



May 6, 2025

Mr. Chris Hill
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Arthur M. Palkowitz
Law Offices of Arthur M. Palkowitz
12807 Calle de la Siena
San Diego, CA 92130

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

Re: Proposed Decision

Transitional Kindergarten, 23-TC-02
Statutes 2021, Chapter 44, Section 60 (AB 130);
Education Code Section 48000, Effective July 9, 2021
Hope Elementary School District and Sunnyvale School District, Claimants

Dear Mr. Hill and Mr. Palkowitz:

The Proposed Decision for the above-captioned matter is enclosed for your review.

Hearing: This matter is set for hearing on **Friday, May 23, 2025, at 10:00 a.m., at California Department of Food and Agriculture (CDFA), First Floor Auditorium, 1220 N Street, Sacramento, California, 95814 and via Zoom.**

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Testimony at the Commission Hearing: If you plan to address the Commission on an agenda item, please notify the Commission Office **not later than noon on the Tuesday prior to the hearing, May 20, 2025**. Please also include the names of the people who will be speaking for inclusion on the witness list and the names and email addresses of the people who will be speaking both in person and remotely to receive a hearing panelist link in Zoom. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

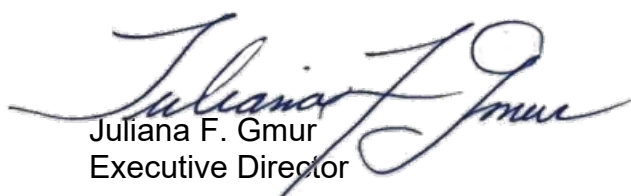
Time to File Written Comments: If you plan to file any written document, please note that Commission staff will include written comments filed at least 15 days in advance of the hearing in the Commissioners' hearing binders, a copy of which is available for public viewing at the Commission meeting. Additionally, written comments filed more than five days in advance of the meeting shall be included in the Commission's meeting binders, if feasible, or shall be provided to the Commission when the item is called, unless otherwise agreed by the Commission or the executive director. (Cal. Code Regs., tit. 2, § 1181.10(b)(1)(A-B).

However, comments filed less than five days in advance of the meeting, the commenter shall provide 12 copies to Commission staff at the in-person meeting. In the case of participation by teleconference, a PDF copy shall be filed via the Commission's dropbox at <https://www.csm.ca.gov/dropbox.shtml> at least 24 hours prior to the meeting. Commission staff shall provide copies of the comments to the Commission and shall place a copy on a table for public review when the item is called or, in the case of participation via teleconference, shall provide an electronic copy to the Commission and post a copy on the Commission's website, and may share the document with the Commission and the public using the "share screen" function. (Cal. Code Regs., tit. 2, § 1181.10(b)(1)(C)).

Postponement: If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

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

Very truly yours,



Juliana F. Gmur
Executive Director

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

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).¹ 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.”² 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.³ 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.⁴

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

¹ Transitional kindergarten and TK are used interchangeably throughout this Decision.

² Education Code section 48000(d).

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

⁴ 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, 2024.⁵ 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.⁶ The Department of Finance (Finance) filed comments on the Test Claim on July 11, 2024.⁷ 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.⁸

Commission staff issued the Draft Proposed Decision on March 27, 2025.⁹

The claimants, Finance, and the California Department of Education (CDE) each filed comments on the Draft Proposed Decision on April 17, 2025.¹⁰ On April 21, 2025, claimants filed additional Late Comments responding to CDE's comment letter.¹¹

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

⁵ Exhibit A, Test Claim.

⁶ 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.

⁷ Exhibit B, Finance's Comments on the Test Claim.

⁸ Exhibit C, Claimants' Rebuttal Comments, filed August 8, 2024.

⁹ Exhibit G, Draft Proposed Decision.

¹⁰ 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.

¹¹ 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.”¹²

Claims

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

| Issue | Description | Staff Recommendation |
|----------------------------------|---|---|
| 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. ¹³ 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.” ¹⁴ | <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. ¹⁶ 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. ¹⁷ Finance asserts that because some of the test claim statute’s |

¹² *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.

¹³ Government Code section 17551(c).

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

¹⁶ 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.)

¹⁷ 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.¹⁵</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.¹⁸ 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> |

¹⁵ Government Code 17557(e).

¹⁸ 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 2023-2024.¹⁹</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."²⁰ 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."²¹ ADA is the total number of days of pupil attendance divided by the total number of days in the</p> |

¹⁹ Exhibit A, Test Claim, page 13.

²⁰ See Education Code section 46300(g)(1).

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

| Issue | Description | Staff Recommendation |
|-------|-------------|---|
| | | <p>regular school year.²² 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.²³</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.²⁴ This is ADA the school district would not otherwise receive if not for the TK program, as TK students are not</p> |

²² Education Code section 46301.

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

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

| Issue | Description | Staff Recommendation |
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| | | <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.²⁵</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.²⁶ CSBA claimed that article XIII B, section 6 requires the Legislature to appropriate <i>additional</i> funding for state mandated programs.²⁷ The court</p> |

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

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

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

| Issue | Description | Staff Recommendation |
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| | | <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.”²⁸ 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,”²⁹ 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.”³⁰ 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> |

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

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

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

| Issue | Description | Staff Recommendation |
|-------|-------------|--|
| | | <p>other constitutional guarantees.”³¹</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.³² 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.”³³</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.³⁴ 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.”³⁵ 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

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

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

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

³⁴ TK and transitional kindergarten are used interchangeably throughout this Decision.

³⁵ 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.³⁶ The apportionment promised comes from the increase in the school district's average daily attendance (ADA) caused by TK pupils attending the program.³⁷ ADA is the total number of days of pupil attendance divided by the total number of days in the regular school year.³⁸ 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.³⁹

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.⁴⁰ 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.⁴¹ 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."⁴²

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-

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

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

³⁸ Education Code section 46301.

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

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

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

⁴² 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.⁴³ 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.”⁴⁴ 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.”⁴⁵

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.⁴⁶ “Local proceeds of taxes” includes any local property tax revenue that offsets a school district’s funding entitlement.⁴⁷ 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 2022-2023.⁴⁸

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.⁴⁹ 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

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

⁴⁴ Education Code section 48000(c)(1), (g).

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

⁴⁶ California Constitution, article XVI, section 8(b)(2) and (3).

⁴⁷ Education Code section 41202(g).

⁴⁸ Education Code section 41204.7 (Statutes 2022, chapter 52).

⁴⁹ 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.⁵⁰ 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:⁵¹ \$120 per pupil ADA but not less than \$2,400 total;⁵² and the Education Protection Account provides additional funding at minimum \$200 per unit of ADA.⁵³ 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.⁵⁴

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.⁵⁵ 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.⁵⁶ As indicated above, school districts are entitled to \$12,932 per unit of ADA generated by TK pupils specifically for the

⁵⁰ Education Code section 42238.03(c)(1)(A).

⁵¹ 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.

⁵² California Constitution, article IX, section 6.

⁵³ 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.

⁵⁴ Education Code 42238.03(e)

⁵⁵ See Statutes 2010, chapter 705 (SB 1381), section 5.

⁵⁶ Education Code section 48000(a).

program.⁵⁷ 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.”⁵⁸

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.⁵⁹ 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.⁶⁰ 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.”⁶¹ 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,” . . .⁶²

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,”⁶³ as follows:

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

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

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

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

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

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

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

⁶³ *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.⁶⁴

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.⁶⁵ "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."⁶⁶

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."⁶⁷

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.

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

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

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

⁶⁷ *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:

| Member | Vote |
|---|-------------|
| 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.⁶⁸ 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.”⁶⁹ 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.⁷⁰ The apportionment promised comes from the increase in the school district’s average daily attendance (ADA) caused by TK pupils attending the program.⁷¹ ADA is the total number of days of pupil attendance divided by the total number of days in the regular school year.⁷² 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.⁷³

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.⁷⁴ 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.⁷⁵ Education Code section 48000(e), as originally added in 2010 and

⁶⁸ TK and transitional kindergarten are used interchangeably throughout this Decision.

