

COMMISSION ON STATE MANDATES

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November 13, 2015

Mr. Arthur Palkowitz
Stutz Artiano Shinoff & Holtz
2488 Historic Decatur Road, Suite 200
San Diego, CA 92106

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

Re: **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**
California Assessment of Student Performance and Progress (CAASPP),
14-TC-01 and 14-TC-04
Education Code Sections 60602 et al.
Plumas County Office of Education, Plumas Unified School District, Porterville Unified
School District, Santa Ana Unified School District, Vallejo City Unified School District,
Claimants

Dear Mr. Palkowitz:

The draft proposed decision for the above-named matter is enclosed for review and comment.

Written Comments

Written comments may be filed on the draft proposed decision by **December 4, 2015**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.3.)

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

Hearing

This matter is set for hearing on **Friday, January 22, 2016**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The proposed decision will be issued on or about January 8, 2016. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM ____
TEST CLAIM
DRAFT PROPOSED DECISION

Education Code Sections 60602, 60602.5, 60603, 60604, 60607, 60610, 60611, 60612, 60640, 60641, 60642.6, 60643, 60643.6, 60648, 60648.5, 60649, 60810, 99300, and 99301; as added or amended by Statutes 2013, Chapter 489¹ (AB 484); Statutes 2014, Chapter 32 (SB 858); Statutes 2014, Chapter 327 (AB 1599)

California Code of Regulations, Title 5, Sections 850-864 as added or amended by Register 2014, Nos. 30 and 35

California Assessment of Student Performance and Progress (CAASPP)

14-TC-01

Plumas County Office of Education, Plumas Unified School District, Porterville Unified School District, Santa Ana Unified School District, and Vallejo City Unified School District, Claimants

AND

California Code of Regulations, Title 5, Sections 850-864 as added or amended by Register 2014, No. 6

California Assessment of Student Performance and Progress (CAASPP)

14-TC-04

Plumas County Office of Education, Plumas Unified School District, Porterville Unified School District, and Santa Ana Unified School District, Claimants

EXECUTIVE SUMMARY

Overview

This consolidated test claim alleges reimbursable costs mandated by the state for school districts to administer statewide academic assessments to students in accordance with the requirements of Statutes 2013, chapter 489 (AB 484); Statutes 2014, chapter 32 (SB 858); Statutes 2014, chapter 327 (AB 1599); and title 5 of the California Code of Regulations,² sections 850-864, as amended by Register 2014, Nos. 6, 30, and 35. As the analysis herein explains, many of the code sections and regulations pled do not contain any mandatory or directory language, or mandate actions

¹ This statute was pled as “Statutes 2013-2014, Chapter 489 (AB 484)” in the test claim. However, it was chaptered by the Secretary of State and is later referred to by the Legislature, in the state budget as “Statutes 2013, chapter 489.” Therefore, this analysis will refer to it as “Statutes 2013, chapter 489.”

² Unless otherwise indicated, all following references to regulations will be to California Code of Regulations, title 5.

only by state-level entities such as the Superintendent of Public Instruction or the State Board of Education. Several more of the code sections pled make only clarifying changes, and do not impose new activities on local government. And, while some of the code and regulatory sections added or amended do impose activities on local government that were not required under prior law, the analysis concludes that school districts may have incurred increased costs mandated by the state only during fiscal year 2013-2014; beginning July 1, 2014 there are no costs mandated by the state, because the state has provided funding which is specifically intended to cover the costs of the mandate, and, absent evidence to the contrary, is sufficient as a matter of law to cover the costs of the mandate.

Procedural History

Test claim 14-TC-01 was filed with the Commission on State Mandates (Commission) on December 23, 2014,³ and deemed complete and issued for comment on January 2, 2015. On January 28, 2015, the Department of Finance (Finance) requested an extension of time to comment on the test claim, which was granted for good cause.

On February 13, 2015, Finance filed written comments on 14-TC-01.⁴ Between February 12, 2015, and February 24, 2015, the following local governments filed comments on 14-TC-01: Orange County Board of Education; Visalia Unified School District; Tulare Joint Union High School District; Santa Rosa City Schools; San Lorenzo Valley Unified School District; Del Norte County Office of Education; Cupertino Union School District; Belmont-Redwood Shores School District; Santa Cruz City Schools; and Moreno Valley Unified School District.⁵ And, on February 12, 2015, Vallejo City Unified School District submitted a request to be joined as a claimant in 14-TC-01,⁶ which was granted and noticed on February 18, 2015.⁷ On March 13, 2015, the claimants filed rebuttal comments,⁸ and the California Educational Technology Professionals Association filed comments on 14-TC-01.⁹ On March 17, 2015, claimants filed an amendment to 14-TC-01, which was deemed incomplete. On March 27, 2015, claimants cured the filing, and the amendment was deemed complete, and deemed to replace the December 23, 2014 test claim filing.¹⁰ On April 27, 2015, Finance filed late comments in answer to claimants'

³ Exhibit A, Amended Test Claim 14-TC-01. Note that this document is in fact the test claim as amended March 25, 2015, which has replaced the original filing. Based upon the filing date of December 23, 2014, the potential period of reimbursement begins July 1, 2013. However, since the effective dates of the test claims and regulations are later dates, the potential period of reimbursement begins on the effective date of the statute or regulation that imposes a state-mandate.

⁴ Exhibit D, Finance's Comments on Test Claim 14-TC-01, filed February 13, 2015.

⁵ Exhibit E, Interested Parties and Persons Comments.

⁶ Exhibit C, Vallejo City Unified School District Request to Join Test Claim and Declarations.

⁷ Exhibit X, Notice of Addition of Co-Claimant.

⁸ Exhibit F, Claimants' Rebuttal on 14-TC-01, filed March 13, 2015.

⁹ Exhibit E, Interested Parties and Persons' Comments.

¹⁰ Exhibit X, Notice of Complete Test Claim Filing.

rebuttal comments on the original test claim filing.¹¹ On May 11, 2015, claimants filed additional late rebuttal comments.¹²

On June 1, 2015, Commission staff issued the draft proposed decision on 14-TC-01.¹³ On June 16, 2015, Finance submitted a request for an extension of time to comment and postponement of the hearing, which was denied for failure to state good cause. On June 19, 2015, Finance submitted a second request for an extension of time and postponement of the hearing, which was approved for good cause shown. On July 20, 2015, the claimants and Finance submitted comments on the draft proposed decision.¹⁴

On June 26, 2015, claimants filed 14-TC-04. On August 14, 2015, 14-TC-04 was deemed complete and consolidated with 14-TC-01 and the consolidated claim was named “CAASPP.”¹⁵ No party or interested party filed comments on 14-TC-04. On August 20, 2015, claimants requested a postponement of hearing from the December 3, 2015 hearing date to January 22, 2016, which was granted for good cause shown.

On November 13, 2015, Commission staff issued the draft proposed decision for the consolidated test claim.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁶

Claims

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

¹¹ Exhibit G, Finance’s Late Comments on 14-TC-01, filed April 27, 2015.

¹² Exhibit H, Claimants’ Late Rebuttal on 14-TC-01, filed May 11, 2015.

¹³ Exhibit I, Draft Proposed Decision on 14-TC-01.

¹⁴ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01; Exhibit K, Finance’s Comments on Draft Proposed Decision on 14-TC-01.

¹⁵ Exhibit B, Test Claim 14-TC-04.

¹⁶ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

Subject	Description	Staff Recommendation
<p>Education Code sections 60602; 60602.5; 60603; 60611, as added or amended by Statutes 2013, chapter 489, and Statutes 2014, chapter 327; California Code of Regulations, title 5, sections 850; 862.5, as amended by Register 2014, Nos. 6, 30, and 35.</p>	<p>Education Code sections 60602 and Section 60602.5, state the intent of the Legislature to provide statewide testing.</p> <p>Education Code section 60603 provides definitions of key terms “[a]s used in this chapter,” including, but not limited to, “achievement test,” “computer-based assessment,” “field test,” and “local educational agency.”</p> <p>Education Code section 60611 states that a local educational agency (LEA), including its staff, shall not carry on any program for the sole purpose of test preparation of pupils for the statewide pupil assessment system.</p> <p>Section 850 of the regulations is also a definitional section, providing for “accommodations,” “achievement tests,” and more.</p> <p>Section 862.5 of the regulations provides for funding to be apportioned to each LEA based on the number of pupils.</p>	<p><i>Deny</i> – Education Code sections 60602 and 60602.5, as added or amended, contain only Legislative intent language. Education Code section 60603 and section 850 of the regulations, as amended, are definitional; Education Code section 60611 is prohibitive; section 862.5 of the regulations provides for funding for the program to be apportioned to each LEA; none of these sections contain any mandatory language.</p>
<p>Education Code sections 60604; 60612; 60642.6; 60643; 60643.6; 60648; 60648.5; 60649; and 60810, as added or amended by Statutes 2013, chapter 489, and Statutes 2014, chapter 327.</p>	<p>Sections 60604, 60612, 60642.6, 60648, 60648.5, 60649, and 60810, to the extent they contain any mandatory or directory language, are directed toward the Superintendent of Public Instruction, the State Board of Education, or the California Department of Education (CDE).</p> <p>Section 60643 provides the requirements of contracts entered into between the California Department of Education and “the contractor or contractors of the achievement</p>	<p><i>Deny</i> – Sections 60604, 60612, 60642.6, 60643, 60643.6, 60648, 60648.5, 60649, and 60810 impose new activities only on state entities and the contractor, rather than local governments.</p>

