



September 11, 2024

Mr. Arthur Palkowitz  
Law Offices of Arthur M. Palkowitz  
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San Diego, CA 92130

Ms. Natalie Sidarous  
State Controller's Office  
Local Government Programs and  
Services Division  
3301 C Street, Suite 740  
Sacramento, CA 95816

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

**Re: Proposed Decision**

*California Assessment of Student Performance and Progress (CAASPP),  
22-1401-I-01*

Education Code Section 60640, as amended by Statutes 2013, Chapter 489 (AB 484) and Statutes 2014, Chapter 32 (SB 858); California Code of Regulations, Title 5, Sections 850, 852, 853, 853.5, 857, 861(b)(5), 864 (Register 2014, Nos. 6, 30, and 35)

Fiscal Years: 2015-2016 and 2016-2017  
Fresno Unified School District, Claimant

Dear Mr. Palkowitz and Ms. Sidarous:

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

**Hearing**

This matter is set for hearing on **Friday, September 27, 2024, at 10:00 a.m., at Park Tower, 980 9th Street, Suite 300, Sacramento, California, 95814 and via Zoom.**

The Commission is committed to ensuring that its public meetings are accessible to the public and that the public has the opportunity to observe the meeting and to participate by providing written and verbal comment on Commission matters whether they are physically appearing at the in-person meeting location or participating via Zoom. If you want to speak during the hearing and you are in-person, please come to the table for the swearing in and to speak when your item is up for hearing. If you are participating via Zoom, you must use the "Raise Hand" feature in order for our moderators to know you need to be unmuted.

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Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness plan to testify. Please also include the names of the people who will be speaking and the names and email addresses of the people who will be speaking remotely for inclusion on the witness list so that detailed instructions regarding how to participate as a party in this meeting on Zoom can be provided to them. When calling or emailing, 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.

If you plan to file any written document for Commission member review, please note that Commission staff will include written comments filed at least 15 days in advance of the hearing in the Commissioners' hearing binders. Additionally, staff will transmit written comments filed between 15 and five days prior to a meeting to the Commission members, if possible.

However, comments filed less than five days prior to a meeting will not be included in the Commissioners' hearing binders and a PDF of the document, shall be filed via the Commission's dropbox at <https://www.csm.ca.gov/dropbox.shtml> at least 24-hours prior to the hearing to allow staff time to process and post the document to allow all in-person and remote participants to review it. Commission staff shall provide an electronic copy to the Commission, include an electronic copy in the public hearing binder at the hearing, 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)).

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.

Sincerely,



Heather Halsey  
Executive Director

**ITEM 4**  
**INCORRECT REDUCTION CLAIM**  
**PROPOSED DECISION**

Education Code Section 60640, as Amended by Statutes 2013, Chapter 489 (AB 484)  
and Statutes 2014, Chapter 32 (SB 858)

California Code of Regulations, Title 5, Sections 850, 852, 853, 853.5, 857, 861(b)(5),  
864 (Register 2014, Nos. 6, 30, and 35)

*California Assessment of Student Performance and Progress (CAASPP)*

Fiscal Years 2015-2016 and 2016-2017

22-1401-I-01

Fresno Unified School District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Incorrect Reduction Claim (IRC) challenges the State Controller’s Office (Controller’s) reduction of costs claimed for materials and supplies by the Fresno Unified School District (claimant) for the *California Assessment of Student Performance and Progress (CAASPP)* program for fiscal years 2015-2016 and 2016-2017. *CAASPP* requires school districts test students in grades three through eight and grade 11 in English Language Arts and Mathematics using a secured browser-based testing platform. The Controller reduced all of the claimant’s costs for the purchase of 5,155 new computing devices and broadband internet services during the audit period, totaling \$2,295,922. The Controller found the claimant did not provide supporting documentation showing its existing supply of computing devices and broadband internet services were insufficient to administer the test to its pupils during the testing window provided by the California Department of Education (CDE) as required by the Parameters and Guidelines. The Controller further found the claimant’s existing supply of computing devices and broadband internet services were sufficient to complete testing for all eligible pupils within the testing window according to the tool provided by the CDE and the testing contractor called the “Smarter Balanced Technology Readiness Calculator” (SBAC Calculator). The claimant disputes these findings.

Staff finds the Controller’s reductions are correct as a matter of law and are not arbitrary, capricious, or entirely lacking in evidentiary support, and recommends the Commission on State Mandates (Commission) deny this IRC.

## **Procedural History**

The Commission adopted Parameters and Guidelines for the *California Assessment of Student Performance and Progress* program on March 25, 2016.<sup>1</sup> The claimant signed reimbursement claims for fiscal year 2015-2016 on January 24, 2017, and for fiscal year 2016-2017 on February 14, 2018. The Controller commenced the audit on November 18, 2019, and issued the final audit report on December 16, 2020.<sup>2</sup> The claimant filed the IRC on December 21, 2022.<sup>3</sup> The Controller filed late comments on the IRC on October 2, 2023.<sup>4</sup> The claimant filed rebuttal comments objecting to the Controller's late comments on October 4, 2023, and late supplemental rebuttal comments responsive to the Controller's late comments on November 3, 2023.<sup>5</sup> Commission staff issued the Draft Proposed Decision on July 17, 2024.<sup>6</sup> The Controller filed comments on the Draft Proposed Decision on July 19, 2024.<sup>7</sup> The claimant filed comments on the Draft Proposed Decision on August 7, 2024.<sup>8</sup>

## **Commission Responsibilities**

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission's regulations requires the Commission to send the decision to the Controller and request the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of Parameters and Guidelines, de novo, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the

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<sup>1</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 112 (Parameters and Guidelines).

<sup>2</sup> Exhibit A, IRC, filed December 21, 2022, page 93 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 5 (Declaration of Lisa Kurokawa).

<sup>3</sup> Exhibit A, IRC, filed December 21, 2022.

<sup>4</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023.

<sup>5</sup> Exhibit C, Claimant's Rebuttal Comments, filed October 4, 2023; Exhibit D, Claimant's Late Supplemental Rebuttal Comments, filed November 3, 2023.

<sup>6</sup> Exhibit E, Draft Proposed Decision, issued July 17, 2024.

<sup>7</sup> Exhibit F, Controller's Comments on the Draft Proposed Decision, filed July 19, 2024.

<sup>8</sup> Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 7, 2024.

meaning of article XIII B, section 6 of the California Constitution.<sup>9</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitution and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>10</sup>

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>11</sup>

The Commission must also review the Controller’s audit in light of the fact the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>12</sup> In addition, section 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations requires any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>13</sup>

**Claims**

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

Issue	Description	Staff Recommendation
Did the claimant timely file this IRC within three years from the date claimant first received from the Controller a final state audit report, letter, or other written notice of adjustment to a	Section 1185.1(c) of the Commission’s regulations required an IRC to be filed no later than three years after the claimant first receives a final state audit report, letter, or other written notice of	<i>Timely filed</i> – The final audit report was issued on December 16, 2020, and the IRC was filed on December 21, 2022, within three years of the final audit report.

<sup>9</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>10</sup> *County of Sonoma v. Commission on State Mandates* (2000), 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>11</sup> *Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>12</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>13</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

Issue	Description	Staff Recommendation
reimbursement claim, which complies with Government Code section 17558.5(c)?	adjustment to a reimbursement claim, which complies with the notice requirements of Government Code section 17558.5(c).	
Is the Controller's reduction of costs for materials and supplies in Finding 1, correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support?	The Controller reduced all of the claimant's costs for the purchase of 5,155 new computing devices and broadband internet services during the audit period, totaling \$2,295,922. The Controller found: 1) the claimant did not provide supporting documentation showing its existing supply of computing devices and broadband internet services were insufficient to administer the test to its pupils during the testing window provided by the California Department of Education (CDE) as required by the Parameters and Guidelines, and 2) the claimant's existing supply of computing devices and broadband internet services were sufficient to complete testing for all eligible pupils within the testing window according to the tool provided by the CDE and the testing contractor called the "Smarter Balanced Technology Readiness Calculator" (SBAC calculator).	<p><i>Reduction is correct as a matter of law, and not arbitrary, capricious, or lacking in evidentiary support.</i></p> <p>The Controller correctly found the documents provided by the claimant do not support a finding that the existing inventory of devices were insufficient to comply with the minimum technology specifications to administer the CAASPP test to all eligible pupils within the testing window identified in CDE regulations and, thus, the Controller's reduction is correct as a matter of law. The inventory of existing devices the claimant provided as supporting documentation is not sufficient to support a finding the claimant did not have sufficient existing inventory to meet the program's minimum technology specifications. The claimant chose to use a shorter, 35-day testing window for all students (instead of the 60 days provided in CDE regulations for grades three through eight) and granted 75 percent more</p>

Issue	Description	Staff Recommendation
	<p>The Parameters and Guidelines require claimants to maintain supporting documentation showing their existing inventory of computing devices and accessories, technology infrastructure, and broadband internet services is not sufficient to administer the <i>CAASPP</i> test to all eligible pupils in the testing window provided by CDE, based on the minimum technical specifications identified by the contractor(s) or consortium.<sup>14</sup> Claimants are not required to provide a computing device for every pupil; the intent of the program is to minimize the number of devices needed by rotating students through computer labs, moving “computers on wheels” between classrooms, or creating a pool of mobile computing devices that it transports from school to school, and the program was designed to be used on older computers.<sup>15</sup></p>	<p>testing time to students on average than the State provided, which the claimant alleges impacted the number of devices needed. Although school districts have the authority under CDE regulations to shorten the testing window and to allow all students more time to complete the tests, both of which may increase the number of computing devices needed to administer the <i>CAASPP</i> test, those costs are triggered by local discretionary decisions, are outside of the “minimum technology specifications,” and are not mandated by the state.</p> <p>In addition, the claimant did not provide supporting documentation to show its existing broadband internet services were insufficient to comply with the <i>CAASP</i> program.<sup>16</sup> The claimant asserts it was necessary to improve network infrastructure to ensure equity to its students across the District, but the only documentation regarding</p>

<sup>14</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines).

<sup>15</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 89-90 (Decision and Parameters and Guidelines).

<sup>16</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines).

Issue	Description	Staff Recommendation
		<p>its broadband internet services the claimant provided was a table showing broadband internet service expenses for fiscal year 2016-2017 totaling \$135,277.64, with a note from Phil Nuefeld, the Executive Director of IT, that 30 percent was for CAASPP, or \$40,583.29.<sup>17</sup> This is a source document showing the actual costs incurred, but it does not show the claimant was unable to provide 20 Kbps internet service to each student being tested simultaneously without making improvements to its broadband internet service.</p> <p>Finally, the Controller's use of the Smarter Balanced Technology Readiness Calculator" (SBAC Calculator) and information provided by the claimant to determine whether the claimant's existing supply of computing devices and broadband internet services were sufficient to complete testing for all eligible pupils, was not arbitrary, capricious, or entirely lacking in evidentiary support. The Parameters and Guidelines require claimants to comply with</p>

<sup>17</sup> Exhibit A, IRC, filed December 21, 2022, page 38.



Issue	Description	Staff Recommendation
		<p>the minimum technology specifications identified by SBAC and recognized the SBAC Calculator as a tool to assist school districts in determining how to meet those specifications within the CDE testing window. Therefore, the decision to base the number of devices needed on the SBAC Calculator's formula was not arbitrary, capricious, or lacking in evidentiary support. Moreover, the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made to reduce the costs claimed.<sup>18</sup></p>

**Staff Analysis**

**A. The Claimant Timely Filed this IRC Within Three Years from the Date it First Received a Final State Audit Report, Letter, or Other Written Notice of Adjustment to a Reimbursement Claim, which Complies with Government Code Section 17558.5(c) from the Controller**

Section 1185.1(c) of the Commission's regulations requires an IRC to be filed no later than three years after the date the claimant receives a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c). Under Government Code section 17558.5(c), the Controller is required to notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a reimbursement claim resulting from an audit or review. The notice must specify which claim components were adjusted and in what amount, as well as interest charges, and the reason for the adjustment.<sup>19</sup>

<sup>18</sup> See *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>19</sup> Government Code section 17558.5(c).

Here, the Controller issued the final audit report on December 16, 2020.<sup>20</sup> The audit report specifies the claim components and amounts adjusted, as well as the reasons for the adjustments, and therefore complies with the Government Code section 17558.5(c) notice requirements.<sup>21</sup> The claimant filed the IRC on December 21, 2022, within three years of the final audit report.<sup>22</sup> Staff finds the IRC was timely filed.

**B. The Controller’s Reduction in Finding 1 Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

Staff finds the Controller’s reduction is correct as a matter of law. Under the Parameters and Guidelines, claimants are eligible for reimbursement to provide "a computing device, the use of an assessment technology platform, and the adaptive engine" to administer the *CAASPP* assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with "minimum technology requirements" identified by the *CAASPP* contractor (the Smarter Balanced Assessment Consortium, or SBAC).<sup>23</sup> However, the Decision and Parameters and Guidelines explicitly found school districts are only required to adhere to the *minimum technology specifications* provided by SBAC, consistent with the plain language of the test claim regulations.<sup>24</sup> The Commission determined "minimum technology specifications" include "desktop or laptop computers, iPads, or other tablet computers for which SBAC provides secure browser support to administer the *CAASPP* in the academic year; accompanied by a keyboard, headphones, and a pointing device; and connected to broadband internet service, providing at least 20 Kbps per student to be tested simultaneously."<sup>25</sup> The Commission also found "minimum technology specifications" include the number of computing devices and how much bandwidth is needed to administer the test to pupils within the testing window provided by section 855 of the CDE regulations, which for most pupils in grades three through eight is 60 days.<sup>26</sup> The Decision explained SBAC’s minimum technology specifications did *not* require school districts to provide a computing device for every student, and the intention was to have

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<sup>20</sup> Exhibit A, IRC, filed December 21, 2022, page 93 (Final Audit Report).

<sup>21</sup> Exhibit A, IRC, filed December 21, 2022, pages 92-130 (Final Audit Report).

<sup>22</sup> Exhibit A, IRC, filed December 21, 2022, page 1.

<sup>23</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 112 (Parameters and Guidelines).

<sup>24</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 91 (Decision and Parameters and Guidelines); California Code of Regulations, title 5, section 857(e) ("The LEA *CAASPP* coordinator shall ensure current and ongoing compliance with the minimum technology specifications as identified by the *CAASPP* contractor(s) or consortium.").

<sup>25</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 98 (Decision and Parameters and Guidelines).

<sup>26</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 100 (Decision and Parameters and Guidelines).

school districts minimize the number of devices needed by having multiple students each use the same device, whether by rotating groups of students through a computer lab, moving “computers on wheels” between classrooms, or creating a pool of laptops and tablets to transport from one school to the next, taking advantage of the long regulatory testing window identified in the regulations.<sup>27</sup> SBAC also designed the *CAASPP* assessment to be administered on older computing devices, and technology specifications were “deliberately established as a low entry point to help ensure that technology-purchasing decisions are made based on instructional plans” and not on testing.<sup>28</sup> Thus, the Commission found “districts that have compatible devices are *not* compelled by this mandate to purchase new computing devices or upgrade operating systems,” and if existing devices and technology infrastructure are insufficient to meet the minimum technology specifications, the claimant has the burden to provide documentation supporting increased costs required to administer the *CAASPP* tests in accordance with those specifications.<sup>29</sup> In this respect, the Parameters and Guidelines explicitly require “Claimants shall maintain supporting documentation showing how their existing inventory of computing devices and accessories, technology infrastructure, and broadband internet service is not sufficient to administer the *CAASPP* test to all eligible pupils in the testing window, based on the minimum technical specifications identified by the contractor(s) or consortium.”<sup>30</sup> The Commission’s Decision adopting the Parameters and Guidelines, and the Parameters and Guidelines themselves, are regulatory in nature and are binding on the claimant.<sup>31</sup>

In this case, the Controller correctly found the documents provided by the claimant do not support a finding the existing inventory of devices were insufficient to comply with the minimum technology specifications to administer the *CAASPP* test to all eligible pupils within the testing window identified in CDE regulations and, thus, the Controller’s reduction is correct as a matter of law. The claimant provided an inventory of its existing devices as of the start of each fiscal year during the audit period.<sup>32</sup> The Decision on the Parameters and Guidelines recognizes an inventory of existing devices may establish a “baseline” by which to measure any required incremental increases in

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<sup>27</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 89-90 (Decision and Parameters and Guidelines).

