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April 20, 2020

VIA DROP BOX

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Re: Comments of California School Boards Association
Request to Amend Parameters and Guidelines
Graduation Requirements Program, 11-PGA-03 (CSM-4435)
Education Code Sections 51225.3 and 42238.24
Statutes 1983, Chapter 498; Statutes 2010, Chapter 724
Department of Finance, Requester
Our file 1101-10320

Dear Ms. Halsey:

Our firm represents the California School Boards Association and its Education Legal Alliance ("CSBA") which seeks to submit comments in response to the Commission on State Mandate's December 20, 2019 "Request for Simultaneous Comment on the Request to Amend Parameters and Guidelines and the Application of the Court's Opinion in *California School Boards' Association [CSBA III] v. State of California* issued December 20, 2019."

I. BACKGROUND

CSBA is a member-driven association composed of nearly 1,000 K-12 school district governing boards and county boards of education throughout California. CSBA supports local board governance and advocates on behalf of school districts and county offices of education. The Education Legal Alliance of CSBA helps to ensure that local school boards retain the authority to fully exercise the responsibilities vested in them by law to make appropriate policy and fiscal decisions for their local education agencies. The Education Legal Alliance represents CSBA's members by addressing legal issues of statewide concern to school districts and county offices of education. The Education Legal Alliance's activities include joining in litigation where the interests of public education are at stake. Relevant here, CSBA, through its ELA was a petitioner in the *CSBA III* litigation.

In its July 25, 2011 letter, the Department of Finance ("DOF") stated:

The Department of Finance respectfully requests the Commission on State Mandates to amend the parameters and guidelines for Chapter 498 of the Statutes of 1983 (CSM 4435 Graduation Requirements) ["Parameters and Guidelines"] to reflect the addition of Education Code section 42238.24 by Chapter 724 of the Statutes of 2010 (AB 1610, Assembly Budget). Education Code section 42238.24 requires that state apportionment and select categorical program funding first be used by school districts and county offices of education to offset the classroom teacher salary and benefit costs incurred for courses required by the state. *Further, we request that the effective date for the period of reimbursement resulting from adoption of these amendments reflect the enactment date of the governing statute, which was October 19, 2010.*

DOF proposed that Paragraph IX of the Parameters and Guidelines, be amended to read:

IX. OFFSETTING REVENUES AND OTHER REIMBURSEMENTS

Any offsetting revenues the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.

In addition, reimbursement for this mandate from any source provided for the current expense of education, including but not limited to, federal, state, and block grant funding listed below, and pursuant to Ed. Code §§ 42238 et seq. (as amended by Stats. 2010, ch. 724, (AB 1610, § 16, eff. Oct. 19, 2010)), including total science teacher costs and indirect costs of providing the second science course, and materials costs of supplying the second science course, as required by Ed. Code section 51225.3 (as amended by Stats. 1983, ch. 498), that are funded by restricted resources as identified in the California Department of Education California School Accounting Manual, shall be identified and deducted from this claim for reimbursement:

- State funds apportioned to districts and county offices of education from the State School Fund pursuant to Ed. Code section 41372;
- State funds provided pursuant to Ed. Code section 2550 et seq.;
- Funding provided in the annual Budget Act for any educational purposes as specified in Ed. Code § 42605, (added by Stats. 2009, Third Extraordinary Session, ch. 12 (SB 4, § 15, eff. Feb. 20, 2009));
- Funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructions Materials Program (Ed. Code, §§ 60450 et seq., repealed by Stats. 2002, ch. 1168 (AB 1818, §71, eff. Jan 1, 2004));

- Funds appropriated from the State Instructional Materials Fund (Ed. Code, §§ 60240 et seq.);
- And other state and federal funds provided for instructional purposes.

The State Controller's Office (SCO) will adjust the claims for any prior reimbursements received for the Graduations Requirements program from claim submitted for the period beginning October 19, 2010.

If the school district or county office submits a valid reimbursement claim for a new science facility, the reimbursement shall be reduced by the amount of state bond funds, if any received by the school district or county office to construct the new science facility.