⁶⁹ Education Code section 48000(d).

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

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

⁷² Education Code section 46301.

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

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

⁷⁵ 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.”⁷⁶

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.⁷⁷ 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.”⁷⁸ 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.”⁷⁹

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.⁸⁰ “Local proceeds of taxes” includes any local property tax revenue that offsets a school district’s funding entitlement.⁸¹ 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 2022-2023.⁸²

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

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

⁷⁸ Education Code section 48000(c)(1), (g).

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

⁸⁰ California Constitution, article XVI, section 8(b)(2) and (3).

⁸¹ Education Code section 41202(g).

⁸² 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.⁸³ 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.⁸⁴ 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 Constitution⁸⁵: \$120 per pupil ADA but not less than \$2,400 total;⁸⁶ and the Education Protection Account provides additional funding at minimum \$200 per unit of ADA.⁸⁷ 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.⁸⁸

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

⁸³ 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.

⁸⁴ Education Code section 42238.03(c)(1)(A).

⁸⁵ 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.

⁸⁶ California Constitution, article IX, section 6.

⁸⁷ 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.

⁸⁸ 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.⁸⁹ 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.⁹⁰ As indicated above, school districts are entitled to \$12,932 per unit of ADA generated by TK pupils specifically for the program.⁹¹ 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.”⁹²

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.⁹³ 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.⁹⁴ 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.”⁹⁵ The court explained that:

⁸⁹ See Statutes 2010, chapter 705 (SB 1381), section 5.

⁹⁰ Education Code section 48000(a).

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

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

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

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

⁹⁵ *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," . . .⁹⁶

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,"⁹⁷ 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.⁹⁸

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.⁹⁹ "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."¹⁰⁰

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."¹⁰¹

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.

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

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

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

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

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

¹⁰¹ *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. ¹⁰² |
| 04/12/2024- 05/13/2024 | Parties, interested parties, and interested persons filed comments on the Test Claim. ¹⁰³ |
| 07/11/2024 | The Department of Finance (Finance) filed comments on the Test Claim. ¹⁰⁴ |
| 08/08/2024 | The claimants filed rebuttal comments. ¹⁰⁵ |
| 03/27/2025 | Commission staff issued the Draft Proposed Decision. ¹⁰⁶ |
| 04/17/2025 | The claimants, Finance, and the California Department of Education (CDE) each filed comments on the Draft Proposed Decision. ¹⁰⁷ |
| 04/21/2025 | The claimants filed additional Late Comments on the Draft Proposed Decision in response to CDE's Comments ¹⁰⁸ |

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

¹⁰² Exhibit A, Test Claim.

¹⁰³ 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.

¹⁰⁴ Exhibit B, Finance's Comments on the Test Claim.

¹⁰⁵ Exhibit C, Claimants' Rebuttal Comments.

¹⁰⁶ Exhibit G, Draft Proposed Decision.

¹⁰⁷ 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.

¹⁰⁸ Exhibit K, Claimants' Late Comments on the Draft Proposed Decision.

at least six months in every year.”¹⁰⁹ 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.”¹¹⁰ Education Code section 48200 says that “each person between the ages of 6 and 18 years ...is subject to compulsory full time education.”¹¹¹ 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.¹¹² 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.¹¹³

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.¹¹⁴ 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 1.¹¹⁵ 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.¹¹⁶ However, low- and moderate-income families that could not afford

¹⁰⁹ California Constitution, article IX, section 5.

¹¹⁰ California Constitution, article IX, section 6.

¹¹¹ Education Code section 48200.

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

¹¹³ Education Code section 48000(b).

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

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

¹¹⁶ 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.¹¹⁷

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.¹¹⁸ 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.¹¹⁹ 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.¹²⁰ 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.¹²¹

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.¹²² 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.¹²³ The Act also amended section 48000 to define transitional kindergarten as "the first year of a two-year kindergarten program that uses

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

¹¹⁸ See Statutes 2010, chapter 705 (SB 1381).

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

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

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

¹²² 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.

¹²³ 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.¹²⁴

(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.¹²⁵

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.¹²⁶

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...”¹²⁷

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.”¹²⁸

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

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

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

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

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

¹²⁸ 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.”¹²⁹ 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.”¹³⁰ 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.¹³¹ 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.¹³² Seven percent of school districts reported they did not have a TK program that year because they were small districts with no eligible students.¹³³ 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

¹²⁹ 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.

¹³⁰ Statutes 2010, chapter 705, section 5.

¹³¹ 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).

¹³² 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.

¹³³ 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.”¹³⁴

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.¹³⁵ 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.¹³⁶ 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.¹³⁷ He also admitted there were few options for recourse available to parents in districts that chose not to provide TK.¹³⁸

¹³⁴ 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.

¹³⁵ 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).

¹³⁶ 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.

¹³⁷ 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.

¹³⁸ 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.”¹³⁹

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.¹⁴⁰ 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.¹⁴¹ 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.¹⁴² Finally in 2020, the Legislature extended the deadline for compliance with the previously imposed teacher credentialing requirements to August 1, 2021.¹⁴³ 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

¹³⁹ 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.

¹⁴⁰ Statutes 2014, chapter 32, section 33 (SB 858).

¹⁴¹ Statutes 2015, chapter 13, section 28 (AB 104).

¹⁴² Statutes 2018, chapter 32, section 46 (AB 1808).

¹⁴³ Statutes 2020, chapter 24, section 55 (SB 98).

transitional kindergarten program.”¹⁴⁴ 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.”¹⁴⁵ 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.¹⁴⁶ 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.”¹⁴⁷ 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.”¹⁴⁸ “A school district or county office of education operating a kindergarten program must offer

¹⁴⁴ 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.

¹⁴⁵ Statutes 2014, chapter 687, (SB 876), Summary Digest, paragraph 5.

¹⁴⁶ 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.

¹⁴⁷ 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.

¹⁴⁸ 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.”¹⁴⁹ 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.”¹⁵⁰ 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.¹⁵¹ 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.¹⁵² 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.¹⁵³ 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 1.¹⁵⁴ In one case, a school district offers TK but with

¹⁴⁹ 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.

¹⁵⁰ 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.

¹⁵¹ 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.

¹⁵² 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.

¹⁵³ 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.

¹⁵⁴ Exhibit L (8), Alexander Valley School District, Intent to Enroll Form, 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.¹⁵⁵

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

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 (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.

¹⁵⁵ 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.¹⁵⁶

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.¹⁵⁷

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.¹⁵⁸

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

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

¹⁵⁸ 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.”¹⁵⁹

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.”¹⁶⁰ 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.”¹⁶¹ 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.¹⁶²
- 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

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

¹⁶⁰ Statutes 2021, chapter 44 (AB 130), Summary Digest, paragraph 2.

¹⁶¹ Statutes 2021, chapter 44 (AB 130), Summary Digest, paragraph 2.

¹⁶² 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.¹⁶³

- 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.¹⁶⁴

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.¹⁶⁵

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.¹⁶⁶ A single student with perfect attendance for one year would generate one unit of ADA for

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

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

¹⁶⁵ Education Code section 46300(g).

¹⁶⁶ 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.¹⁶⁷ 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.¹⁶⁸

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.”¹⁶⁹ 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.”¹⁷⁰

Before Proposition 13, public schools were funded from local taxes on real property, supplemented by the State School Fund.¹⁷¹ “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.”¹⁷²

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.*

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

¹⁶⁸ Education Code section 42238.05(a)(1).

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

¹⁷⁰ *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.

¹⁷¹ *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.”

