requires as a condition of receipt of apportionment of funds, an average maximum TK class size of 24 pupils per schoolsite, and beginning in the 2022-2023 school year, an adult-to-pupil ratio of one adult per 12 pupils in a TK classroom.<sup>4</sup>

For reasons stated in the analysis, staff finds the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 on the ground that

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<sup>1</sup> Transitional kindergarten and TK are used interchangeably throughout this Decision.

<sup>2</sup> Education Code section 48000(d).

<sup>3</sup> Education Code section 48000(c)(1)(G), as amended by Statutes 2021, chapter 44 (AB 130), section 60.

<sup>4</sup> Education Code section 48000(g), as amended by Statutes 2021, chapter 44 (AB 130), section 60.

there are no costs mandated by the state pursuant to Government Code section 17556(e) and recommends the Commission deny this Test Claim.

### **Procedural History**

The Hope Elementary School District and Sunnyvale School District (claimants) filed the Test Claim on January 22, 2024.<sup>5</sup> During the public comment period from April 12, 2024 to May 13, 2024, almost 200 interested parties and interested persons filed letters in support of the Test Claim.<sup>6</sup> The Department of Finance (Finance) filed comments on the Test Claim on July 11, 2024.<sup>7</sup> The claimants filed rebuttal comments on August 8, 2024, which included over 100 additional letters of support from interested parties and interested persons including the California School Boards' Association (CSBA), responding to Finance's comments.<sup>8</sup>

Commission staff issued the Draft Proposed Decision on March 27, 2025.<sup>9</sup>

The claimants, Finance, and the California Department of Education (CDE) each filed comments on the Draft Proposed Decision on April 17, 2025.<sup>10</sup> On April 21, 2025, claimants filed additional Late Comments responding to CDE's comment letter.<sup>11</sup>

### **Commission Responsibilities**

Under article XIII B, section 6 of the California Constitution, local agencies and 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

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<sup>5</sup> Exhibit A, Test Claim.

<sup>6</sup> Due to the high number of comments that are duplicative, most interested party and interested person comments have been excluded from the exhibits, save for a few representative examples. See Exhibit D, Anthony Ranii, President, Schools for Sound Finance, Comments on the Test Claim; Exhibit E, Dr. Robert Bauer, Trustee, Portola Valley School District, Comments on the Test Claim; and Exhibit F, Ellen Sheffer, Board President, San Luis Coastal Unified School District, Late Comments on the Test Claim. However, all comments are available on the Commission's website on the matter page for this Test Claim at <https://csm.ca.gov/matters/23-TC-02.shtml> and each commenter is acknowledged by name in footnotes in the Interested Parties and Interested Persons section of the Draft Proposed Decision.

<sup>7</sup> Exhibit B, Finance's Comments on the Test Claim.

<sup>8</sup> Exhibit C, Claimants' Rebuttal Comments, filed August 8, 2024.

<sup>9</sup> Exhibit G, Draft Proposed Decision.

<sup>10</sup> Exhibit H, Claimants' Comments on the Draft Proposed Decision; Exhibit I, Finance's Comments on the Draft Proposed Decision; Exhibit J, California Department of Education's Comments on the Draft Proposed Decision.

<sup>11</sup> Exhibit K, Claimants' Late Comments on the Draft Proposed Decision.

alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and 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 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>12</sup>

### **Claims**

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

<b>Issue</b>	<b>Description</b>	<b>Staff Recommendation</b>
Was the test claim timely filed?	A test claim shall be filed no later than 12 months following the effective date of an executive order or statute, or within 12 months of incurring increased costs as a result of the executive order or statute, whichever is later. <sup>13</sup> The Commission’s regulations clarify that “within 12 months of incurring increased costs” means “within 12 months (365 days) of <i>first</i> incurring increased costs as a result of a statute or executive order, whichever is later.” <sup>14</sup>	<i>Yes, timely filed.</i> The test claim statute has an effective date of July 9, 2021, while the Test Claim was jointly filed on January 22, 2024. <sup>16</sup> However, the claimants filed declarations under penalty of perjury that they first incurred increased costs to implement the test claim statute on July 1, 2023, when they hired additional teachers and non-teacher employees to staff the TK program. <sup>17</sup> Finance asserts that because some of the test claim statute’s

<sup>12</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>13</sup> Government Code section 17551(c).

<sup>14</sup> California Code of Regulations, title 2, section 1183.1(c), emphasis added.

<sup>16</sup> Exhibit A, Test Claim, page 1. The test claim statute, Statutes 2021, chapter 44, was a budget bill and took effect immediately when filed with the Secretary of State (Statutes 2021, chapter 44, section 165.)

<sup>17</sup> Exhibit A, Test Claim, pages 24-25 (Declaration of Lori van Gogh, Chief Business Officer, Sunnyvale School District); pages 30-31 (Declaration of Mike Thomson, Chief Business Official, Business Office, Hope Elementary School District).

Issue	Description	Staff Recommendation
	<p>A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.<sup>15</sup></p>	<p>requirements went into effect during the 2021-2022 and 2022-2023 school years, it is uncertain whether the claimants first incurred increased costs prior to July 1, 2023, and therefore this Test Claim may not be timely.<sup>18</sup> Finance provides no evidence that supports this position besides some inconsistencies in the claimants' documentary evidence it believes may be evidence of earlier increased costs. However, the inconsistencies do not rise to the level of substantial evidence of earlier increased costs, and the claimants declare under penalty of perjury that they first experienced increased costs on July 1, 2023. Absent evidence the claimants did or should have first incurred increased costs to implement the test claim statute prior to July 1, 2023, the Commission must accept the claimants' signed declarations of when they first incurred increased costs. The January 22, 2024 filing date is therefore timely.</p> <p>Because the Test Claim was filed on January 22, 2024 (fiscal year 2023-2024), the potential period of</p>

<sup>15</sup> Government Code 17557(e).

<sup>18</sup> Exhibit B, Finance's Comments on the Test Claim, page 3.

Issue	Description	Staff Recommendation
		reimbursement begins at the start of the prior fiscal year, July 1, 2022.
Does the test claim statute impose a reimbursable state-mandated program on school districts?	<p>Government Code section 17556(e) provides that the Commission shall not find costs mandated by the state if a bill includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.</p> <p>The claimants allege that the test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 because the requirements are mandated by the state and they are basic aid districts that receive property tax revenue instead of state funding under the Local Control Funding Formula (LCFF), and therefore they did not receive funding from the state for pupils admitted in the transitional kindergarten program in 2023-2024.<sup>19</sup></p>	<p><i>No, there are no costs mandated by the state.</i> Even if there is a state-mandated program, the state has provided additional revenue specifically intended to fund the costs of the TK program within the meaning of Government Code section 17556(e).</p> <p>The test claim statute's requirements are a "condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300."<sup>20</sup> Education Code section 46300(g)(1) expressly states that in computing the average daily attendance (ADA) of a school district, "there shall be included the attendance of pupils in . . . a transitional kindergarten program after they have completed one year in that program if . . . (B) The pupils participated in a transitional kindergarten program pursuant to subdivision (c) of Section 48000."<sup>21</sup> ADA is the total number of days of pupil attendance divided by the total number of days in the</p>

<sup>19</sup> Exhibit A, Test Claim, page 13.

<sup>20</sup> See Education Code section 46300(g)(1).

<sup>21</sup> Education Code section 46300 (as last amended by Statutes 2010, chapter 705).

Issue	Description	Staff Recommendation
		<p>regular school year.<sup>22</sup> ADA is used in calculating how much funding the state shall set aside for education each year under Proposition 98, and how much of that funding each school district is entitled to under the Local Control Funding Formula (LCFF) and from constitutionally guaranteed minimums.<sup>23</sup></p> <p>As fully explained in the analysis, these formulas generate an entitlement of \$12,932 per unit of ADA for pupils in the TK program, between the base rate per unit of kindergarten through grade three ADA adjusted annually, an adjustment conditional on maintaining an average class size in kindergarten through grade three classes of 24 pupils, and an add-on for ADA generated by TK pupils specifically intended to support the costs to maintain an average of one adult per twelve students in a TK classroom.<sup>24</sup> This is ADA the school district would not otherwise receive if not for the TK program, as TK students are not</p>

<sup>22</sup> Education Code section 46301.

<sup>23</sup> California Constitution, article IX, section 6; article XIII, section 36; article XVI, section 8; Education Code section 42238.02.

<sup>24</sup> Education Code section 42238.02(d)(1)(A), (d)(2), (d)(3), and (g)(2).

Issue	Description	Staff Recommendation
		<p>otherwise eligible to enroll in school.</p> <p>Based on the Supreme Court's 2019 decision in <i>California School Boards' Association v. State of California</i> (CSBA), the funds apportioned to school districts under Proposition 98 provide funding specifically intended to fund the costs of a state-mandated program and reimbursement is not required.<sup>25</sup></p> <p>In CSBA, school districts objected to the Legislature designating previously unrestricted Proposition 98 funds that would from then on be required to first be used to fund two state mandated programs, including the <i>Graduation Requirements</i> program that mandated an additional science course to graduate from high school, requiring school districts to incur costs including the salary and benefits of science teachers.<sup>26</sup> CSBA claimed that article XIII B, section 6 requires the Legislature to appropriate <i>additional</i> funding for state mandated programs.<sup>27</sup> The court</p>

<sup>25</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713.

<sup>26</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 719, 721-722.

<sup>27</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 724.

Issue	Description	Staff Recommendation
		<p>concluded that CSBA cites no other constitutional provision or authority that bars the Legislature from identifying a portion of previously unrestricted state funding and prospectively designating it to pay for state-mandated costs. “Funds so designated are not local proceeds of taxes.”<sup>28</sup> The court also rejected CSBA’s argument that “once certain funding is defined as the education agencies’ ‘proceeds of taxes,’ it is protected by Section 6 and the State’s authority is correspondingly limited,”<sup>29</sup> finding instead that “article XIII B, section 6 does not preclude the Legislature from adjusting the mix of state funding allocated for unrestricted versus mandate purposes.”<sup>30</sup> The court concluded that the Legislature has broad authority over revenue collection and allocation, which allows it to “increase, decrease, earmark, or otherwise modify state education funding in order to satisfy reimbursement obligations, so long as its chosen method is consistent with Proposition 98 and</p>

<sup>28</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

<sup>29</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.

<sup>30</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.



Issue	Description	Staff Recommendation
		<p>other constitutional guarantees.”<sup>31</sup></p> <p>Just like the school districts in <i>CSBA</i> that were disappointed by the Legislature’s decision to satisfy its mandate obligations by decreasing the amount of unrestricted state funding available to them for other purposes, basic aid districts are not entitled to a baseline level of excess property tax revenue.<sup>32</sup> The state has satisfied its funding obligations under article XIII B, section 6 of the California Constitution when it designates funds appropriated by the state for education as subventions for mandate reimbursement. Such funds “are not local proceeds of taxes.”<sup>33</sup></p>

### **Staff Analysis**

This Test Claim alleges new state-mandated activities and costs arising from amendments to Education Code section 48000 found in Statutes 2021, chapter 44, section 60 (AB 130), relating to the transitional kindergarten (TK) program.<sup>34</sup> Existing law requires, as a condition of receiving an apportionment of funds for TK pupils, school districts to maintain a TK program, defined as “the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate.”<sup>35</sup> Prior law provided, “[a]s a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Education Code section 46300,” school districts and charter schools shall ensure that a child, who will have their

<sup>31</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 726.

<sup>32</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.

<sup>33</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

<sup>34</sup> TK and transitional kindergarten are used interchangeably throughout this Decision.

<sup>35</sup> Education Code section 48000(d).

fifth birthday between September 2 and December 2 from the 2014-2015 school year onwards, be admitted into a transitional kindergarten program maintained by the school district or charter school.<sup>36</sup> The apportionment promised comes from the increase in the school district's average daily attendance (ADA) caused by TK pupils attending the program.<sup>37</sup> ADA is the total number of days of pupil attendance divided by the total number of days in the regular school year.<sup>38</sup> ADA is used in calculating how much funding the state shall set aside for education each year under Proposition 98, and how much of that funding each school district is entitled to under the Local Control Funding Formula (LCFF) and from constitutionally guaranteed minimums.<sup>39</sup>

The 2021 test claim statute expands the birthdate range used to determine who shall be admitted into TK programs incrementally over several years, so that by the 2025-2026 school year, as a condition of receipt of apportionment for pupils in a TK program, school districts shall ensure that children who will have their fourth birthday by September 1 shall be admitted into a TK program maintained by the school district or charter school.<sup>40</sup> The test claim statute also imposes new conditions on school districts and charter schools for receipt of apportionment for pupils in a TK program, requiring the school districts and charter schools to maintain an average TK class enrollment of not more than 24 pupils for each schoolsite; and, beginning with the 2022-2023 school year, to maintain an average of at least one adult for every 12 pupils in a TK classroom.<sup>41</sup> Education Code section 48000(e), as originally added in 2010 and continues today, provides that "a transitional kindergarten program shall not be construed as a new program or higher level of service."<sup>42</sup>

Claimants, interested parties and persons, and the California Department of Education (CDE) contend the test claim statute imposes a state-mandated program to provide a TK program as specified in the statute and raise arguments in favor of school districts being both legally and practically compelled to provide a TK program and comply with the new requirements.

The Commission does not need to reach a decision on whether the new requirements are mandated by the state. The question whether there is a reimbursable state-

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<sup>36</sup> See Education Code section 48000(c)(1)(C), as amended by Statutes 2010, chapter 705 (SB 1381), section 3.

<sup>37</sup> Education Code section 46300(g). See also, Statutes 2010, chapter 705, section 5.

<sup>38</sup> Education Code section 46301.

<sup>39</sup> California Constitution, article IX, section 6; article XIII, section 36; article XVI, section 8; Education Code section 42238.02.

<sup>40</sup> Education Code section 48000(c)(1)(G), as amended by Statutes 2021, chapter 44 (AB 130), section 60.

<sup>41</sup> Education Code section 48000(g), as amended by Statutes 2021, chapter 44 (AB 130), section 60.

<sup>42</sup> Education Code section 48000(e), as amended by Statutes 2010, chapter 705 (SB 1381), section 3.

mandated program pursuant to article XIII B, section 6 of the California Constitution considers multiple elements, all of which must be satisfied to approve a test claim.<sup>43</sup> As explained below, the state has provided additional revenue intended to fund the costs of the TK program and, therefore, pursuant to Government Code section 17556(e), there are no costs mandated by the state.

The test claim statute states that the required activities are a “condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300.”<sup>44</sup> Education Code section 46300(g)(1) expressly states that in computing the ADA of a school district, “there shall be included the attendance of pupils in . . . a transitional kindergarten program after they have completed one year in that program if . . . (B) The pupils participated in a transitional kindergarten program pursuant to subdivision (c) of Section 48000.”<sup>45</sup>

Article XVI, section 8(b) of the California Constitution (Proposition 98) provides the formulas used to determine how much funding the state shall set aside for public education each year, consisting of a mix of state General Fund revenue and local proceeds of taxes, adjusted by ADA.<sup>46</sup> “Local proceeds of taxes” includes any local property tax revenue that offsets a school district’s funding entitlement.<sup>47</sup> In 2022, the Legislature added Education Code section 41204.7, which requires the Director of Finance to factor any increases in the amount of funding school districts are entitled to as a result of the changes in ADA from the TK program into its Proposition 98 calculations, starting with fiscal year 2022-2023.<sup>48</sup>

The LCFF then apportions the Proposition 98 funds to school districts. The total of a school district’s base, supplemental, and concentration grants, and any add-ons, is the school district’s LCFF entitlement.<sup>49</sup> The LCFF entitlement now includes the additional ADA for TK pupils for those schools that provide a TK program, which is adjusted annually for inflation, along with a 10.4 percent adjustment to the kindergarten through grade three base rate that is conditional on the school district maintaining an average class size for kindergarten through grade three students of 24 pupils, plus an add-on equal to \$2,813 adjusted annually per ADA generated from TK pupils intended to support the costs to maintain an average of at least one adult for every twelve pupils in a TK classroom. In total, school districts are entitled to at least \$12,932 per unit of ADA generated by TK pupils for a school district to admit all pupils born within the mandatory

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<sup>43</sup> See *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>44</sup> Education Code section 48000(c)(1), (g).

<sup>45</sup> Education Code section 46300 (as last amended by Statutes 2010, chapter 705).

<sup>46</sup> California Constitution, article XVI, section 8(b)(2) and (3).

<sup>47</sup> Education Code section 41202(g).

<sup>48</sup> Education Code section 41204.7 (Statutes 2022, chapter 52).

<sup>49</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 7.

date ranges, maintain a maximum average TK class size of 24 pupils per school site, and maintain an average of one adult for every twelve pupils in a TK classroom.

Each school district's LCFF entitlement is then satisfied by first crediting each school district with its share of local property tax revenue.<sup>50</sup> For the majority of school districts, local property tax revenue is not enough to meet its LCFF entitlement, and the state covers the difference using its remaining Proposition 98 funding. For a small number of school districts including the claimants, their local property tax revenue meets or exceeds their LCFF entitlement. These districts are referred to as basic aid districts, because they do not receive additional state aid to meet the entitlement, but the state still provides them with the following minimum amount of additional state funding guaranteed by the state Constitution:<sup>51</sup> \$120 per pupil ADA but not less than \$2,400 total;<sup>52</sup> and the Education Protection Account provides additional funding at minimum \$200 per unit of ADA.<sup>53</sup> Additionally, when creating the LCFF, the Legislature included a provision that no district would receive less state aid than it received in fiscal year 2012-2013 for pre-existing programs that were replaced by the LCFF.<sup>54</sup>

Government Code section 17556(e) provides that the Commission shall not find costs mandated by the state when "[t]he statute, executive order, or an appropriation in a Budget Act or other bill . . . includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate." The Commission finds that the state has provided additional revenue through the LCFF specifically intended to fund the costs of the TK program, including the new requirements, in an amount sufficient to fund the costs of the program and, thus, there are no costs mandated by the state pursuant to Government Code section 17556(e).

Here, the Legislature has added funding specifically for the TK program through the LCFF. Each student that attends a TK program generates ADA for the school district, which is used in calculating school district apportionments under the LCFF.<sup>55</sup> This ADA would not otherwise exist if not for the TK program, as without transitional kindergarten, school districts are only required to admit a child into kindergarten if they will have their fifth birthday by September 1 of that school year, and the children who are eligible to enroll in TK do not meet that requirement.<sup>56</sup> As indicated above, school districts are entitled to \$12,932 per unit of ADA generated by TK pupils specifically for the

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<sup>50</sup> Education Code section 42238.03(c)(1)(A).

<sup>51</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 7.

<sup>52</sup> California Constitution, article IX, section 6.

<sup>53</sup> California Constitution, article XIII, section 36(e)(3)(B). This funding is separate and in addition to the funding requirement in article IX, section 6.

<sup>54</sup> Education Code 42238.03(e)

<sup>55</sup> See Statutes 2010, chapter 705 (SB 1381), section 5.

<sup>56</sup> Education Code section 48000(a).

program.<sup>57</sup> Just like the Supreme Court held in *California School Boards' Association v. State of California* (CSBA), the state has satisfied its funding obligations under article XIII B, section 6 of the California Constitution when it designates funds appropriated by the state for education as subventions for mandate reimbursement. Such funds “are not local proceeds of taxes.”<sup>58</sup>

The court in CSBA addressed a challenge by school districts to legislation that required funds apportioned to school districts under Proposition 98, which were previously designated as unrestricted non-mandated education funding, to first be used to pay for two state-mandated programs, including the *Graduation Requirements* program that added a mandated science course to graduate from high school, requiring school districts to incur costs including the salary and benefits of science teachers.<sup>59</sup> CSBA contended that the legislation violated the mandate reimbursement requirement in article XIII B, section 6 since additional mandate funding is required to be provided. The court disagreed. The court recognized that although the funds the claimants may have wished to use exclusively for other substantive program activities were now reduced as a result of the statute in CSBA, this did not in itself transform the costs into a reimbursable state mandate.<sup>60</sup> The court concluded, “CSBA cites no other constitutional provision or authority that bars the Legislature from identifying a portion of previously unrestricted state funding and prospectively designating it to be used to offset mandate costs. Funds so designated are not local proceeds of taxes.”<sup>61</sup> The court explained that:

CSBA’s insistence that article XIII B, section 6 requires the state to provide “additional” funding to cover the [Graduation Requirements] mandates ultimately rests on its contention that the Legislature may not “identify pre-existing education funding as mandate payment.” But article XIII B, section 6 does not guarantee any baseline of “pre-existing education funding,” . . .<sup>62</sup>

The court also rejected CSBA’s argument that “once certain funding is defined as the education agencies’ ‘proceeds of taxes,’ it is protected by Section 6 and the State’s authority is correspondingly limited,”<sup>63</sup> as follows:

CSBA is correct that Government Code sections 7906 and 7907 define school districts’ and county superintendents’ “proceeds of taxes” to include

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<sup>57</sup> Education Code section 42238.02(d)(1)(A), (d)(2), (d)(3), and (g)(2).