As noted in DOF's request, the amendments were based on the enactment of Education Code section 42238.24 ("Section 42238.24"), which states:

Costs related to the salaries and benefits of teachers incurred by a school district or county office of education to provide the courses specified in paragraph (1) of subdivision (a) of Section 51225.3 shall be offset by the amount of state funding apportioned to the district pursuant to this article, or in the case of a county office of education pursuant to Article 2 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1, and the amount of state funding received from any of the items listed in Section 42605 that are contained in the annual Budget Act. The proportion of the school district's current expense of education that is required to be expended for payment of the salaries of classroom teachers pursuant to Section 41372 shall first be allocated to fund the teacher salary costs incurred to provide the courses required by the state.

Consideration of these amendments was put on hold when CSBA brought a legal challenge regarding the validity of Section 42238.24.

II. ARGUMENT

As the Commission is aware, the facial constitutional challenges to Section 42238.24 were eventually decided by the California Supreme Court in late 2019. (*CSBA v. State of California* (2019) 8 Cal.5th 713 ["*CSBA III*"].) In upholding the constitutionality of Section 42238.24, the Court described the statute as "requiring a portion of state funding provided annually to local education agencies to be used prospectively as 'offsetting revenues'" and as "designating previously non-mandate education funding as restricted funding at the start of the next fiscal year to satisfy the state's obligation to reimburse school districts for these two mandates." (*Id.*, at p. 719.) It concluded that the Legislature had authority to designate funding as "offsetting" "as long as its chosen method is consistent with Proposition 98 and other constitutional guarantees." (*Id.* at p. 727.)

Given the language of Section 42238.24 and the Court's holding in *CSBA III*, CSBA provides the following comments on DOF's proposed amendments:

1. The Parameters And Guidelines Should Conform To Section 42238.24's Language

As noted above, Section 44238.24 allows for offsetting revenue to include two sources of revenue:

- “the amount of state funding apportioned to the district pursuant to this article, or in the case of a county office of education pursuant to Article 2 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1;” and,
- “the amount of state funding received from any of the items listed in Section 42605 that are contained in the annual Budget Act.”

CSBA submits that the Parameters and Guidelines should be amended to reflect this language. However, the amendments submitted by DOF take a broader approach.

The proposed language includes funds apportioned from the State School Fund pursuant to Education Code section 41372.¹ Section 41372, however, is not included in the article – Article 2 – in which Section 42238.24 is found. Given the interconnected complexities of this portion of the Education Code, it is possible that there is overlap between the funding referenced in Article 2 and section 41372. Nonetheless, the language of the Parameters and Guidelines should follow the language of Section 42238.24 – which does not reference Education Code section 41372 – as it is the statutory language which is the basis for the amendments.

The proposed language also includes “other state and federal funds provided for instructional purposes.” Again, however, this is beyond the scope of the impact of Section 42238.24 or the ruling in *CSBA III*. Section 42238.24 is very specific as to the two sources of revenue which should be considered offsetting, a characteristic the California Supreme Court recognized in describing the statute as “requiring a *portion of state funding* provided annually to local education agencies to be used prospectively as ‘offsetting revenues.’” (*CSBA III, supra*, 8 Cal.5th at p. 719, emphasis added.) DOF’s proposed expansive language is not justified by the enactment of Section 42238.24 and should not be part of the amendments.²

2. The Parameters And Guidelines Should Clarify That Funding From The Education Protection Account Shall Not Be Considered Offsetting

While *CSBA III* addressed the primary constitutional challenge to Section 42238.24, it did not decide a related issue regarding designation of funding from the Education Protection Account (“EPA”) as offsetting revenue under Section 42238.24. As the opinion of the First District Court of Appeal explained, during the litigation, the State indicated in a discovery response that “[EPA] revenues are potentially offsetting” for the Graduation Requirements

¹ In the State Controller Office’s (“SCO”) comments of September 9, 2011, SCO suggests revising this reference to subdivisions (a) and (b) of Education Code section 41372.