	<p>tests provided for in Section 60640.”</p> <p>Section 60643.6 provides that an LEA shall be reimbursed by the contractor for any unexpected expenses incurred due to scheduling changes that resulted from the late delivery of testing materials.</p>	
<p>Education Code sections 60607; 60610; 60641; 99300; and 99301, as added or amended by Statutes 2013, chapter 489, and Statutes 2014, chapter 327; California Code of Regulations, title 5, sections 851, 853.5, 853.7, 855, 859, 862, and 863, as amended by Register 2014, Nos. 6, 30, and 35.</p>	<p>Section 60607 replaces “STAR” with “CAASPP.”</p> <p>Section 60610 and section 60641 are amended to expressly include charter schools in statewide testing.</p> <p>Section 99300 and 99301 were amended to clarify that CAASPP replaces STAR, with respect to the Early Assessment Program.</p> <p>Section 851 of the regulations provides for the timing of the CAASPP tests, and expressly includes charter schools.</p> <p>Sections 853.5 and 853.7 of the regulations provide for universal tools and designated supports, which “shall be permitted” to students taking the CAASPP, and accommodations, which are required by a pupil’s Individualized Education Program (IEP) or Section 504 plan.</p> <p>Section 855 of the regulations describes the timing of the CAASPP tests.</p> <p>Section 859 of the regulations provides for a CAASPP Test Security Agreement and CAASPP Test Security Affidavit, and describes the persons required to agree to and sign these documents.</p>	<p><i>Deny</i> – Education Code sections 60607; 60610; 60641; 99300; and 99301, as amended, and California Code of Regulations, title 5, sections 851, 853.5, 853.7, 855, 859, 862, and 863, as amended by Register 2014, Nos. 6, 30, and 35, involve only clarifying or consistency changes, and do not impose any new requirements on school districts.</p>

	<p>Section 862 of the regulations provides for the annual apportionment information report, including certain data, to be made available to school districts.</p> <p>Section 863 of the regulations provides for CAASPP pupil reports to be shared with parents.</p>	
<p>Education Code section 60640, as amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 32, and California Code of Regulations, title 5, sections 853 and 857 as amended by Register 2014, No. 35.</p>	<p>Education Code section 60640 describes the contents of the CAASPP. Section 853, as amended by Register 2014, No. 35, states that the primary mode of administration of the CAASPP shall be via computer, and section 857 requires the LEA CAASPP coordinator to ensure current and ongoing compliance with the minimum technology requirements identified by the Smarter Balanced Assessment Consortium.</p>	<p><i>Partially Approve</i> – The test claim statutes and regulations require that the new CAASPP assessments shall be administered on computers. Staff finds that school districts are mandated by the state to prepare for and administer the CAASPP via computers, including, as necessary, the purchase of hardware, software, or peripherals, and technology infrastructure improvements.</p> <p>However, beginning July 1, 2014, substantial new funding is provided in the state budget that is specifically intended to fund the costs of the mandated program in an amount sufficient as a matter of law to fund the costs of the program. Additionally, from January 1, 2014 to June 30, 2014, there is funding provided in the state budget that may be used for the program, but it is not required to pay for the mandated activities. Therefore, staff finds state-mandated reimbursable costs incurred between January 1, 2014 and June 30, 2014 to prepare for and administer the CAASPP via computers, including, as necessary, the purchase of hardware, software, or peripherals, and technology</p>

		<p>infrastructure improvements, may be reimbursable to the extent LEAs utilize general revenue-limited funds to pay for those incurred costs.</p>
<p>Code of Regulations, title 5, sections 852, 853, 857, 858, 861, and 864, as amended by Register 2014, Nos. 6, 30, and 35.</p>	<p>These sections, as amended, provide for reporting and informational requirements pertaining to the CAASPP tests; ensuring test preparation and security; and require compliance with instructions or manuals provided by the CAASPP contractor.</p>	<p><i>Partially Approve</i> – Several activities required by these regulatory sections are new, as compared with prior law. Specifically, staff finds that school districts are mandated by the state to:</p> <ul style="list-style-type: none"> • 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 or guardian’s written request to excuse his or her child from any or all parts of the CAASPP assessments shall be granted. • Beginning February 3, 2014, score and transmit the CAASPP tests in accordance with manuals or other instructions provided by the contractor or CDE. • 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. • 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.

		<ul style="list-style-type: none"> • 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. <p>However, there is additional funding available beginning July 1, 2014, which is specifically intended to fund the costs of the mandated program in an amount sufficient as a matter of law to fund the costs of the program. Therefore, staff finds state-mandated costs incurred between February 3, 2014 and June 30, 2014 only are reimbursable.</p>
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Analysis

A. Many of the Code Sections and Regulations Pled Do Not Contain Mandatory or Directory Language; Do Not Impose Any Activities on Local Government; or Are Not New, and Thus, Do Not Mandate a New Program or Higher Level of Service Within the Meaning of Article XIII B, Section 6 of the California Constitution.

- 1. Education Code sections 60602, 60602.5, 60603, and 60604, 60611, 60612, 60642.6, 60643, 60643.6, 60648, 60648.5, 60649, and 60810; and California Code of Regulations, title 5, sections 850 and 862.5, do not contain any mandatory or directory provisions, or are directed toward state entities or other actors, and therefore do not impose any mandated activities on local government.**

Education Code sections 60602, 60602.5, 60603, and 60604, 60611, 60612, 60642.6, 60643, 60643.6, 60648, 60648.5, 60649, and 60810; and sections 850 and 862.5 of the regulations, do not impose any required activities on local government. These sections state the Legislature’s intent to provide a system of individual assessment of pupils, define terms of the CAASPP program, and provide for the apportionment of funds for the program; or, are directed to state agencies. Although these code sections and regulations provide background and help explain the scope of the program, they do not, themselves, impose any required activities on local school districts.

- 2. Education Code sections 60607, 60610, 60641, 99300, and 99301 as added or amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 327, and California Code of Regulations, title 5, sections 851, 853.5, 853.7, 855, 859, 862, and 863 as amended by Register 2014, Nos. 6, 30, and 35 do not impose any new activities or costs on school districts.**

In *Lucia Mar*, the Court held a mandated activity must be new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order, to impose a new program or higher level of service.¹⁷

Here, the requirements of sections 60607, 60610, 60641, 99300, 99301, and sections 851, 853.5, 853.7, 855, 859, 862, and 863 of the regulations do not impose new activities on school districts.

- a) Education Code section 60607, regarding the inclusion of the CAASPP results in a pupil's permanent school record, does not impose new requirements.

Section 60607, as amended, is substantially the same as the former section, with only minor, non-substantive changes. The only change to subdivision (a) is the replacement of “STAR” with “MAPP.” Other changes include substituting “local educational agencies” for “schools” in subdivision (b), and “MAPP” for “statewide pupil assessment program” in subdivision (b), and “California Standards Test” in subdivision (c).¹⁸ In each case “MAPP” was then amended to “CAASPP” by Statutes 2014, chapter 327.¹⁹ These changes are non-substantive in nature; subdivision (a) requires that schools or school districts must maintain each pupil’s “individual record of accomplishment,” but prior section 60607 imposed the same requirement.²⁰

- b) Education Code sections 60610 and 60641 do not impose new requirements.

Sections 60610 and 60641, and California Code of Regulations, title 5, section 851, as amended, expressly include charter schools in a school district’s testing program, and make other clarifying changes that are not new, with respect to prior law. These changes do not impose new activities on local government.

- c) Education Code sections 99300 and 99301, regarding the Early Assessment Program and the provision of the CAASPP results to the Chancellor of the Community Colleges, do not impose any new requirements on school districts.

Sections 99300 and 99301, as amended, make clarifying changes to the Early Assessment Program that do not impose any new activities on local government. Section 99300 does not contain any mandatory or directory language aimed at local government, and primarily states the intent of the Legislature with respect to the EAP. Amended section 99301 replaces “the California Standards Test (CST) and the augmented CST” with “grade 11 assessment” or “assessment” or “assessment referenced in Section 60641,” in accordance with section 99300, discussed above. The amendment makes no substantive change to the requirement to provide results to the Chancellor, or to participating community college districts’ requirements to use the assessments to provide diagnostic advice or for placement purposes. Therefore, this requirement, though now applicable to a successor academic achievement test, is not new.

¹⁷ *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

¹⁸ Education Code section 60640 (Stats. 2013, ch. 489).

¹⁹ Education Code section 60640 (Stats. 2014, ch. 327).

²⁰ Compare Education Code section 60607(a) (Stats. 2004, ch. 233) with Education Code section 60607(a) (Stats. 2013, ch. 489; Stats. 2014, ch. 327).

- d) California Code of Regulations, title 5, section 851, as amended by the test claim regulations addresses general pupil testing requirements and prohibitions, and does not impose any new requirements on school districts.

Section 851 of the regulations generally requires LEAs to administer the assessments to each of its pupils within a specified window of time, and to make arrangements for testing pupils in alternative education programs or programs conducted off campus. As amended by the test claim regulations, section 851 now refers to “LEAs” instead of “school districts” and states that LEAs “*may administer* the primary language test pursuant to Education Code section 60640...”²¹ In addition, the amended section expressly includes charter schools in an LEA’s testing schedule, but charter schools were already required to participate in statewide testing under prior law.²²

These changes do not result in any new mandated activities. Nearly all changes to section 851 are non-substantive, and in fact, make the primary language test, which was formerly mandatory, permissive.