<sup>28</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 103 (Decision and Parameters and Guidelines, citing SBAC Technology Strategy Framework and Testing Device Requirements).

<sup>29</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 93, 98 (Decision and Parameters and Guidelines).

<sup>30</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines).

<sup>31</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

<sup>32</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report).

cost, but does *not* capture all of the information necessary to determine whether the district was compelled to purchase new devices or install new technology infrastructure to comply with the minimum technology specifications.<sup>33</sup>

The claimant used a shorter, 35-day testing window for all students (instead of the 60 days provided in CDE regulations for grades three through eight) and granted 75 percent more testing time to students on average than the State provided, which the claimant alleges impacted the number of devices needed. Although school districts have the authority under CDE regulations to shorten the testing window and to allow all students more time to complete the tests, both of which may increase the number of computing devices needed to administer the *CAASPP* test, those costs are triggered by local discretionary decisions, are outside of the “minimum technology specifications,” and are not mandated by the state. The Parameters and Guidelines authorize reimbursement only for the “minimum technology specifications” required to administer the *CAASPP* test during the window period “provided in CDE regulations.” The state-mandated program is designed to work within the district’s existing resources. Thus, to be entitled to reimbursement, a claimant is required to show with supporting documentation its existing computing devices are insufficient to administer the *CAASPP* test to students within the 60-day testing window identified in the CDE regulations. If a claimant chooses to alter those minimum technology specifications causing it to purchase more devices, then reimbursement is not required. Thus, the Controller’s reduction of costs for 5,155 new computers is correct as a matter of law.

In addition, the claimant did not provide supporting documentation showing its existing broadband internet services were insufficient to comply with the *CAASP* program.<sup>34</sup> The claimant asserts it was necessary to improve network infrastructure to ensure equity to its students across the District, but the only documentation regarding its broadband internet services the claimant provided was a table showing broadband internet service expenses for fiscal year 2016-2017 totaling \$135,277.64, with a note from Phil Nuefeld, the Executive Director of IT, that 30 percent was for *CAASPP*, or \$40,583.29.<sup>35</sup> This is a source document showing the actual costs incurred, but it does not show the claimant was unable to provide 20 Kbps internet service to each student being tested simultaneously without making improvements to its broadband internet service. Staff finds the Controller correctly determined “the district provided no supporting documentation to show that the networking upgrades were mandated, and no support to show how the existing infrastructure prevented it from conducting the *CAASPP* testing within the mandated 60-day window.”<sup>36</sup> Thus, the Controller’s

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<sup>33</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 100 (Decision and Parameters and Guidelines).

<sup>34</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines).

<sup>35</sup> Exhibit A, IRC, filed December 21, 2022, page 38.

<sup>36</sup> Exhibit A, IRC, filed December 21, 2022, page 111 (Final Audit Report).

reduction of costs claimed for improving Broadband internet services is correct as a matter of law.

Staff further finds the Controller's reduction is not arbitrary, capricious, or without evidentiary support. The supporting documentation the claimant provided gave no information showing the number of existing devices and bandwidth were insufficient. The Controller exercised its audit authority to find the minimum number of computing devices and broadband internet service the claimant needed to administer *CAASPP* during the testing window using the SBAC calculator and information provided by the claimant, leaving open the possibility the claimant's existing inventory of devices and broadband internet services was in fact insufficient, even if the supporting documents did not show it. The Controller found the claimant needed 2,459 devices and 49.18 Mbps broadband internet bandwidth to complete testing for all eligible pupils in the 60-day testing window provided in CDE regulations in fiscal year 2015-2016, and 2,440 devices and 48.80 Mbps broadband internet bandwidth in fiscal year 2016-2017; significantly less than the 31,816 devices in the claimant's existing inventory in fiscal year 2015-2016 and 33,920 devices in fiscal year 2016-2017, and had sufficient existing bandwidth to meet the minimum technology specifications.<sup>37</sup> A 35-day testing window would still only require 4,215 devices in fiscal year 2015-2016 and 4,182 devices in fiscal year 2016-2017 according to the SBAC calculator, well within the claimant's existing inventory of 31,816 devices in fiscal year 2015-2016, and 33,920 devices in fiscal year 2016-2017.<sup>38</sup>

The claimant alleges this conclusion was arbitrary and capricious because the Parameters and Guidelines do not require the number of devices needed be determined using the SBAC Calculator, and the calculator does not consider the choices made by the claimant and other "mitigating factors."<sup>39</sup> While the Parameters and Guidelines do not specifically require using the SBAC Calculator to determine the number of devices and bandwidth needed to administer *CAASPP* testing to all eligible pupils, the Parameters and Guidelines do require claimants comply with the minimum technology specifications identified by SBAC, and the Decision and Parameters and Guidelines recognized the SBAC Calculator as a tool to assist school districts in determining how to meet those specifications within the CDE testing window. Therefore, the decision to base the number of devices needed on the SBAC Calculator's formula was not arbitrary, capricious, or lacking in evidentiary support. Moreover, the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made to reduce the costs claimed.<sup>40</sup>

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<sup>37</sup> Exhibit A, IRC, filed December 21, 2022, page 105 (Final Audit Report).

<sup>38</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 17.

<sup>39</sup> Exhibit A, IRC, filed December 21, 2022, pages 17, 19.

<sup>40</sup> See *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

### **Conclusion**

Based on the forgoing analysis, staff finds the Controller's reduction is correct as a matter of law, and not arbitrary, capricious, or lacking in evidentiary support.

### **Staff Recommendation**

Staff recommends the Commission adopt the Proposed Decision to deny the IRC. Staff further recommends the Commission authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

<p><b>IN RE INCORRECT REDUCTION CLAIM</b></p> <p>Education Code Section 60640, as Amended by Statutes 2013, Chapter 489 (AB 484) and Statutes 2014, Chapter 32 (SB 858)</p> <p>California Code of Regulations, Title 5, Sections 850, 852, 853, 853.5, 857, 861(b)(5), 864 (Register 2014, Nos. 6, 30, and 35)</p> <p>Fiscal Years 2015-2016 and 2016-2017</p> <p>Filed on December 21, 2022</p> <p>Fresno Unified School District, Claimant</p>	<p>Case No.: 22-1401-I-01</p> <p><i>California Assessment of Student Performance and Progress (CAASPP)</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted September 27, 2024)</i></p>
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**DECISION**

The Commission on State Mandates (Commission) heard and decided this Incorrect Reduction Claim (IRC) during a regularly scheduled hearing on September 27, 2024. [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 IRC by a vote of [vote will be included in the adopted Decision], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Shannon Clark, Representative of the Director of the Office of Planning and Research	
Deborah Gallegos, Representative of the State Controller	
Renee Nash, School District Board Member	
William Pahland, Representative of the State Treasurer, Vice Chairperson	
Michelle Perrault, Representative of the Director of the Department of Finance, Chairperson	

## **Summary of the Findings**

This IRC addresses reductions made by the State Controller's Office (Controller) to costs claimed by the Fresno Unified School District (claimant) for fiscal years 2015-2016 and 2016-2017 (audit period) for the *California Assessment of Student Performance and Progress (CAASPP)* program. *CAASPP* requires school districts test students in grades three through eight and grade 11 in English Language Arts and Mathematics using a secured browser-based testing platform. The Controller reduced all of the claimant's costs for the purchase of 5,155 new computing devices and broadband internet services during the audit period, totaling \$2,295,922. The Controller found the claimant did not provide supporting documentation showing its existing supply of computing devices and broadband internet services was insufficient to administer the test to its pupils during the testing window provided by the California Department of Education (CDE) as required by the Parameters and Guidelines. The Controller further found the claimant's existing supply of computing devices and broadband internet services were sufficient to complete testing for all eligible pupils within the testing window according to the tool provided by the CDE and the testing contractor called the "Smarter Balanced Technology Readiness Calculator" (SBAC Calculator). The claimant disputes these findings.

The Commission finds the Controller's reduction is correct as a matter of law. Under the Parameters and Guidelines, claimants are eligible for reimbursement to provide "a computing device, the use of an assessment technology platform, and the adaptive engine" to administer the *CAASPP* assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with "minimum technology requirements" identified by the *CAASPP* contractor (the Smarter Balanced Assessment Consortium, or SBAC).<sup>41</sup> However, the Decision and Parameters and Guidelines explicitly found school districts are only required to adhere to the *minimum technology specifications* provided by SBAC, consistent with the plain language of the test claim regulations.<sup>42</sup> The Commission determined "minimum technology specifications" include "desktop or laptop computers, iPads, or other tablet computers for which SBAC provides secure browser support to administer the *CAASPP* in the academic year; accompanied by a keyboard, headphones, and a pointing device; and connected to broadband internet service, providing at least 20 Kbps per student to be tested simultaneously."<sup>43</sup> The Commission also found "minimum technology specifications" include the number of computing devices and how much bandwidth is needed to

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<sup>41</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 112 (Parameters and Guidelines).

<sup>42</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 91 (Decision and Parameters and Guidelines); California Code of Regulations, title 5, section 857(e) ("The LEA *CAASPP* coordinator shall ensure current and ongoing compliance with the minimum technology specifications as identified by the *CAASPP* contractor(s) or consortium.").

<sup>43</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 98 (Decision and Parameters and Guidelines).



administer the test to pupils within the testing window provided by section 855 of the CDE regulations, which for most pupils in grades three through eight is 60 days.<sup>44</sup> The Decision explained SBAC’s minimum technology specifications did *not* require school districts to provide a computing device for every student, and the intention was to have school districts minimize the number of devices needed by having multiple students each use the same device, whether by rotating groups of students through a computer lab, moving “computers on wheels” between classrooms, or creating a pool of laptops and tablets to transport from one school to the next, taking advantage of the long regulatory testing window identified in the regulations.<sup>45</sup> SBAC also designed the *CAASPP* assessment to be administered on older computing devices, and the technology specifications were “deliberately established as a low entry point to help ensure that technology-purchasing decisions are made based on instructional plans” and not on testing.<sup>46</sup> Thus, the Commission found “districts that have compatible devices are *not* compelled by this mandate to purchase new computing devices or upgrade operating systems,” and if existing devices and technology infrastructure are insufficient to meet the minimum technology specifications, the claimant has the burden to provide documentation supporting a finding of increased costs required to administer the *CAASPP* tests in accordance with those specifications.<sup>47</sup> In this respect, the Parameters and Guidelines explicitly require “Claimants shall maintain supporting documentation showing how their existing inventory of computing devices and accessories, technology infrastructure, and broadband internet service is not sufficient to administer the *CAASPP* test to all eligible pupils in the testing window, based on the minimum technical specifications identified by the contractor(s) or consortium.”<sup>48</sup> The Commission’s Decision adopting the Parameters and Guidelines, and the Parameters and Guidelines themselves, are regulatory in nature and are binding on the claimant.<sup>49</sup>

In this case, the Controller correctly found the documents provided by the claimant do not support a finding the existing inventory of devices was insufficient to comply with the minimum technology specifications to administer the *CAASPP* test to all eligible pupils

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<sup>44</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 100 (Decision and Parameters and Guidelines).

<sup>45</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 89-90 (Decision and Parameters and Guidelines).

<sup>46</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 103 (Decision and Parameters and Guidelines, citing SBAC Technology Strategy Framework and Testing Device Requirements).

<sup>47</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 93, 98 (Decision and Parameters and Guidelines).

<sup>48</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines).

<sup>49</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

within the testing window identified in CDE regulations and, thus, the Controller's reduction is correct as a matter of law. The claimant provided an inventory of its existing devices at the start of each fiscal year during the audit period.<sup>50</sup> The Decision and Parameters and Guidelines recognizes an inventory of existing devices may establish a "baseline" by which to measure any required incremental increases in cost, but does *not* capture all of the information necessary to determine whether the district was compelled to purchase new devices or install new technology infrastructure to comply with the minimum technology specifications.<sup>51</sup>

The claimant also used a shorter, 35-day testing window for all students (instead of the 60 days provided in CDE regulations for grades three through eight) and granted 75 percent more testing time to students on average than the State provided, which the claimant alleges impacted the number of devices needed. Although school districts have the authority under CDE regulations to shorten the testing window and to allow all students more time to complete the tests, both of which may increase the number of computing devices needed to administer the *CAASPP* test, those costs are triggered by local discretionary decisions, are outside of the "minimum technology specifications," and are not mandated by the state. The Parameters and Guidelines authorize reimbursement only for the "minimum technology specifications" required to administer the *CAASPP* test during the window period "provided in CDE regulations." The state-mandated program is designed to work within the district's existing resources. Thus, to be entitled to reimbursement, a claimant is required to show with supporting documentation its existing computing devices are insufficient to administer the *CAASPP* test to students within the 60-day testing window identified in the CDE regulations. If a claimant chooses to alter those minimum technology specifications causing it to purchase more devices, then reimbursement is not required. Thus, the Controller's reduction of costs for 5,155 new computers is correct as a matter of law.

In addition, the claimant did not provide supporting documentation showing its existing broadband internet service was insufficient to comply with the *CAASP* program.<sup>52</sup> The claimant asserts it was necessary to improve network infrastructure to ensure equity to its students across the District, but the only documentation regarding its broadband internet services the claimant provided was a table showing broadband internet service expenses for fiscal year 2016-2017 totaling \$135,277.64, with a note from Phil Nuefeld, the Executive Director of IT, that 30 percent was for *CAASPP*, or \$40,583.29.<sup>53</sup> This is a source document showing the actual costs incurred, but it does not show the claimant was unable to provide 20 Kbps internet service to each student being tested simultaneously without making improvements to its broadband internet service. Thus,

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<sup>50</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report).

<sup>51</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 100 (Decision and Parameters and Guidelines).

<sup>52</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines).

<sup>53</sup> Exhibit A, IRC, filed December 21, 2022, page 38.

the Commission finds the Controller correctly determined “the district provided no supporting documentation to show that the networking upgrades were mandated, and no support to show how the existing infrastructure prevented it from conducting the CAASPP testing within the mandated 60-day window.”<sup>54</sup> Thus, the Controller’s reduction of costs claimed for improving Broadband internet services is correct as a matter of law.