¹⁷² *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.¹⁷³ 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.¹⁷⁴ 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.¹⁷⁵ “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.”¹⁷⁶

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.¹⁷⁷

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.”¹⁷⁸ 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

¹⁷³ *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.

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

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

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

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

¹⁷⁸ 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.¹⁷⁹

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.¹⁸⁰

"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."¹⁸¹ 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

¹⁷⁹ California Constitution, article XVI, section 8(b).

¹⁸⁰ California Constitution, article XVI, section 8(d), (e), (h).

¹⁸¹ 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.¹⁸²

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.¹⁸³

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.¹⁸⁴ Prior to 2013, each school district's apportionment was calculated individually using a revenue limits system based on historic spending levels.¹⁸⁵ 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.¹⁸⁶

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 12.¹⁸⁷ Students in a TK program are counted as kindergarten students for the purpose of this calculation.¹⁸⁸ 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 12.¹⁸⁹ The base rates are adjusted annually to account for cost-of-living increases.¹⁹⁰ These adjustments also

¹⁸² Education Code section 41204.7 (Statutes 2022, chapter 52).

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

¹⁸⁴ Education Code sections 42238.02, 42238.03.

¹⁸⁵ 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.

¹⁸⁶ 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.

¹⁸⁷ Education Code section 42238.02(d)(1).

¹⁸⁸ 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.

¹⁸⁹ 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.

¹⁹⁰ 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.¹⁹¹ The total of the four grade spans is the school district's base grant.¹⁹²

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.¹⁹³ 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.¹⁹⁴

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.¹⁹⁵

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 2023-2024.¹⁹⁶ 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

¹⁹¹ Education Code section 42238.02(d)(3), (4).

¹⁹² 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).

¹⁹³ Education Code section 42238.02(e).

¹⁹⁴ Education Code section 42238.02(f).

¹⁹⁵ Education Code section 42238.02(g)(1), (h).

¹⁹⁶ 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.”¹⁹⁷

The total of a school district’s base, supplemental, and concentration grants, and any add-ons, is the school district’s LCFF entitlement.¹⁹⁸ 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.¹⁹⁹ 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:²⁰⁰

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

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

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

¹⁹⁸ 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.

¹⁹⁹ Education Code section 42238.03(c)(1)(A).

²⁰⁰ 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.

²⁰¹ California Constitution, article IX, section 6.

²⁰² 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”).²⁰³

Basic aid districts are free to use whatever property tax revenue they have in excess of their LCFF entitlement on their local educational priorities.²⁰⁴ 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.”²⁰⁵ 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.²⁰⁶

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.

²⁰³ 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.

²⁰⁴ 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.

²⁰⁵ Education Code section 41370(a).

²⁰⁶ 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.²⁰⁷

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.”²⁰⁸ 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.²⁰⁹

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

²⁰⁷ Exhibit A, Test Claim, page 12.

²⁰⁸ Exhibit A, Test Claim, pages 12-13.

²⁰⁹ 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.²¹⁰

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.”²¹¹

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, 2023.²¹² 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.²¹³ 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.²¹⁴
- \$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.²¹⁵

²¹⁰ Exhibit A, Test Claim, page 13.

²¹¹ Exhibit A, Test Claim, page 16.

²¹² 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).

²¹³ 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).

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

²¹⁵ 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.²¹⁶

Alleged increased costs for Hope Elementary School District are:

- \$433,671.46 for 2.5 (FTE) additional teachers in fiscal year 2023-24.²¹⁷
- \$83,963.03 for 1.65 (FTE) additional classified employees in fiscal year 2023-24.²¹⁸
- 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.²¹⁹

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.²²⁰

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.²²¹

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.²²² 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.²²³

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

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

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

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

²²⁰ Exhibit C, Claimants' Rebuttal Comments, page 3.

²²¹ Exhibit C, Claimants' Rebuttal Comments, page 3.

²²² Exhibit C, Claimants' Rebuttal Comments, page 4.

²²³ 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, 2025.²²⁴ The claimants reassert they are legally compelled to provide TK, based on the test claim statute's use of the word "shall."²²⁵ 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."²²⁶ 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** ..."²²⁷ 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.²²⁸

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.²²⁹

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.

²²⁴ Exhibit H, Claimants' Comments on the Draft Proposed Decision.

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

²²⁶ Exhibit H, Claimants' Comments on the Draft Proposed Decision page 3.

²²⁷ 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.

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

²²⁹ 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.”²³⁰

On April 21, 2025, the claimants filed additional Late Comments on the Draft Proposed Decision, responding to the CDE’s comments.²³¹ The claimants agree with the CDE’s arguments for why school districts are both legally and practically compelled to provide a TK program.²³² 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.²³³

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.²³⁴

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.

²³⁰ Exhibit H, Claimants’ Comments on the Draft Proposed Decision, page 4.

²³¹ Exhibit K, Claimants’ Late Comments on the Draft Proposed Decision.

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

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

²³⁴ 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.”²³⁵ 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.²³⁶ Finance asserts that this funding can be applied to costs relating to TK pupil instruction, among other allowable services.²³⁷ 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.²³⁸

²³⁵ Exhibit B, Finance’s Comments on the Test Claim, page 1.

²³⁶ Exhibit B, Finance’s Comments on the Test Claim, page 2.

²³⁷ Exhibit B, Finance’s Comments on the Test Claim, page 2.

²³⁸ 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.²³⁹ 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.²⁴⁰

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."²⁴¹ 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."²⁴² 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.²⁴³

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

²³⁹ Exhibit B, Finance's Comments on the Test Claim, page 2.

²⁴⁰ Exhibit B, Finance's Comments on the Test Claim, page 3.

²⁴¹ Exhibit B, Finance's Comments on the Test Claim, page 3.

²⁴² Exhibit B, Finance's Comments on the Test Claim, page 3.

²⁴³ 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.²⁴⁴

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 2024-2025.²⁴⁵

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.²⁴⁶

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.²⁴⁷

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.²⁴⁸

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)

²⁴⁴ Exhibit B, Finance's Comments on the Test Claim, page 4.

²⁴⁵ Exhibit B, Finance's Comments on the Test Claim, page 4.

²⁴⁶ 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.

²⁴⁷ Exhibit B, Finance's Comments on the Test Claim, page 5.

²⁴⁸ Exhibit I, Finance's Comments on the Draft Proposed Decision.

expressing their support.²⁴⁹ 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 rebenchmarking 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.

²⁴⁹ 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.²⁵⁰

²⁵⁰ 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 commentators, 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

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.”²⁵¹

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.”²⁵²

The claimants attached over 100 additional public comments to their rebuttal, specifically responding to Finance’s comments.²⁵³ 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.”²⁵⁴ 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.²⁵⁵ 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.”²⁵⁶

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

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

²⁵² 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.

²⁵³ Exhibit C, Claimants’ Rebuttal Comments, pages 13-277.

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

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

²⁵⁶ 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.”²⁵⁷

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.²⁵⁸ Commentors reasserted their opinion that

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

²⁵⁸ 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.²⁵⁹

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).

²⁵⁹ 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.²⁶⁰ 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.²⁶¹ 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

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.

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

²⁶¹ 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.²⁶² 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.²⁶³

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

²⁶³ 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).²⁶⁴ 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."²⁶⁵

E. Department of Education (CDE)

The CDE filed its own comments on the Draft Proposed Decision on April 17, 2025.²⁶⁶ 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.²⁶⁷ 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

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

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

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

²⁶⁷ 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.²⁶⁸

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.²⁶⁹

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.”²⁷⁰

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:

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

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

²⁷⁰ 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.²⁷¹

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.²⁷²

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

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

²⁷² 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.”²⁷³ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”²⁷⁴

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.²⁷⁵
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.²⁷⁶
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.²⁷⁷
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.²⁷⁸

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.²⁷⁹ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.²⁸⁰ In making its

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

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

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

²⁷⁶ *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).