- e) California Code of Regulations, title 5, sections 853.5 and 853.7, as added and amended by the test claim regulations, address universal tools, designated supports, and accommodations for pupils taking the CAASPP, and do not impose any new requirements on school districts.

As amended by the test claim regulations, sections 853.5, and 853.7, for English learners, provide for the use of both “embedded” and “non-embedded” testing aids, called “universal tools, designated supports, and accommodations.” “Embedded” means a resource, whether a universal tool, designated support, or an accommodation, that is part of the assessment technology platform for the computer-based CAASPP tests.^{23,24} In other words, an embedded support is by definition built into the computer-based tests, or the computers themselves that are used for testing, and therefore the provisions in section 853.5(a), (c), and (e), requiring embedded universal tools, designated supports, and accommodations, respectively, do not require any activity of school districts, other than providing a computing device and the use of an assessment technology platform as required by Education Code section 60640, which is discussed below.

“Non-embedded” means a resource that is *not* part of the technology platform for the computer-based CAASPP tests, and “universal tools” means that those resources are available to all pupils.²⁵ The plain language of sections 853.5(b) and (d), however, describing non-embedded universal tools, and non-embedded designated supports, states that “all pupils *shall be permitted* the following...” The language does not require a school district “to provide” these materials, as

²¹ California Code of Regulations, title 5, section 851 (Register 2014, No. 35).

²² Education Code section 60640, as last amended by Statutes 2009-2010, chapter 2 (5th Ex Sess.); Education Code section 47605, as last amended by Statutes 2008, chapter 179.

²³ California Code of Regulations, title 5, section 850(m).

²⁴ Exhibit X, Matrix entitled “Universal Tools, Designated Supports, and Accommodations for the California Assessment of Student Performance and Progress for 2014–15,” revised March 12, 2015.

²⁵ California Code of Regulations, title 5, section 850(aa) and (q).

it does in subdivision (f) for non-embedded accommodations. Thus, the plain language of this regulation does not require school districts to incur any new costs to provide, furnish, or supply these materials. Additionally, “designated supports” are “resources which the pupil regularly uses in the classroom for instruction and/or assessment(s) and that are available for use by any pupil for whom the need has been indicated, prior to the assessment administration, by an educator or group of educators or specified in a pupil’s IEP or Section 504 plan.”²⁶ Permitting a pupil to use a non-embedded designated support that is already used regularly in the classroom is not new. Accordingly, staff finds that section 853.5(b) and (d), as amended by the test claim regulations, does not require school districts to incur any new costs.

Section 853.5(f), as amended by the test claim regulations, requires the school district “to provide” certain non-embedded accommodations on the CAASPP tests when specified in a pupil’s IEP or Section 504 plan. “Accommodations” means “resources documented in a pupil’s IEP or Section 504 Plan which the pupil regularly uses in the classroom for instruction and/or assessment(s) and that are either utilized in the assessment environment or consist of changes in procedures or materials that increase equitable access during the assessment and that cannot fundamentally alter the comparability of scores.”²⁷

Under existing state and federal law, pupils with disabilities are guaranteed the right to receive a free and appropriate public education, including special education and related services that are identified in the pupil’s IEP.²⁸ Federal law, in the No Child Left Behind Act (NCLB), also requires that all students participate in the standardized assessments, and that “the reasonable adaptations and accommodations for students with disabilities . . . necessary to measure the academic achievement of such students relative to State academic content and State student academic achievement standards” shall be provided.²⁹ And, under prior state law, former Education Code section 60604 required that individuals with exceptional needs “shall be included in the testing requirement [of the STAR exam]. . . with appropriate accommodations in administration, where necessary. . . .”³⁰ Thus, providing a non-embedded accommodation to a pupil with a disability does not require a school district to provide a new resource or cost, when the resource is already required by the pupil’s IEP.

Section 853.5(g), as amended, provides that an LEA may submit a request in writing to the CDE prior to the administration of a CAASPP test for approval for the use of an individualized aid. However, the authorization to request an accommodation that is already provided in the IEP or 504 Plan is not new. Prior law also provided that if a variation was not listed in the regulation,

²⁶ California Code of Regulations, title 5, section 850(k) (Register 2014, No. 35).

²⁷ California Code of Regulations, title 5, section 850(a).

²⁸ 20 United State Code section 1400(d); 34 Code of Federal Regulations, sections 300.340–300.350; Education Code section 56000 et seq.

²⁹ 20 United States Code section 6311(b)(3)(C)(ix).

³⁰ Former Education Code section 60640, as amended by Statutes 2009-2010, 5th Ex. Sess., chapter 2.

the school district or pupil’s IEP team may submit to the CDE for review of the proposed variation.³¹

Register 2014, No. 35 restated the substance of section 853.5(c) and (d), describing embedded and non-embedded designated supports, in new section 853.7, which applies exclusively to English learner pupils.³² Section 853.7 continues the requirements of section 853.5, as amended by Register 2014, No. 6, without interruption and therefore no new activities are imposed.

- f) California Code of Regulations, title 5, section 855, as amended by the test claim regulations, describes the timing of the CAASPP tests, and does not impose any new requirements on school districts.

As amended by Register 2014, No. 6, section 855 provides for the testing window for the 2013-2014 CAASPP field test, described below, and for the CST, CMA, and CAPA. Although section 855 contains mandatory language (“shall administer” and “shall be administered”), reading the section in context, it does not itself mandate providing the tests. Moreover, prior section 855 also described the timing of the various tests required under the STAR program. Therefore, no new requirements or activities are imposed by the amendments to section 855.

- g) California Code of Regulations, title 5, section 859, as amended by the test claim regulations, addresses the security agreement and affidavit for the CAASPP tests, and does not impose any new requirements on school districts.

Section 859 provides for a CAASPP Test Security Agreement and CAASPP Test Security Affidavit, and requires that certain individuals agree to and sign the agreement and the affidavit, as applicable. Much of the content, and the persons required to sign, are substantially the same as the STAR Test Security Agreement and STAR Test Security Affidavit, provided for under the prior section, except that amended section 859 contains certain provisions more applicable to electronic media than paper tests. However, the activity required of school districts is to ensure that all coordinators, examiners, translators, proctors, and scribes agree to and sign the security agreement or affidavit, as specified. The changes to the content of the agreement do not alter the scope of the activity required. Therefore, amended section 859 does not impose any new activities on local government.

- h) California Code of Regulations, title 5, section 862, as amended by the test claim regulations, governs the apportionment information report, and does not impose any new requirements on school districts.

Prior section 862 provides for an annual apportionment information report, including certain information about the number of pupils enrolled and tested and the number of pupils administered any portion of the CAASPP using paper and pencil assessments, and the number of pupils administered a diagnostic assessment pursuant to Education Code section 60644. As amended, section 862 requires the LEA CAASPP coordinator to certify the accuracy of the

³¹ Former California Code of Regulations, title 5, section 853.5(f) (Register 2011, No. 15).

³² Compare California Code of Regulations, title 5, section 853.5 (Register 2014, No. 30) with California Code of Regulations, title 5, section 853.5 (Register 2014, No. 35). See also California Code of Regulations, title 5, section 853.7 (Register 2014, No. 35); Exhibit X, CAASPP Final Statement of Reasons, page 2.

apportionment information report, rather than the district superintendent, as provided under prior law.³³ Though the person certifying has changed, there are no new requirements imposed on school districts by section 862, as amended.

- i) California Code of Regulations, title 5, section 863, as amended by the test claim regulations, addresses CAASPP pupil reports and cumulative record labels, and does not impose any new activities on school districts.

Code of Regulations, section 863, as amended, changes “school district” to “LEA”, and requires an LEA to “forward or transmit pupil results for the tests conducted pursuant to Education Code section 60640 to each pupil’s parent or guardian within 20 working days,” and states that schools are responsible for “maintaining pupil’s scores with the pupil’s permanent school records...” and “forwarding or transmitting” the results to schools to which pupils matriculate or transfer.³⁴ These are clarifying and consistency changes, and do not alter the scope of activities required of the schools and school districts. Therefore, there are no new required activities imposed by this amended section.

B. Education Code Section 60640 and Sections 852, 853, 857, 858, 861, and 864 of the Title 5 Regulations, as Amended by the Test Claim Statutes and Regulations, Require School Districts to Perform Some New Activities That Were Not Required Under Prior Law.

- 1. Education Code section 60640, as amended by Statutes 2013, chapter 489, beginning January 1, 2014, and interpreted in light of the implementing regulations imposes a new requirement to administer the CAASPP assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology requirements.**

Section 60640, as amended, replaces the STAR exam with CAASPP, beginning in the 2013-2014 school year. Grades 2, 9, and 10 are no longer required to take the annual assessments previously required,³⁵ and the California Modified Assessment is no longer necessary with the appropriate “universal tools” and “designated supports” available within the computer adaptive Smarter Balanced tests.³⁶ For the 2013-2014 school year, the Smarter Balanced assessments in English language arts and mathematics “shall be a field test only,” meaning that the results will not be used for state and federal accountability purposes.³⁷ The full administration of the CAASPP test began in Spring 2015.³⁸

³³ California Code of Regulations, title 5, section 862 (Register 2014, No. 6.).