The Commission further finds the Controller’s reduction is not arbitrary, capricious, or without evidentiary support. As the supporting documentation the claimant provided gave no information showing how the number of existing devices and bandwidth were insufficient, the Controller exercised its audit authority to find the minimum number of computing devices and broadband internet service the claimant needed to administer CAASPP during the testing window using the SBAC calculator and information provided by the claimant, leaving open the possibility the claimant’s existing inventory of devices and broadband internet services was in fact insufficient, even if the supporting documents did not show it. The Controller found the claimant needed 2,459 devices and 49.18 Mbps broadband internet bandwidth to complete testing for all eligible pupils in the 60-day testing window provided in CDE regulations in fiscal year 2015-2016, and 2,440 devices and 48.80 Mbps broadband internet bandwidth in fiscal year 2016-2017; significantly less than the 31,816 devices in the claimant’s existing inventory in fiscal year 2015-2016 and 33,920 devices in fiscal year 2016-2017, and had sufficient existing bandwidth to meet the minimum technology specifications.<sup>55</sup> A 35-day testing window would still only require 4,215 devices in fiscal year 2015-2016 and 4,182 devices in fiscal year 2016-2017 according to the SBAC calculator, well within the claimant’s existing inventory of 31,816 devices in fiscal year 2015-2016, and 33,920 devices in fiscal year 2016-2017.<sup>56</sup>

The claimant alleges this conclusion was arbitrary and capricious, because the Parameters and Guidelines do not require the number of devices needed be determined using the SBAC Calculator, and the calculator does not consider the choices made by the claimant and other “mitigating factors.”<sup>57</sup> While the Parameters and Guidelines do not specifically require using the SBAC Calculator to determine the number of devices and bandwidth needed to administer CAASPP testing to all eligible pupils, the Parameters and Guidelines do require claimants comply with the minimum technology specifications identified by SBAC, and the Decision and Parameters and Guidelines recognized the SBAC Calculator as a tool to assist school districts in determining how to meet those specifications within the CDE testing window. Therefore, the decision to base the number of devices needed on the SBAC Calculator’s formula was not arbitrary, capricious, or lacking in evidentiary support. Moreover, the Controller

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<sup>54</sup> Exhibit A, IRC, filed December 21, 2022, page 111 (Final Audit Report).

<sup>55</sup> Exhibit A, IRC, filed December 21, 2022, page 105 (Final Audit Report).

<sup>56</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 17.

<sup>57</sup> Exhibit A, IRC, filed December 21, 2022, pages 17, 19.

adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made to reduce the costs claimed.<sup>58</sup>

Accordingly, the Commission denies this IRC.

## COMMISSION FINDINGS

### I. Chronology

01/22/2016	The Commission adopted the Test Claim Decision. <sup>59</sup>
02/04/2016	The Commission issued a Corrected Test Claim Decision. <sup>60</sup>
03/25/2016	The Commission adopted the Decision and Parameters and Guidelines. <sup>61</sup>
07/01/2016	The Controller issued claiming instructions. <sup>62</sup>
01/24/2017	The claimant filed its fiscal year 2015-2016 reimbursement claim. <sup>63</sup>
10/01/2017	The Controller issued revised claiming instructions. <sup>64</sup>
02/14/2018	The claimant filed its fiscal year 2016-2017 reimbursement claim. <sup>65</sup>
11/18/2019	The Controller notified the claimant of the audit. <sup>66</sup>
10/21/2020	The Controller issued the Draft Audit Report. <sup>67</sup>
10/29/2020	The claimant filed comments on the Draft Audit Report. <sup>68</sup>

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<sup>58</sup> See *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>59</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 83 (Decision and Parameters and Guidelines).

<sup>60</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 83 (Decision and Parameters and Guidelines).

<sup>61</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 82 (Decision and Parameters and Guidelines).

<sup>62</sup> Exhibit A, IRC, filed December 21, 2022, page 51 (Claiming Instructions).

<sup>63</sup> Exhibit A, IRC, filed December 21, 2022, page 119 (Final Audit Report).

<sup>64</sup> Exhibit A, IRC, filed December 21, 2022, page 71 (Revised Claiming Instructions).

<sup>65</sup> Exhibit A, IRC, filed December 21, 2022, page 125 (Final Audit Report).

<sup>66</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 5 (Declaration of Lisa Kurokawa).

<sup>67</sup> Exhibit A, IRC, filed December 21, 2022, page 99 (Final Audit Report).

<sup>68</sup> Exhibit A, IRC, filed December 21, 2022, page 115 (Final Audit Report).

12/16/2020 The Controller issued the Final Audit Report.<sup>69</sup>  
12/21/2022 The claimant filed the IRC.<sup>70</sup>  
10/02/2023 The Controller filed late comments on the IRC.<sup>71</sup>  
10/04/2023 The claimant filed rebuttal comments.<sup>72</sup>  
11/03/2023 The claimant filed late supplemental rebuttal comments.<sup>73</sup>  
07/17/2024 Commission staff issued the Draft Proposed Decision.<sup>74</sup>  
07/19/2024 The Controller filed comments on the Draft Proposed Decision.<sup>75</sup>  
08/07/2024 The claimant filed comments on the Draft Proposed Decision.<sup>76</sup>

## II. Background

### A. California Assessment of Student Performance and Progress Program

The *California Assessment of Student Performance and Progress (CAASPP)* Program replaced the previous Standardized Testing and Reporting (STAR) program. During the audit period, *CAASPP* assessments were used to test students in grades three through eight and grade 11 in English Language Arts and Mathematics.<sup>77</sup> The tests are taken online via a secured browser, and thus, the tests are to be taken on a computing device with internet access.<sup>78</sup> Each subject has two portions, a computer adaptive test and a performance task, and each portion is intended to take about two hours each, or eight hours total; however the tests are taken untimed and allow frequent breaks so some students may need more time.<sup>79</sup>

On January 22, 2016, the Commission adopted the Test Claim Decision, and later issued a Corrected Decision to add an activity approved in the Decision, but

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<sup>69</sup> Exhibit A, IRC, filed December 21, 2022, page 93 (Final Audit Report).

<sup>70</sup> Exhibit A, IRC, filed December 21, 2022.

<sup>71</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023.

<sup>72</sup> Exhibit C, Claimant's Rebuttal Comments, filed October 4, 2023.

<sup>73</sup> Exhibit D, Claimant's Late Supplemental Rebuttal Comments, filed November 3, 2023.

<sup>74</sup> Exhibit E, Draft Proposed Decision, issued July 17, 2024.

<sup>75</sup> Exhibit F, Controller's Comments on the Draft Proposed Decision, filed July 19, 2024.

<sup>76</sup> Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 7, 2024.

<sup>77</sup> Education Code section 60640(b)(1)(A).

<sup>78</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 88.

<sup>79</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 133.

inadvertently omitted from the conclusion.<sup>80</sup> The Parameters and Guidelines were adopted on March 25, 2016, and for each eligible claimant that incurs increased costs, the following activities are reimbursable:<sup>81</sup>

- A. Beginning January 1, 2014, provide “a computing device, the use of an assessment technology platform, and the adaptive engine” to administer the CAASPP assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology specifications, as identified by the CAASPP contractor(s) or consortium. Reimbursement for this activity includes the following:
  1. A sufficient number of desktop or laptop computers, iPads, or other tablet computers for which Smarter Balanced provides secure browser support in the academic year, along with a keyboard, headphones, and a pointing device for each, to administer the CAASPP to all eligible pupils within the testing window provided by CDE regulations.
  2. Broadband internet service providing at least 20 Kbps per pupil to be tested simultaneously, costs for acquisition and installation of wireless or wired network equipment, and hiring consultants or engineers to assist a district in completing and troubleshooting the installation.

**Claimants shall maintain supporting documentation showing how their existing inventory of computing devices and accessories, technology infrastructure, and broadband internet service is not sufficient to administer the CAASPP test to all eligible pupils in the testing window, based on the minimum technical specifications identified by the contractor(s) or consortium.**

**Reimbursement is NOT required to provide a computing device for every pupil, for the time to assess each pupil, or for the purchase of other equipment not listed.**

- B. Beginning February 3, 2014, the LEA CAASPP coordinator shall be responsible for assessment technology, and shall ensure current and ongoing compliance with minimum technology specifications as identified by the CAASPP contractor(s) or consortium.
- C. Beginning February 3, 2014, notify parents or guardians each year of their pupil’s participation in the CAASPP assessment system, including notification that notwithstanding any other provision of law, a parent’s

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<sup>80</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 83 (Decision and Parameters and Guidelines).

<sup>81</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 83-84 (Decision and Parameters and Guidelines).

or guardian's written request to excuse his or her child from any or all parts of the CAASPP assessments shall be granted.

- D. Beginning February 3, 2014, score and transmit the CAASPP tests in accordance with manuals or other instructions provided by the contractor or CDE.
- E. Beginning February 3, 2014, identify pupils unable to access the computer-based version of the CAASPP tests; and report to the CAASPP contractor the number of pupils unable to access the computer-based version of the test.
- F. Beginning February 3, 2014, report to CDE if a pupil in grade 2 was administered a diagnostic assessment in language arts and mathematics that is aligned to the common core academic content standards pursuant to Education Code section 60644.
- G. Beginning February 3, 2014, comply with any and all requests from CAASPP contractors, and abide by any and all instructions provided by the CAASPP contractor or consortium, whether written or oral, that are provided for training or provided for in the administration of a CAASPP test. Only participation in the training directed by the CAASPP contractor or consortium is reimbursable as follows:
  - 1. *All LEA CAASPP Coordinators, CAASPP Test Site Coordinators (SCs), Test Administrators (TAs), and school administrative staff who will be involved in the Smarter Balanced assessment administration to review the applicable supplemental videos and archived Webcasts, which can be found on the CAASPP Current Administration Training Web page at <http://caaspp.org/training/caaspp/>.*
  - 2. *Prior to administering a test, Test Administrators (and any other individuals who will be administering any secure Smarter Balanced assessment) to read the CAASPP Smarter Balanced Online Test Administration Manual, the Smarter Balanced Usability, Accessibility, and Accommodations Guidelines, and the Test Administrator (TA) Reference Guide, and view the associated Smarter Balanced training modules. All of these documents are linked on the CAASPP Instructions and Manuals Web page at <http://caaspp.org/administration/instructions/>.*
- H. Beginning August 27, 2014, the CAASPP test site coordinator shall be responsible for ensuring that all designated supports, accommodations and individualized aids are entered into the registration system.<sup>82</sup>

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<sup>82</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, pages 115-116 (Parameters and Guidelines), emphasis in original.

At issue in this IRC is the Controller’s method for determining whether a school district has a sufficient existing supply of computing devices and broadband internet services in accordance with the *first* reimbursable activity. As stated in the Decision and Parameters and Guidelines, although providing “a computing device, the use of an assessment technology platform, and the adaptive engine” is a reimbursable part of the mandated program, this does not mean school districts are required to provide each student with their own computing device. The program is designed to be compatible with existing technology in which districts have previously invested, and as explained herein, the CDE regulations provide for a long testing window to meet the requirements.<sup>83</sup> In addition, testimony during the Parameters and Guidelines stage supported a finding schools could rotate students through a computer lab, move “computers on wheels” to different classrooms, and districts could pool together available mobile units, such as laptops or tablets, and transport them from one school site to the next.<sup>84</sup> The Smarter Balanced Assessment Consortium (SBAC) guidance, which identifies the minimum technology specifications, also asserted most districts would find their existing infrastructure and device inventory would be sufficient, although certain scenarios may cause various districts to consider purchasing additional devices.<sup>85</sup> The Decision and Parameters and Guidelines state the following:

The Commission finds that claimants *are required*, based on the approved activity, and the technology specifications issued by the contractor(s), to use existing devices and technology infrastructure, if compatible (i.e., if there is an available secure browser and sufficient network speed). And, if existing devices and technology infrastructure are not sufficient, the burden is on the claimant to establish, based on supporting documentation, that increased costs are required to administer the assessments in accordance with the law. In addition, as the “boilerplate” language in Section V. of the Parameters and Guidelines already provide, reimbursement on a pro-rata basis is required if technology infrastructure and computing devices are used for purposes other than the CAASPP assessments.<sup>86</sup>

Thus, the Commission found claimants are expected to utilize their existing devices and broadband internet services first to meet minimum technology specifications before they purchase additional devices and broadband internet services to use for the program, and the burden is on claimants to establish their existing devices and broadband

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<sup>83</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 91, 100 (Decision and Parameters and Guidelines).

<sup>84</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 89-90 (Decision and Parameters and Guidelines).

<sup>85</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 90 (Decision and Parameters and Guidelines).

<sup>86</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 98-99 (Decision and Parameters and Guidelines), emphasis in original.



internet services were not sufficient to administer testing to all eligible pupils within the testing window.

### **B. The Controller's Audit and Summary of the Issues**

The claimant's reimbursement claims for fiscal years 2015-2016 and 2016-2017 totaled \$2,897,066. The Controller found \$493,077 of claimed expenses allowable and \$2,402,989 to be unallowable.<sup>87</sup> The claimant disputes Finding 1, regarding claimant's unallowed materials and supplies costs.<sup>88</sup>

\$2,295,922 was claimed for materials and supplies costs during the audit period: \$1,504,004 for computers, browsers or peripherals for fiscal year 2015-2016, \$751,335 for computers, browsers or peripherals for fiscal year 2016-2017, and \$40,583 for internet service, network equipment, consultants or engineers for fiscal year 2016-2017.<sup>89</sup> These costs were for 3,509 new computers purchased in fiscal year 2015-2016; 1,646 new computers purchased in fiscal year 2016-2017 (5,155 new computers in total); and replacing over 2,000 access ports throughout the district and core switches at all instructional sites as well as unspecified bandwidth improvements at some Southeast Fresno school sites.<sup>90</sup> The Controller found all of these materials and supplies costs were unallowable. The Controller found the claimant "did not meet the existing technology infrastructure and broadband internet service requirements outlined in the program's Parameters and Guidelines," and the claimant "was not aware of the reimbursement requirements outlined in the Parameters and Guidelines," because the claimant "did not provide documentation to show that its existing inventory of computing devices and broadband internet service was not sufficient to administer the CAASPP test within the testing window," and "the district's own inventory records clearly show that it had enough computing devices to perform the CAASPP testing within the testing window without needing to purchase additional computing devices."<sup>91</sup>

The CDE and Smarter Balanced Assessment Consortium provide a tool called the "Smarter Balanced Technology Readiness Calculator," (SBAC Calculator) which estimates the number of days and the internet bandwidth required to complete testing given the number of students to be tested, number of available devices, the number of hours per day devices are available for testing, and the available internet bandwidth, which the Controller used to determine whether the claimant's existing inventory of

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<sup>87</sup> Exhibit A, IRC, filed December 21, 2022, page 102 (Final Audit Report).

<sup>88</sup> Findings 2 and 3 also concluded the claimant did not report some indirect costs that would have been reimbursable and underreported offset revenues and reimbursements, which the claimant does not dispute.

<sup>89</sup> Exhibit A, IRC, filed December 21, 2022, page 101 (Final Audit Report).

<sup>90</sup> Exhibit A, IRC, filed December 21, 2022, pages 35 (Exhibit 3); 37 (Exhibit 4); 107 (Final Audit Report).

<sup>91</sup> Exhibit A, IRC, filed December 21, 2022, pages 103, 108, 111 (Final Audit Report).

devices and broadband internet services were sufficient.<sup>92</sup> The claimant provided the Controller with an inventory of its existing devices for both fiscal years. After confirming with the claimant the inventory did not contain any duplicate serial numbers, surplus/disposed computers, or computers used by staff, and after excluding any devices that did not meet the *CAASPP* program’s minimum specifications, the Controller found the claimant had 31,816 existing devices in fiscal year 2015-2016, and 33,920 existing devices in fiscal year 2016-2017.<sup>93</sup> The claimant reported broadband internet speeds varied between school sites, ranging from 100 Mbps (megabits per second) to 1 Gbps (gigabytes per seconds), so the Controller chose to apply the lowest reported 100 Mbps to the entire district.<sup>94</sup> Given 36,876 students tested in fiscal year 2015-2016, and 36,595 students in fiscal year 2016-2017, the Controller used the Smarter Balanced Technology Readiness Calculator to find the claimant could complete testing in a 60-day testing window using only 2,459 devices and 49.18 Mbps in fiscal year 2015-2016, and using 2,440 devices and 48.80 Mbps in fiscal year 2016-2017.<sup>95</sup> Because the minimum number of devices and bandwidth needed was less than the claimant’s existing devices and broadband internet speeds for either year, the Controller concluded the claimant’s existing devices and internet were sufficient to complete testing for all eligible pupils in the testing window.