<sup>58</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

<sup>59</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 719, 721-722.

<sup>60</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 727.

<sup>61</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

<sup>62</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 727.

<sup>63</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.

unrestricted state education funding. But those statutes do not guarantee or lock into place any baseline of unrestricted state funding, and as explained above, article XIII B, section 6 does not preclude the Legislature from adjusting the mix of state funding allocated for unrestricted versus mandate purposes.<sup>64</sup>

Rather, the court held the Legislature has multiple methods available to it for satisfying the state's mandate obligations, such as: 1) providing new funding; 2) eliminating a different program or funded mandate to free up funds; 3) identifying new offsetting savings or offsetting revenue; 4) designating previously unrestricted funding as prospectively allocated for the mandate; or 5) suspending the mandate and rendering it unenforceable.<sup>65</sup> "Pursuant to its broad authority over revenue collection and allocation, the Legislature may increase, decrease, earmark, or otherwise modify state education funding in order to satisfy reimbursement obligations, so long as its chosen method is consistent with Proposition 98 and other constitutional guarantees."<sup>66</sup>

Just like the court held in *CSBA*, the state has satisfied its funding obligations under article XIII B, section 6 of the California Constitution for the TK program, including the new requirements, when it designated funds appropriated by the state specifically for the TK program for mandate reimbursement. Such funds "are not local proceeds of taxes."<sup>67</sup>

Accordingly, there are no costs mandated by the state pursuant to Government Code section 17556(e) and, thus, the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

### **Conclusion**

Based on the forgoing analysis, staff finds that the test claim statute does not impose a reimbursable state-mandated program on school districts, as there are no costs mandated by the state.

### **Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision to deny the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

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<sup>64</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.

<sup>65</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 726.

<sup>66</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 726.

<sup>67</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE TEST CLAIM**

Education Code Section 48000  
Statutes 2021, Chapter 44, Section 60  
(AB 130)  
Effective July 9, 2021  
Filed on January 22, 2024  
Hope Elementary School District and  
Sunnyvale School District, Claimants

Case No.: 23-TC-02

*Transitional Kindergarten*

DECISION PURSUANT TO  
GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7.

*(Adopted May 23, 2025)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on May 23, 2025. [Witness list will be included in the adopted 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 Decision to deny the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Deborah Gallegos, Representative of the State Controller, Vice Chairperson	
Karen Greene Ross, Public Member	
Renee Nash, School District Board Member	
William Pahland, Representative of the State Treasurer	
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	
Matt Read, Representative of the Director of the Governor's Office of Land Use and Climate Innovation	

**Summary of the Findings**

This Test Claim alleges new state-mandated activities and costs arising from amendments to Education Code section 48000 found in Statutes 2021, chapter 44,

section 60 (AB 130), relating to the transitional kindergarten (TK) program.<sup>68</sup> Existing law requires, as a condition of receiving an apportionment of funds for TK pupils, school districts to maintain a TK program, defined as “the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate.”<sup>69</sup> Prior law provided, “[a]s a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Education Code section 46300,” school districts and charter schools shall ensure that a child, who will have their fifth birthday between September 2 and December 2 from the 2014-2015 school year onwards, be admitted into a transitional kindergarten program maintained by the school district or charter school.<sup>70</sup> The apportionment promised comes from the increase in the school district’s average daily attendance (ADA) caused by TK pupils attending the program.<sup>71</sup> ADA is the total number of days of pupil attendance divided by the total number of days in the regular school year.<sup>72</sup> ADA is used in calculating how much funding the state shall set aside for education each year under Proposition 98, and how much of that funding each school district is entitled to under the Local Control Funding Formula (LCFF) and from constitutionally guaranteed minimums.<sup>73</sup>

The 2021 test claim statute expands the birthdate range used to determine who shall be admitted into TK programs incrementally over several years, so that by the 2025-2026 school year, as a condition of receipt of apportionment for pupils in a TK program, school districts shall ensure that children who will have their fourth birthday by September 1 shall be admitted into a TK program maintained by the school district or charter school.<sup>74</sup> The test claim statute also imposes new conditions on school districts and charter schools for receipt of apportionment for pupils in a TK program, requiring the school districts and charter schools to maintain an average TK class enrollment of not more than 24 pupils for each schoolsite; and, beginning with the 2022-2023 school year, to maintain an average of at least one adult for every 12 pupils in a TK classroom.<sup>75</sup> Education Code section 48000(e), as originally added in 2010 and

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<sup>68</sup> TK and transitional kindergarten are used interchangeably throughout this Decision.

<sup>69</sup> Education Code section 48000(d).

<sup>70</sup> See Education Code section 48000(c)(1)(C), as amended by Statutes 2010, chapter 705 (SB 1381), section 3.

<sup>71</sup> Education Code section 46300(g). See also, Statutes 2010, chapter 705, section 5.

<sup>72</sup> Education Code section 46301.

<sup>73</sup> California Constitution, article IX, section 6; article XIII, section 36; article XVI, section 8; Education Code section 42238.02.

<sup>74</sup> Education Code section 48000(c)(1)(G), as amended by Statutes 2021, chapter 44 (AB 130), section 60.

<sup>75</sup> Education Code section 48000(g), as amended by Statutes 2021, chapter 44 (AB 130), section 60.



continues today, provides that “a transitional kindergarten program shall not be construed as a new program or higher level of service.”<sup>76</sup>

The claimants, interested parties and persons, and the California Department of Education (CDE) contend the test claim statute imposes a state-mandated program to provide a TK program as specified in the statute and raise arguments in favor of school districts being both legally and practically compelled to provide a TK program and comply with the new requirements.

The Commission does not need to reach a decision on whether the new requirements are mandated by the state. The question whether there is a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution considers multiple elements, all of which must be satisfied to approve a claim.<sup>77</sup> As explained below, the state has provided additional revenue intended to fund the costs of the TK program and, therefore, pursuant to Government Code section 17556(e), there are no costs mandated by the state.

The test claim statute states that the required activities are a “condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300.”<sup>78</sup> Education Code section 46300(g)(1) expressly states that in computing the ADA of a school district, “there shall be included the attendance of pupils in . . . a transitional kindergarten program after they have completed one year in that program if . . . (B) The pupils participated in a transitional kindergarten program pursuant to subdivision (c) of Section 48000.”<sup>79</sup>

Article XVI, section 8(b) of the California Constitution (Proposition 98) provides the formulas used to determine how much funding the state shall set aside for public education each year, consisting of a mix of state General Fund revenue and local proceeds of taxes adjusted by ADA.<sup>80</sup> “Local proceeds of taxes” includes any local property tax revenue that offsets a school district’s funding entitlement.<sup>81</sup> In 2022, the Legislature added Education Code section 41204.7, which requires the Director of Finance to factor any increases in the amount of funding school districts are entitled to as a result of the changes in ADA from the TK program into its Proposition 98 calculations, starting with fiscal year 2022-2023.<sup>82</sup>

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<sup>76</sup> Education Code section 48000(e), as amended by Statutes 2010, chapter 705 (SB 1381), section 3.

<sup>77</sup> See *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>78</sup> Education Code section 48000(c)(1), (g).

<sup>79</sup> Education Code section 46300 (as last amended by Statutes 2010, chapter 705).

<sup>80</sup> California Constitution, article XVI, section 8(b)(2) and (3).

<sup>81</sup> Education Code section 41202(g).

<sup>82</sup> Education Code section 41204.7 (Statutes 2022, chapter 52).

The LCFF then apportions the Proposition 98 funds to school districts. The total of a school district's base, supplemental, and concentration grants, and any add-ons, is the school district's LCFF entitlement.<sup>83</sup> The LCFF entitlement now includes the additional ADA for TK pupils for those schools that provide a TK program, which is adjusted annually for inflation, along with a 10.4 percent adjustment to the kindergarten through grade three base rate that is conditional on the school district maintaining an average class size for kindergarten through grade three students of 24 pupils, plus an add-on equal to \$2,813 adjusted annually per ADA generated from TK pupils intended to support the costs to maintain an average of at least one adult for every twelve pupils in a TK classroom. In total, school districts are entitled to at least \$12,932 per unit of ADA generated by TK pupils for a school district to admit all pupils born within the mandatory date ranges, maintain a maximum average TK class size of 24 pupils per school site, and maintain an average of one adult for every twelve pupils in a TK classroom.

Each school district's LCFF entitlement is then satisfied by first crediting each school district with its share of local property tax revenue.<sup>84</sup> For the majority of school districts, local property tax revenue is not enough to meet its LCFF entitlement, and the state covers the difference using its remaining Proposition 98 funding. For a small number of school districts including the claimants, their local property tax revenue meets or exceeds their LCFF entitlement. These districts are referred to as basic aid districts, because they do not receive additional state aid to meet the entitlement, but the state still provides them with the following minimum amount of additional state funding guaranteed by the state Constitution<sup>85</sup>: \$120 per pupil ADA but not less than \$2,400 total;<sup>86</sup> and the Education Protection Account provides additional funding at minimum \$200 per unit of ADA.<sup>87</sup> Additionally, when creating the LCFF, the Legislature included a provision that no district would receive less state aid than it received in fiscal year 2012-2013 for pre-existing programs that were replaced by the LCFF.<sup>88</sup>

Government Code section 17556(e) provides that the Commission shall not find costs mandated by the state when "[t]he statute, executive order, or an appropriation in a Budget Act or other bill . . . includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate." The Commission finds that the state has provided additional revenue through the LCFF specifically intended to fund the costs of the TK program, including

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<sup>83</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 7.

<sup>84</sup> Education Code section 42238.03(c)(1)(A).

<sup>85</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 7.

<sup>86</sup> California Constitution, article IX, section 6.

<sup>87</sup> California Constitution, article XIII, section 36(e)(3)(B). This funding is separate and in addition to the funding requirement in article IX, section 6.

<sup>88</sup> Education Code 42238.03(e)

the new requirements, in an amount sufficient to fund the costs of the program and, thus, there are no costs mandated by the state pursuant to Government Code section 17556(e).

Here, the Legislature has added funding specifically for the TK program through the LCFF. Each student that attends a TK program generates ADA for the school district, which is used in calculating school district apportionments under the LCFF.<sup>89</sup> This ADA would not otherwise exist if not for the TK program, as without transitional kindergarten, school districts are only required to admit a child into kindergarten if they will have their fifth birthday by September 1 of that school year, and the children who are eligible to enroll in TK do not meet that requirement.<sup>90</sup> As indicated above, school districts are entitled to \$12,932 per unit of ADA generated by TK pupils specifically for the program.<sup>91</sup> Just like the Supreme Court held in *California School Boards' Association v. State of California* (CSBA), the state has satisfied its funding obligations under article XIII B, section 6 of the California Constitution when it designates funds appropriated by the state for education as subventions for mandate reimbursement. Such funds “are not local proceeds of taxes.”<sup>92</sup>

The court in CSBA addressed a challenge by school districts to legislation that required funds apportioned to school districts under Proposition 98, which were previously designated as unrestricted non-mandated education funding, to first be used to pay for two state-mandated programs, including the *Graduation Requirements* program that added a mandated science course to graduate from high school, requiring school districts to incur costs including the salary and benefits of science teachers.<sup>93</sup> CSBA contended that the legislation violated the mandate reimbursement requirement in article XIII B, section 6 since additional mandate funding is required to be provided. The court disagreed. The court recognized that although the funds the claimants may have wished to use exclusively for other substantive program activities were now reduced as a result of the statute in CSBA, this did not in itself transform the costs into a reimbursable state mandate.<sup>94</sup> The court concluded, “CSBA cites no other constitutional provision or authority that bars the Legislature from identifying a portion of previously unrestricted state funding and prospectively designating it to be used to offset mandate costs. Funds so designated are not local proceeds of taxes.”<sup>95</sup> The court explained that:

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<sup>89</sup> See Statutes 2010, chapter 705 (SB 1381), section 5.

<sup>90</sup> Education Code section 48000(a).

<sup>91</sup> Education Code section 42238.02(d)(1)(A), (d)(2), (d)(3), and (g)(2).

<sup>92</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

<sup>93</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 719, 721-722.

<sup>94</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 727.

<sup>95</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

CSBA's insistence that article XIII B, section 6 requires the state to provide "additional" funding to cover the [Graduation Requirements] mandates ultimately rests on its contention that the Legislature may not "identify pre-existing education funding as mandate payment." But article XIII B, section 6 does not guarantee any baseline of "pre-existing education funding," . . .<sup>96</sup>

The court also rejected CSBA's argument that "once certain funding is defined as the education agencies' 'proceeds of taxes,' it is protected by Section 6 and the State's authority is correspondingly limited,"<sup>97</sup> as follows:

CSBA is correct that Government Code sections 7906 and 7907 define school districts' and county superintendents' "proceeds of taxes" to include unrestricted state education funding. But those statutes do not guarantee or lock into place any baseline of unrestricted state funding, and as explained above, article XIII B, section 6 does not preclude the Legislature from adjusting the mix of state funding allocated for unrestricted versus mandate purposes.<sup>98</sup>

Rather, the court held the Legislature has multiple methods available to it for satisfying the state's mandate obligations, such as: 1) providing new funding; 2) eliminating a different program or funded mandate to free up funds; 3) identifying new offsetting savings or offsetting revenue; 4) designating previously unrestricted funding as prospectively allocated for the mandate; or 5) suspending the mandate and rendering it unenforceable.<sup>99</sup> "Pursuant to its broad authority over revenue collection and allocation, the Legislature may increase, decrease, earmark, or otherwise modify state education funding in order to satisfy reimbursement obligations, so long as its chosen method is consistent with Proposition 98 and other constitutional guarantees."<sup>100</sup>

Just like the court held in *CSBA*, the state has satisfied its funding obligations under article XIII B, section 6 of the California Constitution for the TK program, including the new requirements, when it designated funds appropriated by the state specifically for the TK program for mandate reimbursement. Such funds "are not local proceeds of taxes."<sup>101</sup>

Accordingly, there are no costs mandated by the state pursuant to Government Code section 17556(e) and, thus, the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

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<sup>96</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 727.

<sup>97</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.

<sup>98</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.

<sup>99</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 726.

<sup>100</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 726.

<sup>101</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

## COMMISSION FINDINGS

### I. Chronology

07/09/2021	Statutes 2021, Chapter 44, section 60 was enacted.
01/22/2024	The claimants filed the Test Claim. <sup>102</sup>
04/12/2024- 05/13/2024	Parties, interested parties, and interested persons filed comments on the Test Claim. <sup>103</sup>
07/11/2024	The Department of Finance (Finance) filed comments on the Test Claim. <sup>104</sup>
08/08/2024	The claimants filed rebuttal comments. <sup>105</sup>
03/27/2025	Commission staff issued the Draft Proposed Decision. <sup>106</sup>
04/17/2025	The claimants, Finance, and the California Department of Education (CDE) each filed comments on the Draft Proposed Decision. <sup>107</sup>
04/21/2025	The claimants filed additional Late Comments on the Draft Proposed Decision in response to CDE's Comments <sup>108</sup>

### II. Background

#### A. History of California's Kindergarten Program

The California State Constitution says that the Legislature “shall provide for a system of common schools by which a free school shall be kept up and supported in each district

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<sup>102</sup> Exhibit A, Test Claim.

<sup>103</sup> The Commission received almost 200 comments from interested parties and interested persons. Due to the sheer number of comments, and a high number of comments being duplicative, only a few representative examples have been included in the exhibits. See Exhibit D, Anthony Ranii, President, Schools for Sound Finance, Comments on the Test Claim; Exhibit E, Dr. Robert Bauer, Trustee, Portola Valley School District, Comments on the Test Claim; and Exhibit F, Ellen Sheffer, Board President, San Luis Coastal Unified School District, Late Comments on the Test Claim. However, all comments are available on the Commission's website on the matter page for this Test Claim <https://csm.ca.gov/matters/23-TC-02.shtml> and each commenter is acknowledged by name in footnotes in the Interested Parties and Interested Persons section of the Draft Proposed Decision.

<sup>104</sup> Exhibit B, Finance's Comments on the Test Claim.

<sup>105</sup> Exhibit C, Claimants' Rebuttal Comments.

<sup>106</sup> Exhibit G, Draft Proposed Decision.

<sup>107</sup> Exhibit H, Claimants' Comments on the Draft Proposed Decision; Exhibit I, Finance's Comments on the Draft Proposed Decision; Exhibit J, California Department of Education's Comments on the Draft Proposed Decision.

<sup>108</sup> Exhibit K, Claimants' Late Comments on the Draft Proposed Decision.

at least six months in every year.”<sup>109</sup> The Constitution does not specify when a child is entitled to enter school, although it defines the Public School System to include “kindergarten schools, elementary schools, secondary schools, technical schools, and state colleges.”<sup>110</sup> Education Code section 48200 says that “each person between the ages of 6 and 18 years ...is subject to compulsory full time education.”<sup>111</sup> Although parents are not required to enroll their children in compulsory education until age six, they may enroll their child in kindergarten earlier, and the law states that “a child shall be admitted to a kindergarten maintained by the school district at the beginning of the school year, or at a later time in the same year, if the child will have their fifth birthday on or before...September 1,” thereby obligating school districts to provide kindergarten.<sup>112</sup> School districts also have authority to voluntarily admit into their kindergarten program children who will turn five at any time during the school year on a case-by-case basis, conditional on the school district’s governing body determining early admittance is in the child’s best interests and the parent or guardian is given information on the advantages and disadvantages and any other explanatory information about the effect of early admittance.<sup>113</sup>

For a very long time, to be age-eligible for a kindergarten program in California, a child was required to have their fifth birthday on or before December 2 of that school year.<sup>114</sup> This was one of the latest cutoff dates for kindergarten eligibility in the country, and only three other states (Connecticut, Michigan, and Vermont) also had cutoff dates between December 1 and January 1.<sup>115</sup> This presented a unique position for “young fives,” children with fall or late summer birthdays that could technically start kindergarten while still four years old, or could choose to wait until the next year when they could enter kindergarten as a five-year-old like the majority of their classmates. Because numerous studies showed long-term educational benefits to starting kindergarten later, particularly if the child had access to a preschool or prekindergarten program during that time to help prepare them for a classroom environment, the practice of “redshirting” was commonplace.<sup>116</sup> However, low- and moderate-income families that could not afford

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<sup>109</sup> California Constitution, article IX, section 5.

<sup>110</sup> California Constitution, article IX, section 6.

<sup>111</sup> Education Code section 48200.

<sup>112</sup> Education Code section 48000(a)(4) (As amended by Statutes 2010, chapter 705 (SB 1381), section 3). This is consistent with current law.

<sup>113</sup> Education Code section 48000(b).

<sup>114</sup> Education Code section 48000 (As amended by Statutes 1987, chapter 1452, section 403).

<sup>115</sup> Exhibit L (4), Assembly Committee on Education, Analysis of SB 1381, as amended June 1, 2010, page 2.

<sup>116</sup> Exhibit L (4), Assembly Committee on Education, Analysis of SB 1381, as amended June 1, 2010, page 3.

private schooling options during that interim year found their children suffered academically.<sup>117</sup>

### **B. The Kindergarten Readiness Act of 2010**

In 2010, the Legislature passed SB 1381, the Kindergarten Readiness Act of 2010, which adjusted the cutoff dates for age-eligibility for kindergarten and first grade.<sup>118</sup> This would take place over several years, so that to be admitted into kindergarten, the child was required to have their fifth birthday on or before: December 2 for the 2011-2012 school year; November 1 for the 2012-2013 school year; October 1 for the 2013-2014 school year; and September 1 for the 2014-2015 school year and each year thereafter. The date by which a child must turn six to be age-eligible for first grade would also move back in a similar manner.<sup>119</sup> This was originally presented as a cost-cutting measure, as it would reduce kindergarten class sizes by making fewer pupils eligible to enroll each year. The first draft of SB 1381 included a statement of the state's intention that half of the state's savings would go towards state preschools to offset the burden this would place on low-income families.<sup>120</sup> However, feedback from the Assembly Committee on Education that most displaced students likely would not have access to a state preschool program and anecdotal accounts about the success of transitional kindergarten pilot programs convinced SB 1381's author to instead add a transitional kindergarten program to serve displaced students.<sup>121</sup>

As initially proposed, SB 1381 added the transitional kindergarten program by amending Education Code section 46300(g). Section 46300(g) provided that, when calculating ADA, school districts can only include attendance for pupils in their second year of kindergarten if the school district had on file an agreement signed by the pupil's parent or guardian agreeing that the pupil may continue in kindergarten for not more than one additional year.<sup>122</sup> SB 1381, as proposed, allowed school districts to include in their ADA calculation a second year of kindergarten attendance if a pupil participated in a transitional kindergarten program.<sup>123</sup> The Act also amended section 48000 to define transitional kindergarten as "the first year of a two-year kindergarten program that uses

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<sup>117</sup> Exhibit L (4), Assembly Committee on Education, Analysis of SB 1381, as amended June 1, 2010, page 3.