²⁷⁷ *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.

²⁷⁸ *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.

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

²⁸⁰ *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.”²⁸¹

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.²⁸² 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.”²⁸³

The test claim statute has an effective date of July 9, 2021.²⁸⁴ The Test Claim was jointly filed on January 22, 2024.²⁸⁵ 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.²⁸⁶

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.²⁸⁷ Finance does not provide any evidence to support its position that the claimants incurred increased

²⁸¹ *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.

²⁸² Government Code section 17551(c).

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

²⁸⁴ 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.)

²⁸⁵ Exhibit A, Test Claim, page 1.

²⁸⁶ 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).

²⁸⁷ 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, 2023.²⁸⁸

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.²⁸⁹ 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.²⁹⁰ 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.²⁹¹ 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

²⁸⁸ Exhibit B, Finance's Comments on the Test Claim, page 4.

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

²⁹⁰ Exhibit A, Test Claim, page 34 (Pay09a Report).

²⁹¹ 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 43.64.²⁹²

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.²⁹³ 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

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

²⁹³ 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.²⁹⁴

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.²⁹⁵

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.

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

²⁹⁵ 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.²⁹⁶

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*.²⁹⁷

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 Credentialing²⁹⁸

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

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

²⁹⁸ 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.²⁹⁹
- Beginning in the 2022-23 school year, maintain an average of at least one adult for every 12 pupils in a transitional kindergarten classroom.³⁰⁰
- 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.³⁰¹
- 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.³⁰²
- 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.³⁰³
- 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.³⁰⁴

The Draft Proposed Decision found that these requirements were not mandated by the state.³⁰⁵ 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

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

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

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

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

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

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

³⁰⁵ 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.³⁰⁶

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.³⁰⁷ 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.³⁰⁸

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.³⁰⁹ 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."³¹⁰ However,

³⁰⁶ 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.

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

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

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

³¹⁰ *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 2023-2024.³¹¹

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.³¹² 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.³¹³ 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.”³¹⁴ 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.”³¹⁵ 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.³¹⁶

³¹¹ Exhibit A, Test Claim, page 13.

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

³¹³ Education Code sections 42238.02, 42238.03.

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

³¹⁵ Exhibit B, Finance's Comments on the Test Claim, page 2.

³¹⁶ 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.³¹⁷ 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."³¹⁸

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.³¹⁹ 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."³²⁰ 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."³²¹ 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

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

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

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

³²⁰ Education Code section 48000(c)(1), (g).

³²¹ 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.³²² 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.³²³ 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 98.³²⁴

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.³²⁵ As of the 2022-23 fiscal year the base rate for kindergarten (including TK) through grade three was \$10,119 per pupil.³²⁶ This base rate includes an existing 10.4 percent adjustment that is contingent on maintaining an average class size of 24 pupils.³²⁷ 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.³²⁸ 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

³²² California Constitution, article XVI, section 8(b)(2) and (3).

³²³ Education Code section 41202(g).

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

³²⁵ 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.”

³²⁶ 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.

³²⁷ Education Code section 42238.02(d)(3).

³²⁸ 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”³²⁹ 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.³³⁰ 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.³³¹

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.”³³² 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.³³³ Additionally, the extra funding intended for the average maximum class size and adult-to-pupil ratios are built into the LCFF entitlement calculation.³³⁴ The

³²⁹ Education Code section 41204.7(a).

³³⁰ Education Code sections 41370(a) and 41372.

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

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

³³³ Education Code section 42238.02(d)(1)(A), (d)(2).

³³⁴ 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 6.³³⁵ 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.³³⁶ 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.³³⁷ 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.³³⁸ 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."³³⁹

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

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

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

³³⁷ 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.

³³⁸ 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.

³³⁹ *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.’”³⁴⁰ 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.³⁴¹

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.³⁴²

“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.”³⁴³ 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.³⁴⁴ “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.”³⁴⁵ 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,” . . .³⁴⁶

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,”³⁴⁷ as follows:

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

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

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

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

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

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

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

³⁴⁷ *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.³⁴⁸

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."³⁴⁹ 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).)³⁵⁰

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.³⁵¹ 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

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

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

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

³⁵¹ 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.³⁵² 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.”³⁵³

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.”³⁵⁴

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.

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

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

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

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On May 6, 2025, I served the:

- **Current Mailing List dated April 22, 2025**
- **Proposed Decision issued May 6, 2025**

Transitional Kindergarten, 23-TC-02

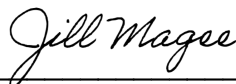
Statutes 2021, Chapter 44, Section 60 (AB 130);

Education Code Section 48000, Effective July 9, 2021

Hope Elementary School District and Sunnyvale School District, Claimants

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 6, 2025 at Sacramento, California.



Jill Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/22/25

**Claim
Number:** 23-TC-02

Matter: Transitional Kindergarten

Claimants: Hope Elementary School District
Sunnyvale School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Amber Alexander, Assistant Principal Budget Manager, *Department of Finance*

Education Systems Unit, 915 L Street, 7th Floor, Sacramento, Ca

Phone: (916) 445-0328

Amber.Alexander@dof.ca.gov

Michael Alferes, Fiscal and Policy Analyst, K-12, *Legislative Analyst's Office*

925 L Street, Suite 1000, Sacramento, CA 95816

Phone: (916) 319-8332

michael.alferes@lao.ca.gov

Lindsay Alker, Certificated Teacher, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

lalker@montecitou.org

Brooks Allen, Executive Director, *California State Board of Education (SBE)*

1430 N Street, Suite 5111, Sacramento, CA 95814

Phone: (916) 319-0708

BRAllen@cde.ca.gov

Benjamin Allen, *California Department of Education*

Policy Office, Early Education Division, 1430 N. Street, Suite 3410,
Sacramento, CA 95814-5901

Phone: (916) 319-0536

ballen@cde.ca.gov

Stacy Allison, Certificated Teacher, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

sallison@montecitou.org

Jaime Allison, Certificated Teacher, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

jallison@montecitou.org

Virginia Alvarez, Chief Business Official, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

valvarez@montecitou.org

Ashley Anderson, Board Member, *Newport-Mesa Unified School District*

2985 Bear Street, Costa Mesa, CA 92626

Phone: (714) 424-5000

aanderson@nmusd.us

Mercy Anykia, *Hope School District*

748 Cieneguitas Road, Unit C, Santa Barbara, CA 93110

Phone: (785) 550-9998

anyikame@gmail.com

Lili Apgar, Specialist, *State Controller's Office*

Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA
95816

Phone: (916) 324-0254

lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Kim Aragon, Employee, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564
karagon@hopeschooldistrict.org

Aimee Armsby, President, *Portola Valley School District*
4575 Alpine Road, Portola Valley, CA 94028
Phone: (650) 851-1777
pvsdboard@pvsd.net

Robert Banfield, Trustee, *San Luis Coastal Unified School District*
1500 Lizzie Street, San Luis Obispo, CA 93401
Phone: (805) 549-1202
robertbanfield@slcUSD.org

Anna Barich, Attorney, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Anna.Barich@csM.ca.gov

Tim Barker, Teacher, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
tbarker@hopeschooldistrict.org

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

Michelle Barto, Board Member, *Newport-Mesa Unified School District*
2985 Bear Street, Costa Mesa, CA 92626
Phone: (949) 679-0821
mbarto@newportbeachca.gov

Robert Bauer, Trustee, *Portola Valley School District*
4575 Alpine Road, Portola Valley, CA 94028
Phone: (650) 851-1777
rbauer@pvsd.net

Julian Becher, *Hope School District*
3965 B Foothill Road, Santa Barbara, CA 93110
Phone: (347) 986-7069
julianbecher@gmail.com