² CSBA also agrees with SCO’s suggestion to remove reference to the Schiff-Bustamante Standards-Based Instruction Materials Program.

mandate. CSBA then sought to amend its petition to add this matter to the pending litigation; the superior court did not allow the amendment. However, on appeal, the Court of Appeal reversed on this point, directing that CSBA be allowed to amend its petition to include this argument.

As the matter was only recently remanded to the superior court for further proceedings and given the current court closures, there has not been an opportunity for CSBA to amend its petition or for the superior court to resolve this question.³ However, it is clear from the language of the Constitution that EPA funding cannot be considered as offsetting revenue and given the State's prior statements to the contrary CSBA seeks inclusion of a provision in the Parameters and Guidelines to clarify that such funds shall not be considered offsetting, even given Section 42238.24.

The EPA was created through the addition of section 36 to article XIII of the California Constitution with the adoption of Proposition 30 in 2012. Subdivision (e)(1) of section 36 created the "Education Protection Account ... to receive and disburse the revenues derived from the incremental increases in taxes imposed by [that] section,..." The constitutional provision also specified the use for the EPA funds:

(5) Notwithstanding any other provision of law, the moneys deposited in the Education Protection Account for education shall not be used to pay any costs incurred by the Legislature, the Governor, or any agency of state government.

(6) A community college district, county office of education, school district, or charter school shall have sole authority to determine how the moneys received from the Education Protection Account are spent in the school or schools within its jurisdiction,...

(Cal. Const., art. XIII, § 36, subd. (e).) While the California Supreme Court did not have an opportunity to rule on the designation of EPA funds as offsetting, it specifically noted that the Legislature had authority to designate funding "as long as its chosen method is consistent with Proposition 98 and other constitutional guarantees." (*CSBA III, supra*, 8 Cal.5th. at p. 727, emphasis added.) Subdivision (e) of section 36 is such a "constitutional guarantee." It explicitly requires that the use of EPA funds be left to the discretion of locally elected governing boards. While *CSBA III* may have held that the State may commandeer a portion of "otherwise unrestricted" education funding through the legislative process (*id.* at p. 724), it explicitly prohibits the State from doing the same with funds which are to be used at the discretion of local education agencies under constitutional dictate.

Accordingly, it is important that the Parameters and Guidelines specify that EPA funds are not offsetting, or at a minimum, not to include overly expansive language in the Parameters and Guidelines that creates ambiguity regarding the nature of EPA funds.

³ For this reason, CSBA would support deferring any decision on amendment of the Parameters and Guidelines until the superior court proceedings are complete. However, it has not sought a postponement as the Commission previously denied a similar request from DOF.

3. Changes In Offsetting Revenue Should Be Effective With The 2011-12 Fiscal Year

Section 42238.24 was enacted by Assembly Bill No. 1610. It was signed by the Governor on October 19, 2010, and went into effect immediately as urgency legislation. (Stats. 2010, ch. 724.) DOF's amendments suggest that the calculation of the funding listed in Section 42238.24 as offsetting the costs of the mandate should begin that same day, October 19, 2010. However, *CSBA III* suggests a different result.

CSBA III reviewed the history of both Assembly Bill No. 1610 and Senate Bill No. 856 (Stats. 2010, ch. 719) which were both signed and became effective on October 19, 2010. However, in describing the statutes, the California Supreme Court said:

In 2010, during a period of economic recession, the Legislature enacted two statutes requiring a portion of state funding provided annually to local education agencies to be used prospectively as "offsetting revenues" under Government Code section 17557, subdivision (d)(2)(B) to satisfy two existing state reimbursement mandates. (Ed. Code, §§ 42238.24 [Graduation Requirements], 56523, subd. (f) [Behavioral Intervention Plans].) These statutes designate previously non-mandate education funding as restricted funding *at the start of the next fiscal year* to satisfy the state's obligation to reimburse school districts for these two mandates.

(*CSBA III, supra*, 8 Cal.5th at p. 719, emphasis added.) This statement indicates the Court's understanding that the change effected by Section 42238.24 would take effect with the 2011-12 fiscal year – "the next fiscal year" after enactment of the two statutes. Thus, the Parameters and Guidelines should indicate that Section 42238.24 should not impact claims for costs incurred prior to the 2011-12 fiscal year or count as offsetting funds received prior to that fiscal year.

