



February 16, 2021

Mr. Ed Hanson  
Department of Finance  
Education Systems Unit  
915 L Street, 7th Floor  
Sacramento, CA 95814

*And Affected State Agencies and Interested Parties (See Mailing List)*

**RE: Request for Simultaneous Comment on the Request to Amend Parameters and Guidelines and the Application of the Court's Opinion and Judgment and the Stipulation of the Parties in *California School Boards' Association (CSBA) v. State of California***

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

Dear Mr. Hanson:

### **Background**

On July 25, 2011, the Department of Finance (Finance) filed a request to amend Section IX of the Parameters and Guidelines (Offsetting Revenues) for the *Graduation Requirements* program as follows:

Specifically, we propose amending the parameters and guidelines to include the following language regarding the offset and reimbursement of teacher salary and benefit costs, instructional materials costs, and supplies costs, in section IX, Offsetting Revenues and Other Reimbursements as follows:

#### **"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, including but not limited to, federal, state, and block grants; total science teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California School Accounting Manual; funds appropriated to school districts from the Schiff Bustamante Standards Based Instructional Materials Program (Ed. Code, §§ 60450 et seq., repealed by Stats. 2002, ch. 1168 (AB 1818, § 71, eff. Jan. 1, 2004) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials; funds appropriated from the State Instructional Materials Fund (Ed. Code, §§ 60240 et seq.) and used for supplying the second science course mandated by Education Code section 51223.5 (as amended by Stats. 1983,~~

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~~ch. 498) with instructional materials and supplies; and other state funds, shall be identified and deducted from this claim. The State Controller's Office (SCO) will adjust the claims for any prior reimbursements received for the Graduation Requirements program from claims submitted for the period beginning January 1, 2005.~~

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 teachers 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 by 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 purpose 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 Instructional 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 Graduation Requirements program from claims 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."<sup>1</sup>

On June 19, 2012, this matter was placed on inactive status at the request of several school districts pending the outcome of litigation in *California School Boards' Association (CSBA) v. State of California* (Alameda County Superior Court, Case No. RG11554698; First District Court of Appeal, Case No. A148606; California Supreme Court, Case No. S247266), which challenged the constitutionality of Education Code section 42238.24.

On December 19, 2019, the California Supreme Court filed its opinion in the *CSBA* case, determining that Education Code section 42238.24 does not violate the California Constitution, and remanded the remaining issues to the lower court. (*CSBA v. State of California* (2019) 8 Cal.5th 713.)

On December 20, 2019, Commission staff determined that the issue relating to Education Code section 42238.24 was resolved and issued a 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) v. State of California*.

On April 17, 2020, after requests for extensions of time were granted to the Department of Finance, CSBA, and the test claimants, the Commission received a request from Finance to place this matter on inactive status. The request was approved due to the continuing litigation in *CSBA* lawsuit, and only for resolution of the issue of whether the State violates article III, section 36 of the California Constitution (enacted in 2013 by Proposition 30) if education protection account funds are considered offsetting state funding under Education Code section 42238.24 (relating to the *Graduation Requirements* program).

On February 1, 2021, the Alameda County Superior Court entered judgment resolving the case based on a stipulation of the parties. Specifically, the State of California, Department of Finance, and State Controller agreed that for purposes of this and any future dispute regarding the *Graduation Requirements* mandate, education protection account funding is not offsetting revenue under Education Code section 42238.24, and CSBA agreed to dismiss with prejudice their cause of action on this issue.

Accordingly, this matter is no longer inactive, and will be placed on the Commission's hearing calendar.

### **Request for Comments**

All parties, interested parties, and interested persons receiving this letter may file written comments regarding the Department of Finance's Request to Amend the Parameters and Guidelines for the *Graduation Requirements* program and the effect of the Supreme Court's decision in *CSBA v. State of California* (2019) 8 Cal.5th 713 and the judgment based on the stipulation of the parties entered by the court on February 1, 2021, on Finance's request not later than **5:00 p.m. on March 3, 2021**, in accordance with Government Code Section 11020 and sections 1181.3, 1183.8 and 1187.5 of the Commission's regulations.

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<sup>1</sup> Request to Amend Parameters and Guidelines (PGA) by the Department of Finance (Finance) filed July 25, 2011 (<https://csm.ca.gov/matters/11-PGA-03/doc2.pdf>, pages 1-2).

Oral or written representations of fact offered by any person shall be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information or belief. (Cal. Code. Regs., tit. 2 §§ 1185.2 and 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>2</sup> Hearsay evidence (such as declarations not based on personal knowledge but information and belief alone) may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.<sup>3</sup>

**Rebuttal.** Parties, interested parties and interested persons may file rebuttals. The rebuttals are due not later than 5:00 p.m., 15 days from the service date of the comments (Gov. Code § 11020 and Cal. Code. Regs., tit. 2 §§ 1183.8. Oral or written representations of fact offered by any person shall be under oath or affirmation and signed under penalty of perjury by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge, information or belief. (Cal. Code. Regs., tit. 2 §§ 1183.8 and 1187.5.) If new written representations of fact are made, they must be supported with documentary evidence filed with the rebuttal. (Cal. Code. Regs., tit. 2 §§ 1181.3, 1183.8, and 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>4</sup> Hearsay evidence (such as declarations not based on personal knowledge but information and belief alone) may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.<sup>5</sup>

**Filing Written Materials.** All written representations of fact made to the Commission are required to be supported by documentary or testimonial evidence submitted under penalty of perjury. (Cal. Code Regs., tit. 2, 1187.5.)

The Commission's regulations require that written materials filed with the Commission be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, 1181.3(c)(1).) Refer to <https://www.csm.ca.gov/dropbox.php> on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, 1181.3(c)(2).)

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<sup>2</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.

<sup>3</sup> Title 2, California Code of Regulations, section 1187.5.

<sup>4</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.

<sup>5</sup> Title 2, California Code of Regulations, section 1187.5.

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If you would like to request an extension of time, please refer to section 1187.9(a) of the Commission's regulations.

**Tentative Hearing Date**

The request to amend the Parameters and Guidelines is tentatively set for hearing on **July 23, 2021**.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey". The signature is fluid and cursive, with a long horizontal stroke at the end.

Heather Halsey  
Executive Director

**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 February 16, 2021, I served the:

- **Request for Simultaneous Comment on the Request to Amend Parameters and Guidelines and the Application of the Court's Opinion and Judgement and the Stipulation of the Parties in *California School Boards' Association (CSBA) v. State of California* issued February 16, 2021**

Request to Amend Parameters and Guidelines  
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Education Code Sections 51225.3 and 42238.24  
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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 February 16, 2021 at Sacramento, California.



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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 2/16/21

**Claim Number:** 11-PGA-03

**Matter:** Graduation Requirements (CSM-4435)

**Requester:** Department of Finance

### 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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