Jammie Behrendt, Associate Superintendent, *Menlo Park City School District*
181 Encinal Ave, Atherton, CA 94027
Phone: (650) 321-7140
jbehrendt@mpcsd.org

Ginni Bella Navarre, Deputy Legislative Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8342
Ginni.Bella@lao.ca.gov

Daniel Berman, Parent, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
Dgcberman@gmail.com

Kimberly Berman, 6th Grade Certificated Teacher, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
kberman@montecitou.org

Ryan Blasena, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
rblasena@hopeschooldistrict.org

Mitchell Bragg, Board Member, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
mbragg@montecitou.org

Robert Bravo, Superintendent, *Campbell Union High School District*
3235 Union Ave, San Jose, CA 95124-2095
Phone: (408) 371-0960
rbravo@cuhsd.org

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

Tristan Brown, Legislative Director, *CFT A Union of Educators and Classified Professionals*
1107 9th Street, Suite 460, Sacramento, CA 95814
Phone: (916) 446-2788
tbrown@cft.org

Nick Bruski, Principal, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
nbruski@montecitou.org

Brandi Bryant, Hope School District,
4136-A Via Andorra, Santa Barbara, CA 93110
Phone: (909) 499-6133
bnbryant19@gmail.com

Mark Buchman, Trustee, *San Luis Coastal Unified School District*
1500 Lizzie Street, San Luis Obispo, CA 93401
Phone: (805) 549-1202
mbuchman@slcusd.org

Nancy Bui, Superintendent, *Brisbane School District*
1 Solano Street, Brisbane, CA 94005
Phone: (415) 467-0550
nbui@brisbanesd.org

Guy Burdick, Consultant, *MGT Consulting*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Shelby Burguan, Budget Manager, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3085
sburguan@newportbeachca.gov

Jennifer Burks, Superintendent, *Solana Beach School District*
309 North Rios Avenue, Solana Beach, CA 92075-1298
Phone: (858) 794-7100
jenniferburks@sbsd.net

Sharon Burns, Principal, *Menlo Park City School District*
181 Encinal Avenue, Atherton, CA 94027
Phone: (650) 326-5164
sburns@mpcsd.org

Edgar Cabral, Fiscal and Policy Analyst, K-12, *Legislative Analyst's Office*
925 L Street, Suite 100, Sacramento, CA 95816
Phone: (916) 319-8332
edgar.cabral@lao.ca.gov

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments,
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Abby Carrington, 5th Grade Teacher, *Montecito Union School District*
1551 Myra Street, Carpinteria, CA 93013
Phone: (908) 812-1771
acarrington@montecitou.org

Veronica Causor-Lara, Manager, Internal Audit, *San Jose Unified School District*
855 Lenzen Avenue, San Jose, CA 95126
Phone: (408) 535-6000
vcausorlara@sjusd.org

Michael Chaix, Superintendent, *Cucamonga School District*
8776 Archibald Avenue, Rancho Cucamonga, CA 91730-4698
Phone: (909) 987-8942
mchaix@cuca.k12.ca.us

Jackie Chen, Chief Business Officer, *Menlo Park City School District*
181 Encinal Avenue, Atherton, CA 94027
Phone: (650) 321-7140
jchen@mpcsd.org

Phillip Christopher, Proffessor, UCSB, *Hope School District*
229 Arboleda Road, Santa Barbara, CA 92110
Phone: (805) 570-4952
pchristopher@ucsb.edu

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Graham Clark, Superintendent, *Fremont Union High School District*
589 West Fremont Avenue, PO Box F, Sunnyvale, CA 94087
Phone: (408) 522-2201
graham_clark@fuhisd.org

Brian Clausen, Trustee, *San Luis Coastal Unified School District*
1500 Lizzie Street, San Luis Obispo, CA 93401
Phone: (805) 549-1202
bclausen@slcusd.org

Brooke Cloud, Montecito Union School District, *Certificated Teacher*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
bcloud@montecitou.org

Kelly Cousineau, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564

kellycousineau@gmail.com

Kim Crail, Board Vice President, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

kcrail@montecitou.org

Heidi Craine, Certificated Teacher, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

hcraine@montecitou.org

Adam Cripps, Interim Finance Manager, *Town of Apple Valley*

14955 Dale Evans Parkway, Apple Valley, CA 92307

Phone: (760) 240-7000

acripps@applevalley.org

Daniel Cunnison, Board Member, *Hope School District*

3970 La Colima Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564

Dcunnison@hopeschooldistrict.org

Gregory Dannis, Board Clerk, *Hillsborough City School District*

300 El Cerrito Avenue, Hillsborough, CA 94010

Phone: (650) 342-5193

gdannis@dwkesq.com

Ana de Arce, Superintendent, *Hillsborough City School District*

300 El Cerrito Avenue, Hillsborough, CA 94010

Phone: (650) 342-5193

adearce@hcsdk8.org

Jessica Deitchman, Assistant Program Budget Manager, *Department of Finance*

Education Systems Unit, 915 L Street, 7th Floor, Sacramento, CA 95814

Phone: (916) 445-0328

Jessica.Deitchman@dof.ca.gov

Jeff Dixon, Interim Superintendent, *Laguna Beach Unified School District*

550 Blumont Street, Laguna Beach, CA 92651

Phone: (949) 497-7700

jdixon@lbusd.org

John Doe, Certificated Teacher, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
cornelas@montecitou.org

Maurene Donner, Superintendent, *College Elementary School District*
3525 Pine Street, Santa Ynez, CA 93460-0188
Phone: (805) 686-7300
mdonner@collegeschooldistrict.org

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

Jennifer Dudley, Superintendent - Principal, *Fort Ross Elementary School District*
30600 Seaview Road, Cazadero, CA 95421
Phone: (707) 847-3390
jdudley@fortrossschool.org

Matt Dunkle, Superintendent, *Forestville Union School District*
632 Highway 116, Forestville, CA 95436
Phone: (707) 887-2279
mdunkle@forestvilleusd.org

Theana Earls, Employee, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
tearls@hopeschooldistrict.org

Melissa Erickson, Certificated Teacher Education Specialist, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
merickson@montecitou.org

Cindy Everman, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
everman@cox.net

Meaghan Faulman, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564
meg.faulman@gmail.com

Ben Faulman, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
benfaulman@yahoo.com

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Kevin Fisher, Assistant City Attorney, *City of San Jose*
Environmental Services, 200 East Santa Clara Street, 16th Floor, San Jose, CA 95113
Phone: (408) 535-1987
kevin.fisher@sanjoseca.gov

Diana Galindo-Roybal, Superintendent, *Goleta Union School District*
401 North Fairview Avenue, Goleta, CA 93117
Phone: (805) 681-1200
droybal@gusd.us

Michael Gallagher, Superintendent, *Sunnyvale School District*
Claimant Contact
819 Iowa Ave, Sunnyvale, CA 94086
Phone: (408) 522-8200
michael.gallagher@sesd.org

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

Len Garfinkel, General Counsel, *California Department of Education*
1430 N Street, Sacramento, CA 95814
Phone: (916) 319-0860
lgarfinkel@cde.ca.gov

Don Geddis, Board Vice President, *Hillsborough City School District*
300 El Cerrito Avenue, Hillsborough, CA 94010
Phone: (650) 342-5193
don@dongeddis.com

Brett Geithman, Superintendent, *Larkspur-Corte Madera School District*
230 Doherty Drive, Larkspur, CA 94939

Phone: (415) 927-6960
bgeithman@lcmschools.org

Juliana Gmur, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
juliana.gmur@csm.ca.gov

Laura Godinez, Employee, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
gherbst@hopeschooldistrict.org

Larissa Graham, Parent, *Hope School District*
3903 Laguna Blanca Drive, Santa Barbara, CA 93110
Phone: (805) 302-4848
larissagraham10@gmail.com