Fiscal Year	Students Tested	Devices Needed for Testing	Days in Testing Window	District’s Internet Speed	Estimated Bandwidth Required
2015-2016	36,876	2,459	60	100 Mbps	49.18 Mbps (49.18% of total bandwidth)
2016-2017	36,595	2,440	60	100 Mbps	48.80 Mbps (48.80% of total bandwidth)

<sup>96</sup>

In response to the draft audit report, the claimant did not dispute the number of existing devices, the existing broadband internet speed, or the number of pupils required to take the *CAASP* test during the fiscal years in question, but responded to the audit objecting to the conclusion “it was not aware of the reimbursement requirements outlined in the program’s Parameters and Guidelines.”<sup>97</sup> The claimant argued the Parameters and Guidelines do not specify claimants must use the Smarter Balanced Technology Readiness Calculator to determine the number of devices needed to complete *CAASPP*

<sup>92</sup> Exhibit H (1), Smarter Balanced Assessment Consortium, Smarter Balanced Technology Readiness Calculator, <https://www3.cde.ca.gov/sbactechcalc/> (accessed June 10, 2024).

<sup>93</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report).

<sup>94</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report).

<sup>95</sup> Exhibit A, IRC, filed December 21, 2022, page 105 (Final Audit Report).

<sup>96</sup> Exhibit A, IRC, filed December 21, 2022, page 105 (Final Audit Report).

<sup>97</sup> Exhibit A, IRC, filed December 21, 2022, page 106 (Final Audit Report).

testing. The claimant asserted due to its large geographical range, high unduplicated student population, high special education population, and several mitigating factors, it needed more than the minimum number of devices according to the Smarter Balanced Technology Readiness Calculator's estimates. The claimant found a large majority of its students struggled to complete testing within the recommended time frame and suffered test-taking fatigue. To address this the claimant's testing procedures during the audit period tested one grade level per week to ensure students had adequate time to complete the tests.<sup>98</sup> The claimant also used a 35-day testing window instead of the 60-day testing window the Controller assumed in its calculations, allowing students as much instructional time as possible.<sup>99</sup> Additionally, the claimant asserted many of the claimant's existing devices were allegedly inadequate for testing because they were at the end of their lifecycle, or were repurposed for other activities and could not be used for testing.<sup>100</sup> The 5,155 computers the claimant purchased during the audit period represent only a 15 percent increase in the district's existing devices,<sup>101</sup> and the Test Claim Decision found some school districts may be required to purchase new devices.<sup>102</sup> The claimant further alleged the network expenses were necessary to ensure there was equity across the district for all school sites and were used to improve network infrastructure at several school sites in Southeast Fresno and replace over 2,000 access ports across the district and core switches at all school sites to help increase bandwidth.<sup>103</sup>

These arguments did not change the Controller's findings. The final audit report indicates although the Parameters and Guidelines do not specify claimants must use the Smarter Balanced Technology Readiness Calculator to show their existing devices and internet infrastructure are insufficient, the Parameters and Guidelines do require claimants maintain documentation supporting a finding their existing inventory of computing devices and internet service are not sufficient to complete *CAASPP* testing within the testing window. "The district did not provide documentation to show that its existing inventory of computing devices and broadband internet service was not sufficient to administer the *CAASPP* test within the testing window. Therefore, we used the calculator to determine the number of computing devices the district needed to administer the *CAASPP* test to all eligible pupils within the testing window."<sup>104</sup> The final audit report indicates the Smarter Balanced Technology Readiness Calculator is a tool provided by the contractor, the Smarter Balanced Assessment Consortium (SBAC) and CDE to assist schools in determining their technology requirements for the *CAASPP*

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<sup>98</sup> Exhibit A, IRC, filed December 21, 2022, page 107 (Final Audit Report).

<sup>99</sup> Exhibit A, IRC, filed December 21, 2022, page 107 (Final Audit Report).

<sup>100</sup> Exhibit A, IRC, filed December 21, 2022, page 107 (Final Audit Report).

<sup>101</sup> Exhibit A, IRC, filed December 21, 2022, page 106 (Final Audit Report).

<sup>102</sup> Exhibit A, IRC, filed December 21, 2022, page 106 (Final Audit Report).

<sup>103</sup> Exhibit A, IRC, filed December 21, 2022, page 107 (Final Audit Report).

<sup>104</sup> Exhibit A, IRC, filed December 21, 2022, page 108 (Final Audit Report).

program. By changing parameters in the calculator, an agency can determine the network bandwidth required to administer the assessments, as well as determine the minimum number of computers needed to administer the assessments within the testing window (assuming the network bandwidth was already sufficient).<sup>105</sup> Although the issues raised in the claimant's response to the audit regarding test taking fatigue and granting students additional instructional time are "reasonable, measured, and thoughtfully considered," the specific testing procedures used during the audit period fell outside the scope of the audit, so were not addressed.<sup>106</sup> The final audit report further states the district has discretion as to how it addresses test-taking fatigue and provides adequate time to complete the assessments "(as long as the timeline falls within the mandated testing window)."<sup>107</sup> The *CAASPP* Online Test Administration Manual allows school districts to utilize a shorter testing window than the 60-day maximum.<sup>108</sup> However, the decision to use a shorter testing window is a discretionary decision on the claimant's part, and the state did not require the claimant to purchase additional computing devices.<sup>109</sup> Additionally, the claimant provided no supporting documentation to show the networking upgrades were mandated, and no support to show how the existing infrastructure prevented it from conducting the *CAASPP* testing within the mandated 60-day window.<sup>110</sup> The Controller therefore concluded all of the claimant's Materials and Supplies costs during the audit period were unallowable, because the claimant had a sufficient existing supply of computing devices and broadband internet services.

### **III. Positions of the Parties**

#### **A. Fresno Unified School District**

The claimant submitted reimbursement claims for fiscal years 2015-2016 and 2016-2017 totaling \$2,897,066. The claimant seeks reinstatement of \$2,295,922. The claimant alleges the Controller's reductions in Finding 1 are incorrect because it complied with the Parameters and Guidelines and was not required to show its existing devices were insufficient to complete testing using the Smarter Balanced Technology Readiness Calculator's formula.

The claimant reviewed the Smarter Balanced Technology Readiness Calculator's estimates for how many devices would be required to complete testing and determined internally the 2,450 devices needed for a 60-day testing window would not be enough to complete testing in a manner is timely and equitable.<sup>111</sup> The claimant alleges there

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<sup>105</sup> Exhibit A, IRC, filed December 21, 2022, page 108 (Final Audit Report).

<sup>106</sup> Exhibit A, IRC, filed December 21, 2022, page 109 (Final Audit Report).

<sup>107</sup> Exhibit A, IRC, filed December 21, 2022, pages 109-110 (Final Audit Report).

<sup>108</sup> Exhibit A, IRC, filed December 21, 2022, page 110 (Final Audit Report).

<sup>109</sup> Exhibit A, IRC, filed December 21, 2022, page 111 (Final Audit Report).

<sup>110</sup> Exhibit A, IRC, filed December 21, 2022, page 111 (Final Audit Report).

<sup>111</sup> Exhibit A, IRC, filed December 21, 2022, page 14.

were several “mitigating factors” were not taken into consideration in the calculator’s estimates. First, it felt a 60-day testing window would create inequities between students tested earlier in the testing window and those receiving additional instructional time by being tested later, and so used a 35-day testing window instead. “If the district were to administer the test over the entire 60-day period, there would be inequities across the district with students taking the test at the end of the testing window would have received additional instruction compared to the students taking the test at the beginning of the test period.”<sup>112</sup> Second, the claimant found its high population of unduplicated students suffered from test-taking fatigue and struggled to complete tests within the SBAC’s estimates and so its testing procedures granted more time for testing per student. “This period provided approximately 75% more time than what is recommended by the Smarter Balance Calculator (150,000 unique testing days = 2,500 devices x 60 days) since the District is testing in 35 days instead of 60 days. The district needed approximately 263,800 (4,396 devices x 60 days) unique testing days where a student had access to a device to complete the CAASPP testing.”<sup>113</sup> “The testing procedures in 2015-16 and 2016-17 were established to test one grade level per week to ensure that disadvantaged students have equitable and appropriate time to complete the test.”<sup>114</sup> Third, the claimant’s large geographical reach created logistical challenges with transporting devices between schools. “Due to the District’s large geographical reach in Fresno County, (six thousand square miles) the District faced logistical challenges moving devices from school to school.”<sup>115</sup> These factors required the claimant to need more devices than the Smarter Balanced Technology Readiness Calculator estimated, and the claimant purchased approximately “5,100 new devices (not replacements)” to implement the program in a timely and equitable manner.<sup>116</sup>

The network improvement expenses claimed were also done to address inequities:

In 2015-16 and 2016-17, the network reimbursement expenses claimed were necessary for all school sites across the district that had the bandwidth requirements to administer the testing. Due to the District’s large geographical reach in Fresno County the District improved the network infrastructure to ensure there was equity within the District for all school sites. During this period, there were school sites in Southeast

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<sup>112</sup> Exhibit A, IRC, filed December 21, 2022, page 15.

<sup>113</sup> Exhibit A, IRC, filed December 21, 2022, page 15. Note this increase in unique testing days was misattributed in the IRC filing to being caused by the shorter testing window. A 35-day testing window would not cause an increase in the number of days each student would need access to a computing device, but granting more time per student as part of the claimant’s testing procedures would.

<sup>114</sup> Exhibit A, IRC, filed December 21, 2022, pages 15-16.

<sup>115</sup> Exhibit A, IRC, filed December 21, 2022, page 15.

<sup>116</sup> Exhibit A, IRC, filed December 21, 2022, page 17.

Fresno that required improvement to the bandwidth so that testing could be administered.<sup>117</sup>

The claimant relies on the Test Claim Decision, which acknowledged some school districts would be required to purchase new devices, and needing to upgrade testing devices would be inevitable and somewhat uneven from year to year and from one school district to the next.<sup>118</sup> The \$2,295,922 claimed for 5,155 new computing devices and broadband internet service improvements were for reimbursable activities in the Parameters and Guidelines, namely providing a sufficient number of desktop or laptop computers, iPads, or other tablet computers for which Smarter Balanced afforded secure browser support in the academic year, and broadband internet service providing at least 20 Kbps (kilobits per second) per pupil to students being tested simultaneously.<sup>119</sup>

The claimant also asserts the inventory of existing devices it presented to the Controller was sufficient supporting documentation to show it did not have sufficient computing devices to administer testing within the testing window provided by regulations, and the inventory did not accurately represent the number of devices available to use for testing, because it included devices being used for other programs:

The District's supporting documentation, in compliance with the P & G, detailed their "device inventory" that did not have sufficient computing devices to administer the assessment within the testing window provided by the regulations. (P & G p.19) An inventory of existing devices does not necessarily capture all the information necessary to determine whether a district was compelled to purchase new devices or install modern technology infrastructure, but it does establish a "baseline" by which to measure the incremental increase in service (and cost).

SBAC acknowledged in some districts "certain equipment was purchased and deployed to specific sites and to specific user populations with program funding that requires it be kept at a single site or be appropriated for a single population as a condition of the corresponding funds. Thus, program-limited funds, or other legal requirements attached to existing resources, may be a factor in determining whether a district has a sufficient inventory of existing technology infrastructure and devices to administer the assessment." (P & G; p.19.)

Not all of District's existing devices were available for testing as they were being used for only instructional purposes in the classroom, primarily for core ELA and Math instruction. As a result, these devices were not taken out of use for student learning for CAASPP testing. To pull these devices away during the CAASPP testing would hinder student's instruction and

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<sup>117</sup> Exhibit A, IRC, filed December 21, 2022, page 16.

<sup>118</sup> Exhibit A, IRC, filed December 21, 2022, page 16.

<sup>119</sup> Exhibit A, IRC, filed December 21, 2022, page 19.

ability to learn in the classroom; thus, providing further inequities in student learning.<sup>120</sup>

The claimant asserts the Controller's audit findings do not comply with the Parameters and Guidelines because the Controller "arbitrarily and capriciously determined the number of computing devices the District needed to administer the *CAASPP* test are to be solely 'based on calculations on the Smarter Balanced Technology Readiness Calculator's formula.' (District's Audit Response dated October 29, 2020.)"<sup>121</sup> "SCO erroneously concluded the only requirement for reimbursement is that the district's existing inventory of computing devices, technology infrastructure, and broadband internet service be insufficient to administer the *CAASPP* tests to all eligible pupils within the testing window, based on the minimum technical specifications identified by the contractor(s) or consortium."<sup>122</sup> Because the Parameters and Guidelines do not specify the supporting documentation must use the SBAC Calculator to show the existing inventory of devices and broadband internet services were insufficient, the Controller's findings were arbitrary and capricious.

SCO abused their discretion in denying the District's costs claimed for computing devices under Finding 1. The District provided supporting documentary evidence that they supplemented their existing computing devices and the expansion of the existing technology infrastructure due to the testing requirements of *CAASPP*. It was foreseen during the approval of the test claim and the subsequent parameters and guidelines process it would be necessary for Districts to increase their computing devices.

The District's increase of devices by 15% for the testing of 40,000 students is reasonable and appropriate based on the District's documentation provided to SCO during the audit. SCO failed to rely on the test claim and the P & G that the upgrade of testing devices is inevitable, if somewhat uneven from year to year and from one district to the next. In addition, the technology requirements to implement the assessment were deliberately established as a low entry point to help ensure that technology-purchasing decisions are made based on instructional plans and to increase the likelihood that schools will successfully engage in online testing. A majority of the District's existing infrastructure and device inventory served to administer the online assessments.<sup>123</sup>

The claimant submitted the following supporting documentation with the IRC:

- A declaration by Fresno Unified School District Chief Executive of Fiscal Services, Kim Kelstrom, stating the claimed activities were performed to

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<sup>120</sup> Exhibit A, IRC, filed December 21, 2022, pages 17-18.

<sup>121</sup> Exhibit A, IRC, filed December 21, 2022, page 19.

<sup>122</sup> Exhibit A, IRC, filed December 21, 2022, page 19.

<sup>123</sup> Exhibit A, IRC, filed December 21, 2022, page 20.

implement provisions of the Education Code Section 60640, as amended by the Statutes of 2013, Chapter 489 (Assembly Bill 484) and the Statutes of 2014, Chapter 32 (Senate Bill 858); and Title 5, California Code of Regulations, sections 850,852, 853, 853.5, 857, 861(b)(5), and 864, as added or amended by Register 2014, Nos. 6, 30, and 35. Kelstrom also declares the authenticity of claimant's Exhibits 1-6, described below; the overall schedule for testing days and overall testing days per site in fiscal year 2015-2016 were similar to those in fiscal year 2016-2017 documented in Exhibits 1 and 2; and all exhibits were prepared in the ordinary course of business while determining the claimant's budget and testing schedule for the *CAASPP* program.<sup>124</sup>

- Exhibit 1, a table of *CAASPP* testing days in fiscal year 2016-2017, showing which days each school within the district held *CAASPP* testing within an 8-week, 38-day testing window.<sup>125</sup>
- Exhibit 2, a table of unique *CAASPP* testing days per site in fiscal year 2016-2017, showing the number of students per grade at each school within the district and the number of testing days per grade level at each school, ranging from 2.5 days to 30 days, resulting in 263,788 unique testing days for 37,684 students across the entire district, or seven days per student on average.<sup>126</sup>
- Exhibit 3, an inventory of the quantity and models of computing devices purchased in fiscal year 2015-2016 to use for *CAASPP* testing, showing 3,509 computing devices purchased for \$1,504,003.70.<sup>127</sup>
- Exhibit 4, an inventory of the quantity and models of computing devices purchased in fiscal year 2016-2017 to use for *CAASPP* testing, showing 1,646 computing devices purchased for \$753,335.46.<sup>128</sup> The table also shows claimant's broadband internet services expenses for that year were \$135,277.64 in total, with a note from Phil Nuefeld, the Executive Director of IT, that 30 percent was for *CAASPP*, or \$40,583.29.<sup>129</sup> Exhibit 4 also includes a table of the existing inventory of computers used by students in fiscal year 2015-2016, sorted

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<sup>124</sup> Exhibit A, IRC, filed December 21, 2022, pages 21-25 (Declaration of Kim Kelstrom).