³⁴ California Code of Regulations, title 5, section 863 (Register 2014, No. 6.).

³⁵ Assembly Third Reading, AB 484, as amended May 24, 2013.

³⁶ See Exhibit X, CMA Pilot Test, California Department of Education.

³⁷ Education Code section 60640(b) (Stats. 2013, ch. 489; Stats. 2014, ch. 32).

³⁸ Exhibit X, Field Test – Smarter Balanced Assessment Consortium; Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 12.

- a) Many of the plain-language requirements in section 60640, as amended by the test claim statutes, are not new, or require a lower level of service when compared to prior law.

Many of the requirements in section 60640, as amended, are not new or require a lower level of service. For example, the requirement *to administer a statewide assessment* pursuant to section 60640(b), (f), (g), and (k) is no different from that under prior law, and in fact represents a lower level of service. The subject matter of the assessments under the prior law is substantively the same as under CAASPP, but because pupils in grades 2, 9, and 10 are no longer required to participate in the English and mathematics assessments, the number of pupils required to be assessed under sections 60640(f) and 60640(b) is fewer than that required under former sections 60640 and 60642.5.³⁹ Moreover, section 60640(b)(1)(B) explains that “[i]n the 2013-14 school year, the consortium summative assessment in English language arts and mathematics *shall be a field test only...*” The field test is not intended to include all of the otherwise-applicable components of the assessments, and indeed the field test was implemented in that manner.⁴⁰ Therefore, the requirements of section 60640 for the 2013-2014 school year to administer the field test assessments to all eligible pupils are a lower level of service, and not new, *except with respect* to the use of computers, as discussed below.

- b) LEAs are newly required, however, 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.

Notwithstanding that the general requirements of 60640 to administer the tests are not new, there is a new requirement inherent in the administration of the new CAASPP tests via computer, which is best understood when interpreted in light of sections 850, 853, and 853.5 of the implementing regulations.⁴¹ The Assembly Appropriations Committee explains that “these assessments are designed to be online and computer adaptive as opposed to the paper - and - pencil STAR assessments currently administered to pupils.”⁴²

Additionally, the definitions found in section 60603 and section 850 of the regulations, demonstrate the Legislature’s intent that the new assessments are to be computer-based, and

³⁹ Compare former Education Code section 60640(b) (Stats. 2009-2010, 5th Ex. Sess., ch. 2) with Education Code section 60642.5 (Stats. 2008, ch. 752). See also, former Education Code section 60603 (Stats. 2004, ch. 233).

⁴⁰ Education Code section 60640(f)(2) (Stats. 2013, ch. 489); Education Code section 60603 (Stats. 2013, ch. 489). See also, Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, pages 16; 41; Smarter Balanced Field Test Questions and Answers, page 1.

⁴¹ California Code of Regulations, title 5, section 850, 853, 853.5, and 857 are evaluated independently elsewhere in this analysis; these sections are discussed here only to the extent that they help to elucidate the requirements of section 60640 with respect to the acquisition and ongoing maintenance of adequate minimum technology requirements to administer the CAASPP.

⁴² Exhibit X, AB 484, Appropriations Committee Analysis, page 1.

section 853 of the regulations, as amended by Register 2014, No. 35, states that the “primary mode of administration of a CAASPP test shall be via a computing device, the use of an assessment technology platform, and the adaptive engine.”⁴³ And, the LEA CAASPP coordinator is required by section 857 of the regulations to “ensure current and ongoing compliance with the minimum technology specifications as identified by the CAASPP contractors.”⁴⁴

Therefore, staff finds that Education Code section 60640, as amended by Statutes 2013, chapter 489, beginning January 1, 2014, and interpreted in light of sections 850, 853, 853.5, and 857 of the regulations, imposes a new requirement 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.

2. California Code of Regulations, title 5, section 852, as amended by Register 2014, No. 6, imposes a new requirement on school districts to provide an annual parental notification of CAASPP testing containing information about the test and information on the right to request an exemption from testing for their child.

Prior section 852 of the regulations provided for a parental exemption from the annual statewide testing.⁴⁵ These provisions have remained, with clarifying changes, but as amended by the test claim regulations, section 852 now also requires school districts to *notify parents each year* of their pupil’s participation in the CAASPP testing, and that notification must include “a notice of the provisions outlined in Education Code section 60615” pertaining to a parental exemption request.⁴⁶

Staff finds that section 852, as amended, requires school districts, beginning February 3, 2014, to 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 or guardian’s written request to exempt his or her child from any or all parts of the CAASPP assessments shall be granted.

3. California Code of Regulations, title 5, section 853, as amended by Register 2014, Nos. 6, 30, and 35, imposes a new requirement on school districts to score and transmit the CAASPP tests in accordance with the manuals or other instructions provided by the contractor or CDE, and to identify pupils, if applicable, who are unable to access the computer-based version of the test.

Prior section 853 provided that the STAR tests shall be administered and returned by school districts in accordance with the manuals or other instructions provided by the contractor, including instructions for administering the test with variations, accommodations, and modifications. As amended by Register 2014, No. 6, effective February 3, 2014, the section now

⁴³ California Code of Regulations, title 5, section 853(b) (Register 2014, No. 35).

⁴⁴ California Code of Regulations, title 5, section 857 (Register 2014, No. 6).

⁴⁵ See Exhibit X, February Emergency Regulations, page 12.

⁴⁶ California Code of Regulations, title 5, section 852(a-b).

requires that the CAASPP tests be “administered, scored, transmitted, and/or returned” by “LEAs” (replacing “school districts”) in accordance with the instructions provided by the contractor “or CDE.” The amended section also provides that “an LEA *may utilize* a paper-pencil version of any [computer based test (CBT)] of the CAASPP assessment system... if the LEA identifies the pupils that are unable to access the CBT version of the test.”⁴⁷

Staff finds that section 853 imposes new requirements on school districts to score and transmit the tests in accordance with manuals and instructions provided by the contractor or CDE. The prior regulation did not require school districts to score and transmit the tests to the contractor or CDE.

- 4. California Code of Regulations, title 5, section 857, as amended by Register 2014, Nos. 6 and 35, impose new requirements on the school districts and LEA CAASPP coordinators to identify pupils unable to access the computer-based version of the CAASPP tests; report to the CAASPP contractor the number of pupils unable to access the computer-based version of the test; ensure current and ongoing compliance with the minimum technology specifications; and to ensure the training, required for the new computer based assessment, of test site coordinators who will oversee the test administration at each school site.**

Section 857, as amended by the test claim regulations, is not substantially different from prior law, with respect to designating an LEA CAASPP coordinator to serve as the LEA representative and liaison between the LEA and the contractor and between the LEA and CDE for all matters relating to CAASPP. These activities are identical to those imposed by former section 857(a) on the district STAR coordinator under prior law.⁴⁸ However, as amended by the test claim regulations, section 857(a) requires the superintendent of each school district to identify pupils unable to access the computer-based version of the CAASPP tests; and to report to the CAASPP contractor the number of pupils unable to access the computer-based version of the test.⁴⁹ These requirements were not imposed by prior law and are new. In addition, section 857(c) and (d) requires the CAASPP coordinator to “ensure current and ongoing compliance with the minimum technology specifications as identified by the CAASPP contractor(s) or consortium.” These activities are newly required.

Accordingly, staff finds that section 857, as amended by Register 2014, Nos. 6, 30, and 35, beginning February 3, 2014, requires school district superintendents to identify pupils unable to access the computer-based version of the CAASPP tests and to report to the CAASPP contractor the number of pupils unable to access the computer-based version of the test. The regulation also requires the LEA CAASPP coordinator to “ensure current and ongoing compliance with the minimum technology specifications as identified by the CAASPP contractor(s) or consortium.”

- 5. California Code of Regulations, title 5, section 858, as amended by Register 2014, Nos. 6 and 35 imposes new requirements on school district CAASPP test site coordinators to be responsible for ensuring that all designated supports, accommodations, and individualized aids are entered into the registration**

⁴⁷ California Code of Regulations, title 5, section 853 (Register 2014, No. 6).

⁴⁸ Register 2011, No. 15.

⁴⁹ California Code of Regulations, title 5, section 857(a) (Register 2014, No. 6).

system, and to be responsible for the training required for the new computer-based assessment of test examiners, translators, proctors, and scribes.

The activities of designating a CAASPP test site coordinator, and the duties imposed on that person, are not new; a STAR test site coordinator was required under prior law, with similar duties and scope of responsibility.

However, a new activity is imposed by section 858(d), as amended by Register 2014, No. 35 beginning August 27, 2014, to provide that the CAASPP test site coordinator “shall be responsible for ensuring that all designated supports, accommodations and individualized aids are entered into the registration system” This activity was not required under prior law.

6. California Code of Regulations, title 5, section 861, as amended by Register 2014, No. 6 imposes a new requirement on school districts to 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.

As amended by Register 2014, No. 6, section 861(a) requires school districts to report “any and all program and demographic pupil data requested by CDE...” for inclusion in the California Longitudinal Pupil Achievement Data System (CALPADS.)⁵⁰ And section 861(c) requires school districts to ensure that the CALPADS data elements are up to date and accurate prior to registration and throughout the testing window. The “program and demographic pupil data” collected for CALPADS is not substantively different from what was required to be collected under the STAR program.

However, the activity required by section 861(b)(5), to 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, is a new reporting requirement.