<sup>118</sup> See Statutes 2010, chapter 705 (SB 1381).

<sup>119</sup> Education Code section 48010, as amended by Statutes 2010, chapter 705 (SB 1381), section 4.

<sup>120</sup> Exhibit L (14), Senate Amendment to SB 1381, March 23, 2010.

<sup>121</sup> Exhibit L (4), Assembly Committee on Education, Analysis of SB 1381, as amended June 1, 2010, page 5.

<sup>122</sup> Pursuant to Section 48011, which says that a child who has completed one school year in a kindergarten program shall be admitted into first grade unless the child's parent or guardian and the school district agree the child shall continue in kindergarten not more than one additional year.

<sup>123</sup> Exhibit L (5), Assembly Amendment to SB 1381, August 4, 2010, section 2.

a modified kindergarten curriculum that is age and developmentally appropriate,” and to specify who would be admitted into the program.<sup>124</sup>

(c)(1) In the 2012-13 school year, a child who will have his or her fifth birthday between November 2 and December 2 shall be admitted into a transitional kindergarten program maintained by the school district.

(2) In the 2013-14 school year, a child who will have his or her fifth birthday between October 2 and December 2 shall be admitted into a transitional kindergarten program maintained by the school district.

(3) In the 2014-15 school year and each school year thereafter, a child who will have his or her fifth birthday between September 2 and December 2 shall be admitted into a transitional kindergarten program maintained by the school district.<sup>125</sup>

The Assembly Committee on Appropriations criticized this version of SB 1381 for requiring all school districts to provide transitional kindergarten as fiscally inefficient and not cost effective, noting, for example, a small school district that has only one or two eligible students would still be required to provide a transitional kindergarten program for those students, and would need to hire and train staff and obtain a facility for a class of two.<sup>126</sup>

Thus, SB 1381 was amended again to insert a line in paragraph (c) which tied the transitional kindergarten program to conditional funding by prefacing the requirements that students born within specified date ranges be admitted to a transitional kindergarten program maintained by the school district: “As a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to subdivision (g) of section 46300, a school district or charter school shall ensure the following...”<sup>127</sup>

The Legislature also added a paragraph (e) to Section 48000 stating that “a transitional kindergarten program shall not be construed as a new program or higher level of service.”<sup>128</sup>

The language used to summarize SB 1381 in legislative analysis changed as well. Instead of stating the bill “requires, commencing with the 2012-2013 school year, a child who would otherwise be eligible for enrollment in kindergarten be admitted to a transitional kindergarten program maintained by a school district,” the analysis now described the bill by saying it would “*allow* districts to claim funding for two years of

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<sup>124</sup> Exhibit L (5), Assembly Amendment to SB 1381, August 4, 2010, section 2.

<sup>125</sup> Exhibit L (5), Assembly Amendment to SB 1381, August 4, 2010, section 2.

<sup>126</sup> Exhibit L (1), Assembly Committee on Appropriations, Analysis of SB 1381, as amended August 2, 2010, page 3.

<sup>127</sup> Education Code section 48000(c), as amended by Statutes 2010, chapter 705 (SB 1381), section 3.

<sup>128</sup> Education Code section 48000(e), as amended by Statutes 2010, chapter 705 (SB 1381), section 3.



kindergarten for children born between September and December, assuming certain conditions are met.”<sup>129</sup> A final amendment added a section to SB 1381 stating legislative intent that “the Legislature finds and declares that pupils participating in transitional kindergarten are to be included in computing the average daily attendance of a school district for purposes of calculating school district apportionments and the funding requirements of Section 8 of Article XVI of the California Constitution.”<sup>130</sup> With these changes, the Legislature adopted SB 1381.

### **C. Implementation of Transitional Kindergarten as an Optional Program**

In 2014, the American Institutes for Research published a study on the transitional kindergarten program’s first year of implementation.<sup>131</sup> The study noted that in the first year, 89 percent of school districts that served kindergarten students offered a TK program, serving approximately 96 percent of eligible students in the state.<sup>132</sup> Seven percent of school districts reported they did not have a TK program that year because they were small districts with no eligible students.<sup>133</sup> The remaining four percent of school districts, including at least one basic aid district, elected not to offer TK despite having eligible students due to a combination of there being too few eligible students and not enough funding or resources from the state:

The remaining 4 percent of districts cited a variety of reasons for not implementing TK in 2012-2013. Some of these respondents indicated that their district was too small or had too few (e.g., one or two) TK-eligible students to warrant establishing a TK program; eligible students were enrolled in kindergarten instead. For example, one district offered this explanation: “We only have one student who qualifies for TK, and he was determined to be fully ready for kindergarten.” Another cited the small size of the district and said, “We will enroll students in the traditional [kindergarten] classroom and provide additional service when needed.”

Other non-implementing districts cited a lack of funding or resources or the uncertainty about funding for the program. For example, when asked

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<sup>129</sup> Exhibit L (1), Assembly Committee on Appropriations, Analysis of SB 1381, as amended August 2, 2010, page 1; Exhibit L (15), Senate Appropriations Committee, Fiscal Summary of SB 1381, as amended August 30, 2010, page 1, emphasis added.

<sup>130</sup> Statutes 2010, chapter 705, section 5.

<sup>131</sup> Exhibit L (6), American Institutes for Research, *Study of California’s Transitional Kindergarten Program, Report on the First Year of Implementation*, April 2014, (accessed on January 21, 2025).

<sup>132</sup> Exhibit L (6), American Institutes for Research, *Study of California’s Transitional Kindergarten Program, Report on the First Year of Implementation*, April 2014, (accessed on January 21, 2025), page 10.

<sup>133</sup> Exhibit L (6), American Institutes for Research, *Study of California’s Transitional Kindergarten Program, Report on the First Year of Implementation*, April 2014, (accessed on January 21, 2025), page 39.

why the district was not providing TK, one respondent cited “funding and lack of specific and appropriate instructional materials” as the chief concerns. A basic aid district (whose base funding comes entirely from local property taxes and which does not receive per-pupil funding from the state) indicated that the district had “no space, no additional funding coming to the district” to support implementation.

Finally, a few districts also expressed some confusion about the requirements for the program. One administrator from a small district not implementing TK commented, “We only have one student that is eligible, and at the time, our understanding was that we had to provide a TK class. We have come to understand that we can enroll TK students in an existing kindergarten class, which is our intention in the 2013–14 school year.”<sup>134</sup>

The decision for some school districts not to provide TK is well documented, though controversial. A 2013 article by the Almanac highlighted the disappointment of parents in several basic aid districts that chose not to provide TK.<sup>135</sup> The article noted that while the California Department of Education’s (CDE) website claimed TK is a mandatory program, attorneys for the districts that did not offer TK pointed out this conflicted with what the law actually said.<sup>136</sup> When asked to comment on the discrepancy, the author of SB 1381 asserted his belief that “the clear intent and expectation is that TK (transitional kindergarten) is required in every K-12 school setting,” and remarked that the bill likely would not have passed without the TK program providing for students that were affected by the change to kindergarten eligibility.<sup>137</sup> He also admitted there were few options for recourse available to parents in districts that chose not to provide TK.<sup>138</sup>

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<sup>134</sup> Exhibit L (6), American Institutes for Research, *Study of California’s Transitional Kindergarten Program, Report on the First Year of Implementation*, April 2014, (accessed on January 21, 2025), page 40.

<sup>135</sup> Exhibit L (7), Wood, *Transitional Kindergarten Debate, Required or Not*, The Almanac (October 20, 2013), <https://www.almanacnews.com/news/2013/10/20/transitional-kindergarten-debate-required-or-not/> (accessed on March 20, 2025).

<sup>136</sup> Exhibit L (7), Wood, *Transitional Kindergarten Debate, Required or Not*, The Almanac (October 20, 2013), <https://www.almanacnews.com/news/2013/10/20/transitional-kindergarten-debate-required-or-not/> (accessed on March 20, 2025), page 2.

<sup>137</sup> Exhibit L (7), Wood, *Transitional Kindergarten Debate, Required or Not*, The Almanac (October 20, 2013), <https://www.almanacnews.com/news/2013/10/20/transitional-kindergarten-debate-required-or-not/> (accessed on March 20, 2025), page 2.

<sup>138</sup> Exhibit L (7), Wood, *Transitional Kindergarten Debate, Required or Not*, The Almanac (October 20, 2013), <https://www.almanacnews.com/news/2013/10/20/transitional-kindergarten-debate-required-or-not/> (accessed on March 20, 2025), page 4.

“They can either persuade their board to provide the program that every other district in the state is providing,... or they can litigate, or they can ask the state Legislature to reconfirm the fact that (transitional kindergarten) is a requirement.”<sup>139</sup>

No such litigation or reconfirmation from the Legislature took place. The Legislature made several amendments to Education Code section 48000 in the years between the adoption of the Kindergarten Readiness Act of 2010 and the test claim statute. In 2014, the Legislature stated its intention that transitional kindergarten curriculum be aligned to the California Preschool Learning Foundations developed by the CDE, and added an additional requirement that, as a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to section 46300(g), a school district or charter school shall ensure that by August 1, 2020, TK teachers that were first assigned to a TK classroom after July 1, 2015 have either: at least 24 units in early childhood education, childhood development, or both; professional experience in a classroom setting with preschool age children comparable to 24 units of education; or a child development permit issued by the Commission on Teacher Credentialing.<sup>140</sup> In 2015, the Legislature authorized school districts and charter schools to voluntarily admit into their TK programs children who will have their fifth birthday after December 2 but during that school year, provided the school district’s governing board determined it was in the best interest of the child, the parent or guardian is given information about the advantages and disadvantages and any other explanatory information about the effect of early admittance, and with the caveat that these additional pupils shall not generate ADA or be included in unduplicated pupil counts until after their fifth birthday.<sup>141</sup> In 2018, the Legislature authorized school districts that administer a state preschool program to place four-year-old children who are enrolled in state preschool into transitional kindergarten instead, and allowed comingling between classes for the transitional kindergarten and state preschool programs, provided the school district is compliant with all requirements for both programs and the comingled classroom does not also include children enrolled in their second year of a TK program or children enrolled in kindergarten.<sup>142</sup> Finally in 2020, the Legislature extended the deadline for compliance with the previously imposed teacher credentialing requirements to August 1, 2021.<sup>143</sup> In all of these, the Legislative Counsel’s Digest described the existing law by saying it “authorizes a school district or charter school to maintain a

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<sup>139</sup> Exhibit L (7), Wood, *Transitional Kindergarten Debate, Required or Not*, The Almanac (October 20, 2013), <https://www.almanacnews.com/news/2013/10/20/transitional-kindergarten-debate-required-or-not/> (accessed on March 20, 2025), page 4.

<sup>140</sup> Statutes 2014, chapter 32, section 33 (SB 858).

<sup>141</sup> Statutes 2015, chapter 13, section 28 (AB 104).

<sup>142</sup> Statutes 2018, chapter 32, section 46 (AB 1808).

<sup>143</sup> Statutes 2020, chapter 24, section 55 (SB 98).

transitional kindergarten program.”<sup>144</sup> The only case where a bill used different phrasing to describe existing law was an amendment to the teacher credentialing requirement to rephrase one of the credentials, where the Legislative Counsel’s Digest described the existing law as it “requires a school district or charter school, as a condition of receipt of apportionment for pupils in a transitional kindergarten program, to ensure that teachers who are assigned to a transitional kindergarten classroom after July 1, 2015, be credentialed, and, by August 1, 2020, have a minimum number of units in early childhood education or childhood development, comparable experience in a preschool setting, or a child development permit issued by the Commission on Teacher Credentialing.”<sup>145</sup> At no point did the Legislature make a statement of its intention that school districts are required to offer TK programs, or refer to the requirements for TK programs as anything but a condition of receiving an apportionment for pupils in a TK program.

Although there are clearly cases of some school districts not providing TK programs, the CDE has consistently told the public that TK is a required program for all school districts. As early as 2011, the CDE said that each elementary or unified school district must offer transitional kindergarten and kindergarten classes for all eligible students to attend, and that this law applied equally regardless of whether they receive state funding or are basic aid districts.<sup>146</sup> Information published on the CDE’s website asserts that “Education Code section 48000(c) requires any school district operating a kindergarten to also provide a transitional kindergarten (TK) program for all 4-year-old children by 2025-26.”<sup>147</sup> Because each elementary or unified school district must offer kindergarten classes for all eligible children to attend, this means that “Each elementary or unified school district must offer TK classes for all children eligible to attend.”<sup>148</sup> “A school district or county office of education operating a kindergarten program must offer

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<sup>144</sup> Statutes 2014, chapter 32, Summary Digest, paragraph 18; Statutes 2015, chapter 13, Summary Digest, paragraph 18; Statutes 2018, chapter 32, Summary Digest, paragraph 9; Statutes 2020, chapter 24, Summary Digest, paragraph 27; Statutes 2021, chapter 44, Summary Digest, paragraph 2.

<sup>145</sup> Statutes 2014, chapter 687, (SB 876), Summary Digest, paragraph 5.

<sup>146</sup> Exhibit L (20), California Department of Education, *Transitional Kindergarten FAQs*, September 30, 2011, <https://www.cde.ca.gov/ci/gs/em/kinderfaq.asp> (accessed via the Internet Archive, <https://web.archive.org/web/20110930142750/https://www.cde.ca.gov/ci/gs/em/kinderfaq.asp> on April 17, 2025), page 2.

<sup>147</sup> Exhibit L (3), California Department of Education, *Universal Prekindergarten FAQs*, <https://www.cde.ca.gov/ci/gs/em/kinderfaq.asp#accordionfaq> (accessed on March 20, 2025), page 31.

<sup>148</sup> Exhibit L (16), California Department of Education, *Kindergarten in California*, <https://www.cde.ca.gov/ci/gs/em/kinderinfo.asp> (accessed on March 20, 2025), page 3.

TK for age-eligible children to attend.”<sup>149</sup> The CDE also states that “Regardless if a district receives state revenues through the Local Control Funding Formula or is a basic aid district, if it offers kindergarten, *then the expectation* is that it also offers TK as TK is the first year of a two-year kindergarten program.”<sup>150</sup> Despite this position, there is no record of the CDE imposing penalties or attempting to enforce this requirement on school districts that do not provide TK programs.

As of September 2021, just a few months after the test claim statute went into effect, at least a dozen basic aid districts reportedly still did not offer TK programs.<sup>151</sup> A parent advocacy group reported that in the 2019-2020 school year, about 700 eligible students were unable to attend TK because their home district did not offer a TK program.<sup>152</sup> This includes some school districts that initially offered transitional kindergarten when the program was introduced, before later choosing to end their TK programs over funding and equity concerns.<sup>153</sup> At the time of drafting this Decision, at least some school districts appear to still not offer TK, whether explicitly stating they do not offer a TK program or by only providing information about enrolling in kindergarten for pupils who will turn five by September 1.<sup>154</sup> In one case, a school district offers TK but with

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<sup>149</sup> Exhibit L (3), California Department of Education, *Universal Prekindergarten FAQs*, <https://www.cde.ca.gov/ci/gs/em/kinderfaq.asp#accordionfaq> (accessed on March 20, 2025), page 31.

<sup>150</sup> Exhibit L (3), California Department of Education, *Universal Prekindergarten FAQs*, <https://www.cde.ca.gov/ci/gs/em/kinderfaq.asp#accordionfaq> (accessed on March 20, 2025), page 31, emphasis added.

<sup>151</sup> Exhibit L (2), D’Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsource.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025), page 4.

<sup>152</sup> Exhibit L (2), D’Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsource.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025), page 4.

<sup>153</sup> Exhibit L (2), D’Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsource.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025), pages 4, 6.

<sup>154</sup> Exhibit L (8), Alexander Valley School District, Intent to Enroll Form, [https://docs.google.com/forms/d/e/1FAIpQLSe8YE--tzU5tnK5JQUBNHfqbo76RBLiLPoaxon9Ok\\_G0pdP9g/viewform](https://docs.google.com/forms/d/e/1FAIpQLSe8YE--tzU5tnK5JQUBNHfqbo76RBLiLPoaxon9Ok_G0pdP9g/viewform) (accessed on February 3, 2025), page 3; Exhibit L (9) Cardiff School District, Enrollment & Registration Information Page, <https://www.cardiffschools.com/Page/5220> (accessed on March 20, 2025), page 2; Exhibit L (10) Encinitas Union School District, New Student Registration, <https://www.eusd.net/registration/new-student-registration> (accessed on March 20, 2025), page 1; Exhibit L (11), Rancho Santa Fe School District, Enrollment

modified eligibility that is only available to district residents who will turn four by September 1 and are low-income eligible, homeless, or foster youth.<sup>155</sup>

#### **D. The Test Claim Statute**

The test claim statute (Statutes 2021, chapter 44, section 60) amended Education Code section 48000 to gradually expand the range of birthdates of children who are eligible for TK over several years, until by the 2025-2026 school year, as a condition of receiving an apportionment for pupils in a TK program, schools districts shall ensure that all children who have their fourth birthday before September 1 be admitted into a TK program maintained by the school district or charter school. As amended, the statute reads:

(1) As a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300, and Chapter 3 (commencing with Section 47610) of Part 26.8, a school district or charter school shall ensure the following:

[...]

(C) From the 2014-15 school year to the 2021-22 school year, inclusive, a child who will have their fifth birthday between September 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(D) In the 2022-23 school year, a child who will have their fifth birthday between September 2 and February 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(E) In the 2023-24 school year, a child who will have their fifth birthday between September 2 and April 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(F) In the 2024-25 school year, a child who will have their fifth birthday between September 2 and June 2 shall be admitted to a

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Information, <https://www.rsfschool.net/parent-portal/pre-reg-registration-information> (accessed on March 20, 2025), page 1; Exhibit L (12), Ross School District, Kindergarten Registration, [https://drive.google.com/file/d/1WWT6SLyolUaJSHArwy679JBle9KVec\\_W/view](https://drive.google.com/file/d/1WWT6SLyolUaJSHArwy679JBle9KVec_W/view) (accessed on February 3, 2025), page 1; Exhibit L (13) Solana Beach School District, Registration, <https://www.sbsd.k12.ca.us/Page/443> (accessed on March 20, 2025), page 2.

<sup>155</sup> Exhibit L (17), Del Mar Union School District, Transitional Kindergarten Early Intervention, <https://www.dmusd.org/Departments/Enrollment/Transitional-Kindergarten-Early-Intervention/index.html> (accessed on February 3, 2025), page 2.



transitional kindergarten program maintained by the school district or charter school.

(G) In the 2025-26 school year, and in each school year thereafter, a child who will have their fourth birthday by September 1 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.<sup>156</sup>

Additionally, the test claim statute added a limitation on average class sizes for TK classes of 24 pupils and added an average adult-to-student ratio for TK classrooms of 1:12 starting in 2022-2023. As amended, these requirements now state:

(g) As a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300, a school district or charter school shall do all of the following:

(1) Maintain an average transitional kindergarten class enrollment of not more than 24 pupils for each schoolsite.

(2) Commencing with the 2022-23 school year, maintain an average of at least one adult for every 12 pupils for transitional kindergarten classrooms.<sup>157</sup>

Besides these changes to Education Code section 48000 pled by the claimants, the test claim statute made additional changes to section 48000: decreased the adult-to-pupil ratio to 1:10 pupils, commencing with the 2023-2024 school year and contingent on an appropriation of funds for this purpose; extended the deadline for compliance with the existing teaching credentials requirement to August 1, 2023; modified the phrasing used in the section authorizing school districts to voluntarily admit pupils into the TK program to make it consistent with the new date ranges for TK eligibility; specified that eligibility for TK does not impact a family's eligibility for various other state funded preschool or childcare programs such as Head Start or Early Head Start; gave the Superintendent authority to authorize state preschool contracting agencies to offer wraparound childcare services for eligible children in an education program serving transitional kindergarten, kindergarten, or grades one to 12; and made small grammatical and phrasing changes to existing language in section 48000 to keep those paragraphs consistent with the substantive changes to the section.<sup>158</sup>

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<sup>156</sup> Education Code section 48000(c), as amended by Statutes 2021, chapter 44 (AB 130), section 60.

<sup>157</sup> Education Code section 48000(g), as amended by Statutes 2021, chapter 44 (AB 130), section 60.

<sup>158</sup> Education Code section 48000(g), (k), (l), as amended by Statutes 2021, chapter 44 (AB 130), section 60.