<sup>125</sup> Exhibit A, IRC, filed December 21, 2022, pages 26-28. The exhibit shows a 38-day testing window, when the claimant's comments on the audit, IRC filing, rebuttal comments, and comments on the Draft Proposed Decision all reference a 35-day testing window. This decision will use 35 days when discussing what the claimant alleges, and 38 days when discussing the supporting documentation.

<sup>126</sup> Exhibit A, IRC, filed December 21, 2022, pages 29-30.

<sup>127</sup> Exhibit A, IRC, filed December 21, 2022, pages 31-35.

<sup>128</sup> Exhibit A, IRC, filed December 21, 2022, pages 36-37.

<sup>129</sup> Exhibit A, IRC, filed December 21, 2022, page 38.



by model number and operating system. In total there were 31,829 computing devices used by students across the district.<sup>130</sup>

- Exhibit 5, a table of the existing inventory of computers used by students in fiscal year 2016-2017, sorted by model number and operating system. In total there were 33,944 computing devices used by students across the district.<sup>131</sup>
- Exhibit 6, a table of all the *CAASPP* testing sites across the district, including each schools' type (Elementary, K-8, Middle, High School, or Special Education) to note what grades were tested at that school. There were 94 schools that participated in *CAASPP* testing across the district.<sup>132</sup>

On October 4, 2023, the claimant filed rebuttal comments on the Controller's late comments on the IRC, in which the claimant objected the Controller filed its comments on the IRC more than 90 days after the IRC was deemed complete and Government Code 17553(d) provides "The Controller *shall* have no more than 90 days after the date the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the claim by the commission."<sup>133</sup> It asserted the Controller's late comments must be rejected in its entirety, and if the Commission will not remove the Controller's late comments from the record, asked the Commission provide the legal authority supporting the decision and provide the claimant with ample time to consider submitting rebuttal comments.<sup>134</sup>

On November 3, 2023, the claimant filed late supplemental comments responsive to the Controller's late comments on the IRC but not waiving the objections raised in its previous comments, in which the claimant reasserted the District had discretion to choose the duration of its testing period pursuant to the California Code of Regulations, title 5, sections 855(a)(1), 855(a)(2), 855 (a)(3), 855(b), and 855(c).<sup>135</sup> The claimant also argues the Controller's decision to reject the claimant's shorter testing period was arbitrary and capricious because the claimant used a 35-day testing window, there would have been inequities across the district between students who take the tests earlier or later in a 60-day testing window, the district's large geographic reach presented logistical challenges with transporting devices between schools, and the Test Claim Decision acknowledged some school districts may need to purchase additional

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<sup>130</sup> Exhibit A, IRC, filed December 21, 2022, pages 39-43.

<sup>131</sup> Exhibit A, IRC, filed December 21, 2022, pages 44-47.

<sup>132</sup> Exhibit A, IRC, filed December 21, 2022, pages 48-50.

<sup>133</sup> Gov Code Section 17553(d) (Emphasis added in Exhibit C, Claimant's Rebuttal Comments, filed October 4, 2023).

<sup>134</sup> Exhibit C, Claimant's Rebuttal Comments, filed October 4, 2023.

<sup>135</sup> Exhibit D, Claimant's Late Supplemental Rebuttal Comments, filed November 3, 2023, page 2.

devices.<sup>136</sup> The claimant asserts the test period duration selected by the Controller is not supported by the Test Claim Decision or the Parameters and Guidelines, the regulations gave LEAs discretion when to complete testing so long as it was not outside the maximum 12-week period, and there is no authority prohibiting a shorter testing window.<sup>137</sup> The claimant states Exhibits 3 and 4 of the IRC filing show its purchases of new devices and broadband internet services and one-time purchases were reasonable and necessary to perform the *CAASPP* testing because the Test Claim Decision acknowledged some districts may be required to make new purchases of additional computers or computational devices.<sup>138</sup>

On August 7, 2024, the claimant filed comments on the Draft Proposed Decision.<sup>139</sup> The claimant states, when reviewing the Controller’s audit decisions, the Commission must determine whether the Controller’s decisions were arbitrary, capricious, or lacking in evidentiary support. The claimant asserts this is similar to the standard of review used by courts when reviewing state agency decisions for alleged abuse of discretion and asks whether the decision was “arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.”<sup>140</sup> The claimant argues the Controller’s decision was “procedurally unfair” based on the same reasons the claimant previously asserted for why the decision was arbitrary and capricious. These reasons include:

- The claimant shortened its testing period as was permissible under the regulations to allow students additional instructional time and prevent inequities between students tested at the beginning of the testing window and those tested later; the shortened testing period increased the number of devices needed to complete testing;
- The claimant’s large geographical reach and 95 testing sites also presented logistical challenges to transporting devices between schools that necessitated purchasing additional devices;
- Purchasing additional computing devices to administer *CAASPP* assessments is an approved activity in the Commission’s Decision and Parameters and Guidelines; and,

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<sup>136</sup> Exhibit D, Claimant’s Late Supplemental Rebuttal Comments, filed November 3, 2023, page 3.

<sup>137</sup> Exhibit D, Claimant’s Late Supplemental Rebuttal Comments, filed November 3, 2023, pages 3-4.

<sup>138</sup> Exhibit D, Claimant’s Late Supplemental Rebuttal Comments, filed November 3, 2023, pages 3-4.

<sup>139</sup> Exhibit G, Claimant’s Comments on the Draft Proposed Decision, filed August 7, 2024.

<sup>140</sup> Exhibit G, Claimant’s Comments on the Draft Proposed Decision, filed August 7, 2024, page 2, (quoting *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782).

- The supporting documentation the claimant provided, specifically Exhibits 3 and 4 documenting the claimant's purchase of new computing devices and broadband internet services, demonstrate the claimant supplemented its existing inventory of computing devices and expanded its existing technology infrastructure due to CAASPP's requirements.

Yet the Controller ignored the evidence of claimant's shorter testing window and determined the number of computing devices the claimant needed solely based on the SBAC Calculator's formula, which is not required by the Parameters and Guidelines.<sup>141</sup>

## **B. State Controller's Office**

The Controller filed late comments on the IRC, which defend the Controller's position in the final audit report and provide a more detailed explanation of how it came to the conclusions in Finding 1.<sup>142</sup>

The Controller determined the number of existing devices when the Controller's auditors met with district staff and asked for existing inventory reports for the audit period. The district's IT Department generated queries that captured every instance a student logged onto a computer during two 90-day periods from March 1 to June 30 in 2015 and 2016.<sup>143</sup> The claimant's staff selected this period because they asserted this was the busiest time of year when most computers would be used for testing, and they felt confident this would capture nearly 100 percent of computer logins.<sup>144</sup> The Controller asked the claimant to confirm the beginning inventories only included active devices, did not include surplus or disposed devices, and no devices used by staff.<sup>145</sup> The Controller then reviewed the fiscal year 2015-2016 CAASPP Administrative Manual and

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<sup>141</sup> Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 7, 2024.

<sup>142</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023. The claimant objected to the Controller filing its comments late and requested the Commission either reject the late comments in its entirety or explain the legal authority for including it. Government Code section 17553(d) sets an upper limit on the time given to the Controller to timely file comments on an IRC. This is also in section 1185.2(d) of the Commission's regulations. However, the Commission has no authority to reject late comments on the IRC. Government Code section 17553(d) says the Controller's failure to timely file comments shall not delay the Commission's consideration of the claim, not that the untimely comments shall not be included in the record. As the claimant filed late rebuttal comments in response to the Controller's late comments, has authority to respond to the Draft Proposed Decision, and an opportunity to present its IRC to the Commission at the hearing, there is no prejudice to the claimant by the inclusion of the Controller's late comments in the record.

<sup>143</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 11.

<sup>144</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 11.

<sup>145</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 12.

fiscal year 2016-2017 Technical Specifications Manual to verify supported operating systems, minimum requirements, and recommended specifications for computing devices used for testing, and excluded any devices that did not meet these requirements.<sup>146</sup> This resulted in finding there were 31,816 devices available for testing that met minimum specifications in fiscal year 2015-2016, and 33,920 devices available for testing in fiscal year 2016-2017.<sup>147</sup> “Essentially, this list represents the most complete inventory totals of computing devices available for testing that meet the minimum specification for the *CAASPP* program.”<sup>148</sup>

The testing window was determined by looking at sections 855(a)(1), 855(a)(2), 855(a)(3), 855(b), and 855(c) of the title 5 regulations, which said in fiscal year 2015-2016, the testing window shall begin on the day in which 66 percent of the school’s annual instruction days have been completed for grades three through eight, and on the day in which 80 percent of the schools’ annual instruction days have been completed for grade 11.<sup>149</sup> In a 180-day school year, this means there is a 60-day, 12-week testing window for grades three through eight, and a seven-week testing window for grade 11.<sup>150</sup> In fiscal year 2016-2017, the *CAASPP* Online Test Administration Manual said testing began on the day when 66 percent of the school’s annual instruction days had been completed for grades three through eight as well as grade 11.<sup>151</sup> Considering the Commission’s Decision noted districts might meet their computing device needs by pooling mobile devices and transporting them to multiple schools with staggered testing windows, and the seven-week testing window for grade 11 in fiscal year 2015-2016 would only apply to 5 percent of students tested during the audit period, the Controller chose to base all its calculations on the broader, 12-week regulatory testing window.<sup>152</sup>

The Controller found the number of students tested by looking at the CDE’s records on the district’s *CAASPP* test results for the audit period. According to the CDE, the district tested 36,876 students in fiscal year 2015-2016 (36,668 given Smarter Balanced Summative Assessments + 208 given California Alternative Assessments), and 36,595 students in fiscal year 2016-2017 (36,352 Smarter Balanced Summative Assessments + 243 California Alternative Assessments).<sup>153</sup>

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<sup>146</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 11.

<sup>147</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 12.

<sup>148</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 12.

<sup>149</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 12.

<sup>150</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 12.

<sup>151</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 13.

<sup>152</sup> Exhibit B, Controller’s Late Comments on the IRC, filed on October 2, 2023, pages 12-13.

<sup>153</sup> Exhibit B, Controller’s Late Comments on the IRC, filed on October 2, 2023, page 14.

The district reported to the Controller its computers were available for testing for two hours per day, the lowest allowed by the state.<sup>154</sup> The district also reported varying internet speeds at its schools, namely elementary schools had 100 Mbps, middle schools had 500 Mbps, and high schools had 1 Gbps.<sup>155</sup> Because the lowest reported speed was 100 Mbps, the Controller used that as the existing broadband internet service for the entire district.<sup>156</sup>

Using the SBAC Calculator, the Controller plugged in the above data points to find the claimant could complete testing in fiscal year 2015-2016 for 36,876 students using its 31,816 devices in 4.64 days, and could complete testing in fiscal year 2016-2017 for 36,595 students using its 33,920 devices in 4.32 days.<sup>157</sup> To complete testing in 60 days, the claimant needed only 2,459 devices in fiscal year 2015-2016, and 2,440 devices in fiscal year 2016-2017.<sup>158</sup>

The Controller responded to the IRC by asserting although using an accelerated 35-day testing window is an option available to LEAs, it is not mandated. The claimant's decision to purchase additional devices was based on several "mitigating factors," such as the testing window, were discretionary decisions on the claimant's part.<sup>159</sup> "The test windows chosen by the claimant were discretionary, yet they are being used as the justification for the purchase of an additional 5,100 computing devices. The district is treating a voluntary decision as a state mandate."<sup>160</sup> The claimant did not provide documentation showing its existing supply of computing devices was insufficient to administer testing to all eligible pupils within a 12-week testing window. The Controller's auditors attempted to gather this information by requesting the claimant provide inventories of computers available for student use only. Based on the records the claimant provided, the claimant only needed to maintain an inventory of 2,459 devices in fiscal year 2015-2016, and 2,440 devices in fiscal year 2016-2017, to complete testing for all eligible pupils within a 60-day testing window.<sup>161</sup> Even with the claimant's shortened, 35-day testing window, the claimant would only require maintaining 4,215 devices in fiscal year 2015-2016 and 4,182 devices in fiscal year 2016-2017 according

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<sup>154</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 14.

<sup>155</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 14.

<sup>156</sup> Exhibit B, Controller's Late Comments on the IRC, filed on October 2, 2023, page 14.

<sup>157</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 14.

<sup>158</sup> Exhibit B, Controller's Late Comments on the IRC, filed on October 2, 2023, page 14.

<sup>159</sup> Exhibit B, Controller's Late Comments on the IRC, filed on October 2, 2023, page 16.

<sup>160</sup> Exhibit B, Controller's Late Comments on the IRC, filed on October 2, 2023, page 16.

<sup>161</sup> Exhibit B, Controller's Late Comments on the IRC, filed on October 2, 2023, page 16.

to the SBAC Calculator; still fewer than claimant’s existing devices for either year.<sup>162</sup> The decision to use the SBAC Calculator in determining the number of devices needed to administer *CAASPP* testing was not arbitrary, capricious, or entirely lacking in evidentiary support, because “the readiness calculator is a tool that districts can use to meet their obligation of determining if their existing inventory of computing devices was sufficient to administer the *CAASPP* testing program.”<sup>163</sup> The Controller contends it considered all relevant factors in making its decision, and provided documentation to support the findings, demonstrating a rational connection between those factors. “[The Controller] did not abuse [its] discretion in denying the costs claimed for computing devices. The district supplemented their existing inventory of computing devices *without considering if their current inventory was sufficient to meet the requirements of the mandated program within the mandated testing window.*”<sup>164</sup>

The Controller provided the following supporting documents in its late comments on the IRC:

- A declaration from Lisa Kurokawa, chief of the State Controller’s Office’s Compliance Audits Bureau, that all attached records are true copies of records either provided by the claimant or retained at the Compliance Audits Bureau’s place of business.<sup>165</sup>
- The inventory of existing computing devices the claimant provided for fiscal years 2015-2016 and 2016-2017, showing 31,816 devices in fiscal year 2015-2016 and 33,920 devices in fiscal year 2016-2017, after excluding unsupported devices. The tab also includes an email correspondence between auditor Tien Nguyen and Eugene Trofimenko of Fresno Unified School District’s Fiscal Services department, verifying: the lists represent the existing inventory of computing devices available for student use at the start of each fiscal year; the lists did not contain any duplicative serial numbers, only included active computers and did not include any surplus or disposed devices; computers purchased during the year that were ready for use were included in the count; the list only contains devices that were logged into by students; devices used by both students and staff are highly unlikely because staff computers need higher speeds and

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<sup>162</sup> Exhibit B, Controller’s Late Comments on the IRC, filed on October 2, 2023, page 17.

<sup>163</sup> Exhibit B, Controller’s Late Comments on the IRC, filed on October 2, 2023, page 17.

<sup>164</sup> Exhibit B, Controller’s Late Comment on the IRC, filed on October 2, 2023, page 17, emphasis in original.