7. California Code of Regulations, title 5, section 864, as amended by Register 2014, No. 6, imposes a new requirement on school districts to comply with any and all requests from CAASPP contractors and abide by any and all instructions provided by the CAASPP contractor or consortium.

Former Code of Regulations, title 5, section 864, addressed the reporting of test scores. As repealed and replaced by Register 2014, No. 6, section 864 now provides that an LEA is an agent of CDE for purposes of the CAASPP program, and that in order for the state to meet its obligations in the development, administration, and security of valid and reliable tests, LEAs shall:

- (1) comply with any and all requests from CAASPP contractor(s) in accordance with Education Code section 60641; and
- (2) abide by any and all instructions provided by the CAASPP contractor or consortium, whether written or oral, that are presented for training or provided for in the administration of a CAASPP test.

⁵⁰ CALPADS is a longitudinal data system used to maintain individual-level data including student demographics, course data, discipline, assessments, staff assignments, and other data for state and federal reporting.

These requirements, though non-specific, are newly required by the amended section, beginning February 3, 2014.

C. The New Requirements Impose a State-Mandated New Program or Higher Level of Service on School Districts.

Finance argues that the CAASPP program, like the STAR testing program that preceded it, is not mandated by the state, but is required to meet federal program requirements and was enacted to avoid a loss of federal funding. The claimants counter that the *STAR* test claim determined that some of the testing requirements *were* a reimbursable mandate, notwithstanding the underlying federal requirement to administer standardized academic assessments; and that the *STAR II and III* test claim did not reach the federal mandate issue. And, the claimants argue, “regardless of whether STAR itself was a federal mandate, CAASPP certainly is not.” The claimants reason that “California was compliant with NCLB’s requirement to administer assessments to determine students’ levels of academic achievement under STAR...[but the Legislature] chose – without any change to NCLB – to adopt a new assessment regime that was much more expansive (and expensive).”⁵¹

Fundamentally, NCLB is an incentive program, consistent with “the vast bulk of cost-producing federal influence on government at the state and local levels [being] by inducement or incentive rather than direct compulsion.”⁵² States are required to comply with NCLB to receive federal funding for education.

However, even if NCLB imposes a federal mandate on the states to provide “a set of high-quality, yearly student academic assessments” in mathematics, reading or language arts, and science, the new activities required by the test claim statutes and regulations go beyond that requirement, are mandated by state law, and do not impose costs mandated by the federal government.

In addition, the new mandated activities are unique to government in that they are only required of school districts and they provide a service to the public “to provide assessments that can assist teachers, administrators, students and parents/guardians with a better understanding of college and career readiness.”^{53,54}

Accordingly, the activities required by the test claim statutes and regulations impose a state-mandated a new program or higher level of service on school districts.

D. There Are Costs Mandated by the State Pursuant to Government Code Section 17514, from January 1, 2014 Until June 30, 2014 Only.

⁵¹ Exhibit F, Claimants’ Rebuttal on 14-TC-01, filed March 13, 2015, page 5.

⁵² *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 73.

⁵³ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 8.

⁵⁴ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875; See also, *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172, where the court finds that “education in our society is considered to be peculiarly governmental function”; that “public education is administered by local agencies to provide service to the public”; and that, therefore, “public education constitutes a ‘program’ within the meaning of Section 6.”

The claimants have alleged a total of \$8,568,068 in increased costs for the fiscal year 2013-2014,⁵⁵ and allege “a total of more than \$15 million in increased costs for 2014-2015.”⁵⁶ Claimants have further stated in their test claim that they are “unaware at this time” of any dedicated state or federal funds “available for this program.”⁵⁷ In addition, the claimants argue that only an estimate of 2014-2015 costs is necessary, and “a ‘substantial evidence’ requirement is baseless as there is no such requirement at this stage in the process.”⁵⁸

Finance has argued that several sources of funding are or may be available to cover the costs of any mandate, and therefore the Commission must not find costs mandated by the state, pursuant to section 17556(e).⁵⁹ Finance also argues that “the claimants may be seeking reimbursement for purchases that were already planned and would have been made regardless of the creation of the CAASPP.” In other words, Finance argues that the expenditures reported may not in fact be attributable to the mandate.

Staff finds that during fiscal year 2013-2014, there are sources of funding available that may be applied to the activities found above to be new requirements mandated by the state, but none that are specifically intended to fund the costs of the mandate in an amount sufficient to fund the cost of the state mandate within the meaning of Government Code section 17556(e). Thus, to the extent a school district complied with the new activities required to administer the CAASPP at any time from January 1, 2014, through June 30, 2014, and did not receive and apply funds (which are not local proceeds of taxes) to cover the entire cost of this activity, then reimbursement is required under article XIII B, section 6 for the increased local costs.

However, beginning July 1, 2014, there is additional funding provided, both in the test claim statutes and in the Budget Act for 2014-2015, which is specifically intended to cover the costs of the mandated activities. Absent substantial evidence in the record to the contrary, the funding is sufficient as a matter of law to fund the costs of the mandated activities, is required to be applied to the activities, and bars a finding of costs mandated by the state pursuant to Government Code section 17556(e). Thus, beginning July 1, 2014, reimbursement under article XIII B, section 6 is not required for the new mandated activities.

1. The 2013-2014 Budget Act contains only potentially offsetting revenues, pursuant to Government Code sections 17556(e) and 17557, and therefore some school districts may have incurred costs mandated by the state from January 1, 2014 through June 30, 2014.

The 2013-2014 Budget Act and other appropriations made for fiscal year 2013-2014 include funding sources that may be used for the costs of this mandated program. However, none of these revenues are specifically intended to fund the costs of the mandated activities for the

⁵⁵ Exhibit A, Amended Test Claim 14-TC-01, page 74; Exhibit C, Vallejo City Unified School District Request to Join Claim, pages 5-6.

⁵⁶ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, page 2.

⁵⁷ Exhibit A, Amended Test Claim 14-TC-01, pages 73-74.

⁵⁸ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, page 2.

⁵⁹ See Exhibit D, Finance’s Comments on 14-TC-01, filed February 13, 2015; Exhibit F, Finance’s Late Comments on 14-TC-01, filed April 27, 2015.

CAASPP program during the 2013-2014 fiscal year in an amount sufficient to fund the mandated program within the meaning of Government Code section 17556(e). Line Items 6110-113-0001 and 6110-113-0890 of the 2013-2014 Budget Act address costs of the STAR assessments, which were replaced by CAASPP as of January 1, 2014.⁶⁰ To the extent school districts applied the funds intended for STAR to the costs of the new CAASPP assessments, their annual claims should reflect an adjustment to reimbursable costs mandated by the state (i.e., offsetting revenues applied),⁶¹ but nothing in the 2013-2014 Budget Act *requires* school districts to apply funding to a program that did not yet exist when the Budget Act was written. For that reason, though they may be off-setting, preexisting funds cannot satisfy the test of Government Code section 17556(e) to deny the test claim.

Similarly, although Statutes 2013, chapter 48 recognizes the pending improvements in internet connectivity that may be necessary to administer computer-based assessments, the \$1.25 billion in Common Core implementation funding is not *required* to fulfill those needs first. The statute expressly states that a school district shall expend funds “for *any* of the following purposes...”⁶²

Additionally, though the test claim statutes do provide that the CAASPP must be administered “from the funds available for that purpose,” as discussed above, there is no precedent for interpreting “from the funds available” to mean all possible funds, including the \$1.25 billion provided for Common Core implementation before the test claim statutes were enacted. Nor is there any precedent for interpreting “from the funds available” as a phrase that implicates Government Code section 17556(e).

As noted above, the earliest of the three test claim statutes pled, Statutes 2013, chapter 489, has an effective date of January 1, 2014. The administration of the 2013-2014 field test of the Smarter Balanced computer-based assessments was scheduled to take place, in accordance with the February 2014 emergency regulations, “during a testing window of 25 instructional days that includes 12 instructional days before and after completion of 85 percent of the school’s, track’s, or program’s instructional days.”⁶³ As a result, the field test was administered between March 25 and June 13 of 2014.⁶⁴ Therefore, at least some school districts likely incurred mandated costs for the activity to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers after January 1, 2014, but before the 2014-2015 Budget Act took effect on July 1, 2014. To the extent school districts can show that they incurred state-mandated increased costs to comply with this requirement between January 1, 2014 and June 30, 2014, those costs are mandated by the state and are eligible for reimbursement. Note that costs incurred prior to January 1, 2014 would not

⁶⁰ Statutes 2013, chapter 489.

⁶¹ See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [“...read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.”].

⁶² Statutes 2013, chapter 48 (AB 86), section 85(d) [emphasis added].

⁶³ California Code of Regulations, title 5, section 855 (Register 2014, No. 6).

⁶⁴ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 42.

be, by definition, state-mandated increased costs within the scope of the test claim statutes, because the *earliest* test claim statute pled became effective and operative on January 1, 2014.

Based on the foregoing, staff finds that the funding identified in the 2013-2014 Budget Act (Line Items 6110-113-0001 and 6110-113-0890) and the \$1.25 billion appropriated for Common Core implementation by Statutes 2013, chapter 48 are potentially offsetting revenues that must be deducted from the costs claimed for January 1, 2014 to June 30, 2014, to the extent that a school district expended the described revenues for any of the state-mandated activities.