Education Code section 48000(e) continues to provide, as it has since 2010, that “a transitional kindergarten program shall not be construed as a new program or higher level of service.”<sup>159</sup>

The test claim statute comes from an education trailer bill that amended dozens of code sections besides Education Code section 48000. The Legislative Counsel’s Digest described the existing law regarding TK by saying it “authorizes school districts to maintain a transitional kindergarten program,” and “requires, in the 2014-15 school year and each school year thereafter, and as a condition of receipt of apportionments for pupils in a transitional kindergarten program, a child who will have their 5th birthday between September 2 and December 2, to be admitted to a transitional kindergarten program maintained by a school district or charter school.”<sup>160</sup> It further described the changes in law made by the test claim statute by saying it would “revise the timespans for those mandatory and optional admittance requirements to be phased in from the 2022-2023 school year to the 2025-2026 school year, at which time a school district or charter school, as a condition of receipt of apportionments for pupils in a transitional kindergarten program, would be required to admit to a transitional kindergarten program maintained by the school district or charter school a child who will have their 4th birthday by September 1.”<sup>161</sup> Additionally, the test claim statute added or amended several other code sections not pled by the claimants that are worth noting because the changes are related to TK programs. The test claim statute:

- 1) Created the California Prekindergarten Planning and Implementation Grant Program, which offered \$300,000,000 to local education agencies for the costs associated with creating or expanding state preschool or TK programs, a condition of which is that the local education agencies shall develop a plan for how all children in the local education agency’s attendance area will have access to full-day learning programs the year before kindergarten.<sup>162</sup>
- 2) Allocated \$490,000,000 for the California Preschool, Transitional Kindergarten, and Full-Day Kindergarten Facilities Grant Program (formerly the Full-Day Kindergarten Facilities Grant Program) for the purpose of constructing new school facilities or retrofitting existing facilities to provide transitional kindergarten and full-day kindergarten classrooms, for which it specifies that as a condition for school districts seeking funds for a transitional kindergarten facilities project, the school district’s governing body shall pass a resolution at a public meeting stating

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<sup>159</sup> Education Code section 48000(e), as amended by Statutes 2010, chapter 705 (SB 1381), section 3.

<sup>160</sup> Statutes 2021, chapter 44 (AB 130), Summary Digest, paragraph 2.

<sup>161</sup> Statutes 2021, chapter 44 (AB 130), Summary Digest, paragraph 2.

<sup>162</sup> Education Code section 8281.5, as added by Statutes 2021, chapter 44 (AB 130), section 4.



the district's intent to offer or expand enrollment in a transitional kindergarten program.<sup>163</sup>

- 3) Allocated \$350,000,000 for a Teacher Residency Grant Program for applicants to establish or expand, strengthen or improve access to a teacher residency program that supports either designated shortage fields, including transitional kindergarten, or support a diverse teacher workforce that reflects the local education agency community's diversity.<sup>164</sup>

#### **E. Average Daily Attendance**

Education Code section 48000 provides that the requirements for the TK program are “a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300, and Chapter 3 (commencing with Section 47610) of Part 26.8, as applicable.” Chapter 3 of Part 26.8 specifies rules for determining average daily attendance for charter schools, while Section 46300(g) provides:

(1) In computing the average daily attendance of a school district or charter school, there shall be included the attendance of pupils in kindergarten after they have completed one school year in kindergarten or pupils in a transitional kindergarten program after they have completed one year in that program if one of the following conditions is met:

(A) The school district or charter school has on file for each of those pupils an agreement made pursuant to Section 48011, approved in form and content by the department and signed by the pupil's parent or guardian, that the pupil may continue in kindergarten for not more than one additional school year.

(B) The pupils participated in a transitional kindergarten program pursuant to subdivision (c) of Section 48000.

(2) A school district or charter school may not include for apportionment purposes the attendance of any pupil for more than two years in kindergarten or for more than two years in a combination of transitional kindergarten and kindergarten.<sup>165</sup>

Thus, the apportionment promised in Section 48000 comes from the increase in a school district or charter school's ADA from being able to include two years of kindergarten for TK students in its attendance count. ADA is the total number of days of pupil attendance divided by the total number of days in the regular school year.<sup>166</sup> A single student with perfect attendance for one year would generate one unit of ADA for

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<sup>163</sup> Education Code section 17375, as amended by Statutes 2021, chapter 44 (AB 130), section 15.

<sup>164</sup> Education Code section 44415.5, as amended by Statutes 2021, chapter 44 (AB 130), section 45.

<sup>165</sup> Education Code section 46300(g).

<sup>166</sup> Education Code section 46301.

the school district. Article XVI, section 8 of the California Constitution (Proposition 98) specifies that “changes in enrollment” are measured based on percentage change in ADA, and Education Code section 14022 specifies that for the purposes of section 8 and 8.5 of article XVI in the California Constitution, “enrollment” for school districts means ADA when students are counted as ADA, and as ADA equivalents for services not counted in ADA.<sup>167</sup> School districts can determine their ADA based on the current fiscal year, the previous fiscal year, or the average of the three most recent prior fiscal years, whichever is greatest.<sup>168</sup>

The state uses ADA when determining how much funding to provide for school districts: both the overall funding set aside for all school districts through Proposition 98 and when determining how much to apportion to each school district under the Local Control Funding Formula (LCFF).

#### **F. History of School Funding and Proposition 98**

Historically, school districts have been funded through a mix of state and local revenues. “The financing of public schools in California has been, and remains, a complex and sometimes convoluted system of joint responsibility between state and local government.”<sup>169</sup> The courts have also made it clear that “[s]chool moneys belong to the state, and the apportionment of funds to a school district does not give that district a proprietary right therein.”<sup>170</sup>

Before Proposition 13, public schools were funded from local taxes on real property, supplemented by the State School Fund.<sup>171</sup> “Specifically, in this . . . pre-Proposition 13 period, 55.7 percent of school revenues came from local property taxes and 35.5 percent from state aid” and “the Legislature determined the manner of school financing shared by local government.”<sup>172</sup>

In 1971, school funding based on the value of a school district's real estate was challenged as an unconstitutional violation of the equal protection clause in *Serrano v.*

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<sup>167</sup> California Constitution, article XVI, section 8(f); Education Code section 14022(a)(2).

<sup>168</sup> Education Code section 42238.05(a)(1).

<sup>169</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1287.

<sup>170</sup> *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1579, footnote 5; *California Teachers Assoc. v. Hayes* (1992) 5 Cal.App.4th 1513, 1525.

<sup>171</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1271. The State School Fund is required by article IX, section 6 of the California Constitution, which states that “The Legislature shall add to the State School Fund such other means from the revenues of the State as shall provide in said fund for apportionment in each fiscal year,” a specified amount of funding per K-12 pupil in ADA “as the Legislature may provide.”

<sup>172</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1271.

*Priest*, which resulted in court decisions finding that the system of school financing impermissibly discriminated based on the wealth of the district.<sup>173</sup> As a result, the Legislature tried to equalize school funding, but before the legislation took effect, Proposition 13 was adopted and restricted the ability of school districts to raise funds through local property tax revenues.<sup>174</sup> As a result, the Legislature reduced the share of local property tax revenues allocated to schools from approximately 53 percent to approximately 35 percent and made up the difference with state funds.<sup>175</sup> “Although in the aftermath of Proposition 13, the state's percentage of support for schools increased from the pre-*Serrano* days, joint state and local funding responsibility for school districts existed when [article XIII B,] section 6 became effective on July 1, 1980.”<sup>176</sup>

With this history of reduced revenues resulting from article XIII A and the greater competition for state revenues within article XIII B's appropriations limit, Proposition 98 was adopted.

It can be seen that as a result of the events of the 1970's the already difficult task of financing public education was made even more formidable. As a result of article XIII A, the state was forced to assume a greater share of the responsibility for funding education. Any formula for funding education would be required to meet equal protection principles as set forth in the *Serrano* decisions. And as a result of article XIII B, there was certain to be greater competition for the state revenues within the appropriations limit. It was against this background that the voters enacted Proposition 98 at the November 1988 General Election.<sup>177</sup>

Proposition 98 amended article XVI, sections 8 of the California Constitution to require the state to set aside a minimum amount of General Fund and local property tax revenue each year to be used for funding public schools and community colleges. “From all state revenues there shall first be set apart the moneys to be applied by the State for support of the public school system and public institutions of higher education.”<sup>178</sup> This amount is determined using one of three formulas, depending on the strength of the economy, with two of the three formulas using state and local

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<sup>173</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1272, citing to *Serrano v. Priest* (1971) 5 Cal.3d 584 and *Serrano v. Priest* (1976) 18 Cal.3d 728.

<sup>174</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1273.

<sup>175</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1274.

<sup>176</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1274.

<sup>177</sup> *California Teachers Assoc. v. Hayes* (1992) 5 Cal.App.4th 1513, 1527-1528.

<sup>178</sup> California Constitution, article XVI, section 8(a).

proceeds of taxes to satisfy the State's Proposition 98 obligation. In normal or strong economic years, the formula used is the larger of either:

- 1) the same percentage share of the General Fund that was provided to K-14 schools in the 1986-1987 fiscal year; or
- 2) at least the same amount as the total General Fund proceeds of taxes and "allocated local proceeds of taxes" allocated the prior fiscal year, adjusted for changes in ADA and growth in per capita personal income.

In years of weak economic growth, the formula used instead is:

- 3) at least the same amount as the total General Fund proceeds of taxes and "allocated local proceeds of taxes" allocated the prior fiscal year, adjusted for changes in ADA and the growth in per capita General Fund revenues plus one-half percent.<sup>179</sup>

The Legislature is also allowed to suspend Proposition 98 funding for a single year if voted for by a two-thirds majority of each house. However, if the Legislature suspends Proposition 98 for a year or uses the third formula when determining funding, the state is obligated to keep track of the difference between what would have been provided under the second formula and what was actually provided and make up the difference later.<sup>180</sup>

"Allocated local proceeds of taxes," as used in formulas two and three of Proposition 98, are also defined as "those local revenues, except revenues identified pursuant to paragraph (5) of subdivision (j) of Section 42238.02, that are used to offset state aid for school districts in calculations performed pursuant to Sections 2558 and 42238 and Chapter 7.2 (commencing with Section 56836) of Part 30."<sup>181</sup> In other words, any property tax revenue used to offset a school district's entitlement under the Local Control Funding Formula (LCFF, described below) is statutorily included in the "allocated local proceeds of taxes" used to meet the state's Proposition 98 obligation to set aside funding specifically intended for schools. In addition, in 2022, the Legislature added Education Code section 41204.7, to require the Director of Finance to factor any increases in the amount of funding school districts are entitled to as a result of the changes in ADA from the TK program into its Proposition 98 calculations as follows:

Notwithstanding any other law, commencing with the 2022–23 fiscal year, the Director of Finance shall annually adjust the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986-87 for purposes of making the calculations required under paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, so that any annual increase in local control funding formula apportionments generated by an increase in average daily attendance due to the implementation of Section 48000

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<sup>179</sup> California Constitution, article XVI, section 8(b).

<sup>180</sup> California Constitution, article XVI, section 8(d), (e), (h).

<sup>181</sup> Education Code section 41202(g).

results in a commensurate increase in General Fund proceeds of taxes and allocated local proceeds of taxes that are required to be applied by the state for the support of school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution.<sup>182</sup>

Proposition 98 does not determine how much funding the state provides to each school district, it only determines how much of the state's revenues each year goes towards funding schools. Outside of providing constitutionally guaranteed minimums to school districts, the Legislature has flexibility to determine how this funding is allocated, including designating portions of it to satisfy reimbursement obligations under article XIII B, section 6 for state mandated programs.<sup>183</sup>

### **G. The Local Control Funding Formula (LCFF) and Basic Aid Districts**

The Local Control Funding Formula (LCFF) determines how Proposition 98 funds should be apportioned to each school district.<sup>184</sup> Prior to 2013, each school district's apportionment was calculated individually using a revenue limits system based on historic spending levels.<sup>185</sup> This system was overly complex, antiquated, inequitable, inefficient, and highly centralized, prompting the Legislature to create a simpler system that considered the same factors more uniformly and allowed school districts to design programs based on local needs and priorities.<sup>186</sup>

The way the LCFF works is the state sorts a school district's ADA into four grade spans: kindergarten through grade three; grades four through six; grades seven and eight; and grades nine through 12.<sup>187</sup> Students in a TK program are counted as kindergarten students for the purpose of this calculation.<sup>188</sup> Each grade span's ADA is multiplied by a specific base rate; for example in the 2022-2023 fiscal year this was \$10,119 for kindergarten through grade three; \$9,304 for grades four through six; \$9,580 for grades seven and eight; and \$11,391 for grades nine through 12.<sup>189</sup> The base rates are adjusted annually to account for cost-of-living increases.<sup>190</sup> These adjustments also

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<sup>182</sup> Education Code section 41204.7 (Statutes 2022, chapter 52).

<sup>183</sup> *California School Boards Association v. State of California* (2019) 8 Cal.5th 713, 726.

<sup>184</sup> Education Code sections 42238.02, 42238.03.

<sup>185</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 1.

<sup>186</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), pages 1-2.

<sup>187</sup> Education Code section 42238.02(d)(1).

<sup>188</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 3.

<sup>189</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 3.

<sup>190</sup> Education Code section 42238.01(d)(2).

include a 2.6 percent adjustment to the base rate for grades nine through 12 to account for providing career technical education and a 10.4 percent adjustment to the kindergarten through grade three base rate that is conditional on the school district maintaining an average class size for kindergarten through grade three students of 24 pupils.<sup>191</sup> The total of the four grade spans is the school district's base grant.<sup>192</sup>

The state also provides a supplemental grant based on the proportion of English learners, low-income students, and foster youth, commonly referred to as unduplicated students because students who qualify for more than one category are still only counted once. For each unduplicated student, school districts receive a supplemental grant equal to 20 percent of the base grant rate, including grade span adjustments.<sup>193</sup> Additionally, districts serving a student population with more than 55 percent unduplicated students receive an additional concentration grant equal to 65 percent of the adjusted base grant rate for each additional unduplicated pupil above the 55 percent threshold.<sup>194</sup>

The state also provides additional add-ons for a school district's participation in specific programs, such as the Targeted Instructional Improvement Block Grant and the Home-to-School Transportation program.<sup>195</sup>

In 2022, after the test claim statute went into effect but before this test claim was filed, the Legislature amended Education Code section 42238.02 so that commencing with the 2022-2023 fiscal year, the Superintendent calculates an add-on equal to \$2,813 multiplied by the ADA specifically generated from transitional kindergarten pupils. This add-on was adjusted for annual cost-of-living increases starting in fiscal year 2023-2024.<sup>196</sup> The Legislature specified: "It is the intent of the Legislature that the costs to meet the requirements of paragraph (2) of subdivision (g) of Section 48000, [the requirement to maintain an average of at least one adult per every twelve pupils in a

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<sup>191</sup> Education Code section 42238.02(d)(3), (4).

<sup>192</sup> Necessary small schools, which are districts with total ADA 2,500 or less that operate schools with less than 96 ADA for elementary schools and less than 286 ADA for high schools and cover either a large area with a small student population or deal with unique conditions that make busing students difficult, determine their base grant through a different method, with each school in the district receiving a grant based on its ADA or staffing level, whichever is lower. See Education Code section 42238.03(a)(1)(D).

<sup>193</sup> Education Code section 42238.02(e).

<sup>194</sup> Education Code section 42238.02(f).

<sup>195</sup> Education Code section 42238.02(g)(1), (h).

<sup>196</sup> Education Code section 42238.02(g)(2), as amended by Statutes 2022, chapter 52, (AB 181) section 38.

transitional kindergarten classroom beginning in the 2022-2023 school year] be supported by the add-on computed pursuant to this paragraph.”<sup>197</sup>

The total of a school district’s base, supplemental, and concentration grants, and any add-ons, is the school district’s LCFF entitlement.<sup>198</sup> As stated above, the LCFF entitlement includes the ADA for TK pupils for those schools that provide a TK program, along with a 10.4 percent adjustment to the kindergarten through grade three base rate that is conditional on the school district maintaining an average class size for kindergarten through grade three students of 24 pupils, plus an add-on equal to \$2,813 per ADA generated from TK pupils intended to support the costs to maintain an average of at least one adult for every twelve pupils in a TK classroom.

The state meets each school district’s LCFF entitlement by first crediting each school district with its share of local property tax revenue.<sup>199</sup> For the majority of school districts, local property tax revenue is not enough to meet its LCFF entitlement, and the state covers the difference using its remaining Proposition 98 funding. For a small number of school districts, however, their local property tax revenue meets or exceeds their LCFF entitlement. These districts are referred to as basic aid districts, because they do not receive additional state aid to meet the entitlement, but the state still provides them with the following minimum amount of additional state funding guaranteed by the state Constitution:<sup>200</sup>

- Each fiscal year, school districts are apportioned not less than \$120 per pupil ADA and not less than \$2,400 total.<sup>201</sup>
- The Education Protection Account provides additional funding at minimum \$200 per unit of ADA.<sup>202</sup>

Additionally, when creating the LCFF, the Legislature included a provision that no district would receive less state aid than it received in fiscal year 2012-2013 for pre-existing programs that were replaced by the LCFF. For most districts these obligations are covered by the funding they receive through the LCFF to meet their entitlement, but since basic aid districts don’t receive any state funding based on their LCFF entitlement, the state must provide basic aid districts with the additional funding cited in this

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<sup>197</sup> Education Code section 42238.02(g)(2), as amended by Statutes 2022, chapter 52, (AB 181) section 38.

<sup>198</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 7.

<sup>199</sup> Education Code section 42238.03(c)(1)(A).

<sup>200</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 7.

<sup>201</sup> California Constitution, article IX, section 6.

<sup>202</sup> California Constitution, article XIII, section 36(e)(3)(B). This funding is separate and in addition to the funding requirement in article IX, section 6.

paragraph that covers these pre-existing obligations, referred to as Minimum State Aid (or “MSA”).<sup>203</sup>

Basic aid districts are free to use whatever property tax revenue they have in excess of their LCFF entitlement on their local educational priorities.<sup>204</sup> However, Education Code section 41370 requires that “the governing board of a school district, the governing body of a charter school, and a county board of education shall, except as may otherwise be specifically provided by law, use all money apportioned to the school district, charter school, or county office of education from the State School Fund during any fiscal year exclusively for the support of the school or schools of the school district, charter school, or county office of education for that year.”<sup>205</sup> Education Code section 41372 further provides that elementary school districts spend 60 percent of this on the salaries for classroom teachers. Thus, school districts are required to spend the apportionment they receive from their LCFF entitlement on support of their schools, with 60 percent of that going towards teacher salaries.

For basic aid districts, changes in ADA or its LCFF entitlement typically have little effect on overall funding. Changes to a basic aid district’s funding are more commonly driven by changes to its local property tax revenue.<sup>206</sup>

### **III. Positions of the Parties, Interested Parties, and Interested Persons**

#### **A. Hope Elementary School District and Sunnyvale School District**

The claimants, Hope Elementary School District and Sunnyvale School District, filed a joint test claim alleging that the test claim statute mandates a new program or higher level of service by requiring school districts to comply with Education Code section 48000(c) and (g) by maintaining a transitional kindergarten program that guarantees the following, as quoted from the Test Claim narrative:

(E) In the 2023–24 school year, a child who will have their fifth birthday between September 2 and April 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(A.B. No. 130, Statutes 2021, Chapter 44, Sec. 60, Education Code § 48000 (E), Effective Date: July 9, 2021.)

(F) In the 2024–25 school year, a child who will have their fifth birthday between September 2 and June 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

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<sup>203</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 7.

<sup>204</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 7.

<sup>205</sup> Education Code section 41370(a).

<sup>206</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 7.



(A.B. No. 130, Statutes 2021, Chapter 44, Sec. 60, Education Code § 48000 (F), Effective Date: July 9, 2021.)

(G) In the 2025–26 school year, and in each school year thereafter, a child who will have their fourth birthday by September 1 shall be admitted to a transitional kindergarten program maintained by the school district or charter school. (A.B. No. 130, Statutes 2021, Chapter 44, Sec. 60, Education Code § 48000 (G), Effective Date: July 9, 2021.)

g) As a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300, a school district or charter school shall ensure that credentialed teachers who are first assigned to a transitional kindergarten classroom after July 1, 2015, have, by August 1, 2021, one do all of the following:

(1) Maintain an average transitional kindergarten class enrollment of not more than 24 pupils for each schoolsite.

(2) Commencing with the 2022–23 school year, maintain an average of at least one adult for every 12 pupils for transitional kindergarten classrooms.<sup>207</sup>

The claimants allege that the requirements to provide a TK program and maintain an average TK class enrollment of not more than 24 pupils for each schoolsite and an average of at least one adult for every twelve pupils for TK classrooms at each schoolsite are state mandates, “based on the statute using mandatory language ‘shall’ and that school districts require receipt of apportionment for pupil funding.”<sup>208</sup> The claimants also point to statements from the CDE that school districts “operating a kindergarten program must offer TK for age-eligible children to attend” as evidence they are required to offer TK programs, and further statements regarding basic aid districts that claim:

Regardless if a district receives state revenues through the Local Control Funding Formula or is a basic aid district, if it offers kindergarten, then the expectation is that it also offers TK as TK is the first year of a two-year kindergarten program. Most districts are embracing TK because early learning is the most effective strategy to close the socioeconomic academic achievement gap and helps build a strong school community by connecting families to their local schools starting with 4-year-olds.<sup>209</sup>

The claimants are both basic aid districts. They explain their issue with how the state provides funding for the TK program as:

Basic aid districts receive property tax revenue instead of funding under the LCFF formula. Basic aid districts did not receive funding from the

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<sup>207</sup> Exhibit A, Test Claim, page 12.