4. The Amendments Should Be Limited To Revisions Warranted By Section 42238.24

While the majority of the revisions suggested by DOF appear based on the enactment of Section 42238.24, DOF's amendments also include other revisions which do not appear to be based on the change in statute. CSBA objects to these additional revisions.

III. CONCLUSION

Based on the above reasons and the SCO's comments, CBSA respectfully urges the Commission to adopt the following amendment to Paragraph IX of the Parameters and Guidelines to reflect the enactment of Section 42238.24⁴:

⁴ CSBA's suggested language incorporates language which is found in the current version of the Parameters and Guidelines and to which CSBA otherwise objects; however, CSBA has not proposed revision of those provisions as it would be beyond the scope of the amendments on which the Commission has sought comment, with the exception of the deletion of funding which was repealed in 2009 as noted by SCO's comments.

IX. OFFSETTING REVENUES AND OTHER REIMBURSEMENTS

Any offsetting revenues the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed.

In addition, reimbursement for this mandate from any source provided for the current expense of education, including but not limited to, federal, state, and block grant funding listed below, and pursuant to Education Code sections 42238 et seq. (Chapter 724, Statutes 2010, effective October 19, 2010), including total science teacher salary costs, related indirect costs of providing the second science course, and instructional materials costs of supplying the second science course, as required by Education Code section 51225.3 (Chapter 498, Statutes 1983), that are funded by restricted resources as identified in the California Department of Education California School Accounting Manual, shall be identified and deducted from this claim for reimbursement:

- State funds apportioned pursuant to Article 2 (commencing with section 42238) of Chapter 7 of Part 24 of Division 3 of Title 2;
- State funds provided pursuant to Education Code sections 2550 et seq.;
- Funding provided in the annual Budget Act for any educational purposes as specified in Education Code section 42605, subdivision (a) (added by Chapter 12, Statutes 2009, effective February 20, 2009). This section was subsequently amended by Chapters 12 and 328, Statutes 2009.
- Funds appropriated from the State Instructional Materials Fund (Education Code, sections 60240 et seq.). This is a continuous appropriation that was amended by Chapter 900, Statutes 2004, effective September 29, 2004.

Funds allocated from the Education Protection Account (Cal. Const., art. XIII, § 36, subd. (e)) shall not be deducted from any claim for reimbursement.

For claims submitted for the period beginning July 1, 2011, the State Controller's Office (SCO) will adjust the claims for reimbursements received after July 1, 2011.

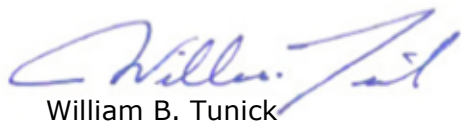
If the school district or county office submits a valid reimbursement claim for a new science facility, the reimbursement shall be reduced by the amount of state bond funds, if any received by the school district or county office to construct the new science facility.

Heather Halsey
April 20, 2020
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CSBA appreciates the Commission's consideration of its comments and suggested revisions.

Sincerely,

DANNIS WOLIVER KELLEY



William B. Tunick
WBT:ah

cc: Interested Parties via CSM's Electronic Filing Mailing List

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 April 24, 2020, I served the:

- **Notice of Inactive Status issued April 24, 2020**
- **Mr. William B. Tunick's Comments on behalf of the California School Boards Association (CSBA) on the Request for Simultaneous Comment filed April 20, 2020**
- **Mr. Christian M. Keiner's Comments on behalf of School Districts on the Request for Simultaneous Comment filed April 20, 2020**
- **Finance's Request to Place Matter on Inactive Status filed April 17, 2020**

Request to Amend Parameters and Guidelines
Graduation Requirements, 11-PGA-03 (CSM-4435)
Education Code Sections 51225.3 and 42238.24
Statutes 1983, Chapter 498; Statutes 2010, Chapter 724
Department of Finance, Requester

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 April 24, 2020 at Sacramento, California.



Jill L. Magee
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 4/24/20

Claim Number: 11-PGA-03

Matter: Graduation Requirements (CSM-4435)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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