<sup>165</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 4-5 (Tab 1).

specifications; and, the list does not include any monitors, projectors, or other accessories.<sup>166</sup>

- The fiscal year 2015-2016 *CAASPP* System Requirements Manual, showing which operating systems and web browsers were supported that year.<sup>167</sup>
- An excerpt from the fiscal year 2016-2017 *CAASPP* Technical Specifications Guide showing which operating systems were supported that year.<sup>168</sup>
- Excerpts from the fiscal year 2015-2016 Online Test Administration Manual, stating the available testing window shall begin on the 118th instructional day in an 180-day school year for grades three through eight, and on the 144th instructional day for grade 11, and may continue until the last instructional day, a 12-week regulatory testing window for grades three through eight and a seven-week regulatory testing window for grade 11. LEAs have the option to select a shorter testing window, no less than 25 instructional days. The excerpts also include a chart of estimated test times, showing testing for grades three through five were estimated to take seven hours total, grades six through eight seven and a half hours total, and grade 11 eight and a half hours total.<sup>169</sup>
- Excerpts from the fiscal year 2016-2017 Online Test Administration Manual, stating the available testing window shall begin on the day 66 percent of a school's annual instructional days have been completed (the 118th instructional day in an 180-day school year) and may continue until the last instructional day, for a 12-week regulatory testing window. LEAs have the option to select a shorter testing window, no less than 25 instructional days. The excerpts also include a chart of estimated test times, showing testing for grades three through five were estimated to take six hours total, grades six through eight six and a half hours total, and grade 11 seven and a half hours total.<sup>170</sup>

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<sup>166</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, pages 21-41 (Tab 3).

<sup>167</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, pages 43-57 (Tab 4).

<sup>168</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, pages 59-64 (Tab 5).

<sup>169</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, pages 66-71 (Tab 6).

<sup>170</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, pages 73-80 (Tab 7).

- The claimant’s *CAASPP* test results in fiscal year 2015-2016, showing claimant administered Smarter Balanced Summative Assessments to 36,668 students, and California Alternative Assessments to 208 students.<sup>171</sup>
- The claimant’s *CAASPP* test results in fiscal year 2016-2017, showing claimant administered Smarter Balanced Summative Assessments to 36,352 students, and California Alternative Assessments to 243 students.<sup>172</sup>
- Smarter Balanced Technology Readiness Calculator example results showing the number of days needed to complete testing if the claimant used all its existing devices, the number of devices needed to complete testing in 60 days, and the number of devices needed to complete testing in 35 days, for both fiscal years.<sup>173</sup>

On July 19, 2024, the Controller filed its comments on the Draft Proposed Decision, agreeing with the recommendation to deny the claim.<sup>174</sup>

#### **IV. Discussion**

Government Code section 17561(d) authorizes the Controller to audit the claims filed by local agencies and school districts and to reduce any claim for reimbursement of state-mandated costs if the Controller determines the claim is excessive or unreasonable.

Government Code section 17551(d) requires the Commission to hear and decide a claim the Controller has incorrectly reduced payments to the local agency or school district. If the Commission determines a reimbursement claim has been incorrectly reduced, section 1185.9 of the Commission’s regulations requires the Commission to send the decision to the Controller and request the costs in the claim be reinstated.

The Commission must review questions of law, including interpretation of the Parameters and Guidelines, *de novo*, without consideration of legal conclusions made by the Controller in the context of an audit. The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>175</sup> The Commission must also interpret the Government Code and implementing regulations in accordance with the broader constitutional and statutory scheme. In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it

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<sup>171</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 121-125. (Tab 9)

<sup>172</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 127-131 (Tab 10).

<sup>173</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 133-138 (Tab 11).

<sup>174</sup> Exhibit F, Controller’s Comments on the Draft Proposed Decision, filed July 19, 2024.

<sup>175</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.



as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>176</sup>

With regard to the Controller’s audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency.<sup>177</sup> Under this standard, the courts have found:

When reviewing the exercise of discretion, “[t]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support....” [Citations.] When making that inquiry, the “ ‘ “court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.” [Citation.]’ ”<sup>178</sup>

The Commission must review the Controller’s audit in light of the fact the initial burden of providing evidence for a claim of reimbursement lies with the claimant.<sup>179</sup> In addition, sections 1185.1(f)(3) and 1185.2(d) and (e) of the Commission’s regulations require any assertions of fact by the parties to an IRC must be supported by documentary evidence. The Commission’s ultimate findings of fact must be supported by substantial evidence in the record.<sup>180</sup>

**A. The IRC Was Timely Filed Within Three Years of the Claimant Receiving a Final State Audit Report from the Controller.**

Section 1185.1(c) of the Commission’s regulations requires an IRC to be filed no later than three years after the date the claimant receives a final state audit report, letter, or other written notice of adjustment to a reimbursement claim, which complies with Government Code section 17558.5(c). Under Government Code section 17558.5(c), the Controller is required to notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a reimbursement claim resulting from an audit

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<sup>176</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>177</sup> *Johnson v. Sonoma County Agricultural Preservation and Open Space Dist.* (2002) 100 Cal.App.4th 973, 983-984. See also *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.

<sup>178</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>179</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275.

<sup>180</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission’s decision is not supported by substantial evidence in the record.

or review. The notice must specify which claim components were adjusted and in what amount, as well as interest charges, and the reason for the adjustment.<sup>181</sup>

Here, the Controller issued the final audit report on December 16, 2020.<sup>182</sup> The audit report specifies the claim components and amounts adjusted, as well as the reasons for the adjustments, and therefore complies with the section 17558.5(c) notice requirements.<sup>183</sup> The claimant filed the IRC on December 21, 2022, within three years of the final audit report.<sup>184</sup> The Commission finds the IRC was timely filed.

**B. The Controller’s Reduction in Finding 1 Is Correct as a Matter of Law and Is Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

Based on the following analysis, the Commission finds the Controller’s reduction of costs is correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

**1. The Controller’s Interpretation of the Parameters and Guidelines Is Correct and, Thus, the Reduction Is Correct as a Matter of Law.**

- a. The Parameters and Guidelines require claimants provide supporting documents to show their existing supply of computing devices and broadband internet services are insufficient to complete testing for all eligible pupils within the testing window identified in CDE regulations.

The *CAASPP* program is a student testing program for pupils in grades three through eight and grade 11, where tests are taken online and are designed to be adaptive to student responses.<sup>185</sup> As such, providing "a computing device, the use of an assessment technology platform, and the adaptive engine" to administer the *CAASPP* assessments to all pupils via computer is a reimbursable part of the program, which includes the acquisition of and ongoing compliance with "minimum technology specifications" identified by the *CAASPP* contractor.<sup>186</sup> Thus, the Parameters and Guidelines authorize reimbursement for the increased costs to provide a sufficient number of laptop computers or other devices to administer the *CAASPP* test to all eligible pupils within the testing window identified in CDE regulations, and the increased costs for broadband internet service providing at least 20 Kbps per pupil to be tested simultaneously in accordance with the testing contractor’s (SBAC’s) minimum

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<sup>181</sup> Government Code section 17558.5(c).

<sup>182</sup> Exhibit A, IRC, filed December 21, 2022, page 93 (Final Audit Report).

<sup>183</sup> Exhibit A, IRC, filed December 21, 2022, pages 92-130 (Final Audit Report).

<sup>184</sup> Exhibit A, IRC, filed December 21, 2022, page 1.

<sup>185</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 88 (Decision and Parameters and Guidelines).

<sup>186</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines).

technology requirements.<sup>187</sup> The Controller reduced the costs claimed for both of these items on the ground the claimant failed to show, with supporting documentation, its existing devices and internet service were insufficient to comply with the mandate.<sup>188</sup>

The Test Claim Decision acknowledged some school districts would need to purchase new devices to be able to fulfill this requirement, and school districts may need to purchase computing devices to maintain their inventory of devices that meet minimum requirements as technological specifications get updated over time.<sup>189</sup> The Decision and Parameters and Guidelines also acknowledged testimony from rural school districts and SBAC's recognition broadband internet services and "existing 'legacy systems' may not be sufficient, and '[m]any districts will, by design or by need, have to consider the implementation of changes to their systems of information technology."<sup>190</sup>

However, the Decision and Parameters and Guidelines explicitly found school districts are only required to adhere to the *minimum technology specifications* provided by SBAC, the *CAASPP* contractor, consistent with the plain language of the test claim regulations.<sup>191</sup> The Commission determined "minimum technology specifications" include "desktop or laptop computers, iPads, or other tablet computers for which Smarter Balanced provides secure browser support to administer the *CAASPP* in the academic year; accompanied by a keyboard, headphones, and a pointing device; and connected to broadband internet service, providing at least 20 Kbps per student to be tested simultaneously."<sup>192</sup> The Commission also found "minimum technology specifications" include the number of computing devices and how much bandwidth is needed to administer the test to pupils within the testing window provided by section 855 of the CDE regulations.<sup>193</sup>

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<sup>187</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 118 (Parameters and Guidelines).

<sup>188</sup> Exhibit A, IRC, filed December 21, 2022, page 103 (Final Audit Report); Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 15.

<sup>189</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 91 (Decision and Parameters and Guidelines).

<sup>190</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, pages 94-95 (Decision and Parameters and Guidelines).

<sup>191</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 91 (Decision and Parameters and Guidelines); California Code of Regulations, title 5, section 857(e) ("The LEA *CAASPP* coordinator shall ensure current and ongoing compliance with the minimum technology specifications as identified by the *CAASPP* contractor(s) or consortium.").

<sup>192</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 98 (Decision and Parameters and Guidelines).

<sup>193</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 100 (Decision and Parameters and Guidelines).

The other key legal requirement applicable to administration of CAASPP, mentioned above, is the testing window provided by the regulations pled in the test claim. Section 855 of the test claim regulations was denied because it did not impose an activity, but rather defined a time frame for testing. [Footnote omitted.] However, to the extent that time frame affects how many computing devices are needed, and how much bandwidth is needed, it must be understood to be a part of “minimum technology specifications.” For the 2013-2014 Field Test, section 855 provided that the assessments be administered “during a testing window of 25 instructional days that includes 12 instructional days before and after completion of 85% of the school’s...instructional days.” [Footnote omitted.] Beginning in the 2014-2015 school year, section 855 stated that testing “shall not begin until at least 66 percent of a school’s annual instructional days have been completed, and testing may continue up to and including the last day of instruction.” [Footnote omitted.] Beginning in the 2015-2016 school year, “the available testing window shall begin on the day in which 66 percent of the school's or track's annual instructional days have been completed, and testing may continue up to and including the last day of instruction for the regular school's or track's annual calendar.” [Footnote omitted.] The requirement to complete testing within the regulatory period provided is thus a factor in establishing what a district needed to comply with the mandate, as is the compatibility of existing devices.<sup>194</sup>

The Decision and Parameters and Guidelines explained SBAC’s minimum technology specifications did *not* require school districts to provide a computing device for every student, and the intention was to have school districts minimize the number of devices needed by having multiple students each use the same device, whether by rotating groups of students through a computer lab, moving “computers on wheels” between classrooms, or creating a pool of laptops and tablets that get transported from one school to the next, taking advantage of the long regulatory testing window identified in the regulations.<sup>195</sup> SBAC also designed the *CAASPP* assessment to be administered on older “legacy” computing devices, and the technology specifications were “deliberately established as a low entry point to help ensure that technology-purchasing decisions are made based on instructional plans” and not on testing.<sup>196</sup>

Thus, despite arguments from the claimants the test claim statute and regulations do not require them to use existing devices, the Commission found “districts that have compatible devices are not compelled by this mandate to purchase new computing

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<sup>194</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 100-101 (Decision and Parameters and Guidelines).

<sup>195</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 89-90 (Decision and Parameters and Guidelines).

<sup>196</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 103 (Decision and Parameters and Guidelines) [citing SBAC Technology Strategy Framework and Testing Device Requirements].

devices or upgrade operating systems,” and if existing devices and technology infrastructure are insufficient to meet the minimum technology specifications, the claimant has the burden to provide documentation to support a finding of increased costs required to administer the *CAASPP* tests in accordance with those specifications.<sup>197</sup>

The Commission finds that claimants *are required*, based on the approved activity, and the technology specifications issued by the contractor(s), to use existing devices and technology infrastructure, if compatible (i.e., if there is an available secure browser and sufficient network speed). And, if existing devices and technology infrastructure are not sufficient, the burden is on the claimant to establish, based on supporting documentation, that increased costs are required to administer the assessments in accordance with the law.<sup>198</sup>

The Parameters and Guidelines reinforced this idea with the following language:

**Claimants shall maintain supporting documentation showing how their existing inventory of computing devices and accessories, technology infrastructure, and broadband internet service is not sufficient to administer the CAASPP test to all eligible pupils in the testing window, based on the minimum technical specifications identified by the contractor(s) or consortium.**

**Reimbursement is NOT required to provide a computing device for every pupil, for the time to assess each pupil, or for the purchase of other equipment not listed.**<sup>199</sup>

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<sup>197</sup>Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 93, 98 (Decision and Parameters and Guidelines). The following example was provided in the Decision: “However, SBAC also recognized that in some districts ‘certain equipment was purchased and deployed to specific sites and to specific user populations with program funding that requires it be kept at a single site, or be appropriated for a single population as a condition of the corresponding funds.’ [Footnote omitted.] Thus, program-limited funds, or other legal requirements attached to existing resources, may be a factor in determining whether a district has a sufficient inventory of existing technology infrastructure and devices to administer the assessment.” (Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 100.)

<sup>198</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 98 (Decision and Parameters and Guidelines), emphasis in original.

<sup>199</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines), emphasis in original.

- b. The Controller correctly found the documents provided by the claimant do not support a finding the existing inventory of devices and broadband internet service were insufficient to comply with the minimum technology specifications to administer the CAASPP tests to all eligible pupils within the testing window identified in CDE regulations and, thus, the Controller's reduction is correct as a matter of law.

As indicated above, the claimant purchased an additional 5,155 new computers and attributed 30 percent of its broadband internet upgrade to the CAASPP program and sought reimbursement for these expenses.<sup>200</sup> The Controller found the claimant did not provide any supporting documentation to show the existing inventory of computing devices and broadband internet service were not sufficient to meet minimum technology standards to administer the CAASPP test to all eligible pupils within the testing window identified in CDE regulations, as required by the Parameters and Guidelines. As described below, the Commission agrees with this finding and thus, the Controller's reduction is correct as a matter of law.

The claimant alleges the Controller "erroneously concluded the only requirement for reimbursement is that the district's existing inventory of computing devices, technology infrastructure, and broadband internet service be insufficient to administer the CAASPP tests to all eligible pupils within the testing window, based on the minimum technical specifications identified by the contractor(s) or consortium."<sup>201</sup> However, the Controller's conclusion comes directly from the language of Parameters and Guidelines, which require that claimants provide supporting documentation showing "their existing inventory of computing devices and accessories, technology infrastructure, and broadband internet service is not sufficient to administer the CAASPP test to all eligible pupils in the testing window, based on the minimum technical specifications identified by the contractor(s) or consortium."<sup>202</sup> A claimant is not entitled to reimbursement for computing devices, technology infrastructure, and broadband infrastructure purchased to use for CAASPP testing if it cannot provide documentation showing its existing inventory of devices and internet services were insufficient to administer CAASPP testing to all eligible pupils within the testing window.<sup>203</sup> The Decision and Parameters and Guidelines are regulatory in nature and are binding on the parties.<sup>204</sup>

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<sup>200</sup> Exhibit A, IRC, filed December 21, 2022, pages 9; 38 (Exhibit 4).

<sup>201</sup> Exhibit A, IRC, filed December 21, 2022, page 19.

<sup>202</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines).

<sup>203</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 98 (Decision and Parameters and Guidelines).