<sup>208</sup> Exhibit A, Test Claim, pages 12-13.

<sup>209</sup> Exhibit A, Test Claim, page 21.

state for pupils admitted to the Transitional Kindergarten program in fiscal year 2023-2024.

Transitional Kindergarten program is funded for school districts, excluding basic aid school districts, based on the same average daily attendance (ADA) calculation as all other students. If a school offers transitional kindergarten, it receives the same amount of funding from the State for each of those students as it does for its traditional kindergarteners.<sup>210</sup>

The claimants argue the test claim statute imposes costs mandated by the state and the exception in Government Code section 17556(e) does not apply because “there is no evidence that additional on-going revenue has been appropriated, specifically to fund the costs of the mandated activities in the test claim.”<sup>211</sup>

Regarding the timeliness of the claimants’ filing, the claimants allege they first incurred increased costs for the test claim statute’s requirement on July 1, 2023.<sup>212</sup> The claimants included allegations of actual and estimated mandated costs in the Test Claim, but updated these amounts in their rebuttal comments with supplemental declarations.<sup>213</sup> According to the updated declarations, the increased costs for Sunnyvale School District are:

- \$824,582 for salaries and benefits for five additional teachers hired in fiscal year 2023-24, to address the requirements to admit children who will have their fifth birthday between September 2 and April 2 and to limit TK class sizes to 24 pupils at each schoolsite.<sup>214</sup>
- \$410,479 for salaries and benefits for seven additional classified employees (paraeducators) hired in fiscal year 2023-24, to address the requirement to maintain an average of at least one adult for every 12 pupils in a TK class.<sup>215</sup>

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<sup>210</sup> Exhibit A, Test Claim, page 13.

<sup>211</sup> Exhibit A, Test Claim, page 16.

<sup>212</sup> Exhibit A, Test Claim, page 25 (Declaration of Lori van Gogh, Chief Business Officer, Sunnyvale School District); 30 (Declaration of Mike Thomson, Chief Business Official, Business Office, Hope Elementary School District).

<sup>213</sup> Exhibit A, Test Claim, pages 24-26 (Declaration of Lori van Gogh, Chief Business Officer, Sunnyvale School District), 30-32 (Declaration of Mike Thomson, Chief Business Official, Business Office, Hope Elementary School District); Exhibit C, Claimants’ Rebuttal Comments, pages 6-8 (Declaration of Arthur Cuffy, Chief Business Officer, Sunnyvale School District), 9-12 (Declaration of Mike Thomson Chief Business Official, Hope Elementary School District).

<sup>214</sup> Exhibit C, Claimants’ Rebuttal Comments, pages 6-7 (Declaration of Arthur Cuffy, Chief Business Officer, Sunnyvale School District).

<sup>215</sup> Exhibit C, Claimants’ Rebuttal Comments, page 7 (Declaration of Arthur Cuffy, Chief Business Officer, Sunnyvale School District).

- Anticipated increased costs in fiscal year 2024-25 of \$849,320 for an additional five teachers and \$362,395 for six additional paraeducators.<sup>216</sup>

Alleged increased costs for Hope Elementary School District are:

- \$433,671.46 for 2.5 (FTE) additional teachers in fiscal year 2023-24.<sup>217</sup>
- \$83,963.03 for 1.65 (FTE) additional classified employees in fiscal year 2023-24.<sup>218</sup>
- Anticipated costs in fiscal year 2024-25 of \$352,970 for two (FTE) additional teachers, and \$64,990 for 1.25 (FTE) additional classified employees.<sup>219</sup>

The claimants allege that Finance's comment that it is not aware of any law or restriction that would preclude the use of LCFF funds for TK costs are in direct contradiction with mandates law, though they did not elaborate on this position.<sup>220</sup>

The claimants also assert that Finance's comments did not acknowledge that other school districts receive funding specifically for their TK programs in addition to their LCFF funding and fail to explain why basic aid districts were excluded.<sup>221</sup>

In response to Finance's speculation that the Test Claim may not be timely filed, the claimants reassert they first incurred increased costs on July 1, 2023, and that Finance has no legal support for its request to further examine the claimants' estimated costs, as the State Controller will be authorized to review costs incurred when filing a claim for reimbursement after the Test Claim is approved.<sup>222</sup> Lastly, the claimants assert that Finance's comments cannot be relied on because they are noncompliant with the Commission's regulations, which require oaths or statements of fact be signed by a person authorized to do so and must be based on knowledge or personal belief, and statements of fact shall be supported with documentary evidence filed with the comments on the test claim, neither of which Finance provided.<sup>223</sup>

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<sup>216</sup> Exhibit C, Claimants' Rebuttal Comments, page 7 (Declaration of Arthur Cuffy, Chief Business Officer, Sunnyvale School District).

<sup>217</sup> Exhibit C, Claimants' Rebuttal Comments, page 10 (Declaration of Mike Thomson, Chief Business Official, Hope Elementary School District).

<sup>218</sup> Exhibit C, Claimants' Rebuttal Comments, page 10 (Declaration of Mike Thomson, Chief Business Official, Hope Elementary School District).

<sup>219</sup> Exhibit C, Claimants' Rebuttal Comments, pages 10-11 (Declaration of Mike Thomson, Chief Business Official, Hope Elementary School District).

<sup>220</sup> Exhibit C, Claimants' Rebuttal Comments, page 3.

<sup>221</sup> Exhibit C, Claimants' Rebuttal Comments, page 3.

<sup>222</sup> Exhibit C, Claimants' Rebuttal Comments, page 4.

<sup>223</sup> Exhibit C, Claimants' Rebuttal Comments, pages 4-5. Section 1183.1(e) of the Commission's regulations requires "[a]ll representations of fact shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of the

The claimants filed comments in response to the Draft Proposed Decision on April 17, 2025.<sup>224</sup> The claimants reassert they are legally compelled to provide TK, based on the test claim statute's use of the word "shall."<sup>225</sup> The claimants also say they are practically compelled based on the CDE's statements that "[a] school district or county office of education operating a kindergarten program must offer TK for age-eligible children to attend."<sup>226</sup> This position was recently reinforced by a letter to school districts from Tony Thurmond, State Superintendent on Public Instruction, stating "Under Education Code Section 48000, **any school district that offers kindergarten is required to also offer TK** and comply with the TK requirements, such as adult-to-student ratio, class size and teacher credentialing. **This requirement includes basic aid districts** ..."<sup>227</sup> The claimants argue they are practically compelled and have no true alternative because:

The consequences of not offering TK would prompt investigations, audits, sanctions and may result in complications in other areas of funding impacting basic aid districts operations with state education authorities. Basic aid districts have no true alternative as non-compliance would result in severe penalties or substantial loss of funding.<sup>228</sup>

The claimants also argue that the D'Souza article included as an exhibit in this Decision should not be relied upon because it was written prior to the CDE issuing the directive that basic aid districts are mandated to offer TK programs, and it fails to provide any evidence relevant in deciding whether the test claim statute is a reimbursable mandate.<sup>229</sup>

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Commission's regulations." However, the determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law. *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>224</sup> Exhibit H, Claimants' Comments on the Draft Proposed Decision.

<sup>225</sup> Exhibit H, Claimants' Comments on the Draft Proposed Decision, pages 2-3.

<sup>226</sup> Exhibit H, Claimants' Comments on the Draft Proposed Decision page 3.

<sup>227</sup> Exhibit H, Claimants' Comments on the Draft Proposed Decision, page 3, quoting Exhibit L (19), Thurmond, Celebrating Universal Transitional Kindergarten, CDE, March 21, 2025, <https://www.cde.ca.gov/nr/el/le/yr21ltr0321c.asp> (accessed on April 17, 2025), page 1, emphasis in original.

<sup>228</sup> Exhibit H, Claimant' Comment's on the Draft Proposed Decision, page 4.

<sup>229</sup> Exhibit H, Claimants' Comments on the Draft Proposed Decision, page 4. This article was included as evidence of the history of TK programs and is therefore relevant. The statement that it was written before the CDE issued directives that basic aid districts were mandated to provide TK is incorrect, as the CDE has always said that all school districts must provide TK and kindergarten classes for all eligible children to attend, and that the law applies equally to all districts regardless of whether they are basic aid, as demonstrated by earlier archived versions of the webpage the claimants cite to. See Exhibit L (20), California Department of Education, *Transitional*

Lastly, the claimants contend that basic aid districts do not receive specific funding for the TK program through the LCFF, and argue: “For basic aid districts to use LCFF that has already been allocated for specific programs is similar to the argument school districts are not entitled to reimbursement since they receive funding from their ADA enrollment under Proposition 98.”<sup>230</sup>

On April 21, 2025, the claimants filed additional Late Comments on the Draft Proposed Decision, responding to the CDE’s comments.<sup>231</sup> The claimants agree with the CDE’s arguments for why school districts are both legally and practically compelled to provide a TK program.<sup>232</sup> However they still disagree there is funding for the program for basic aid districts, and claim they do not receive the apportionment of funds for the TK program promised in Education Code section 48000. The claimants assert:

“Education Code section 48000 provides that the requirements for the TK program are “a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300, and Chapter 3 (commencing with Section 47610) of Part 26.8, as applicable.” (DPD, p. 29.)

It is undisputed Claimants were excluded from receiving an apportionment for pupils in a transitional kindergarten program. Districts that received apportionment for the TK program also receive LCFF funding. Nonetheless, the State takes the indefensible position Claimants are required to provide the TK program thru their LCFF funding. Nothing in the test claim statute states or infers Claimants are exempt from receiving apportionment funding nor that Claimants are required to use their LCFF funding in lieu of receiving the apportionment.<sup>233</sup>

## **B. Department of Finance**

Finance opposes the Test Claim on three grounds: 1) the TK expansion does not constitute a new program or higher level of service; 2) the associated costs are fully funded through a combination of state funding and local property tax revenues, per school finance statutes; and 3) it is uncertain if the Test Claim was filed in a timely manner.<sup>234</sup>

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*Kindergarten FAQs*, September 30, 2011, <https://www.cde.ca.gov/ci/gs/em/kinderfaq.asp> (accessed via the Internet Archive, <https://web.archive.org/web/20110930142750/https://www.cde.ca.gov/ci/gs/em/kinderfaq.asp> on April 17, 2025) page 2.

<sup>230</sup> Exhibit H, Claimants’ Comments on the Draft Proposed Decision, page 4.

<sup>231</sup> Exhibit K, Claimants’ Late Comments on the Draft Proposed Decision.

<sup>232</sup> Exhibit K, Claimants’ Late Comments on the Draft Proposed Decision, pages 1-2.

<sup>233</sup> Exhibit K, Claimants’ Late Comments on the Draft Proposed Decision, page 2.

<sup>234</sup> Exhibit B, Finance’s Comments on the Test Claim, page 1.

Finance asserts that basic aid districts do receive funding through the LCFF, as outlined in Education Code section 42238.02 for the activities required by the test claim statute. While the state calculates LCFF entitlements for each school district using this formula, including basic aid districts, “how the entitlement is funded varies between districts.”<sup>235</sup> A school district’s LCFF entitlement is funded through a variety of sources: local property tax revenue; the Education Protection Account; and state aid. For a basic aid district, its local property tax revenue exceeds its respective LCFF entitlement target, so the school district does not receive additional state aid to meet the entitlement and is able to keep any excess property tax collected for local education priorities. “This does not mean that basic aid districts do not receive any state aid,” as they still receive funding through the LCFF for Minimum State Aid (MSA) pursuant to Education Code section 42238.03, from the guaranteed \$120 per student in Article IX section 6 of the California Constitution, and from the Education Protection Account pursuant to Article XIII section 36 of the California Constitution, and often receive additional miscellaneous funding through sources such as the Expanded Learning Opportunities Program, Proposition 28 funding for Arts and Music programs, and other programs enacted by the Legislature.<sup>236</sup> Finance asserts that this funding can be applied to costs relating to TK pupil instruction, among other allowable services.<sup>237</sup> Finance also explains that TK attendance costs are included in the apportionment calculations for all school districts, including basic aid districts as follows:

TK attendance costs are included in the 2022-23 and 2023-24 principal apportionment calculations, which means all apportionment-generating local education agencies, which includes basic aid districts, will receive ongoing LCFF funding for TK pupils. Nothing precludes these funds — whether generated through property taxes or through Proposition 98 General Fund as calculated through the LCFF to meet the target LCFF entitlement — from being used for TK costs. Finance is not aware of any law or restriction that would preclude the use of these funds for TK costs. Finance is also not aware of any law or restriction that entitles a basic aid district to a specific amount of excess property taxes. Rather, for purposes of computing the Proposition 98 minimum guarantee, implementing statute, Section 41202 (g), defines the term “Allocated local proceeds of taxes” to include local revenues used to offset LCFF state aid (references to Section 42238 have been defined to mean 42238.02 as implemented pursuant to Section 42238.03 pursuant to Section 42238.06). Additionally, per AB 130, the specified activities are required as a receipt of apportionment.<sup>238</sup>

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<sup>235</sup> Exhibit B, Finance’s Comments on the Test Claim, page 1.

<sup>236</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2.

<sup>237</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2.

<sup>238</sup> Exhibit B, Finance’s Comments on the Test Claim, page 2-3.

For the 2023-2024 second principal apportionment, Sunnyvale School District had an entitlement of \$65.4 million with estimated local property tax revenue of \$105.6 million, while Hope Elementary School District's entitlement was \$9.5 million with local property tax revenue estimated at \$12.5 million.<sup>239</sup> Finance contends the claimants have not clearly demonstrated how these funds fall short of meeting their statutory obligations, and further contends that the claimants have sufficient funding to cover costs through their computed LCFF entitlement. If a basic aid district's property tax revenue were to become insufficient to pay for the district's LCFF apportionment, moving it out of basic aid status, the state would be required to provide additional funding to meet its obligations, which has not happened for the claimants, indicating their entitlement for meeting statutory obligations is fully funded by offsetting property tax revenues. Alternatively, if the Commission does not deny this Test Claim, Finance asserts that these funding sources should be considered offsetting revenue during the Statewide Costs Estimate process and when developing the reimbursement methodology.<sup>240</sup>

Regarding the timeliness of the claimants' filing, Finance points out that besides expanding enrollment eligibility in the 2023-2024 school year to pupils who will have their fifth birthday between September 2 and April 2, the test claim statute also limited class sizes to 24 pupils beginning in the 2021-2022 school year, and required school districts maintain an adult-to-pupil ratio of 1:12 and expanded enrollment eligibility to pupils who have their fifth birthday between September 2 and February 2 in the 2022-2023 school year, and, thus, these costs are not new "to the extent increased costs were incurred prior to July 1, 2023."<sup>241</sup> Additionally, Finance asserts that the transitional kindergarten program has existed since the 2012-2013 school year, Finance is not aware of any previous mandate claims for the program, and "to the extent that administration of the existing program was altered and resulted in increased costs at the discretion of the Claimants, these costs are not reimbursable."<sup>242</sup> Examples of potential discretionary decisions include enrolling TK students earlier than the timeframe specified by the test claim statute or establishing classes at a lower enrollment level than required or at a location that necessitated more teachers or classified employees.<sup>243</sup>

Finance also questions the details of the claimants' evidence of increased costs, alleging that they may include costs outside of the scope of the alleged mandate, or may demonstrate increased costs incurred prior to July 1, 2023. Finance points out that Sunnyvale School District's declared increased costs for additional teachers between July and December 2023, and between January and June 2024 respectively at approximately \$339,000 and \$430,000 per teacher inclusive of salary and benefits, but the estimated costs for three additional teachers in 2024-2025 only came to \$171,000

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<sup>239</sup> Exhibit B, Finance's Comments on the Test Claim, page 2.

<sup>240</sup> Exhibit B, Finance's Comments on the Test Claim, page 3.

<sup>241</sup> Exhibit B, Finance's Comments on the Test Claim, page 3.

<sup>242</sup> Exhibit B, Finance's Comments on the Test Claim, page 3.

<sup>243</sup> Exhibit B, Finance's Comments on the Test Claim, page 3.

per teacher. Similarly, Sunnyvale alleged its costs for additional classified employees (paraeducators) were roughly \$129,000 per paraeducator between July and December 2023, and \$192,000 per paraeducator between January and December 2024, but the estimated increased costs for three additional paraeducators in 2024-2025 only came to \$54,000 per paraeducator. According to Finance, it is unclear why Sunnyvale's increased costs in 2023-2024 were so much higher than the estimated costs for 2024-2025, and theorized the 2023-2024 costs actually included additional costs outside the scope of the alleged mandate.<sup>244</sup>

In Hope Elementary School District's case, the declaration alleged the district hired two additional teachers in 2023-2024, but the report submitted as documentation identifies three teachers, which may be evidence of increased costs prior to July 1, 2023. Finance also points out that Hope Elementary hired two additional teachers and two classified staff in fiscal year 2023-2024, but TK student enrollment based on reported ADA only increased over the previous year from 30 students to 43, and it is unclear why the school district needed that many additional teachers and staff for an additional 13 students. Assuming the increase in ADA/enrollment in 2024-2025 will be similar to 2023-2024, it was also unclear why Hope Elementary estimated it would need an additional three and a half teachers and three and a half additional certified staff for 2024-2025.<sup>245</sup>

Finance also notes that both claimants allege increased costs in 2024-2025 for enrolling TK students who will have their fifth birthday between September 2 and April 2, which is the same requirement for 2023-2024 so there should be no additional costs incurred.<sup>246</sup>

Finance asserts that if the Test Claim is not denied, these discrepancies warrant a closer examination of both claimants' estimated costs, which the Commission should pursue.<sup>247</sup>

On April 17, 2025, Finance filed comments on the Draft Proposed Decision, concurring with the conclusion that there are no costs mandated by the state pursuant to Government Code section 17556(e) because the associated costs are fully funded through the LCFF apportionment, per school finance statutes.<sup>248</sup>

### **C. Interested Parties and Interested Persons**

This test claim attracted almost 200 comments during the comment period from other basic aid districts (interested parties) and members of the public (interested persons)

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<sup>244</sup> Exhibit B, Finance's Comments on the Test Claim, page 4.

<sup>245</sup> Exhibit B, Finance's Comments on the Test Claim, page 4.

<sup>246</sup> Exhibit B, Finance's Comments on the Test Claim, page 5. This discrepancy is most easily explained as an error on the claimants' part, as the test claim statute actually expands enrollment eligibility in 2024-2025 to children with fifth birthdays between September 2 and June 2.

<sup>247</sup> Exhibit B, Finance's Comments on the Test Claim, page 5.

<sup>248</sup> Exhibit I, Finance's Comments on the Draft Proposed Decision.



expressing their support.<sup>249</sup> Most of these comments are identical, with only a few providing additional information on the financial impacts the test claim statute has on that school district specifically. These identical letters state as follows:

California is currently in the second year of phasing in universal transitional kindergarten (UTK). By 2025-26, the state expects all local educational agencies (LEAs) to make transitional kindergarten (TK) available to all children who will have their fourth birthday by September 1 of the school year. To assist with the implementation of UTK, the state funds TK average daily attendance by annually rebenching Proposition 98 with General Fund dollars to account for the newly eligible TK students. Over the past two fiscal years, the state has provided nearly \$1 billion in ongoing funding for the implementation of UTK. That annual cost is expected to grow to approximately \$2.7 billion when UTK is fully implemented in 2025-26.

While the state has highlighted its commitment to fund UTK, the funding distribution methodology that is being utilized leaves out community-funded school districts, which means that our districts do not receive funding for implementing TK. Although interpretations of current law vary, the state has clearly expressed that TK should be offered by all districts, making it an unfunded mandate for community-funded districts not receiving dollars to implement this new, full grade level.

The requirement for community-funded districts to implement UTK clearly meets the determination requirement of the state imposing a new program or higher level of service on LEAs. The state continues to maintain that implementation of UTK is an expectation of all school districts; however, the state is only providing funding for UTK to state-funded districts. The refusal of the state to provide funding for community-funded districts for UTK implementation, while at the same time maintaining that it is still an obligation to implement, constitutes an unfunded mandate by the state.

For these reasons, we strongly support the test claim filed by the Hope Elementary School District and the Sunnyvale School District. Without support from the Commission on this test claim, community-funded districts will be forced to take funding from other programs that currently serve students in order to implement this new grade.

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<sup>249</sup> Due to the high number of comments that are duplicative, most interested party and interested person comments have been excluded from the exhibits, save for a few representative examples. However, all comments are available on the Commission's website on the matter page for this Test Claim: <https://csm.ca.gov/matters/23-TC-02.shtml> and all commenters are identified in this Decision.