2. Absent evidence to the contrary, the state has continued to appropriate revenues sufficient to fund the cost of the mandated activities in the 2014-2015 and 2015-2016 Budget Acts; thus, there are no costs mandated by the state beginning July 1, 2014.

Government Code section 17556(e) provides that the Commission shall not find costs mandated by the state if it determines that the test claim statute or an appropriation in a Budget Act or other bill includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. Finance has identified revenues appropriated by the state for the CAASPP program beginning July 1, 2014, and alleges that these revenues are specifically intended to cover the costs of the mandate, therefore barring a finding of costs mandated by the state pursuant to Government Code section 17556(e).

The claimants acknowledge that these revenue sources exist, but argue that they are either not specifically intended to fund the costs of the mandate, or “simply woefully inadequate...”⁶⁵ Specifically, the claimants argue that the \$400.5 million provided in Statutes 2014, chapter 32 is intended to be used to reimburse outstanding mandate debt, not to cover the costs of new mandates. In addition, the claimants argue that the “K-12 High Speed Network” funding does not constitute revenue specifically intended for mandate costs “because districts and county offices do not receive these funds directly; they only receive the benefit.”⁶⁶ With respect to the state and federal funds in the 2014-2015 Budget Act that expressly reference the test claim statutes, the claimants state:

Finally, claimants do not contest that the \$126.8 million from Provision 7 of Item 6110-113-0001 of the 2014 Budget Act constitutes “additional revenues” under

⁶⁵ Exhibit F, Claimants’ Rebuttal Comments on 14-TC-01, filed March 13, 2015, pages 7-8.

⁶⁶ Exhibit F, Claimants’ Rebuttal Comments on 14-TC-01, filed March 13, 2015, pages 7-8 [Finance has argued, in response to claimants’ rebuttal comments, that to the extent a district or county office of education receives a portion of the K-12 High Speed Network funding, which is a grant-based program, that school district would not incur actual increased costs mandated by the state to improve its internet connectivity. Finance further argues that the waiver received by CDE for NCLB does not render the federal funding inapplicable to the mandate; the waiver applies only to the federal accountability reporting requirements, and “was contingent on California local education agencies ensuring that, with the exception of students with the most significant cognitive disabilities, all students in grades 3 through 8 participated in the Smarter Balanced Assessment Consortium (SBAC) field test in English language arts/literacy and mathematics.” (Exhibit G, Finance’s Late Comments on 14-TC-01, filed April 27, 2015, pages 1-2.)].

Government Code section 17556(e). This uncontested \$126.8 million (or even \$149.5 million if combined with the [federal] funds) is simply woefully inadequate to offset the significant financial need the test claimants have demonstrated in the claim.⁶⁷

Because staff finds that the claimants have failed to establish increased costs mandated by the state in excess of the state and federal funds specifically intended to cover the costs of this mandate, it is not necessary to further analyze whether the outstanding mandate debt funding (\$400.5 million in 2014-2015) or the K-12 High Speed Network funding (\$26.7 million) are potentially offsetting revenues.

However, the state and federal funds identified by Finance in the 2014 Budget Act, are indeed specifically intended to cover the costs of the mandate. The budget language for both the state and the federal appropriations requires the funds to be used for mandated costs of “the *statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013*,” the California English Language Development Test, the California High School Exit Examination, and the California Alternate Performance Assessment.⁶⁸ The 2015-2016 Budget Act continues the funding at substantially the same level, with \$126.5 million in state funding, and \$20.4 million in federal funding.⁶⁹

The claimants have submitted declarations from the superintendent of each of the five named school districts or county offices of education for costs alleged in 14-TC-01.⁷⁰ In support of the claimants’ assertion that the funding is “woefully inadequate,” claimants for 14-TC-04 have provided declarations from the four named claimant districts, which purport to describe costs incurred in excess of the funding available.⁷¹ In addition, claimants argue that the \$15 million alleged by the five named claimants in 14-TC-01 “extrapolated out to all districts in the state greatly, exceed the \$145 million identified as offsetting revenue [sic].”⁷² And finally, in response to the draft proposed decision on 14-TC-01 claimants provided survey results from 77 school districts and county offices of education, accompanied also by declarations, which allege estimated “Technology-Related SBAC Costs” for fiscal years 2013-2014 and 2014-2015.⁷³ Those reported costs are then averaged over the two fiscal years and divided by each district’s or COE’s 2013-2014 enrollment, to arrive at an estimated cost per test taker.⁷⁴ Claimants thus estimate the average cost, based on these survey results, to be \$183 per test taker, but estimate that the amount appropriated yields closer to \$44 per pupil statewide.⁷⁵

⁶⁷ Exhibit F, Claimants’ Rebuttal on 14-TC-01, filed March 13, 2015, page 8.

⁶⁸ Statutes 2014, chapter 25 (SB 852). (Emphasis added.)

⁶⁹ Statutes 2015, chapter 10.

⁷⁰ Exhibit A, Amended Test Claim 14-TC-01, pages 77-178.

⁷¹ Exhibit B, Test Claim 14-TC-04, pages 42-92.

⁷² Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, page 2.

⁷³ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, pages 16-106.

⁷⁴ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, pages 11-14.

⁷⁵ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, pages 14-15.

Although the claimants clearly allege increased costs, they have not introduced sufficient evidence in the record that the funding appropriated in the 2014 Budget Act is insufficient as a matter of law.⁷⁶ The claimants’ initial estimates of costs are supported by declarations sworn under penalty of perjury, but none of the five named claimants acknowledges the amount of funding that it received from the state and federal governments for fiscal year 2014-2015, or makes any attempt to show that the funding received does not satisfy the costs incurred.⁷⁷ Additionally, while the 77 surveyed districts and county offices of education have provided an estimate of their per-pupil costs based on enrollment, which the claimants employ to show that the per-pupil funding statewide is insufficient to cover estimated average per-pupil yearly costs, the five named claimants are not listed among the 77 entities surveyed.⁷⁸ And, despite the fact that the named claimants’ declarations and other evidence fail to account for the funds appropriated or apportioned, and without any evidence of the named claimants’ size and enrollment relative to other districts in the state, the claimants allege that the \$15 million estimated can be “extrapolated out to all districts in the state greatly...”⁷⁹ There is no support for this reasoning.

In addition, the named claimants provided, in the second of the two consolidated test claims, declarations which seek to support the costs alleged to acquire sufficient technology and other resources to implement the CAASPP, but describe only costs incurred for the 2013-2014 fiscal year, which is not in issue here.⁸⁰ Still more confusing, the declarations of the named claimants are accompanied by documentation including purchase orders or invoices for various computers and devices, but the dates of those documents span both fiscal years 2013-2014 and 2014-2015, and therefore the attached documents are in some cases inconsistent with the declarations.⁸¹ This evidence does not support the finding that the claimants seek.

Moreover, in addition to offering the named claimants’ estimated costs as evidence to be extrapolated to the entire state, the claimants have also offered the extrapolation and averaging of survey results from 77 school districts and county offices of education, supported by declarations, which estimate each district’s “Technology-Related SBAC Costs” for fiscal years 2013-2014 and 2014-2015 combined. As noted above, costs for fiscal year 2013-2014 are not in issue. Therefore, the claimant’s estimate of costs incurred, offered as an average of two years, does not constitute sufficient evidence of costs incurred during 2014-2015, which is the only year in issue. Furthermore, given that technology upgrades and acquisitions are, based on the evidence in the record and the test claim statutes themselves, expected to occur most heavily in the early years of implementation of the CAASPP, an average of two years’ costs is even less

⁷⁶ Exhibit A, Amended Test Claim 14-TC-01, page 75; Exhibit C, Vallejo City Unified Request to Join Test Claim, pages 5-6.

⁷⁷ Exhibit A, Amended Test Claim 14-TC-01, pages 77-178.

⁷⁸ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, pages 11-14.

⁷⁹ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, page 2.

⁸⁰ Exhibit B, Test Claim 14-TC-04, pages 52-56; 66-69; 88-92.

⁸¹ Compare Exhibit B, Test Claim 14-TC-04, page 52 with pages 102-106. Compare page 66 with pages 107-108; 162-169.

probative of the question whether funds provided are sufficient as a matter of law for fiscal year 2014-2015.

For the Commission to find increased costs mandated by the state in this case, claimants have to show that the costs incurred beginning July 1, 2014 to administer the CAASPP test exceed the funding provided by the state. The current estimation in the record of \$183 per pupil is not sufficient, for the reasons outlined above. The claimants need only make this showing for *one of the named claimants* in order to support a finding of costs mandated by the state, but based on the evidence in the record they have failed to do so. Absent this evidence in the record the Commission must find, as a matter of law, that the amount of funding currently appropriated is sufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556(e), beginning July 1, 2014. If, in the future, the state fails to appropriate funds sufficient to cover the cost of activities, school districts can then file a request for a redetermination of this test claim based on a subsequent change in law (i.e. a future budget act) that may modify the state's liability for the program pursuant to Government Code section 17570.

Based on the foregoing, staff finds that there are no costs mandated by the state for the new mandated activities within the meaning of Government Code section 17556(e), beginning July 1, 2014.