<sup>204</sup> *California School Boards Association v. State of California* (2009) 171 Cal.App.4th 1183, 1201; *Clovis Unified School Dist. v. Chiang* (2010) 188 Cal.App.4th 794, 798; Government Code sections 17561(d)(1), 17564(b), and 17571.

Moreover, the claimant's repeated emphasis and reliance on the fact the Decision and Parameters and Guidelines acknowledged some school districts would be required to purchase additional devices misinterprets the Decision and Parameters and Guidelines. The Decision and Parameters and Guidelines noted "There will also be a need in certain scenarios for various districts to consider the purchase of additional computers or computational devices...most new hardware will naturally fall well into the specifications released so far..."<sup>205</sup> "The Commission's test claim decision acknowledged the purchase of computing devices, and the upgrade of testing devices is inevitable, if somewhat uneven from year to year and from one district to the next."<sup>206</sup> The claimant asserts this demonstrates "It was foreseen during the approval of the test claim and the subsequent parameters and guidelines process it would be necessary for Districts to increase their computing devices."<sup>207</sup> This acknowledgement does not mean all school districts that purchase computing devices and broadband internet services to use for *CAASPP* testing are entitled to reimbursement. It is recognition that in spite of the program being designed in a way to be as minimally burdensome on school districts as possible by using materials and supplies most school districts already owned, at least some school districts did not have sufficient existing inventories to complete testing for all eligible pupils within a timeframe compliant with state requirements, and as time goes on and the program's technology specifications evolve, some districts may find they no longer have enough devices in their existing inventory that meet minimum requirements. The Decision and Parameters and Guidelines found as follows:

The evidence in the record makes clear that SBAC designed the CAASPP assessment to be administered on older 'legacy' computing devices, and that the technology specifications were 'deliberately established as a low entry point to help ensure that technology-purchasing decisions are made based on instructional plans.' Nevertheless the testimony at the test claim hearing was that some districts had no such 'legacy' systems, and thus were required to make infrastructure improvements and acquire new or additional devices solely because of the mandate.<sup>208</sup>

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<sup>205</sup> Exhibit A, IRC, filed December 21, 2022, page 10, quoting the Decision and Parameters and Guidelines found in Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 90 (Decision and Parameters and Guidelines); see also Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 7, 2024, page 3.

<sup>206</sup> Exhibit A, IRC, filed December 21, 2022, page 16, quoting the Decision and Parameters and Guideline found in Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 91 (Decisions and Parameters and Guidelines); see also Exhibit G, Claimant's Comments on the Draft Proposed Decision, filed August 7, 2024, page 3.

<sup>207</sup> Exhibit A, IRC, filed December 21, 2022, page 20.

<sup>208</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 103 (Decision and Parameters and Guidelines).

It is in those kinds of circumstances where the claimant would be entitled to reimbursement, and must provide supporting documentation the existing inventory of computing devices and accessories, technology infrastructure, and broadband internet service is not sufficient to administer the *CAASPP* test to all eligible pupils in the testing window, based on the minimum technical specifications identified by the contractor(s) or consortium. Thus, the Decision and Parameters and Guidelines explicitly holds the following:

The Commission finds that claimants *are required*, based on the approved activity, and the technology specifications issued by the contractor(s), to use existing devices and technology infrastructure, if compatible (i.e. if there is an available secure browser and sufficient internet speed). And if existing devices and technology infrastructure are not sufficient, the burden is on the claimant to establish, based on supporting documentation, that increased costs are required to administer the assessment in accordance with the law.<sup>209</sup>

In this case, the documents provided by the claimant do not support the conclusion its existing inventory of computing devices and broadband internet service were insufficient to comply with the minimum technology specifications identified by the *CAASPP* contractor to administer the *CAASPP* tests within the testing window identified in CDE regulations. The information the claimant initially provided in response to the Controller's audit included inventories of its existing devices at the start of each fiscal year during the audit period, and statements about the existing broadband internet speeds available at each school and that devices were only available for testing for two hours each day.<sup>210</sup> The Decision and Parameters and Guidelines recognizes an inventory of existing devices may establish a "baseline" by which to measure any required incremental increases in cost, but does *not* capture all of the information necessary to determine whether a district was compelled to purchase new devices or install new technology infrastructure to comply with the minimum technology specifications.<sup>211</sup> The inventories show the claimant had 31,816 devices that met minimum specifications and were available to students during fiscal year 2015-2016, and 33,920 devices during fiscal year 2016-2017.<sup>212</sup> As recognized by the Controller, given the number of the claimant's pupils that took the *CAASPP* exam in fiscal year 2015-2016 (36,876 pupils) and in fiscal year 2016-2017 (36,595 pupils), the existing inventory of computing devices represented an 0.86 to one computer to student ratio in fiscal year 2015-2016 and 0.93 to one computer to student ratio in fiscal year 2016-

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<sup>209</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, pages 98-99 (Decision and Parameters and Guidelines), emphasis in original.

<sup>210</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report).

<sup>211</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 100 (Decision and Parameters and Guidelines).

<sup>212</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report).



2017.<sup>213</sup> The Commission found “districts that have compatible devices are not compelled by this mandate to purchase new computing devices or upgrade operating systems,” and *if* existing devices and technology infrastructure are insufficient to meet the minimum technology specifications, the claimant has the burden to provide documentation that increased costs are required to administer the *CAASPP* tests in accordance with those specifications.<sup>214</sup> Thus, the inventory of existing devices, alone, does not show they were insufficient to meet the minimum technology specifications or the claimant was compelled to purchase new devices to meet those specifications to administer the *CAASPP* test within the testing window identified in CDE regulations.

The claimant also alleged, in response to the draft audit report, many of these devices were inadequate for testing as they were at the end of their life cycle, and many were repurposed for other activities and could not be used for testing.<sup>215</sup> The claimant elaborated on this in the IRC filing by alleging some of its existing inventory of devices were being used for instructional purposes in classrooms, and could not be pulled away to use in *CAASPP* testing.<sup>216</sup> However, there is no documentation to support these allegations as required by the Parameters and Guidelines, and the mandate is to use existing computers purchased for teaching and learning for the *CAASPP* assessment. “The Commission finds that claimants *are required*, based on the approved activity, and the technology specifications issued by the contractor(s), to use existing devices and technology infrastructure, if compatible (i.e., if there is an available secure browser and sufficient network speed).”<sup>217</sup> Moreover, the assertion the devices were not adequate for testing conflicts with the email correspondence between auditor Tien Nguyen and Eugene Trofimenko of Fresno Unified School District’s Fiscal Services department, verifying: the lists represent the existing inventory of computing devices available for student use at the start of each fiscal year; the lists did not contain any duplicative serial numbers, only included active computers and did not include any surplus or disposed devices; computers purchased during the year that were ready for use were included in

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<sup>213</sup> Exhibit A, IRC, filed December 21, 2022, page 109 (Final Audit Report).

<sup>214</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 93, 98 (Decision and Parameters and Guidelines). The following example was provided in the Decision: “However, SBAC also recognized that in some districts ‘certain equipment was purchased and deployed to specific sites and to specific user populations with program funding that requires it be kept at a single site, or be appropriated for a single population as a condition of the corresponding funds.’ [Footnote omitted.] Thus, program-limited funds, or other legal requirements attached to existing resources, may be a factor in determining whether a district has a sufficient inventory of existing technology infrastructure and devices to administer the assessment.” (Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 100.)

<sup>215</sup> Exhibit A, IRC, filed December 21, 2022, page 107 (Final Audit Report).

<sup>216</sup> Exhibit A, IRC, filed December 21, 2022, page 18.

<sup>217</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 100.

the count; the list only contains devices that were logged into by students; devices used by both students and staff are highly unlikely because staff computers need higher speeds and specifications; and, the list does not include any monitors, projectors, or other accessories.<sup>218</sup> The Controller also excluded from the existing inventory all devices that did not meet the *CAASPP* technology requirements.<sup>219</sup>

The claimant also alleged in the IRC, without evidence, its large geographical range presented logistical challenges to transporting devices between schools.<sup>220</sup> “If existing devices and technology infrastructure are not sufficient, the burden is on the claimant to establish, based on supporting documentation, that increased costs are required to administer the assessments in accordance with the law.”<sup>221</sup> Because the claimant failed to provide documentation showing its existing inventory of computing devices was not sufficient to administer the *CAASPP* test to all eligible pupils within the testing window, the Controller denying the claimed expenses for purchasing new computing devices was correct as a matter of law.

Finally, the claimant also provided additional information about the procedures it utilized for testing during the audit period, namely it used a shorter, 35-day testing window for all pupils to allow more instructional time for students before taking the test and granted all students 75 percent more time on average to complete their assessments than is assumed by the SBAC Calculator.<sup>222</sup> The claimant has not provided any documentation to support the argument its existing devices were insufficient to comply with state requirements when factoring in these local decisions. As the Controller pointed out in its comments on the IRC, a 35-day testing window would still only require 4,215 devices in fiscal year 2015-2016 and 4,182 devices in fiscal year 2016-2017 according to the SBAC calculator, well within their existing inventory of 31,816 devices in fiscal year 2015-2016, and 33,920 devices in fiscal year 2016-2017.<sup>223</sup>

More importantly, any increased costs to provide additional computing devices resulting from these local decisions are not mandated by the state and are not eligible for

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<sup>218</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 21-41 (Tab 3).

<sup>219</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report, “For each fiscal year, we accounted for the computing devices that did not meet the minimum technical specifications to determine the number of computing devices available to students for *CAASPP* assessments.”); Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 11.

<sup>220</sup> Exhibit A, IRC, filed December 21, 2022, page 15; see also Exhibit G, Claimant’s Comments on the Draft Proposed Decision, filed August 7, 2024, page 4.

<sup>221</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 98-99 (Decision and Parameters and Guidelines).

<sup>222</sup> Exhibit A, IRC, filed December 21, 2022, page 107 (Final Audit Report).

<sup>223</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report); Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 17.

reimbursement under the Parameters and Guidelines. The Parameters and Guidelines authorize reimbursement to provide a sufficient number of devices to meet SBAC's "minimum technology specifications" to administer the *CAASPP* test to all eligible pupils "within the testing window provided by CDE regulations."<sup>224</sup> The *CAASPP* testing window is provided in section 855 of the CDE regulations, which stated in relevant part the following:

(a) Beginning in the 2015-16 school year, the *CAASPP* achievement tests pursuant to Education Code section 60640(b) shall be administered to each pupil at some time during the following available testing windows:

(1) Unless otherwise stated in these regulations, the available testing window shall begin on the day in which 66 percent of the school's or track's annual instructional days have been completed, and testing may continue up to and including the last day of instruction for the regular school's or track's annual calendar.

(2) For grade 11, the available testing window shall begin on the day in which 80 percent of the school's or track's annual instructional days have been completed, and testing may continue up to and including the last day of instruction for the regular school's or track's annual calendar.<sup>225</sup>

Thus, for fiscal years 2015-2016 and 2016-2017, these regulations provided a testing window to begin for grades three through eight on the 118th instructional day in a 180-day school year, leaving a 12-week or 60-day regulatory testing window for pupils in grades three through eight, and not 35 days selected by the claimant.

In addition, *CAASPP* tests are intended to take around two hours per test, or eight hours total, although exact estimates vary from year to year and between grade levels.<sup>226</sup> The SBAC calculator based its estimations for how long it would take to complete testing on each test taking two hours, noting because the tests are taken untimed and allow for breaks, some students may need more time.<sup>227</sup> With devices only available for testing for two hours per day, this would mean each student would need approximately four days to complete testing. The claimant allotted seven days per student on average to complete testing.<sup>228</sup>

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<sup>224</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines).

<sup>225</sup> California Code of Regulations, title 5, section 855 (Register 2015, No. 48).

<sup>226</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, pages 71 (Fiscal Year 2015-2016 Smarter Balanced Online Test Administration Manual), 80 (Fiscal Year 2016-2017 *CAASPP* Online Test Administration Manual).

<sup>227</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, pages 133-138 (Example Smarter Balanced Technology Readiness Calculator Results).

<sup>228</sup> Exhibit A, IRC, filed December 21, 2022, pages 26-28 (Exhibit 1); 29-30 (Exhibit 2).

Although school districts have the authority under section 855(b) of the regulations to shorten the testing window as long as it is no less than 25 days long, which the claimant shortened to 35 days for all pupils, and to allow all students more time to complete the tests, both of which may increase the number of computing devices needed to administer the *CAASPP* test, those costs are triggered by local discretionary decisions, are outside of the “minimum technology specifications,” and are not mandated by the state. The Parameters and Guidelines authorize reimbursement only for the “minimum technology specifications” required to administer the *CAASPP* test during the window period “provided in CDE regulations.” The state-mandated program is designed to work within the district’s existing resources. Thus, to be entitled to reimbursement, a claimant is required to show with documentation its existing computing devices are insufficient to administer the *CAASPP* test to students within the 60-day testing window identified in the CDE regulations. If a claimant chooses to alter those minimum technology specifications causing it to purchase more devices, reimbursement is not required. Thus, the Controller’s reduction of costs for 5,155 new computers is correct as a matter of law.

Likewise, the claimant did not provide supporting documentation showing its existing broadband internet services were insufficient to comply with the *CAASPP* program, as required by the Parameters and Guidelines.<sup>229</sup> The minimum technology specifications require school districts’ broadband internet services provide at minimum 20Kbps per pupil to be tested simultaneously.<sup>230</sup> The only information provided about the claimant’s existing broadband internet service is that speeds varied between schools; ranging from 100 Mbps to 1 Gbps.<sup>231</sup> The claimant asserted in its response to the audit:

These infrastructure upgrades were necessary to meet the minimum bandwidth and network connectivity requirements to administer the testing to all eligible pupils. Due to the District’s large geographical reach in Fresno County, the District was required to improve the network infrastructure to ensure there was equity across the District for all school sites so the *CAASPP* test could be administered. During this period, there were school sites in Southeast Fresno that required improvement to the bandwidth as this region was lacking in network infrastructure needed to administer testing. In addition, there were over 2,000 access ports that were replaced throughout the District and core switches for all instructional sites were replaced to help increase the bandwidth. These additions made it possible for sites to administer the testing and to reduce the amount of wireless interference. These network improvements were

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<sup>229</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines).

<sup>230</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines).

<sup>231</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report).

necessary for CAASPP testing and would not have been completed if the CAASPP did not require electronic testing.<sup>232</sup>

The assertions improving network infrastructure and ensuring equity across the district made these improvements necessary to meet the “minimum technology specifications” for CAASPP testing are not supported by any evidence or documentation from the claimant. The only documentation regarding its broadband internet services the claimant provided was a table showing \$135,277.64 for broadband internet services incurred in fiscal year 2016-2017, of which the Executive Director of IT Phil Neufield asserted 30 percent of those expenses were for the CAASPP program.<sup>233</sup> This is a source document showing the actual costs for improving the claimant’s broadband internet service, but not showing the improvements were necessary to be able to meet the minimum technology specifications to provide sufficient broadband internet service to students being tested simultaneously during the window period provided in CDE regulations. The claimant’s supporting documentation does not show it was unable to provide 20 Kbps internet service to each student being tested simultaneously without making improvements to its broadband internet service. Thus, the Commission finds the Controller correctly determined “the district provided no supporting documentation to show the networking upgrades were mandated, and no support to show how the existing infrastructure prevented it from conducting the CAASPP testing within the mandated 60-day window.”<sup>234</sup>

Therefore, the claimant did not provide supporting documentation showing how its existing computer devices and broadband internet service were insufficient to administer the CAASPP test to all eligible pupils within the CDE testing window as required by the Parameters and Guidelines, and denying the claimed expenses was correct as a matter of law.