We implore that the Commission staff recommends the test claim to be approved and that Commission members approve the claim when it is heard this fall. Thank you.<sup>250</sup>

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<sup>250</sup> Exhibit D, Anthony Ranii, President, Schools for Sound Finance, Comments on the Test Claim, page 1-2. The following people filed identical comments. From Alexander Valley Union School District, Yvonne Kreck, Board President. From Association of California School Administrators, Edgar Zazueta, Ed.D., Executive Director. From Bonny Doon Elementary School District, Mike Heffner, Superintendent/Principal. From Brisbane School District, Ronan Collver, Superintendent. From Campbell Union High School District: Meredyth Hudson, Assistant Superintendent of Business; and Robert Bravo, Superintendent. From Cardiff School District, Jill Vinson, Superintendent. From Carmel Unified School District, Sharon Ofek, Superintendent. From CFT- A Union of Educators and Classified Professionals, AFT, AFL-CIO, Tristan Brown, Legislative Director. From College Elementary School District, Maurene Donner, Superintendent. From Cucamonga School District, Michael Chaix, Ed.D., Superintendent. From Desert Center Unified School District, Dr. Gregory T. Sackos, Superintendent. From Encinitas Union School District, Andrée Grey, Ed.D., Superintendent. From Forestville Union School District, Matt Dunkle, Superintendent. From Fort Ross Elementary School District: Michael Smallen and Richard Gross, Trustees; and Jennifer Dudley, Superintendent/Principal. From Freemont Union High School District: Christine Mallery, CBO/Associate Superintendent; and Graham Clark, Superintendent. From Goleta Union School District, Dr. Diana Galindo-Roybal, superintendent. From Harmony Union School District, Matthew Morgan, Principal/Superintendent. From Healdsburg Unified School District, Chris Vanden Heuvel, Superintendent. From Hillsborough City School District: An Huang Chen, Don Geddis, Gilbert Wai, Gregory Dannis, and Kim Olif, Board Members; and Louann Carlomagno, Superintendent. From Hope School District: Claire Krock, Assistant Principal; Daniel Cunnison, Board Member; Kelly Keogh, Board of Directors; Kristin Lindquist, Director of Special Education; Yirong Lu, ESN Upper (Grade 4-6); Christy L. Kelso, former Board Member; Jon Magnani, IT Director; Allison Heiduk, Literacy TOSA; Anna Scharfeld and Jestin St. Peter, Principals; Katie O'Toole, Reading Intervention Teacher; Patrice Mueller, STEAM Specialist; Anne Hubbard, Ed.D., Superintendent; Tim Barker, teacher; Beth Scott, Gabrielle C. Herbst, Julie Walsmith, Kim Aragon, Laura Godinez, Theana Earls, and 12 anonymous employees, unspecified employees; Araceli Nahas, Autumn Rose McFarland, Barbara Nguyen-Willeford, Ben Faulman, Brandi Bryant, Dahianna Stengel, Dmitri Jarocki, Irina Ludkovski, James Willeford Jr., Julian Becher, Meaghan Faulman, Chris Hodges, Corey Josenhans, Jamie and Jason Poe, Larissa Graham, Lilly Josenhans, Tim Reinauer, and two anonymous parents, parents; Katie Moses, Claudia Scott, Brian Hiefield, and two anonymous community members, citizens; and Adrian Talley, Amy Steets, Becca McNees, Christine Rissmeyer, Cindy Everman, Diane Satterthwaite, Holly Zepke-Price, Kelly Counsineau, Kim Marme, Natalie Wilkes, Noah Stites-Hallett, Ryan Blasena, Sarah Kemp-Mehl, Thomas Skaff, Tristin Tracy, Wyatt Talley, Luis Mori-Quiroz, Mercy Anyika, and four anonymous commentors, unspecified relationship. From Howell Mountain Elementary School District, Dr. Janet Tufts, Superintendent. From Huntington Beach City School District, Leisa Winston, Ed.D.,

Dr. Robert Bauer, Trustee of Portola Valley School District, added comments to his support letter on the impact Proposition 13 had on his school district's finances, stating: "We had to cut programs and sell property that we otherwise would have maintained for the health and welfare of our learners. The unfunded mandate requiring UTK causes a

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Superintendent. From Laguna Beach Unified School District: Jason Vilorio, Ed.D., Superintendent; Jan Vickers, Board President; and Kelly Osborne, Board Clerk. From Larkspur-Corte Madera School District, Brett Geithman, Ed.D., Superintendent. From Loma Prieta Joint Union School District, Kevin Grier, Ed.D., Superintendent. From Los Gatos Union School District, Sarah Tellez, Assistant Superintendent. From Mendocino Unified School District: Jason Morse, Superintendent; and Meg Kailikole, Business Manager. From Menlo Park City School District: Sharon Burns and Danielle O'Brien, Principals; Chana Stewart, Director of Early Learning Center; Jammie Behrendt, Associate Superintendent; Marites Fermin, Chief Business Officer; and Katherine Strach, unspecified relationship. From Montecito Union School District: Abby Carrington, Kimberly Berman, Amelia Madden, Brooke Cloud, Christina Stokes, Daniel Berman, Heidi Craine, Holly Noble, Jamie Allison, Jeffery Linder, two John Does, Karen Luna, Katie Nimitarnun, Linda Trigueiro, Lindsay Alker, Lisa Monson, Melissa Erikson, Rania Mather, Ron Zecher, Stacy Allison, Vanessa Scarlett, Kim Berman, and Alyssa Gonzalez, teachers; Jacqueline Duran, Jessica Smith, and Mitchell Bragg, Board Members; Virginia Alvarez, Chief Business Official and Human Resources; Autumn Noe, Classified Employee/Parent; Samantha Simon, Nature Lab, STEAM, Special Projects; Nick Bruski, Principal; Susannah Osley, School Board President; Kim Crail, School Board Vice President; Selina Wimmel, School Office Assistant; Melissa Spink, Student Meals Program Coordinator; Anthony Ranii, Superintendent; and Rusty Ito, Vice Principal. From Mountain View Los Altos High School District, Dr. Nellie Meyer, Superintendent. From Mountain View Whisman School District, Dr. Rebecca Westover, Chief Business Officer. From Nevada City School District, Paige Moore, Business Manager. From Newport-Mesa Unified School District: Wesley Smith, Ed.D., Superintendent; Jeffery S. Trader, Assistant Superintendent, Chief Business Official; Ashley Anderson, Lisa Pearson, and Michelle Barto, Board Members. From Palo Alto Unified School District, Carolyn Chow, Chief Business Officer. From Portola Valley School District: Connie Ngo, Chief Business Official; Gary Hanning, President, Board of Trustees; Roberta Zarea, Superintendent; and Kimberly Morris Rosen and Amud Setlur, Trustees. From San Luis Coastal Unified School District, Eric Prater, Ed.D., Superintendent. From Santa Cruz City Schools District: Jimmy Monreal, Assistant Superintendent of Business Services; and Kris Munro, Superintendent. From Sequoia Union High School District, Vinita Singh, Director of Business Services. From Solana Beach School District: Debra Schade, Ph.D., Board President; and Jennifer Burks, Ed.D., Superintendent. From Sonoma Valley Unified School District: Reina Seifts, Associate Superintendent; and Dr. Jeanette Rodriguez-Chien, Superintendent. From St. Helena Unified School District, Kay Vang, Chief Business Official. From Sunnyvale School District, Michael Gallagher, Ed.D., Superintendent. From Tahoe Truckee Unified School District, Kerstin Kramer, Superintendent Chief Learning Officer. From Vista Del Mar Union School District, Bree Valla, Superintendent/Principal.

big financial obligation that will at a minimum increase class sizes which we have been planning and struggling to reduce during the past 15 years.”<sup>251</sup>

Six trustees and the board president for the San Luis Coastal Unified School District each individually filed comment letters that added, “In San Luis Coastal, the cost of this unfunded mandate is \$20 million in facility costs, and \$3.5 million in ongoing personnel costs. Due to class size limits that become more restrictive at full implementation, we expect the cost to be even higher. Like most districts in California, we are confronting deficits in the out years which means significant programmatic reductions in other areas due to this unfunded mandate.”<sup>252</sup>

The claimants attached over 100 additional public comments to their rebuttal, specifically responding to Finance’s comments.<sup>253</sup> These comments primarily took offense at Finance’s assertion that basic aid districts receive an entitlement under the LCFF. “While that statement is accurate, the DOF fails to recognize that community-funded elementary and unified school districts do not receive any additional dollars to support the implementation of UTK despite their LCFF entitlement growing. In other words, the state’s mechanism for funding UTK leaves out community-funded districts and has effectively made those districts pay for the implementation of a new, full grade level with existing resources.”<sup>254</sup> The comments assert that when TK was a small program that only applied to a small cohort of students, basic aid districts were able to absorb the added cost by redirecting funds from some existing programs, but this expansion of the TK program would be costly for any district if adequate resources are not provided, which is why the Newsom administration and Legislature increased the Proposition 98 guarantee to allow for UTK implementation.<sup>255</sup> However the state has not provided additional resources for basic aid districts to implement this program “despite the state maintaining that implementation of UTK is an expectation of all school districts.”<sup>256</sup>

The comments also objected to Finance highlighting the funding basic aid districts receive through the minimum state aid provision of the LCFF and the Education

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<sup>251</sup> Exhibit E, Dr. Robert Bauer, Trustee, Portola Valley School District, Comments on the Test Claim, page 1.

<sup>252</sup> Exhibit F, Ellen Sheffer, Board President, San Luis Coastal Unified School District, Late Comments on the Test Claim, pages 1-2. San Luis Coastal Unified School District Trustees Brian Clausen, Eve Hinton, Chris Ungar, Marilyn Rodger, Mark Buchman, and Robert Banfield, each filed identical comments.

<sup>253</sup> Exhibit C, Claimants’ Rebuttal Comments, pages 13-277.

<sup>254</sup> Exhibit C, Claimants’ Rebuttal Comments, page 13 (Letter from Anthony Ranii, President of Schools for Sound Finance).

<sup>255</sup> Exhibit C, Claimants’ Rebuttal Comments, page 13 (Letter from Anthony Ranii, President of Schools for Sound Finance).

<sup>256</sup> Exhibit C, Claimants’ Rebuttal Comments, page 14 (Letter from Anthony Ranii, President of Schools for Sound Finance).

Protection Account, with the implication these could be used to pay for TK programs. “What the DOF fails to recognize is that community-funded districts have been receiving MSA dollars and EPA dollars since 2013, which means these dollars have already been subsumed into other equally important district programs. This means that without additional funding to implement UTK, community-funded districts are required to encroach on other programs in order to support UTK students and staff. Additionally, MSA and EPA funds are marginal compared to the cost of implementing a full grade level.”<sup>257</sup>

Individual school districts included additional testimony to the same basic comment letter on their actual and estimated increased costs to implement the test claim statute, how they currently use their MSA and EPA funding, and how other programs will be impacted if the test claim is not approved.<sup>258</sup> Commentors reasserted their opinion that

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<sup>257</sup> Exhibit C, Claimants’ Rebuttal Comments, page 14 (Letter from Anthony Ranii, President of Schools for Sound Finance).

<sup>258</sup> See Exhibit C, Claimants’ Rebuttal Comments, pages 27 (Letter from Matt Reno, Superintendent/Principal, Alexander Valley Union School District); 30 (Letter from Pam Rennick, Superintendent/Principal, Ballard School District); 33 (Letter from Mike Heffner, Superintendent/Principal, Bonny Doon Union Elementary School District); 37 (Letter from Audra Pittman, Ph.D., Superintendent, Calistoga Joint Unified School District); 39 (Letter from Dr. Shelly Viramontez, Superintendent, Campbell Union School District); 41-42 (Letter from Jill Vinson, Superintendent, Cardiff School District); 44-45 (Letter from Sharon Ofek, Superintendent, Carmel Unified School District); 47 (Letter from Amy Alzina, Ed.D., Superintendent/Principal, Cold Spring School District); 49 (Letter from Michael Chaix, Superintendent, Cucamonga School District); 51 (Letter from Holly McClurg, Ph.D., Superintendent, Del Mar Union School District); 53-54 (Letter from Greg Sackos, Superintendent/Principal, Desert Center Unified School District); 56 (Letter from Andrée Grey, Ed.D., Superintendent, Encinitas Union School District); 66 (Letter from Ethan Bertrand, Board of Trustees Clerk, Goleta Union School District); 78 (Jointly Signed Letter from Ana de Arce, Superintendent; Kim Oliff, Board President; Don Geddis, Board Vice President; Gregory Dannis, Board Clerk; An Huang Chen, Board Member; Gilbert Wai, Board Member; Joyce Shen, Chief Business Official; Leilani Bell, Human Resources Director; Matthew Lindner, Educational Services Director; Bhavna Narula, Student Services Director; Maureen Sullivan, Education Technology Director; Tracy Dennis, Information Technology Manager; Alec MacKenzie, Hillsborough Teachers Association President; and Kim Hover, California School Employees Association President, Chapter 465; Hillsborough City School District); 81 (Letter from Dr. Brian Johnson, Board of Trustees Member, Hope School District); 90-91 (Letter from Leisa Winston, Ed.D., Superintendent, Huntington Beach School District); 93 (Letter from Nathan Myers, Superintendent, Kenwood School District); 95 (Letter from Brett Geithman, Superintendent, Larkspur-Corte Madera School District); 96-97 (Letter from Dave Scroggins, Superintendent/Principal, Latrobe School District); 99 (Letter from Kelly Osborne, School Board Clerk, Laguna Beach Unified School District); 108 (Letter from Paul Johnson, Superintendent, Los Gatos Union School District); 110 (Letter from Sandra McGonagle, Superintendent, Los Altos School District); 117 (Letter

the state maintaining they are obligated to implement TK, without providing additional funding for basic aid districts, constitutes an unfunded mandate by the state.<sup>259</sup>

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from Audra Romero, Director of Human Resources, Menlo Park City School District); 140-141 (Letter from Rusty Ito, Assistant Principal, Montecito Union School District); 221 (Letter from Dr. Ayinde Rudolphe, Superintendent, Mountain View Whisman School District); 226 (Letter from John Baggett, Superintendent, Nevada City School District); 229 (Letter from Jeffery S. Trader, Assistant Superintendent, Newport-Mesa Unified School District); 236 (Letter from Charen Yu, Chief Business Officer, Palo Alto Unified School District); 239 (Letter from Connie Ngo, Chief Business Official, Portola Valley School District); 243 (Jointly Signed Letter from Gary Waddell, Ed.D.C., Superintendent, and Mark A. Schiel, Deputy Superintendent, Santa Clara Unified School District); 245 (Letter from Dr. Kenneth Geisick, Superintendent, Saratoga Union School District); 251 (Letter from Kay Vang, Chief Business Official, St. Helena Unified School District); 255 (Letter from Eric Prater, Ed.D., Superintendent, San Luis Coastal Unified School District); 263 (Letter from Arthur Cuffy, Chief Business Officer, Sunnyvale School District); 273 (Letter from Tom Hoskins, Superintendent, Vallecito Union School District).

<sup>259</sup> The claimants' rebuttal comments also included additional letters of support from the following interested parties or interested persons whose contents were duplicative to at least one of the letters cited in the previous footnote. From Association of California School Administrators, Edgar Zauzeta, Ed.D., Executive Director. From California Association of School Business Officials, Mishaal Gill, Director of Policy and Advocacy, California Association of School Business Officials. From CFT – A Union of Educators and Classified Professionals, AFT, AFL-CIO, Tristan Brown, Legislative Director. From California School Board Association, Kristen Lindgren-Bruzzzone, General Counsel. From Small School Districts Association, Yuri Calderon, Executive Director. From Acalanes Union High School, John Nickerson, Superintendent. From Calistoga Joint Unified School District, Matthew Reid, Board Member. From Fremont Union High School District: Christine Mallery, CBO/Associate Superintendent; and Graham Clark, Superintendent. From Goleta Union School District: Emily Zacharias, and Dr. Richard Mayer, Board of Trustees Members; Dr. Mary Kahn, Superintendent; Dr. Vikki Ben-Yaacov, Board of Trustees President; and Sholeh Jahangir, Board of Trustees Vice-President. From Hope School District: Daniel Cunnison, and Erik Vasquez, Board of Trustees Members; Dr. Frann Wageneck, Board of Trustees President; and Dr. Kelly Keogh, Board of Trustees Clerk. From Laguna Beach Unified School District: Jan Vickers, School Board President; and Jason Vilorio, Ed.D., Superintendent. From Los Gatos-Saratoga Union High School District, Bill W. Sanderson, Superintendent. From Los Gatos Union School District, Teresa Fiscus, Chief Business Official. From Menlo Park City School District: Sandra Franco, Director MOT; Jammie Behrendt, Associate Superintendent Educational Services; Kristen Gracia, Superintendent; Parke Treadway, Public Information Officer; Stephanie Sheridan, Assistant Superintendent Student Services; Marites Fermin, Chief Business Officer; and Willy Haug, Director of Technology and Innovation. From Montecito Union School District: Jesse Landeros, Facilities Manager; Anthony Ranii, Superintendent; Amanda Salgado, Fiscal Services

As with the rebuttal comments, the claimants attached an additional 25 letters of support from interested parties and interested persons to their comments on the Draft Proposed Decision.<sup>260</sup> These comments contend school districts are legally compelled to provide TK, because the state continues to maintain that all school districts that offer kindergarten are required to also offer TK and comply with the TK program's requirements, as demonstrated by the letter from Tony Thurmond.<sup>261</sup> They also object to the conclusion that the state has provided funding specifically intended to fund transitional kindergarten through the LCFF and that property tax revenue used to offset the LCFF entitlement is considered part of the state apportionment, restating the same argument raised in their rebuttal to Finance's comments that basic aid districts do not receive any additional state funding specifically intended for the program despite their

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Specialist; Sammy Simon, Nature Lab STEAM Special Projects; Austin Valiante, Lead Technology Support; Colin Valiante, Senior Network & Systems Technician; Lindsay Alker, Literacy TOSA; Jamie Allison, School Librarian; Stacy Allison, Kim Berman, Brooke Cloud, Judy Compton, Heidi Craine, Cheryl Hess, Karen Luna, Katie Nimitarnun, Megan Soderborg, Kathy Trent, Danielle Weill, and Ron Zecher, Teachers; Virginia Alvarez, Chief Business Official; Lisa Anderson, Purchasing and Admin Assistant; Judy Benton and Julie Terry, Instructional Assistants; Mitchell Bragg, Jacqueline Duran, and Jessica Smith, Board Members; Nick Bruski, Principal; Kim Crail, School Board Vice President; Melissa Erikson, Resource Specialist; Jeff Linder, Math TOSA; Cassandra Ornelas, Certificated School Nurse; Susan Osley, School Board President; Tony Paulsen and Rebekah Prato, Inclusion Specialists; Sadie Powers, Student Support and Activities Facilitator; Vanessa Scarlett, Science TOSA; and Autumn Noe, Executive Assistant/Parent. From Mountain View Los Altos High School District, Eric Volta, Superintendent. From Newport-Mesa Unified School District: Carol Crane, Board of Education President; Wesley Smith, Ed.D., Superintendent; and Martha Fluor, Former Board Member. From Portola Valley School District, Roberta Zarea, Superintendent. From San Dieguito Union High School District, Stephen Dickenson, Associate Superintendent of Business Services. From Sequoia Union High School District, Vinita Singh, Director of Business Services. From San Luis Coastal Unified School District, Ellen Scheffer, Board Trustee. From Sonoma Valley Unified School District, Dr. Jeanette Rodriguez-Chien, Superintendent. From Sunnyvale School District: Isabel Jubes-Flamerich, Board of Education President; Jeremy Nishihara, Assistant Superintendent of Human Resources & Informational Systems; Michael Gallagher, Ed.D., Superintendent; and Tasha L. Dean, Ed.D., Chief Teaching and Learning Officer. Lastly, Vista Del Mar Union School District, Bree Valla, Superintendent.

<sup>260</sup> Exhibit H, Claimants' Comments on the Draft Proposed Decision, pages 5-55.

<sup>261</sup> Exhibit H, Claimants' Comments on the Draft Proposed Decision, page 5 (Letter from Anthony Ranii, President of Schools for Sound Finance). See Exhibit X (19), Thurmond, Celebrating Universal Transitional Kindergarten, CDE, March 21, 2025, <https://www.cde.ca.gov/nr/el/le/yr21ltr0321c.asp> (accessed on April 17, 2025).

entitlement growing.<sup>262</sup> Individual commenters also provided statements on the way their districts have implemented TK, their actual and anticipated costs for implementing the program, details about the district's status as a basic aid district, their MSA and EPA funding, and what cuts have been made to other programs or funding priorities to pay for the costs of implementing the TK program.<sup>263</sup>

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<sup>262</sup> Exhibit H, Claimants' Comments on the Draft Proposed Decision, page 5 (Letter from Anthony Ranii, President of Schools for Sound Finance).