Conclusion

Based on the foregoing analysis, the Commission finds from January 1, 2014 to June 30, 2014, only, the following state-mandated activities are reimbursable:

- Beginning January 1, 2014, provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology requirements.⁸² Beginning February 3, 2014, the LEA CAASPP coordinator shall be responsible for assessment technology, and ensure current and ongoing compliance with minimum technology specifications as identified by the CAASPP contractor(s) or consortium.⁸³
- 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 or guardian's written request to excuse his or her child from any or all parts of the CAASPP assessments shall be granted.⁸⁴
- Beginning February 3, 2014, score and transmit the CAASPP tests in accordance with manuals or other instructions provided by the contractor or CDE.⁸⁵

⁸² Education Code section 60640 (Stats. 2013, ch. 489), interpreted in light of California Code of Regulations, title 5, sections 850, 850, 853.5, and 857 (Register 2014, Nos. 6, 30, 35).

⁸³ California Code of Regulations, title 5, section 857(d) (Register 2014, No. 6).

⁸⁴ California Code of Regulations, title 5, section 852 (Register 2014, No. 6).

⁸⁵ California Code of Regulations, title 5, section 853 (Register 2014, No. 6).

- 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.⁸⁶
- 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 60644.⁸⁷
- 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.⁸⁸

Funding identified in the 2013-2014 Budget Act (Line Items 6110-113-0001 and 6110-113-0890) and the \$1.25 billion appropriated for Common Core implementation by Statutes 2013, chapter 48 are potentially offsetting revenues that must be deducted from annual costs claimed to the extent a school district uses those funds for the mandated activities.

All other statutes, regulations, and claims for reimbursement are denied.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision to partially approve this test claim, for the period of January 1, 2014 to June 30, 2014 only, and authorize staff to make any technical, non-substantive changes following the hearing.

⁸⁶ California Code of Regulations, title 5, section 857(a) (Register 2014, No. 6).

⁸⁷ California Code of Regulations, title 5, section 861(b)(5) ((Register 2014, No. 6).

⁸⁸ California Code of Regulations, title 5, section 864 (Register 2014, No. 6).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIMS ON:

Education Code Sections 60602, 60602.5, 60603, 60604, 60607, 60610, 60611, 60612, 60640, 60641, 60642.6, 60643, 60643.6, 60648, 60648.5, 60649, 60810, 99300, 99301 as added or amended by Statutes 2013, Chapter 489 (AB 484)⁸⁹; Statutes 2014, Chapter 32 (SB 858); Statutes 2014, Chapter 327 (AB 1599)

Code of Regulations, Title 5, Sections 850-864, as added or amended by Register 2014, Nos. 30 and 35

Filed on December 23, 2014

By, Plumas County Office of Education, Plumas Unified School District, Porterville Unified School District, Santa Ana Unified School District, and Vallejo City Unified School District, Claimants

AND

Code of Regulations, Title 5, Sections 850-864, as added or amended by Register 2014, No. 6

Filed on June 26, 2015

By, Plumas County Office of Education, Plumas Unified School District, Porterville Unified School District, and Santa Ana Unified School District, Claimants

Case Nos.: 14-TC-01 and 14-TC-04

California Assessment of Student Performance and Progress (CAASPP)

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

(Adopted January 22, 2016)

DRAFT PROPOSED DECISION

⁸⁹ This statute was pled as “Statutes 2013-2014, Chapter 489 (AB 484)” in 14-TC-01. However, it was chaptered by the Secretary of State and is later referred to by the Legislature, in the state budget, as “Statutes 2013, chapter 489.” Therefore, this analysis will refer to it as “Statutes 2013, chapter 489.”

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on January 22, 2016. [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 [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the adopted decision] as follows:

Member	Vote
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller, Vice Chairperson	
Mark Hariri, Representative of the State Treasurer	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

Summary of the Findings

The Commission finds that the test claim statutes and regulations pled impose new state-mandated requirements on school districts to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology requirements.⁹⁰ In addition, the regulations implementing the computer-based CAASPP assessments impose certain additional reporting and informational requirements, as described herein. The Commission further finds that the new requirements are mandated by the state, and are uniquely imposed upon local government. And, the Commission finds, absent substantial evidence to the contrary, that there are costs mandated by the state only from January 1, 2014 to June 30, 2014, because additional funding specifically intended to cover the costs of the mandate, and in an amount sufficient to cover the costs of the mandate, was provided in the 2014-2015 Budget Act and continued in the 2015-2016 Budget Act. For the period from January 1, 2014 to June 30, 2014, the Commission has identified potentially offsetting revenues in the Budget Act and other appropriations.

COMMISSION FINDINGS

I. Chronology

12/23/2014 14-TC-01 was filed with the Commission.

⁹⁰ Education Code section 60640 (Stats. 2013, ch. 489); Code of Regulations, title 5, section 853 (Register 2014, Nos. 6, 30, and 35).

01/02/2015 14-TC-01 was deemed complete and issued for comment.⁹¹

01/28/2015 Department of Finance (Finance) requested an extension of time to file comments, which was approved for good cause.

02/12/2015 Vallejo City Unified School District requested to be joined as a claimant in 14-TC-01, which was approved and noticed on February 18, 2015.⁹²

02/13/2015 Finance filed written comments on the test claim.⁹³

02/13/2015-
02/24/2015 The following local governments filed written comments on the test claim filing for 14-TC-01: Orange County Board of Education; Visalia Unified School District; Tulare Joint Union High School District; Santa Rosa City Schools; San Lorenzo Valley Unified School District; Del Norte County Office of Education; Cupertino Union School District; Belmont-Redwood Shores School District; Santa Cruz City Schools; and Moreno Valley Unified School District.⁹⁴

03/13/2015 The California Educational Technology Professionals Association filed comments on 14-TC-01.⁹⁵

03/13/2015 The claimants filed rebuttal comments.⁹⁶

03/25/2015 The claimants amended 14-TC-01 with a revised filing which was deemed to replace the original test claim filing and was issued for comment.⁹⁷

04/27/2015 Finance submitted late comments purporting to rebut claimants' rebuttal to Finance's comments on the original test claim filing, which has now been superseded by the amended test claim filing.⁹⁸

05/11/2015 Claimants submitted additional, late rebuttal comments on Finance's late comments.⁹⁹

06/01/2015 Commission staff issued the draft proposed decision for 14-TC-01.¹⁰⁰

⁹¹ Based upon the filing date of December 23, 2014, the potential period of reimbursement begins July 1, 2013. However, since the test claim statutes and regulations became effective after July 1, 2013, the potential period of reimbursement begins on the effective date of the statute or regulation that imposes a state-mandate.

⁹² Exhibit C, Vallejo City Unified Request to Join Test Claim.

⁹³ Exhibit D, Finance's Comments on Test Claim 14-TC-01, filed February 13, 2015.

⁹⁴ Exhibit E, Interested Parties and Persons Comments.

⁹⁵ Exhibit E, Interested Parties and Persons Comments.

⁹⁶ Exhibit F, Claimants' Rebuttal on 14-TC-01, filed March 13, 2015.

⁹⁷ Exhibit A, Amended Test Claim 14-TC-01. Note that this document is the revised test claim as amended March 25, 2015 which superseded the original filing.

⁹⁸ Exhibit G, Finance's Late Comments on 14-TC-01, filed April 27, 2015.

⁹⁹ Exhibit H, Claimants' Late Rebuttal on 14-TC-01, filed May 11, 2015.

06/16/2015 Finance submitted a request for an extension of time and postponement of the hearing, which was denied for failure to state good cause.

06/19/2015 Finance submitted a second request for an extension of time and postponement of the hearing, which was approved for good cause shown.

06/26/2015 Claimants filed 14-TC-04.

07/20/2015 Claimants filed comments on the draft proposed decision for 14-TC-01.¹⁰¹

07/20/2015 Finance filed comments on the draft proposed decision for 14-TC-01.¹⁰²

08/14/2015 14-TC-04¹⁰³ was deemed complete, consolidated with 14-TC-01, and the consolidated claim was named “CAASPP.”

08/20/2015 Claimants requested postponement of hearing from December 3, 2015 to January 22, 2016, which was granted for good cause shown.

11/13/2015 Commission staff issued the draft proposed decision on the consolidated test claim.

II. Background

A. Federal Law

The Federal Elementary and Secondary Education Act

The Elementary and Secondary Education Act (ESEA) was signed into law in 1965 by President Lyndon Johnson. The ESEA provides basic and incentive grants to schools and school districts having a sizeable enrollment of disadvantaged pupils, as defined by census poverty estimates.¹⁰⁴ Those grants are intended to be used for programs and projects ‘including the acquisition of equipment and where necessary the construction of school facilities...’ to meet the needs of “educationally deprived children from low-income families...”¹⁰⁵

The Improving America’s Schools Act

The Improving America’s Schools Act of 1994 made the Title I funding of the ESEA conditional upon states implementing statewide systems of assessment and accountability for participating schools, saying: “while title I and other programs funded under [the ESEA] contribute to narrowing the achievement gap between children in high-poverty and low-poverty schools, such programs need to become even more effective in improving schools in order to enable all children to achieve high standards...”¹⁰⁶

¹⁰⁰ Exhibit I, Draft Proposed Decision on 14-TC-01.

¹⁰¹ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01.

¹⁰² Exhibit K, Finance’s Comments on Draft Proposed Decision on 14-TC-01.

¹⁰³ Exhibit B, Test Claim 14-TC-04.

¹⁰⁴ See Public Law 89-10, April 11, 1965, sections 201-205.

¹⁰⁵ Public Law 89-10, section 205.

¹⁰⁶ Public Law 103-382, section 1001.