Andree Grey, Superintendent, *Encinitas Union Elementary School District*
101 South Rancho Santa Fe Road, Encinitas, CA 92024-4308
Phone: (760) 944-4300
andree.grey@eusd.net

Kevin Grier, Superintendent, *Loma Prieta Joint Union School District*
23800 Summit Road, Los Gatos, CA 95033
Phone: (408) 353-1101
k.grier@lpjUSD.us

Richard Gross, Trustee, *Fort Ross Elementary School District*
30600 Seaview Road, Cazadero, CA 95421
Phone: (707) 847-3390
richardgross2@icloud.com

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

Mike Heffner, Superintendent-Principal, *Bonny Doon Union Elementary School District*
1492 Pine Flat Road, Santa Cruz, CA 95060
Phone: (831) 427-2300
mheffner@bduesd.org

Gabrielle Herbst, Employee, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564
gherbst@hopeschooldistrict.org

A.C. Hernandez, Board Member, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
ahernandez@montecitou.org

Brian Hiefield, Teacher's Spouse, *Hope School District*
7700 Bradford Drive, Goleta, CA 93117
Phone: (805) 708-3087
jorgeman38@gmail.com

Howard Hills, Board Clerk, *Laguna Beach Unified School District*
550 Blumont Street, Laguna Beach, CA 92651
Phone: (949) 497-7700
hhills@lbusd.org

Eve Hinton, Trustee, *San Luis Coastal Unified School District*
1500 Lizzie Street, San Luis Obispo, CA 93401-3062
Phone: (805) 549-1202
ehinton@slcusd.org

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments,
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Chris Hodges, Parent, *Hope School District*
3770 Lincolnwood Drive, Santa Barbara, CA 93110
Phone: (917) 849-9060
cphodges@gmail.com

An Huang Chen, Board Member, *Hillsborough City School District*
300 El Cerrito Avenue, Hillsborough, CA 94010
Phone: (650) 342-5193
anhuangchen12@gmail.com

Anne Hubbard, Superintendent, *Hope Elementary School District*

Claimant Contact

3970 La Colina Road, Suite #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
ahubbard@hopeschooldistrict.org

Meredyth Hudson, Assistant Superintendent of Business, *Campbell Union High School District*

3235 Union Ave, San Jose, CA 95124-2096

Phone: (408) 371-0960

MHudson@cuhsd.org

Justin Hurst, *Department of Finance*

Education, 915 L Street, 7th Floor, Sacramento, CA 95814

Phone: (916) 445-0328

Justin.Hurst@dof.ca.gov

Angelique Huttonhill, *Deputy General Counsel, California Department of Education*

Legal, Audits, and Charters, Branch, 1430 N. Street Suite 5312, Sacramento, CA 95814

Phone: N/A

ahuttonhill@cde.ca.gov

Kyle Hyland, *School Services of California*

1121 L Street, Suite 1060, Sacramento, CA 95814

Phone: (916) 446-7517

KyleH@sscal.com

Rusty Ito, *Vice Principal, Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

rito@montecitou.org

Dmitri Jarocki, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564

dmitrijarocki@gmail.com

Jason Jennings, *Director, Maximus Consulting*

Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236

Phone: (804) 323-3535

SB90@maximus.com

Corey Josenhans, *Hope School District*

550 Apple Grove Lane, Santa Barbara, CA 93101

Phone: (805) 689-2913

cljosen75@gmail.com

Lilly Josenhans, *Hope School District*

550 Apple Grove Lane, Santa Barbara, CA 93101

Phone: (805) 698-3087

lillypinney@yahoo.com

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments,
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Meg Kailikole, Business Manager, *Mendocino Unified School District*
44141 Little Lake Road, Mendocino, CA 95460
Phone: (707) 937-5868
musdcbo@mcn.org

Anne Kato, Acting Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: (916) 322-9891
akato@sco.ca.gov

Christy Kelso, Hope School District, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
ckelso@me.com

Sarah Kempe-Mehl,
4559 Nueces Drive, Santa Barbara, CA 93110
Phone: (805) 680-3524
sarahkempemehl@gmail.com

Kelly Keogh, Board of Directors, *Hope School District*
724 Grove Lane, Santa Barbara, CA 93105
Phone: (808) 551-3263
kkeogh@hopeschooldistrict.org

Kerstin Kramer, Superintendent, Chief Learning Officer, *Tahoe Truckee Unified School District*
11603 Donner Pass Road, Truckee, CA 96161-4953
Phone: (530) 582-2550
kkramer@ttusd.org

Yvonne Kreck, Board President, *Alexander Valley Union School District*
8511 Highway 128, Healdsburg, CA 95448
Phone: (707) 433-1375
mreno@alexandervalleyusd.org

Claire Krock, Director of Curriculum and Instruction, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564
claire.krock@peabodycharter.net

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

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Government Law Intake, *Department of Justice*
Attorney General's Office, 1300 I Street, Suite 125, PO Box 944255,
Sacramento, CA 94244-2550
Phone: (916) 210-6046
governmentlawintake@doj.ca.gov

Audin Leung, Student Leader, *Free the Period California*
1 Shield Ave, Pierce Co-op TB14, Davis, CA 95616
Phone: (415) 318-9343
freetheperiod.ca@gmail.com

Ryan Lewis, Superintendent, *Lake Elsinore Unified School District*
545 Chaney Street, Lake Elsinore, CA 92530
Phone: (951) 253-7000
Ryan.Lewis@leusd.k12.ca.us

Jeffrey Linder, Certificated Teacher, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
jlinder@montecitou.org

Kristin Lindgren-Bruzzone, General Counsel, *California School Boards Association*
3251 Beacon Boulevard, West Sacramento, CA 95691
Phone: (916) 669-3243
klindgren-bruzzone@csba.org

Yirong Lu, ESN Upper (Grade 4-6), *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
ylu@hopeschooldistrict.org

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 323-0766

ELuc@sco.ca.gov

Irina Ludkovski, Parent and Community Member, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564

i.m.ludkovski@gmail.com

Karen Luna, Certificated Teacher, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

kluna@montecitou.org

Amelia Madden, Certificated Teacher, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

amadden@montecitou.org

Jill Magee, Program Analyst, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

Jill.Magee@csm.ca.gov

Jon Magnani, IT Director, *Hope Elementary School District*

3970 La Colina Road, Santa Barbara, CA 93110

Phone: (805) 682-2564

jmagnani@hopeschooldistrict.org

Christine Mallery, CBO-Associate Superintendent, *Fremont Union High School District*

589 West Fremont Avenue, PO Box F, Sunnyvale, CA 94087

Phone: (408) 522-2245

christine_mallery@fuhsd.org

Darryl Mar, Manager, *State Controller's Office*

3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 323-0706

DMar@sco.ca.gov

Kim Marme, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564

kmarme@hopeschooldistrict.org

Rania Mather, Certificated Teacher, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249
rmather@montecitou.org

Autumn Rose McFarland, *Hope School District*
3950 Carol Ave, Santa Barbara, CA 93110
Phone: (720) 431-3346
Autumn.r.mcfarland@gmail.com

Tina McKendell, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles,
CA 90012
Phone: (213) 974-0324
tmckendell@auditor.lacounty.gov

Becca McNees, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
bmcnees@hopeschooldistrict.org

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

Natasha Middleton, Division Director , *California Department of Education*
Government Affairs Division, 1430 N. Street, Sacramento, CA 95814
Phone: (916) 327-4628
nmiddleton@cde.ca.gov

Eric Monley, Interim Director of Fiscal Services, *San Jose Unified School District*
855 Lenzen Avenue, San Jose, CA 95126
Phone: (408) 535-6000
emonley@sjusd.org

Jimmy Monreal, Assistant Superintendent of Business Services, *Santa Cruz City Schools District*
133 Mission Street, Ste. 100, Santa Cruz, CA 95060
Phone: (831) 429-3410
jmonreal@sccs.net