<sup>263</sup> See Exhibit H, Claimants' Comments on the Draft Proposed Decision, pages 7-8 (Letter from Dr. Barbara Dill-Varga, Superintendent, Aromas-San Juan Unified School District); 9-10 (Letter from John Nickerson, Superintendent, Acalanes Union High School District); 11-13 (Letter from Dr. Jason Hasty, Interim Superintendent, Beverly Hills Unified School District); 14-15 (Letter from Maurene Donner, Superintendent, College School District); 16-17 (Letter from Andrée Grey, Ed.D, Superintendent, Encinitas Union School District); 18-19 (Letter from Deborah Bertolucci, Superintendent, Geyserville Unified School District); 20-21 (Letter from Leisa Winston, Ed.D, Superintendent, Huntington Beach City School District); 22-23 (Letter from Chris Vanden Heuvel, Superintendent, Healdsburg Unified School District); 24-25 (Letter from Anne Hubbard, Ed.D, Superintendent, Hope School District); 26-27 (Letter from Nathan Myers, Superintendent, Kenwood School District); 28-29 (Letter from Teresa Fiscus, Los Gatos Union School District); 30-31 (Letter from Kristen Garcia, Superintendent, Menlo Park City School District); 32-33 (Letter from Dr. Elizabeth Kaufman, Superintendent, Mill Valley School District); 34-35 (Letter from Anthony Ranii, Superintendent, Montecito Union School District); 36-37 (Letter from Jeffery S. Trader, Assistant Superintendent, CBO, Newport-Mesa Unified School District); 38-39 (Letter from Don Austin, Superintendent of Schools, Palo Alto Unified School District); 40-41 (Letter from Dr. Eric Prater, Superintendent, San Luis Coastal Unified School District); 42-43 (Letter from Patrick K. Gaffney, Deputy Superintendent, San Mateo Foster City School District); 44-45 (Letter from Santa Cruz City Schools District); 46-47 (Letter from Dr. Kenneth Geisick, Superintendent, Saratoga Union School District); 48-49 (Letter from Dr. Anthony Shelton, Superintendent of Schools; Dr. Stacy Williamson, Assistant Superintendent of Educational Services; Melody Canady, Assistant Superintendent of Business Services; Gerardo Cruz, Assistant Superintendent of Business Services (Pro Tem); Dr. Douglas Meza, Assistant Superintendent of Human Resources; Dr. Francisco Dussan, Director of Student Services; Carey Upton, Chief Operations Officer; and Dr. Susan Samarge-Powell, Director of Early Learning, Santa Monica-Malibu Unified School District); 50-51 (Letter from Michael Gallagher, Ed.D, Superintendent; Bridget Watson, President, Board of Education; and Peggy Shen Brewster, Vice President, Board of Education, Sunnyvale School District); 52-53 (Letter from Bree Valla, Superintendent, Vista Del Mar Union School District); and 54-55 (Letter from Kerstin Kramer, Superintendent Chief Learning Officer, Tahoe Truckee Unified School District).



#### **D. California School Boards Association (CSBA)**

One of the comment letters attached to the Claimants' Rebuttal Comments came from the California School Boards Association (CSBA).<sup>264</sup> The contents of the comment letter are identical to other letters from interested parties discussed above, with the only addition being an introductory sentence explaining CSBA's interest in the matter by stating "As a statewide association, we are primarily concerned with the harmful precedent of the state establishing an increased level of educational requirements on school districts without corresponding funding."<sup>265</sup>

#### **E. Department of Education (CDE)**

The CDE filed its own comments on the Draft Proposed Decision on April 17, 2025.<sup>266</sup> The CDE alleges that Education Code section 48000 creates an integrated statutory framework that effectively requires any school district that offers kindergarten to also offer TK, and that this conclusion is based on the plain text and not administrative interpretation or preference.<sup>267</sup> The plain language relied on specifically is the definition of transitional kindergarten, which it interprets to completely redefine kindergarten into a two-year program, and the use of the word "shall." It explains:

First, Section 48000(d) expressly defines TK as "the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate." This definition creates a statutory reality where kindergarten is no longer a single-year program but a two-year sequence beginning with TK. Second, Section 48000(c)(1) mandates admission for children meeting specific birth date criteria according to the phased implementation schedule. The statutory language states that these children "shall be admitted" to TK, using mandatory rather than permissive language. When these provisions are read together using the well-established canon that statutes must be interpreted as a coherent whole (See *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 440.) the conclusion is: LEAs offering kindergarten must by logical necessity offer the "first year" of that program as defined by statute. The Legislature's choice to define kindergarten as a two-year program means that offering only the second

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<sup>264</sup> See Exhibit C, Claimants' Rebuttal Comments, pages 21-22 (Letter from Kristin Ludgren-Bruzzone, General Counsel, California School Boards Association).

<sup>265</sup> Exhibit C, Claimants' Rebuttal Comments, page 21 (Letter from Kristin Ludgren-Bruzzone, General Counsel, California School Boards Association).

<sup>266</sup> Exhibit J, California Department of Education's Comments on the Draft Proposed Decision.

<sup>267</sup> Exhibit J, California Department of Education's Comments on the Draft Proposed Decision, page 1.

year (traditional kindergarten) without the first year (TK) would contradict the express statutory definition.<sup>268</sup>

The CDE also argues that school districts are practically compelled to provide transitional kindergarten for three reasons: the loss of TK ADA revenue; the potential to also lose authority to collect traditional kindergarten ADA revenue; and the potential loss of students to other nearby districts that do offer TK putting them at a competitive disadvantage. The CDE explains these points as:

- 1) Loss of Core Operational Revenue: LEAs failing to implement TK would forfeit ADA funding for all eligible four-year-olds under the Section 48000(c) implementation schedule. As the eligible population expands each year through 2025-26, this revenue loss becomes increasingly significant.
- 2) Risk to Kindergarten ADA: Because TK is statutorily defined as the first year of kindergarten, a district not offering TK could face legal challenges to its authority to collect kindergarten ADA at all, as it would effectively be offering only half of the statutorily defined kindergarten program. The Education Code does not contemplate partial implementation of the now statutorily defined two-year kindergarten program.
- 3) Enrollment Pipeline Disruption: Districts declining to implement TK would lose students to neighboring districts offering the full two-year kindergarten program, creating long-term enrollment and funding instability that extends well beyond the TK year itself. This creates a form of competitive disadvantage that practically compels participation.<sup>269</sup>

The CDE argues these considerations are exactly the types of consequences the Supreme Court had in mind in *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 731, when it noted that practical compulsion may exist where “the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate.”<sup>270</sup>

Finally, regarding the Draft Proposed Decision’s conclusion that regardless of whether there is legal or practical compulsion, there are no costs mandated by the state because TK is fully funded through the LCFF, the CDE interprets it as supportive of the CDE’s long-held position that the requirement to provide TK applies to all school districts that provide kindergarten, regardless of whether they are basic aid or receive state funding. It states:

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<sup>268</sup> Exhibit J, California Department of Education’s Comments on the Draft Proposed Decision, pages 1-2.

<sup>269</sup> Exhibit J, California Department of Education’s Comments on the Draft Proposed Decision, page 2.

<sup>270</sup> Exhibit J, California Department of Education’s Comments on the Draft Proposed Decision, page 2 quoting *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 731.

The Commission's own findings reinforce that all LEAs operate under the same fiscal framework, regardless of whether their LCFF entitlement is met through state apportionment or local property taxes.

As the Draft Proposed Decision acknowledges: "The property tax revenue used to offset a school district's LCFF entitlement is not its local proceeds of taxes, but is an apportionment from the state it is obligated to use for the support of schools within the district." (Draft Proposed Decision, p. 71.)

This confirms that Basic Aid districts must apply their property tax revenue to fulfill a state obligation, just as other districts rely on apportionment. These funds, though locally sourced, function within the same statutory entitlement structure and are subject to the same compliance expectations. Accordingly, both Basic Aid and other districts face the same functional and practical obligation to implement TK if they offer kindergarten.<sup>271</sup>

In its conclusion, the CDE requests that the Commission's Decision make the following findings to provide guidance to LEAs regarding their obligations under current law, while remaining consistent with the Commission's conclusions on reimbursement:

- 1) That Education Code Section 48000's definition of kindergarten as a two-year program functionally requires LEAs to implement both years of the program if they offer kindergarten at all;
- 2) That an LEA's decision not to implement TK would jeopardize its authority to collect ADA funding for kindergarten, creating a practical compulsion that leaves LEAs with "no true option or choice"; and
- 3) That this practical compulsion applies equally to all LEAs offering kindergarten, regardless of funding mechanism.<sup>272</sup>

#### **IV. Discussion**

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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

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<sup>271</sup> Exhibit J, California Department of Education's Comments on the Draft Proposed Decision, pages 2-3.

<sup>272</sup> Exhibit J, California Department of Education's Comments on the Draft Proposed Decision, page 3.

spending limitations that articles XIII A and XIII B impose.”<sup>273</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>274</sup>

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

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.<sup>275</sup>
2. The mandated activity constitutes a “program” that 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.<sup>276</sup>
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.<sup>277</sup>
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.<sup>278</sup>

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>279</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>280</sup> In making its

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<sup>273</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>274</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>275</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>276</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

<sup>277</sup> *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>278</sup> *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.

<sup>279</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

<sup>280</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>281</sup>

**A. The Test Claim Was Timely Filed and Has a Potential Period of Reimbursement Beginning July 1, 2022.**

A test claim shall be filed no later than 12 months following the effective date of an executive order or statute, or within 12 months of incurring increased costs as a result of the executive order or statute, whichever is later.<sup>282</sup> The Commission’s regulations clarify that “within 12 months of incurring increased costs” means “within 12 months (365 days) of *first* incurring increased costs as a result of a statute or executive order, whichever is later.”<sup>283</sup>

The test claim statute has an effective date of July 9, 2021.<sup>284</sup> The Test Claim was jointly filed on January 22, 2024.<sup>285</sup> If this filing were based on the statute’s effective date, it would not be timely. However, the claimants filed declarations signed under penalty of perjury that they “first incurred costs” to implement the test claim statute on July 1, 2023, when they were required to hire additional teachers and non-teacher employees because the test claim statute expanded eligibility for the transitional kindergarten program to children whose fifth birthday fell between September 2 and April 2 in the 2023-2024 school year and the districts were required to maintain an average transitional kindergarten class enrollment of not more than 24 pupils for each school site.<sup>286</sup>

Finance asserts that because the limitation on average TK class sizes to 24 pupils went into effect in 2021-2022, and in 2022-2023 the test claim statute expanded program eligibility to students born between September 2 and February 2 and required adult-to-student staffing ratios not exceed 1:12, it is uncertain that there were no increased costs prior to July 1, 2023, in which case the test claim would be untimely.<sup>287</sup> Finance does not provide any evidence to support its position that the claimants incurred increased

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<sup>281</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>282</sup> Government Code section 17551(c).

<sup>283</sup> California Code of Regulations, title 2, section 1183.1(c), emphasis added.

<sup>284</sup> The test claim statute, Statutes 2021, chapter 44, was a budget bill and took effect immediately when filed with the Secretary of State (Statutes 2021, chapter 44, section 165.)

<sup>285</sup> Exhibit A, Test Claim, page 1.

<sup>286</sup> Exhibit A, Test Claim, pages 24-25 (Declaration of Lori van Gogh, Chief Business Officer, Sunnyvale School District); pages 30-31 (Declaration of Mike Thomson, Chief Business Official, Business Office, Hope Elementary School District).

<sup>287</sup> Exhibit B, Finance’s Comments on the Test Claim, page 3.

costs before July 1, 2023, but points to an inconsistency between Hope Elementary School District's testimony of two additional teachers hired in 2023-2024 while the documentary evidence supporting that claim listed three teachers, which it theorized may indicate costs incurred prior to July, 1, 2023.<sup>288</sup>

Finance's theory may be correct. However, the evidence Finance points to does not support their position that increased costs were first incurred by the claimants before July 1, 2023. Hope Elementary School District amended its testimony to say it actually hired 2.5 (FTE) additional teachers in 2023-2024, which corrects the inconsistency Finance theorized may be evidence of earlier increased costs.<sup>289</sup> Even if the claimant did not correct its testimony, the existence of an additional teaching position is not necessarily evidence of a cost incurred to implement the test claim statute prior to July 1, 2023. The documentation does not indicate whether it lists all teachers and staff assigned to teach Transitional Kindergarten, or just those newly hired within a certain period.<sup>290</sup> And Finance has not provided any evidence to support the argument that claimants first incurred costs to implement the changes in law created by the test claim statute before July 1, 2023.

The claimants' declarations of when they first incurred costs are signed under penalty of perjury and satisfy the evidentiary requirements in the Commission's regulations, which require written representations of fact offered by any person at an article 7 hearing shall be under oath or affirmation, and must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief.<sup>291</sup> In addition, the test claim statute requires school districts, as a condition of receipt of apportionment for pupils in a transitional kindergarten program, to admit a child into the TK program who will have their fifth birthday between September 2 and April 2 beginning in the 2023-2024 school year; where the requirement in the 2022-2023 school year was for children having their fifth birthday between September 2 and February 2. Extending the cut-off by two additional months could increase or expand the population of students eligible for a TK program, which has been confirmed by the claimants and Finance. Finance's comments state that Hope Elementary School District saw an increase in TK ADA from 30 students in the 2022-2023 school year to 43 students in the 2023-2024 school year, and Hope

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<sup>288</sup> Exhibit B, Finance's Comments on the Test Claim, page 4.

<sup>289</sup> Exhibit C, Claimants' Rebuttal Comments, page 10 (Declaration of Mike Thomson, Chief Business Official, Hope Elementary School District).

<sup>290</sup> Exhibit A, Test Claim, page 34 (Pay09a Report).

<sup>291</sup> California Code of Regulations, title 2, sections 1183.1(e), 1187.5; Exhibit A, Test Claim, pages 27 (Declaration of Lori van Gogh, Chief Business Officer, Sunnyvale School District) and 33 (Declaration of Mike Thomson, Chief Business Official, Business Office, Hope Elementary School District).

confirmed in its rebuttal comments that in 2023-2024 it had 46 enrolled TK students with an ADA of 43.64.<sup>292</sup>

Thus, without evidence the claimants did or should have first incurred increased costs before July 1, 2023 due to requirements in the test claim statute, the Commission must accept the claimants' declarations that the 2023-2024 school year was the first in which the changes in law in the test claim statute caused them to incur increased costs. The January 22, 2024 filing date is therefore timely.

Government Code section 17557(e) provides that a test claim "shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year." Because the claimants filed the Test Claim on January 22, 2024 (fiscal year 2023-2024), the potential period of reimbursement begins at the start of the prior fiscal year, July 1, 2022.

**B. The Test Claim Statute Imposes New Requirements for the TK Program. However, Even if the New Requirements Are Mandated by the State, There Are No Costs Mandated by the State Pursuant to Government Code Section 17556(e) Because the State Has Provided Additional Revenue Specifically Intended to Fund the Costs of the Transitional Kindergarten Program.**

- 1. Transitional Kindergarten Was Authorized by Prior Statutes and the Test Claim Statute Only Requires as a Condition of Receipt of Apportionment, that School Districts Admit Children Who Will Turn Five Within Newly Expanded Date Ranges and that Schools Maintain Average Maximum Transitional Kindergarten Class Sizes of 24 Pupils with One Adult for Every 12 Pupils in a Transitional Kindergarten Class.**

The TK program was first enacted by the Legislature in 2010 for the 2012-2013 school year.<sup>293</sup> Under prior law, Education Code section 48000 provided that as a condition of receipt of apportionment for pupils in a TK program pursuant to section 46300 and Chapter 3 (commencing with Section 47610) of Part 26.8, school districts were required to ensure that:

(A) In the 2012-13 school year, children who will have their fifth birthday between November 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(B) In the 2013-14 school year, children who will have their fifth birthday between October 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(C) In the 2014-15 school year and each school year thereafter, children who will have their fifth birthday between September 2 and December 2

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<sup>292</sup> Exhibit B, Finance's Comments on the Test Claim, page 4; Exhibit C, Claimants' Rebuttal Comments, page 10 (Declaration of Mike Thomson).

<sup>293</sup> Education Code section 48000(c) (as amended by Statutes 2010, chapter 705, section 3).

shall be admitted to a transitional kindergarten program maintained by the school district or charter school.<sup>294</sup>

Additionally, prior law required that as a condition of receipt of apportionment for pupils in a TK program, the school district was required to ensure that credentialed teachers who were first assigned to a TK classroom after July 1, 2015, have by August 1, 2021, one of the following education, experience, or certificate credentials:

- (1) At least 24 units in early childhood education, or childhood development, or both.
- (2) As determined by the local education agency employing the teacher, professional experience in a classroom setting with preschool age children that is comparable to the 24 units of education described in paragraph (1).
- (3) A child development teacher permit issued by the Commission on Teacher Credentialing.<sup>295</sup>

Thus, the requirements imposed on school districts as a condition of receipt of apportionment for pupils in a TK program, to offer a TK program for children who will have their fifth birthday between September 2 and December 2 and to ensure that teachers assigned to a TK classroom possess the specified education units, professional experience, or certification are not new.

The 2021 test claim statute amended Education Code section 48000 by expanding the range of dates used to determine which children are eligible for the TK program over several years as follows:

- (C) From the 2014-15 school year to the 2021-22 school year, inclusive, a child who will have their fifth birthday between September 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.
- (D) In the 2022–23 school year, a child who will have their fifth birthday between September 2 and February 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.
- (E) In the 2023–24 school year, a child who will have their fifth birthday between September 2 and April 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.
- (F) In the 2024–25 school year, a child who will have their fifth birthday between September 2 and June 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

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<sup>294</sup> Education Code section 48000(c)(1)(A)-(C) (as amended by Statutes 2020, chapter 24, section 55).

<sup>295</sup> Education Code section 48000(g)(1)-(3) (as amended by Statutes 2020, chapter. 24, section 55).



(G) In the 2025–26 school year, and in each school year thereafter, a child who will have their fourth birthday by September 1 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.<sup>296</sup>

Additionally, the test claim statute requires school districts, as a condition of receipt of apportionment for pupils in a TK program, to comply with all of the following:

- (1) Maintain an average transitional kindergarten class enrollment of not more than 24 pupils for each school site.
- (2) Commencing with the 2022-23 school year, maintain an average of at least one adult for every 12 pupils for transitional kindergarten classrooms.
- (3) Commencing with the 2023-24 school year, and for each year thereafter, maintain an average of at least one adult for every 10 pupils for transitional kindergarten classrooms, *contingent upon an appropriation of funds for this purpose*.<sup>297</sup>

The last requirement above, to maintain an average of one adult for every 10 pupils by the 2023-2024 school year, is only required if the Legislature appropriates funding for that purpose and, thus, this requirement would not be subject to mandate reimbursement.

And the test claim statute extends the date upon which school districts are required to ensure their teachers of TK programs have their credentials to August 1, 2023, but does not add any new requirements in this respect:

- (4) Ensure that credentialed teachers who are first assigned to a TK classroom after July 1, 2015, have, by August 1, 2023, one of the following:
  - (A) At least 24 units in early childhood education, or childhood development, or both.
  - (B) As determined by the local education agency employing the teacher, professional experience in a classroom setting with preschool age children that is comparable to the 24 units of education described in subparagraph (A).
  - (C) A child development teacher permit issued by the Commission on Teacher Credentialing<sup>298</sup>

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<sup>296</sup> Education Code section 48000(c) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

<sup>297</sup> Education Code section 48000(g)(1)-(3) (as amended by Statutes 2021, chapter 44 (AB 130), section 60), emphasis added.

<sup>298</sup> Education Code section 48000(g)(4) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

Thus, the following new requirements are imposed on school districts as a condition of receipt of apportionment for TK pupils:

- Beginning in the 2021-22 school year, maintain an average transitional kindergarten class enrollment of not more than 24 pupils for each school site.<sup>299</sup>
- Beginning in the 2022-23 school year, maintain an average of at least one adult for every 12 pupils in a transitional kindergarten classroom.<sup>300</sup>
- Beginning in the 2022-23 school year, ensure that children who will have their fifth birthday between December 3 and February 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.<sup>301</sup>
- Beginning in the 2023-24 school year, ensure that children who will have their fifth birthday between February 3 and April 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.<sup>302</sup>
- Beginning in the 2024-25 school year, ensure that children who will have their fifth birthday between April 3 and June 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.<sup>303</sup>
- Beginning in the 2025-26 school year, ensure that children who will have their fifth birthday between June 3 and September 1 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.<sup>304</sup>

The Draft Proposed Decision found that these requirements were not mandated by the state.<sup>305</sup> The claimants, interested parties, and the CDE all disagree with the findings in the Draft Proposed Decision, arguing that school districts are mandated by the state to provide a transitional kindergarten program, including the new requirements identified above. The claimants argue they are legally compelled based on the use of the word “shall;” interested parties argue they are legally compelled because the CDE maintains that they are required to provide TK; and the CDE’s position is that it interprets section

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<sup>299</sup> Education Code section 48000(g)(1) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

<sup>300</sup> Education Code section 48000(g)(2) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

<sup>301</sup> Education Code section 48000(c)(1)(D) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

<sup>302</sup> Education Code section 48000(c)(1)(E) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

<sup>303</sup> Education Code section 48000(c)(1)(F) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

<sup>304</sup> Education Code section 48000(c)(1)(G) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

<sup>305</sup> Exhibit G, Draft Proposed Decision, pages 56-68.