**2. The Controller’s Reduction in Finding 1 of Materials and Supplies Costs, Based on the SBAC Calculator Showing Claimant’s Minimum Computing Devices and Broadband Requirements To Be Less Than the Claimant’s Existing Supplies, Was Not Arbitrary, Capricious, or Entirely Lacking in Evidentiary Support.**

When reviewing an audit decision of the Controller, the Commission’s scope of review is limited to whether the decision was arbitrary, capricious or entirely lacking in evidentiary support.<sup>235</sup>

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<sup>232</sup> Exhibit A, IRC, filed December 21, 2022, pages 116-117 (Final Audit Report).

<sup>233</sup> Exhibit A, IRC, filed December 21, 2022, page 38 (Exhibit 4).

<sup>234</sup> Exhibit A, IRC, filed December 21, 2022, page 111 (Final Audit Report).

<sup>235</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548. The claimant asserted in its comments on the Draft Proposed Decision that this review standard also considers whether the decision was “unlawful, or procedurally unfair” (Exhibit G, Claimant’s Comments on the Draft Proposed Decision, filed August 7, 2024, page 2). “Procedurally unfair” means the state

“[T]he scope of review is limited, out of deference to the agency’s authority and presumed expertise: ‘The court may not reweigh the evidence or substitute its judgement for that of the agency. [Citation.]’” ... “In general ... the inquiry is limited to whether the decision was arbitrary, capricious, or entirely lacking in evidentiary support....” [Citations.]” When making that inquiry, the “ ‘ “court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.” [Citation.]”<sup>236</sup>

The Commission may not reweigh the evidence or substitute its own judgment for the Controller’s. Instead, the Commission’s inquiry is limited to whether the Controller adequately considered the claimant’s documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made.<sup>237</sup> Furthermore, the claimant bears the initial burden of providing evidence for a reimbursement claim, and any assertions of fact by the claimant must be supported by documentary evidence in the record.<sup>238</sup>

As discussed above, the claimant’s supporting documentation did not provide enough information to say whether the claimant’s existing inventory of computer devices and broadband internet were insufficient to meet minimum technology specifications to administer the *CAASPP* test within the testing window. As the supporting documentation the claimant provided gave no information about the number of devices and bandwidth needed, the Controller could have ended its analysis with its conclusion “The district did not provide documentation to show that its existing inventory of computing devices and broadband internet service was not sufficient to administer the *CAASPP* test within the testing window.”<sup>239</sup> Instead, as described below, the Controller exercised its audit authority to find the minimum number of computing devices and broadband internet service the claimant needed to administer *CAASPP* during the testing window, leaving open the possibility the claimant’s existing inventory of devices

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agency “failed to follow the procedure and give notices required by law” (*Lewin v. St. Joseph Hospital of Orange* (1978) 82 Cal.App.3d 368, 385-386). There is no evidence that the Controller failed to follow statutory or regulatory procedure during its audit, failed to give notices required by law, or violated the claimant’s due process rights.

<sup>236</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>237</sup> See *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>238</sup> *Gilbert v. City of Sunnyvale* (2005) 130 Cal.App.4th 1264, 1274-1275; Government Code section 17559; California Code of Regulations, title 2, sections 1185.1(f)(3) and 1185.2(d), (e).

<sup>239</sup> Exhibit A, IRC, filed December 21, 2022, page 108 (Final Audit Report).

and broadband internet services was in fact insufficient, even if the supporting documents did not show it.

- a. It was not arbitrary, capricious, or entirely lacking in evidentiary support for the Controller to use the SBAC calculator to find the minimum number of devices the claimant needed to complete CAASPP testing for all eligible students within the testing window.

The Controller determined the minimum number of computing devices and broadband internet services required for the claimant to comply with the CAASPP testing program using the “Smarter Balance Technology Readiness Calculator” (SBAC Calculator) provided on CDE’s website.<sup>240</sup> The SBAC Calculator was created to help schools determine how long it would take to administer the CAASPP test, given the number of students, number of available devices, hours per day available for testing, and internet connection speed, and thus determine those factors in accordance with the minimum technology specifications. The SBAC Calculator has users input the number of students to be tested, number of devices available for testing, hours per day devices are available for testing, and available broadband internet speed, and it outputs the number of days needed to complete testing and the bandwidth required, expressed both in terms of bits per second and as a percentage of the existing internet service’s bandwidth.<sup>241</sup>

The Controller found the claimant tested 36,876 students in fiscal year 2015-2016 and 36,595 students in fiscal year 2016-2017, based on the claimant’s CAASPP test results on record.<sup>242</sup> The claimant provided the Controller with inventories of its existing devices for both fiscal years, which after excluding duplicate serial numbers, surplus or disposed computers, devices used by staff, and devices that did not meet the program’s minimum specifications, showed there were 31,816 devices in fiscal year 2015-2016, and 33,920 devices in fiscal year 2016-2017.<sup>243</sup> The claimant asserted, for both fiscal years, devices were available for testing for two hours per day and broadband internet speeds varied between sites, ranging from 100 Mbps to 1 Gbps, so the Controller treated 100 Mbps as the available internet speed across the district.<sup>244</sup> The Controller treated the number of students, hours per day devices were available, and existing internet speeds as fixed variables in the SBAC Calculator, and adjusted the number of devices available to find the minimum number of devices needed to complete testing

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<sup>240</sup> Exhibit H (1), Smarter Balanced Assessment Consortium, Smarter Balanced Technology Readiness Calculator, <https://www3.cde.ca.gov/sbactechcalc/> (accessed June 10, 2024).

<sup>241</sup> Exhibit B, Controller’s Late Comments on the IRC, filed October 2, 2023, pages 133-137 (Tab 11).

<sup>242</sup> Exhibit B, Controller’s Late Comments on the IRC, filed on October 2, 2023, page 14.

<sup>243</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report).

<sup>244</sup> Exhibit A, IRC, filed December 21, 2022, pages 104-105 (Final Audit Report).

within a given number of days. Using this method, the Controller found the claimant could complete testing in the maximum allowable testing window of 60 days using 2,459 devices in fiscal year 2015-2016, and 2,440 devices in 2016-2017.<sup>245</sup> As these numbers were significantly less than the number of existing devices for either year, the Controller found the claimant had a sufficient existing inventory of devices.

The claimant objects to the Controller's use of the SBAC Calculator, because the Parameters and Guidelines do not specify the number of computing devices needed to administer *CAASPP* tests is to be based on the SBAC Calculator's formula.<sup>246</sup> The Parameters and Guidelines do not specifically require claimants use the SBAC Calculator to determine the number of devices needed to administer *CAASPP* testing to all eligible pupils. However, as indicated in the Parameters and Guidelines, claimants are required to comply with the minimum technology requirements specifications identified by SBAC when administering the *CAASPP* assessments to all pupils via computer.<sup>247</sup> The Decision and Parameters and Guidelines also recognized the SBAC Calculator as a tool to assist school districts in determining how to meet those specifications within the CDE testing window, including the number of devices and bandwidth needed to comply with the program.

SBAC states, on its "Technology" web page: "A bandwidth test will measure current internet bandwidth at your school...You can use information obtained from these tools with the Technology Readiness Calculator..." which "can help schools estimate the number of days and associated network bandwidth required to complete the assessments given the number of students, number of computers, and number of hours per day computers are available for testing at the school."<sup>248</sup>

Moreover, the final audit report did not assert the SBAC Calculator is the only means to find the number of devices a claimant needed, as the claimant alleges; it is just one viable method the Controller chose to use under its audit authority. Since the SBAC Calculator was identified in the Decision on the Parameters and Guidelines as being created to help schools administer the *CAASPP* test, the Controller's decision to use the Calculator to determine the minimum number of devices and broadband internet needed was therefore not arbitrary, capricious, or entirely lacking in evidentiary support.

The claimant further argues the Controller's use of the SBAC calculator was arbitrary and capricious since there were several "mitigating factors" not taken into consideration in the calculator's estimates, including the claimant's use of the 35-day testing window for all students and the additional time the claimant gave to students to complete the

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<sup>245</sup> Exhibit A, IRC, filed December 21, 2022, page 105 (Final Audit Report).

<sup>246</sup> Exhibit A, IRC, filed December 21, 2022, page 106 (Final Audit Report).

<sup>247</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 115 (Parameters and Guidelines); California Code of Regulations, title 5, section 857(e).

<sup>248</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 94 (Decision and Parameters and Guidelines).



tests.<sup>249</sup> As indicated above, however, these factors are outside of the minimum technology specifications and, as a matter of law, are not eligible for reimbursement. Thus, the Controller's reduction, notwithstanding these "mitigating factors" is correct as a matter of law and is not arbitrary, capricious, or entirely lacking in evidentiary support.<sup>250</sup>

When reviewing an agency's decision for alleged abuse of discretion, "court[s] must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute."<sup>251</sup> The Commission finds that the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made.<sup>252</sup> Thus, the Controller's reduction of costs claimed for the 5,155 computers is not arbitrary, capricious, or entirely lacking in evidentiary support.

- b. The Controller basing the claimant's broadband internet needs on the SBAC Calculator's findings was not arbitrary, capricious, or entirely lacking in evidentiary support.

Regarding the claimed broadband internet expenses, there is nothing arbitrary, capricious, or lacking in evidentiary support about the Controller's method used to determine the claimant's broadband internet needs. The Controller found the claimant's schools would need to have 49.18 Mbps available bandwidth for testing in fiscal year 2015-2016, and 48.80 Mbps in fiscal year 2016-2017, based on the minimum number of devices needed according to the SBAC Calculator.<sup>253</sup> The SBAC Calculator estimates broadband internet requirements by multiplying the number of devices the user input for its available devices by 20 Kbps, the minimum bandwidth specification that must be provided to each student for CAASPP testing. This assumes all devices are being used simultaneously at the same testing location.<sup>254</sup> This method was not arbitrary, capricious, or lacking in evidentiary support, as it demonstrates the highest possible internet bandwidth needed to complete testing using the minimum number of devices, as required by the Parameters and Guidelines. For any one school to have greater bandwidth requirements than the Controller's estimate, it would have tested more than 2,440 students simultaneously, an unlikely scenario given the actual enrollment at the

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<sup>249</sup> Exhibit A, IRC, filed December 21, 2022, page 15.

<sup>250</sup> Exhibit A, IRC, filed December 21, 2022, pages 109-110 (Final Audit Report).

<sup>251</sup> *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 548.

<sup>252</sup> See *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

<sup>253</sup> Exhibit A, IRC, filed December 21, 2022, page 105 (Final Audit Report).

<sup>254</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 133, fn. 2.

claimant's schools.<sup>255</sup> If anything, this method overestimates the claimant's actual needs and gave the claimant its best possible chance at the Controller finding the claimant's existing bandwidth was insufficient.

The Controller found 100 Mbps to be the claimant's existing bandwidth, based on reports from the claimant that broadband internet services varied between its schools, ranging from 100 Mbps to 1 Gbps.<sup>256</sup> The SBAC Calculator acknowledges actual bandwidth depends on the external connection to the Internet, the speed and utilization of the internal network, and the connections between the computers used by students and those connections to the internal network; and it encourages using an internet speed test to verify the actual bandwidth available.<sup>257</sup> The claimant provided no information on how it determined the existing internet speeds at its schools. Thus, the Controller simply used 100 Mbps, the slowest internet speed reported by the claimant.

The claimant argued in the audit, without evidence:

Due to the District's large geographical reach in Fresno County, the District was required to improve the network infrastructure to ensure that there was equity across the District for all school sites so the CAASPP test could be administered. During this period, there were school sites in South East Fresno that required improvement to the bandwidth as this region was lacking the network infrastructure needed to administer testing. In addition, there were over 2,000 access points that were replaced throughout the District and core switches for all instructional sites were replaced to help increase the bandwidth. These additions made it possible for sites to administer the testing and to reduce the amount of wireless interference. These network improvements were necessary for CAASPP testing and would not have been completed if the CAASPP did not require electronic testing. Before these improvements were implemented, the network team spent significant time assisting, troubleshooting, and supporting the network in 2014/15 to ensure that there was no loss in connectivity while testing was occurring.<sup>258</sup>

The claimant also included a less detailed argument in its IRC filing that:

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<sup>255</sup> See Exhibit A, IRC, filed December 21, 2022, pages 29-30 (Exhibit 2, which shows the total enrollment of eligible students at each of the claimant's schools in fiscal year 2016-2017. Note the school with the highest number of eligible pupils was Kings Canyon Middle School with 898 students, while the school with the highest number of eligible pupils in a single grade level was Sunnyside High School with 624 students in grade 11).

<sup>256</sup> Exhibit A, IRC, filed December 21, 2022, page 104 (Final Audit Report).

<sup>257</sup> Exhibit B, Controller's Late Comments on the IRC, filed October 2, 2023, page 133, fn. 2.

<sup>258</sup> Exhibit A, IRC, filed December 21, 2022, page 107-108 (Final Audit Report).

In 2015-16 and 2016-17, the network reimbursement expenses claimed were necessary for all school sites across the district that had the bandwidth requirements to administer the testing. Due to the District's large geographical reach in Fresno County the District improved the network infrastructure to ensure there was equity within the District for all school sites. During this period, there were school sites in Southeast Fresno that required improvement to the bandwidth so that testing could be administered.<sup>259</sup>

While increasing bandwidth and reducing the amount of wireless interference would be reasonable measures for addressing insufficient broadband internet services, the claimant skipped over the threshold issue of establishing the schools' existing internet service was insufficient to provide 20 Kbps to each student being tested simultaneously so that these improvements were necessary in the first place. The only documentation the claimant provided regarding its broadband internet services was an invoice for fiscal year 2016-2017 with an attached note from the executive director of the claimant's IT department stating that 30 percent of the total broadband internet service expenses that year were for the *CAASPP* program.<sup>260</sup> This only supports that the costs occurred and were internally attributed to the *CAASPP* program, not why they were necessary. As the Controller could only rely on the claimant's own assertions that its existing internet service provided schools at least 100Mbps, assertions that the claimant made no effort to correct, it was not arbitrary, capricious, or lacking in evidentiary support to use 100 Mbps as the claimant's existing internet service. As 100 Mbps is greater than the 49.18 Mbps the Controller found the claimant needed for the program at most, the Controller's concluded that there was sufficient existing broadband internet service.

The Commission finds that the Controller adequately considered the claimant's documentation, all relevant factors, and demonstrated a rational connection between those factors and the adjustments made to reduce the costs claimed for the broadband internet service.<sup>261</sup> The Controller's reduction of costs was not arbitrary, capricious, or lacking evidentiary support.

## **V. Conclusion**

Based on the forgoing analysis, the Commission finds that the Controller's reduction of costs was correct as a matter of law, and not arbitrary, capricious, or entirely lacking in evidentiary support.

Accordingly, the Commission denies this IRC.

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<sup>259</sup> Exhibit A, IRC, filed December 21, 2022, page 16.

<sup>260</sup> Exhibit A, IRC, filed December 21, 2022, page 38 (Exhibit 4).

<sup>261</sup> See *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547-548.

## 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 September 11, 2024, I served the:

- **Current Mailing List dated September 4, 2024**
- **Proposed Decision issued September 11, 2024**

*California Assessment of Student Performance and Progress (CAASPP),  
22-1401-I-01*

Education Code Section 60640, as amended by Statutes 2013, Chapter 489 (AB 484) and Statutes 2014, Chapter 32 (SB 858); California Code of Regulations, Title 5, Sections 850, 852, 853, 853.5, 857, 861(b)(5), 864 (Register 2014, Nos. 6, 30, and 35)

Fiscal Years: 2015-2016 and 2016-2017

Fresno Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on September 11, 2024 at Sacramento, California.



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Jill Magee  
Commission on State Mandates  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 9/4/24

**Claim Number:** 22-1401-I-01

**Matter:** California Assessment of Student Performance and Progress

**Claimant:** Fresno Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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