Lisa Monson, Certificated Teacher, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
Lmonson@montecitou.org

Paige Moore, Business Manager, *Nevada City School District*

800 Hoover LN, Nevada City, CA 95959

Phone: (530) 265-1823

pmoore@ncsd.k12.ca.us

Matthew Morgan, Principal-Superintendent, *Harmony Union School District*

1935 Bohemian Highway, Occidental, CA 95465

Phone: (707) 874-1205

mmorgan@harmonyusd.org

Luis Mori-Quiroz, Parent, *Hope School District*

748 Cieneguitas Road, Unit C, Santa Barbara, CA 93110

Phone: (517) 410-3417

moriluis@gmail.com

Kimberley Morris Rosen, Trustee, *Portola Valley School District*

4575 Alpine Road, Portola Valley, CA 94028

Phone: (650) 851-1777

kimberley.morris@gmail.com

Jason Morse, Superintendent, *Mendocino Unified School District*

44141 Little Lake Road, Mendocino, CA 95460

Phone: (707) 937-5868

jmorse@mcn.org

Katie Moses, Architect,

695 Russell Way, Santa Barbara, CA 93110

Phone: (805) 451-5599

kkcorliss@yahoo.com

Alyssa Mueller, Special Education Administrative Assistant, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564

amueller@hopeschooldistrict.org

Patrice Mueller, STEAM Specialist, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 967-1239

pmueller@hopeschooldistrict.org

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*

915 L Street, Sacramento, CA 95814

Phone: (916) 445-8918

Marilyn.Munoz@dof.ca.gov

Kris Munro, Superintendent, *Santa Cruz City Schools District*
133 Mission St, STE 100, Santa Cruz,, CA 95060
Phone: (831) 429-3410
kmunro@sccs.net

Araceli Nahas, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 680-9944
araceli.gil@gmail.com

Connie Ngo, Chief Business Official, *Portola Valley School District*
4575 Alpine Road, Portola Valley, CA 94028
Phone: (650) 851-1777
cngo@pvsd.net

Michelle Nguyen, *Department of Finance*
Education Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Michelle.Nguyen@dof.ca.gov

Barbara Nguyen-Willeford, *Hope School District*
701 N Hope Ave, Santa Barbara, CA 93110
Phone: (646) 330-2270
barbaralnguyen@gmail.com

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

Katie Nimitarnun, Certificated Teacher, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
knimitarnun@montecitou.org

Holly Noble, Certificated Teacher, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
hnoble@montecitou.org

Autumn Noe, Classified Employee and Parent, *Montecito Union School District*
3950 Via Real SPC 165, Carpinteria, CA 93013
Phone: (805) 708-0607
autumnnoe@gmail.com

Danielle O'Brien, Principal, *Hillview Middle School*

1100 Elder Ave, Menlo Park, CA 94025

Phone: (650) 326-4341

dobrien@mpcsd.org

Katie O'Toole, Reading Intervention Teacher, *Hope School District*

730 North Hope Ave, Santa Barbara, CA 93110

Phone: (805) 450-1912

Kotoole@hopeschooldistrict.org

Sharon Ofek, Superintendent, *Carmel Unified School District*

4380 Carmel Valley Road, Carmel, CA 93923

Phone: (831) 624-1546

sofek@carmelunified.org

Kim Oliff, Board President, *Hillsborough City School District*

300 El Cerrito Avenue, Hillsborough, CA 94010

Phone: (650) 342-5193

theoliffs@gmail.com

Susannah Osley, Board President, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

sosley@montecitou.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*

Claimant Representative

12807 Calle de la Siena, San Diego, CA 92130

Phone: (858) 259-1055

law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*

Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 322-2446

KPangilinan@sco.ca.gov

Lisa Pearson, Board Member, *Newport-Mesa Unified School District*

2985 Bear Street, Costa Mesa, CA 92626

Phone: (949) 677-6964

lmpearson@nmusd.us

Dee Perry, Board President, *Laguna Beach School District*

550 Blumont Street, Laguna Beach, CA 92651

Phone: (949) 497-7700

dperry@lbusd.org

Jayson Poe, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564

jayson.poe@gmail.com

Jamie Poe, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564

itsjamiepoe@gmail.com

Eric Prater, Superintendent, *San Luis Coastal Unified School District*

1500 Lizzie Street, San Luis Obispo, CA 93401-3062

Phone: (805) 549-1202

eprater@slcusd.org

Anthony Ranii, Superintendent, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

aranii@montecitou.org

Roberta Raper, Director of Finance, *City of West Sacramento*

1110 West Capitol Ave, West Sacramento, CA 95691

Phone: (916) 617-4509

robertar@cityofwestsacramento.org

Seth Reddy, *San Jose Unified School District*

855 Lenzen Avenue, San Jose, CA 95126

Phone: (408) 535-6000

sreddy@sjusd.org

Tim Reinauer, *Hope School District*

436 Foxen Drive, Santa Barbara, CA 93105

Phone: (805) 886-4017

TimReinauer@gmail.com

Sandra Reynolds, President, *Reynolds Consulting Group, Inc.*

P.O. Box 891359, Temecula, CA 92589-1359

Phone: (888) 202-9442

rcginc19@gmail.com

Christine Rissmeyer, *Hope School District*

3920 Camellia Ln, Santa Barbara, CA 93110

Phone: (617) 894-4161

chrissyrissemeyer@gmail.com

Marilyn Rodger, Trustee, *San Luis Coastal Unified School District*

1500 Lizzie Street, San Luis Obispo, CA 93401

Phone: (805) 549-1202

mrodger@slcusd.org

Jeanette Rodriguez-Chien, Superintendent, *Sonoma Valley Unified School District*

17850 Railroad Avenue, Sonoma, CA 95476

Phone: (707) 935-4246

jchien@sonomaschools.org

Gregory Sackos, Superintendent, *Desert Center Unified School District*

1434 Kaiser Road, PO Box 6, Desert Center, CA 92239

Phone: (760) 895-8254

gregsackos@eaglemtnschool.com

Yong Salas, *Senate Budget and Fiscal Review Committee*

1020 N Street, Room 502, Sacramento, CA 95814

Phone: (916) 651-4103

Yong.Salas@sen.ca.gov

Vanessa Scarlett, Certificated Teacher, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

vscarlett@montecitou.org

Debra Schade, Board President, *Solana Beach School District*

309 North Rios Avenue, Solana Beach,, CA 92075-1298

Phone: (858) 794-7100

debraschade@sbsd.net

Anna Scharfeld, Principal, *Hope School District*

3970 A La Colina Road, Santa Barbara, CA 93110

Phone: (805) 682-2564

ascharfeld@hopeschooldistrict.org

Cindy Sconce, Director, *Government Consulting Partners*

5016 Brower Court, Granite Bay, CA 95746

Phone: (916) 276-8807

cindysconcegc@gmail.com

Beth Scott, Employee, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564

escott@hopeschooldistrict.org

Claudia Scott, Santa Barbara Citizen,

4822 La Gama Way, Santa Barbara, CA 93111

Phone: N/A

cscott@westmont.edu

Rena Seifts, Associate Superintendent, *Sonoma Valley Unified School District*

17850 Railroad Avenue, Sonoma, CA 95476

Phone: (707) 935-4246

rseifts@sonomaschools.org

Amod Setlur, Trustee, *Portola Valley School District*

4575 Alpine Road, Portola Valley, CA 94028

Phone: (650) 851-1777

asetlur@pvsd.net

Ellen Sheffer, Board President, *San Luis Coastal Unified School District*

1500 Lizzie Street, San Luis Obispo, CA 93401

Phone: (805) 549-1202

esheffer@slcusd.org

Carla Shelton, Senior Legal Analyst, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

carla.shelton@csm.ca.gov

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

camille.shelton@csm.ca.gov

Steve Shields, *Shields Consulting Group, Inc.*

1536 36th Street, Sacramento, CA 95816

Phone: (916) 454-7310

steve@shieldscg.com

Samantha Simon, Special Projects Facilitator, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

ssimon@montecitou.org

Vinita Singh, Director District Business Services, *Sequoia Union High School District*