48000(d)'s definition of transitional kindergarten to completely redefine kindergarten into a two-year program which, when combined with the statute's use of the word "shall," results in a legal conclusion that school districts must by logical necessity provide TK, as it is the first year of the two-year program and to only provide the second year of the program would contradict that express statutory definition.<sup>306</sup>

The claimants also contend they are practically compelled to comply with the test claim statute because the CDE is maintaining that they are required to provide TK, and that not providing TK would result in "investigations, audits, sanctions, and may result in complications in other areas of funding impacting basic aid districts operations with state education authorities," such that non-compliance is no true alternative as it would result in severe penalties or substantial loss of funding.<sup>307</sup> The CDE similarly says that school districts are practically compelled to provide TK because they would miss out on the ADA funding they would have received for their TK students; because they may face legal challenges to their authority to collect ADA funding for their traditional kindergarten students if they only provide half of the two-year program; and because they may lose students to other nearby districts that do offer TK, creating long-term enrollment and funding instability that would put them at a competitive disadvantage.<sup>308</sup>

The Commission does not need to reach a decision on whether the new requirements are mandated by the state. The question whether there is a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution considers multiple elements, all of which must be satisfied to approve a test claim.<sup>309</sup> As explained below, regardless of whether or not the state mandates school districts to provide a TK program and comply with the new requirements, there are no costs mandated by the state.

## **2. There Are No Costs Mandated by the State Pursuant to Government Code Section 17556(e) Because the State Has Provided Additional Revenue Specifically Intended to Fund the Costs of the Transitional Kindergarten Program.**

Article XIII B, section 6 was intended to prevent state government attempts "to force programs on local governments without the state paying for them."<sup>310</sup> However,

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<sup>306</sup> Exhibit H, Claimants' Comments on the Draft Proposed Decision, pages 2-3, 5 (Letter from Anthony Ranii, President, Schools for Sound Finance); Exhibit J, California Department of Education's Comments on the Draft Proposed Decision, pages 1-2.

<sup>307</sup> Exhibit H, Claimants' Comments on the Draft Proposed Decision, pages 3-4.

<sup>308</sup> Exhibit J, California Department of Education's Comments on the Draft Proposed Decision, page 2.

<sup>309</sup> See *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

<sup>310</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1282; Government Code section 17514.

reimbursement is not required if any of the exceptions to costs mandated by the state in Government Code section 17556 apply.

Government Code section 17556(e) provides that the Commission shall not find costs mandated by the state if a bill includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. Here, the parties dispute whether funding has been provided to pay for the TK program.

The claimants allege that the test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 because they are basic aid districts that receive property tax revenue instead of state funding under the LCFF formula, and therefore they did not receive funding from the state for pupils admitted in the transitional kindergarten program in 2023-2024.<sup>311</sup>

Finance argues that all school districts, including basic aid districts such as the claimants, receive an entitlement according to the LCFF, as outlined by Education Code section 42238.02, but the entitlements are funded through a mix of property tax revenue, the Education Protection Account, and state funding.<sup>312</sup> Because basic aid districts' property tax revenue exceeds their LCFF entitlement, they do not receive any additional state funds for their entitlement. Education Code sections 42238.02 and 42238.03 guarantee that no school district would receive less state aid from the LCFF than it received in 2012-13 through the previous revenue limits system; most schools satisfy this provision through the LCFF target entitlement, but basic aid districts — which do not need additional state aid to meet their LCFF entitlement — receive the Minimum State Aid (MSA) to fulfill this requirement.<sup>313</sup> Finance states the costs for TK attendance are included in the 2022-2023 and 2023-2024 apportionment calculations “which means that all apportionment-generating local education agencies, which includes basic aid districts, will receive ongoing LCFF funding for TK pupils.”<sup>314</sup> Finance argues that while increasing basic aid districts' entitlements means decreasing the amount of excess property tax revenue they are allowed to use on local educational priorities, “basic aid districts are not entitled to a specific amount of excess property tax revenue.”<sup>315</sup> Finance also points out that Education Code section 41202(g) defines the term “allocated local proceeds of taxes,” to include local revenues used to offset LCFF state aid.<sup>316</sup>

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<sup>311</sup> Exhibit A, Test Claim, page 13.

<sup>312</sup> Exhibit B, Finance's Comments on the Test Claim, pages 1-2. See Education Code section 42238.02.

<sup>313</sup> Education Code sections 42238.02, 42238.03.

<sup>314</sup> Exhibit B, Finance's Comments on the Test Claim, page 2; Education Code section 41204.7(a).

<sup>315</sup> Exhibit B, Finance's Comments on the Test Claim, page 2.

<sup>316</sup> Exhibit B, Finance's Comments on the Test Claim, pages 2-3.

The claimants respond that this explanation does not acknowledge the funding that other school districts receive specifically for the TK program, and fails to explain why other LEAs receive TK funding but basic aid districts were excluded.<sup>317</sup> Comments from interested parties and interested persons assert that while Finance's statements are accurate, it does not acknowledge that basic aid districts do not receive any additional state dollars to support TK implementation despite their entitlements growing; in other words, "the state's mechanism for funding UTK leaves out community-funded districts and has effectively made those districts pay for the implementation of a new, full grade level with existing resources."<sup>318</sup>

Thus, the core dispute between claimants, interested parties, and the state is whether the state has satisfied its obligation to provide funding for transitional kindergarten by providing the apportionment through the LCFF. Finance alleges that the state has met its obligations through school districts' LCFF entitlements, but claimants and interested parties and interested persons argue that because basic aid districts' LCFF entitlements are completely offset by their local property tax revenue, the state does not provide them additional funding for this program, making this an unfunded state mandate.

The Commission finds that the state has provided funding specifically intended to fund the TK program, including the new required activities, satisfying its obligation to provide funding, and, thus, there are no costs mandated by the state pursuant to Government Code section 17556(e).

The Legislature has provided funding specifically for the TK program through the LCFF.<sup>319</sup> The test claim statute states that the required activities are a "condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300."<sup>320</sup> Education Code section 46300(g)(1) expressly states that in computing the ADA of a school district, "there shall be included the attendance of pupils in . . . a transitional kindergarten program after they have completed one year in that program if . . . (B) The pupils participated in a transitional kindergarten program pursuant to subdivision (c) of Section 48000."<sup>321</sup> The state uses ADA when determining how much funding to provide for school districts, both the overall funding set aside for all school districts through Proposition 98, and when determining how much to provide each school district under the LCFF.

Article XVI, section 8(b) of the California Constitution (Proposition 98) provides the formulas used to determine how much funding the state shall set aside for public

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<sup>317</sup> Exhibit C, Claimants' Rebuttal Comments, page 3; Exhibit H, Claimants' Comments on the Draft Proposed Decision, page 4.

<sup>318</sup> Exhibit C, Claimants' Rebuttal Comments, page 13 (Letter from Anthony Ranii, President, Schools for Sound Finance).

<sup>319</sup> Statutes 2010, chapter 705, section 5; Education Code section 42238.02(d)(1), (4), (g)(2).

<sup>320</sup> Education Code section 48000(c)(1), (g).

<sup>321</sup> Education Code section 46300 (as last amended by Statutes 2010, chapter 705).

education each year, consisting of a mix of state General Fund revenue and allocated local proceeds of taxes.<sup>322</sup> Education Code section 41202(g) defines “allocated local proceeds of taxes,” as used in the Proposition 98 formulas to include local revenues that are used to offset state aid for school districts in LCFF calculations, i.e., a school district’s property tax revenue.<sup>323</sup> In other words, the property tax revenue used to offset a school district’s LCFF entitlement is always included in the “allocated local proceeds of taxes” the state is obligated to set aside for support of education under Proposition 98. As explained in the Background, state and local proceeds of taxes have historically been shared to provide annual funding for school districts, school district funding remained shared when article XIII B, section 6 of the California Constitution was adopted in 1979, and it remains shared today to satisfy the state’s minimum funding obligation under Proposition 98.<sup>324</sup>

The LCFF entitlement formula apportioned to each school district from the Proposition 98 funds provides school districts base rate funding per unit of ADA for pupils in a TK program, adjusted annually.<sup>325</sup> As of the 2022-23 fiscal year the base rate for kindergarten (including TK) through grade three was \$10,119 per pupil.<sup>326</sup> This base rate includes an existing 10.4 percent adjustment that is contingent on maintaining an average class size of 24 pupils.<sup>327</sup> Starting in 2022, the Legislature also provided an add-on to the LCFF entitlement formula equal to \$2,813 per unit of ADA generated by TK pupils, to be adjusted annually for cost-of-living increases, which it specified was intended to cover the costs to meet the requirement to maintain an average of one adult for every twelve pupils in a TK classroom.<sup>328</sup> In total, school districts are entitled to at least \$12,932 per unit of ADA generated by TK pupils for a school district to admit all pupils born within the mandatory date ranges, maintain a maximum average TK class size of 24 pupils per school site, and maintain an average of one adult for every twelve pupils in a TK classroom. Finance is also specifically required by statute to annually adjust the amount of revenues appropriated for Proposition 98, so that any changes in

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<sup>322</sup> California Constitution, article XVI, section 8(b)(2) and (3).

<sup>323</sup> Education Code section 41202(g).

<sup>324</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App,4th 1264, 1272-1274; California Constitution, article XVI, section 8.

<sup>325</sup> Education Code section 42238.02(c), (d). Education Code section 42238.02(d)(3)(D)(ii) specifically states “for purposes of meeting the requirements of paragraph (1) of subdivision (g) of Section 48000, a school district shall maintain an average transitional kindergarten class enrollment of not more than 24 pupils for each schoolsite.”

<sup>326</sup> Exhibit L (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, (accessed on January 24, 2025), page 3.

<sup>327</sup> Education Code section 42238.02(d)(3).

<sup>328</sup> Education Code section 42238.02(g)(2), as amended by Statutes 2022, chapter 52, (AB 181) section 38.

LCFF apportionments caused by an increase in ADA from TK implementation “results in a commensurate increase in General Fund proceeds of taxes and allocated local proceeds of taxes that are required to be applied by the state for the support of school districts . . . .”<sup>329</sup> The Education Code further requires school districts to use all money apportioned from the State School Fund during any fiscal year *exclusively for the support of the school or schools* of the school district, and further specifies that 60 percent of elementary school districts’ expenses shall go towards classroom teachers’ salaries.<sup>330</sup> Therefore, the state has provided funding to school districts specifically intended for the new requirements in the TK program in an amount sufficient to fund the cost of the state mandate through the LCFF entitlement.

The claimants further argue that

It is undisputed Claimants were excluded from receiving an apportionment for pupils in a transitional kindergarten program. Districts that received apportionment for the TK program also receive LCFF funding. Nonetheless, the State takes the indefensible position Claimants are required to provide the TK program thru their LCFF funding. Nothing in the test claim statute states or infers Claimants are exempt from receiving apportionment funding nor that Claimants are required to use their LCFF funding in lieu of receiving the apportionment.<sup>331</sup>

This argument seems to rely on an interpretation of the apportionment received for TK as separate from and in addition to the LCFF entitlement (“Districts that received apportionment for the TK program also receive LCFF funding”). This position is not supported by the law or any evidence provided by the claimants.

The apportionment described is “pursuant to subdivision (g) of Section 46300,” referring to the section that grants school districts authority to collect ADA specifically for TK students, and in the bill that created the TK program, the Legislature included a statement that it “finds and declares that pupils participating in transitional kindergarten are to be included in computing the average daily attendance of a school district for the purposes of calculating school district apportionments and the funding requirements of Section 8 of Article XVI of the California Constitution.”<sup>332</sup> As stated above, the LCFF is used to determine a school district’s share of the Proposition 98 funding for the support of schools based on a district’s ADA, including the ADA generated from the TK program.<sup>333</sup> Additionally, the extra funding intended for the average maximum class size and adult-to-pupil ratios are built into the LCFF entitlement calculation.<sup>334</sup> The

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<sup>329</sup> Education Code section 41204.7(a).

<sup>330</sup> Education Code sections 41370(a) and 41372.

<sup>331</sup> Exhibit K, Claimants’ Late Comments on the Draft Proposed Decision, page 2.

<sup>332</sup> Education Code section 48000(c)(1); Statutes 2010, chapter 705, section 5.

<sup>333</sup> Education Code section 42238.02(d)(1)(A), (d)(2).

<sup>334</sup> Education Code section 42238.02(d)(3), (g)(2).

Legislature's clear intention is that the apportionment for TK is built into school districts' LCFF entitlement calculation; not for there to be a separate apportionment solely for TK.

The Supreme Court's 2019 decision in *California School Boards' Association v. State of California* (CSBA) supports the finding here that funds apportioned to school districts under Proposition 98 for the TK program provide funding specifically intended to fund the costs of a state-mandated program under article XIII B, section 6.<sup>335</sup> There, CSBA challenged the constitutionality of statutes enacted in 2010 directing the use of existing "unrestricted" Proposition 98 funding as offsetting revenues to prospectively pay the costs of two education mandates, including the *Graduation Requirements* mandate.<sup>336</sup> The *Graduation Requirements* program addressed a 1983 Education Code statute that increased the number of science courses required for high school graduation beginning with the 1986-1987 school year from one course to two courses, and reimbursement under article XIII B, section 6 was found to be required for several costs including the increased cost to school districts for staffing the new mandated science class.<sup>337</sup> At the time the test claim decision was adopted by the Commission in 1986, the Legislature had not provided any funding specifically for the mandate.<sup>338</sup> The 2010 statute, however, stated in relevant part the following: "Costs related to the salaries and benefits of teachers incurred by a school district or county office of education to provide the courses specified in paragraph (1) of subdivision (a) of Section 51225.3 [i.e., the test claim code section in *Graduation Requirements*] shall be offset by the amount of state funding apportioned to the district pursuant to this article" and "The proportion of the school district's current expense of education that is required to be expended for payment of the salaries of classroom teachers pursuant to Section 41372 shall first be allocated to fund the teacher salary costs incurred to provide the courses required by the state."<sup>339</sup>

CSBA challenged the 2010 statute contending the Legislature may not "identify pre-existing education funding as mandate payment" but must instead allocate "additional funding" to satisfy its mandate reimbursement obligation under article XIII B, section 6. CSBA further argued the treatment of these funds as "offsetting revenues" . . . "allows the State to eliminate a mandate obligation without actually providing any payment by

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<sup>335</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713.

<sup>336</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 724.

<sup>337</sup> Commission on State Mandates, Decision and Parameters and Guidelines Amendment, *Graduation Requirements*, 11-PGA-03 (CSM-4181A), adopted July 23, 2021, <https://www.csm.ca.gov/decisions/180.pdf> (accessed on February 3, 2025), page 26.

<sup>338</sup> Commission on State Mandates, Test Claim Decision, *Graduation Requirements*, CSM-4181, adopted January 22, 1987, <https://www.csm.ca.gov/decisions/181.pdf> (accessed on February 3, 2025), page 6.

<sup>339</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 722; Education Code section 42238.24 (Statutes 2010, chapter 724).



simply identifying existing funding and designating it ‘offsetting revenues.’”<sup>340</sup> The State disagreed, arguing the Legislature may designate state funding to pay the costs of the mandate without violating article XIII B, section 6 or any other constitutional provision.<sup>341</sup>

The court in *CSBA* found the statutes constitutional and did not violate article XIII B, section 6, and that the state had provided funding specifically intended to cover the costs of the *Graduation Requirements* program, which had to first be used to fully offset any claim for reimbursement. Contrary to claimants’ arguments, it found that the Legislature has multiple methods available to it for satisfying the state’s mandate obligations, such as: 1) providing new funding; 2) eliminating a different program or funded mandate to free up funds; 3) identifying new offsetting savings or offsetting revenue; 4) designating previously unrestricted funding as prospectively allocated for the mandate; or 5) suspending the mandate and rendering it unenforceable.<sup>342</sup>

“Pursuant to its broad authority over revenue collection and allocation, the Legislature may increase, decrease, earmark, or otherwise modify state education funding in order to satisfy reimbursement obligations, so long as its chosen method is consistent with Proposition 98 and other constitutional guarantees.”<sup>343</sup> The court recognized that although the funds the claimants may have wished to use exclusively for other substantive program activities are now reduced as a result of the 2010 statute, this did not in itself transform the costs into a reimbursable state mandate.<sup>344</sup> “The circumstance that the program funds claimants may have wished to use exclusively for substantive program activities are thereby reduced, does not in itself transform the related costs into a reimbursable state mandate.”<sup>345</sup> The court explained that:

CSBA’s insistence that article XIII B, section 6 requires the state to provide “additional” funding to cover the [Graduation Requirements] mandates ultimately rests on its contention that the Legislature may not “identify pre-existing education funding as mandate payment.” But article XIII B, section 6 does not guarantee any baseline of “pre-existing education funding,” . . .<sup>346</sup>

The court also rejected CSBA’s argument that “once certain funding is defined as the education agencies’ ‘proceeds of taxes,’ it is protected by Section 6 and the State’s authority is correspondingly limited,”<sup>347</sup> as follows:

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<sup>340</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 724.

<sup>341</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 725.

<sup>342</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 726.

<sup>343</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 726.

<sup>344</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 727.

<sup>345</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 725.

<sup>346</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 727.

<sup>347</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.

CSBA is correct that Government Code sections 7906 and 7907 define school districts' and county superintendents' "proceeds of taxes" to include unrestricted state education funding. But those statutes do not guarantee or lock into place any baseline of unrestricted state funding, and as explained above, article XIII B, section 6 does not preclude the Legislature from adjusting the mix of state funding allocated for unrestricted versus mandate purposes.<sup>348</sup>

The court concluded, "CSBA cites no other constitutional provision or authority that bars the Legislature from identifying a portion of previously unrestricted state funding and prospectively designating it to be used to offset mandate costs. Funds so designated are not local proceeds of taxes."<sup>349</sup> The court stated the following:

CSBA's "local proceeds of taxes" argument ultimately reduces to the assertion that article XIII B, section 6 prohibits the Legislature from allocating the funds specified in Education Code sections 42238.24 and 56523(f) to pay mandate costs because those funds are subventions received from the state other than pursuant to article XIII B, section 6. But even if those funds were previously "local proceeds of taxes," the Legislature has prospectively designated them as subventions for mandate reimbursement in accordance with article XIII B, section 6. CSBA cites no other constitutional provision or authority that bars the Legislature from identifying a portion of previously unrestricted state funding and prospectively designating it to be used to offset mandate costs. Funds so designated are not local proceeds of taxes. (See Cal. Const. art. XIII B, § 8, subd. (c); Gov. Code, § 7906, subd. (c)(2)(A).)<sup>350</sup>

Here, the Legislature has added funding specifically for the TK program through the LCFF. Each student that attends a TK program generates ADA for the school district, which is used in calculating school district apportionments under the LCFF.<sup>351</sup> This ADA would not otherwise exist if not for the TK program, as without transitional kindergarten, school districts are only required to admit a child into kindergarten if they will have their fifth birthday by September 1 of that school year, and the children who are eligible to enroll in TK do not meet that requirement. Factually, this is in contrast to the issue in *Graduation Requirements* in which the mandated program added a required course but did not *initially* provide additional ADA or other funding specifically intended to fund the cost of the mandate and thus the Commission approved the test claim and found there were increased costs mandated by the state. There, the increased costs of the mandate were not specifically funded until years after the mandate determination, when the Legislature designated funding that would from then on be used to pay for the costs of the program. Here, the Legislature has already provided funding through

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<sup>348</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.

<sup>349</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

<sup>350</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

<sup>351</sup> See Statutes 2010, chapter 705 (SB 1381), section 5.

additional ADA and through add-on grants meant to address increased costs from specific requirements in the test claim statute. As indicated above, school districts are entitled to at least \$12,932 per unit of ADA generated by TK pupils specifically for the program.<sup>352</sup> Just like the court held in *CSBA*, the state has satisfied its funding obligations under article XIII B, section 6 of the California Constitution when it designates funds appropriated by the state for education as subventions for mandate reimbursement. Such funds “are not local proceeds of taxes.”<sup>353</sup>

Although the state’s chosen method leaves basic aid school districts with less excess property tax revenue to spend on local education priorities, this does not mean that reimbursement under article XIII B, section 6 is required. “The circumstance that the program funds claimants may have wished to use exclusively for substantive program activities are thereby reduced, does not in itself transform the related costs into a reimbursable state mandate.”<sup>354</sup>

The Legislature has satisfied its obligation to provide funding for this program through school districts’ entitlements under the LCFF. Accordingly, there are no costs mandated by the state pursuant to Government Code section 17556(e).

## **V. Conclusion**

Based on the foregoing analysis, the Commission denies this Test Claim.

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<sup>352</sup> Education Code section 42238.02(d)(1)(A), (d)(2), (d)(3), and (g)(2).

<sup>353</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

<sup>354</sup> *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 725.