480 James Avenue, Redwood City, CA 94062

Phone: (650) 369-1411

vsingh@seq.org

Thomas Skaff, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564
skaffhelping.others@gmail.com

Michael Smallen, Trustee, *Fort Ross Elementary School District*
30600 Seaview Road, Cazadero, CA 95421
Phone: (707) 847-3390
mjrksmall@icloud.com

Jessica Smith, Board Member, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
jsmith@montecitou.org

Wesley Smith, Superintendent, *Newport-Mesa Unified School District*
2985 Bear Street, Costa Mesa, CA 92626
Phone: (714) 424-5070
wsmith@nmusd.us

Melissa Spink, Student Meals Program Coordinator, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
mspink@montecitou.org

Jestin St. Peter, Principal, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
jstpeter@hopeschooldistrict.org

Paul Steenhausen, Principal Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, , Sacramento, CA 95814
Phone: (916) 319-8303
Paul.Steenhausen@lao.ca.gov

Amy Steets, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
amy.steets@gmail.com

Dahianna Stengel, *Hope School District*
3965B Foothill Road, Santa Barbara, CA 93110
Phone: (201) 232-9810
Deejules11@gmail.com

Chana Stewart, Director of the Early Learning Center, *Menlo Park City School District*

181 Encinal Ave, Atherton, CA 94027

Phone: (650) 321-7140

cstewart@mpcsd.org

Noah Stites-Hallett,

4559 Nueces Drive, Santa Barbara, CA 93110

Phone: (805) 680-3524

noah.stiteshallett@gmail.com

Christina Stokes, Certificated Teacher, *Montecito Union School District*

385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249

cstokes@montecitou.org

Katherine Strach, *Menlo Park City School District*

181 Encinal Ave, Atherton, CA 94027

Phone: (650) 321-7140

kstrach@mpcsd.org

Adrian Talley, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564

atalley@hopeschooldistrict.org

Wyatt Talley, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564

wyatttalley@me.com

Sarah Tellez, Assistant Superintendent of Educational Services, *Los Gatos Union School District*

17010 Roberts Road, Los Gatos, CA 95032

Phone: (408) 335-2000

stellez@lgusd.org

Brittany Thompson, *Department of Finance*

Education Unit, 915 L Street, 7th Floor, Sacramento, CA 95814

Phone: (916) 445-0328

Brittany.Thompson@dof.ca.gov

Jolene Tollenaar, *MGT Consulting Group*

2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 243-8913

jolenetollenaar@gmail.com

Tristin Tracy, *Hope School District*

3970 La Colina Road, #14, Santa Barbara, CA 93110

Phone: (805) 682-2564
tjt805@yahoo.com

Jeffrey Trader, Assistant Superintendent, Chief Business Official, *Newport-Mesa Unified School District*
2985 Bear Street, Costa Mesa, CA 92626
Phone: (714) 424-5003
jtrader@nmusd.us

Linda Trigueiro, Certificated Teacher, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
ltrigueiro@montecitou.org

Janet Tufts, Superintendent, *Howell Mountain Elementary School District*
525 White Cottage Rd. N., Angwin, CA 94508
Phone: (707) 965-2423
jtufts@hmesd.org

Chris Ungar, Trustee, *San Luis Coastal Unified School District*
1500 Lizzie Street, San Luis Obispo, CA 93401
Phone: (805) 549-1202
cungar@slcusd.org

Jessica Uzarski, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Jessica.Uzarski@sen.ca.gov

Bree Valla, Superintendent-Principal, *Vista Del Mar Union School District*
Vista de las Cruces School, 9467 San Julian Rd., Gaviota, CA 93117
Phone: (805) 686-1880
bvalla@vdmusd.org

Chris Vanden Heuvel, Superintendent, *Healdsburg Unified School District*
1028 Prince Street, Healdsburg, CA 95448
Phone: (707) 431-3488
cvandenheuvel@husd.com

Kay Vang, Chief Business Official, *St. Helena Unified School District*
465 Main Street, St. Helena, CA 94575
Phone: (707) 967-2704
kvang@sthelenaunified.org

Jill Vinson, Superintendent, *Cardiff School District*
1888 Montgomery Ave, Cardiff by the Sea, CA 92007

Phone: (760) 632-5890
jill.vinson@cardiffschools.com

Eric Volta, Superintendent, *Mountain View Los Altos High School District*
1299 Bryant Avenue, Mountain View, CA 94040-4599
Phone: (650) 940-4650
eric.volta@mvla.net

Gilbert Wai, Board Member, *Hillsborough City School District*
300 El Cerrito Avenue, Hillsborough, CA 94010
Phone: (650) 342-5193
the3wais@gmail.com

Julie Walsmith, Employee, *Hope School District*
3970 La Colina Road, #14, Santa Barbara, CA 93110
Phone: (805) 682-2564
jwalsmith@hopeschooldistrict.org

Rebecca Westover, Chief Business Officer, *Mountain View Whisman School District*
100 Montecito Ave, Mountain View, CA 94043
Phone: (650) 526-3500
rwestover@mvwsd.org

Adam Whelen, Director of Public Works, *City of Anderson*
1887 Howard St., Anderson, CA 96007
Phone: (530) 378-6640
awhelen@ci.anderson.ca.us

Natalie Wilkes, *Hope Elementary School District*
6723 Calle Koral, Goleta, CA 93117
Phone: (818) 468-0594
nwilkes@hopeschooldistrict.org

James Willeford, *Hope School District*
701 N Hope Ave, Santa Barbara, CA 93110
Phone: (917) 378-9724
jamesfwilleford@gmail.com

Nate Williams, Finance Budget Analyst, *Department of Finance*
Education Unit, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
Nate.Williams@dof.ca.gov

Selina Wimmel, School Office Assistant, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108

Phone: (805) 969-3249
swimmel@montecitou.org

Leisa Winston, Superintendent, *Huntington Beach City School District*
8750 Dorsett Drive, Huntington Beach, CA 92646
Phone: (714) 964-8888
lwinston@hbcasd.us

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative
Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814
Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Bruce Yonehiro, Chief Counsel, *California Department of Education*
1430 N Street, Sacramento, CA 95814-5901
Phone: (916) 319-0860
BYonehiro@cde.ca.gov

Charen Yu, Chief Business Officer, *Palo Alto Unified School District*
25 Churchill Ave, Palo Alto, CA 94036
Phone: (650) 329-3980
cyu@pausd.org

Roberta Zarea, Superintendent, *Portola Valley School District*
4575 Alpine Road, Portola Valley, CA 94028
Phone: (650) 851-1777
rzarea@pvsd.net

Edgar Zazueta, Executive Director, *Association of California School
Administrators*
1029 J Street, Suite 500, Sacramento, CA 95814
Phone: (916) 329-4321
ezazueta@acsa.org

Ron Zecher, Certificated Teacher, *Montecito Union School District*
385 San Ysidro Road, Santa Barbara, CA 93108
Phone: (805) 969-3249
rzecher@montecitou.org

Hollie Zepke-Price, *Hope School District*
3970 La Colina Road, Santa Barbara, CA 93110

Phone: (805) 284-7606

hzepke-price@hopeschooldistrict.org

Helmholt Zinser-Watkins, Associate Governmental Program Analyst, *State
Controller's Office*

Local Government Programs and Services Division, Bureau of Payments,
3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 324-7876

HZinser-watkins@sco.ca.gov