No Child Left Behind

The No Child Left Behind Act of 2001 (NCLB), which Congress enacted as a reauthorization of the Elementary and Secondary Education Act of 1965, requires states that participate in and receive federal funds to administer:

[A] set of high-quality, yearly student academic assessments that include, at a minimum, academic assessments in mathematics, reading or language arts, and science that will be used as the primary means of determining the yearly performance of the State and of each local educational agency and school in the State in enabling all children to meet the State’s challenging student academic achievement standards, except that no State shall be required to meet the requirements of this part relating to science assessments until the beginning of the 2007–2008 school year.¹⁰⁷

Title I of NCLB also requires that the assessments measure pupil proficiency as follows:

Such assessments shall--

[¶]...[¶]

(II) beginning not later than school year 2007–2008, measure the proficiency of all students in science and be administered not less than one time during—

(aa) grades 3 through 5;

(bb) grades 6 through 9; and

(cc) grades 10 through 12;

(vi) involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding;

(vii) beginning not later than school year 2005–2006, measure the achievement of students against the challenging State academic content and student academic achievement standards *in each of grades 3 through 8 in, at a minimum, mathematics, and reading or language arts*, except that the Secretary may provide the State 1 additional year if the State demonstrates that exceptional or uncontrollable circumstances, such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State, prevented full implementation of the academic assessments by that deadline and that the State will complete implementation within the additional 1-year period;¹⁰⁸

NCLB also includes the following reporting provisions in Title I, requiring the assessments to:

(xii) produce individual student interpretive, descriptive, and diagnostic reports, consistent with clause (iii) that allow parents, teachers, and principals to understand and address the specific academic needs of students, and include information regarding achievement on academic assessments aligned with State academic achievement standards, and that are provided to parents, teachers, and

¹⁰⁷ 20 USC 6311 (b)(3)(A) (Pub. L. 107-110, Jan. 8, 2002).

¹⁰⁸ 20 USC 6011 (b)(3)(C) (Pub. L. 107-110, Jan. 8, 2002) [emphasis added].

principals, as soon as is practicably possible after the assessment is given, in an understandable and uniform format, and to the extent practicable, in a language that parents can understand;

(xiii) enable results to be disaggregated within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged, except that, in the case of a local educational agency or a school, such disaggregation shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student.¹⁰⁹

In a case that focused on the educational requirements and funding provisions of Title I of NCLB, a Federal Appellate court stated the following:

In contrast to prior ESEA iterations, NCLB “provides increased flexibility of funds, accountability for student achievement and more options for parents.” 147 Cong. Rec. S13365, 13366 (2001) (statement of Sen. Bunning). The Act focuses federal funding more narrowly on the poorest students and demands accountability from schools, with serious consequences for schools that fail to meet academic-achievement requirements. *Id.* at 13366, 13372 (statements of Sens. Bunning, Landrieu, and Kennedy). States may choose not to participate in NCLB and forgo the federal funds available under the Act, but if they do accept such funds, they must comply with NCLB requirements. See, e.g., 20 U.S.C. § 6311 (“For any State desiring to receive a grant under this part, the State educational agency shall submit to the Secretary a plan....”) (emphasis added); see also *Spellings*, 453 F.Supp.2d at 469 (“In return for federal educational funds under the Act, Congress imposed on states a comprehensive regime of educational assessments and accountability measures.”).

Title I, Part A, of NCLB, titled “Improving Basic Programs Operated by Local Educational Agencies,” continues to pursue the objectives of the ESEA and imposes extensive educational requirements on participating States and school districts, and, likewise, provides the largest amount of federal appropriations to participating States. For example, in fiscal year 2006, NCLB authorized \$22.75 billion in appropriations for Title I, Part A, compared to \$14.1 billion for the remaining twenty-six parts of NCLB combined. Title I, Part A’s stated purposes include meeting “the educational needs of low-achieving children in our Nation’s highest-poverty schools, limited English proficient children, migratory children, children with disabilities, Indian children, neglected or delinquent children, and young children in need of reading assistance.” 20 U.S.C. § 6301(2).

[¶...¶]

¹⁰⁹ 20 USC 6011 (b)(3)(C) (Pub. L. 107-110, Jan. 8, 2002).

To qualify for federal funding under Title I, Part A, States must first submit to the Secretary a “State plan,” developed by the State’s department of education in consultation with school districts, parents, teachers, and other administrators. 20 U.S.C. § 6311(a)(1). A State plan must “demonstrate that the State has adopted challenging academic content standards and challenging student academic achievement standards” against which to measure the academic achievement of the State’s students. *Id.* § 6311(b)(1)(A). The standards in the State plan must be uniformly applicable to students in all of the State’s public schools, and must cover at least reading or language arts; math; and, by the fourth grade, science skills. *Id.* § 6311(b)(1)(C).

States also must develop, and school districts must administer, assessments to determine students' levels of achievement under plan standards. *Id.*

§ 6311(b)(2) (A). These assessments must show the percentage of students achieving “proficiency” among “economically disadvantaged students,” “students from major racial and ethnic groups,” “students with disabilities,” and “students with limited English proficiency.” *Id.* § 6311(b)(2)(C)(v)(II). Schools and districts are responsible for making “adequate yearly progress” (“AYP”) on these assessments, meaning that a minimum percentage of students, both overall and in each subgroup, must attain proficiency. 34 C.F.R. § 200.20(a)(1).

¶...¶

. . . NCLB requires that States use federal funds made available under the Act “only to supplement the funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs assisted under this part, and not to supplant such funds.” 20 U.S.C. § 6321(b)(1). That is, States and school districts remain responsible for the majority of the funding for public education, and the funds distributed under Title I are to be used only to implement Title I programming, not to replace funds already being used for general programming.¹¹⁰

Common Core State Standards

Not a federal law, but discussed here because the federal law provides the context, the Common Core State Standards (CCSS) were developed on the initiative of the National Governors Association and the Council of Chief State School Officers, in partnership with Achieve, Inc., ACT, and the College Board. The intention was to develop internationally-benchmarked standards of college-and career-readiness, which states could then voluntarily adopt, and which would aid educators in improving teaching and learning.¹¹¹ The final CCSS were released in June 2010, and as of June 2014, 43 states, the Department of Defense Education Activity,

¹¹⁰ *School Dist. of City of Pontiac v. Secretary of U.S. Dept. of Education* (2009) 584 F.3d 253, 257-258.

¹¹¹ Exhibit X, “Forty-Nine States and Territories Join Common Core Standards Initiative,” National Governors Association press release, June 1, 2009.

Washington, D.C., Guam, the Northern Mariana Islands, and the U.S. Virgin Islands had adopted the CCSS.¹¹²

Race to the Top Grant Program

As part of the American Recovery and Reinvestment Act of 2009, the Race to the Top Assessment Program provided funding, on a grant-award basis, to state-led consortia with the goal of developing pupil assessments aligned with the CCSS. The Department of Education awarded two grants to parallel programs in September 2010; the Partnership for Assessment of Readiness for College and Careers; and the Smarter Balanced Assessment Consortium.¹¹³ Both grant recipient consortia have since developed computer-based assessments aligned with the CCSS that are intended to be implemented fully during the 2014-2015 school year.

In addition, the Race to the Top program included \$4.35 billion in grant funding to encourage and reward states that create conditions for education innovation and reform, and achieve improvement in student outcomes, including closing achievement gaps and improving high school graduation rates. Of 500 points available on a state's grant application, adopting "a common set of high-quality standards" and participating in a multistate consortium to develop and implement "common, high-quality assessments," earn an applicant up to 50 points.¹¹⁴ In other words, the Race to the Top grant program incentivizes, to an extent, the adoption of common standards and common assessments. Despite having adopted CCSS in August of 2010, and participating in the Smarter Balanced Assessment Consortium to develop common standards-aligned assessments, as discussed below, California was not awarded a grant under this program.¹¹⁵

B. Prior California Law

The state has required school districts to administer achievement tests to pupils for decades: achievement tests were required for pupils in grades 6 and 12 under the California School Testing Act of 1969.¹¹⁶ In 1972, the Legislature expressed its intent regarding pupil testing as follows:

It is the intent of the Legislature . . . to determine the effectiveness of school districts and schools in assisting pupils to master the fundamental educational skills towards which instruction is directed. The program of statewide testing shall provide the public, Legislature, and school districts evaluative information regarding the various levels of proficiency achieved by different groups of pupils of varying socioeconomic backgrounds, so that the Legislature and individual school districts may allocate educational resources in a manner to assure the maximum educational opportunities for all pupils. The program or statewide testing shall identify unusual success or failure and the factors which appear to be

¹¹² Exhibit X, "Development Process," Common Core State Standards, www.commoncore.org.

¹¹³ Exhibit X, "U.S. Secretary of Education Duncan Announces Winners of Competition to Improve Student Assessments," Department of Education press release, September 2, 2010.

¹¹⁴ Exhibit X, Race to the Top Program, Executive Summary, November 2009, pages 2; 7-8.

¹¹⁵ Exhibit X, Awards – Race to the Top Program Fund.

¹¹⁶ Former Education Code sections 12820; 12823 (Stats. 1969, ch. 1552, p. 3152).

responsible, so that appropriate action may be taken at the district and state level to obtain the highest quality education for all public school pupils.¹¹⁷

In 1991, the Legislature expressed that the purpose of California's public school system is to "facilitate the development of each and every one of its pupils to become a self-motivated, competent, and lifelong learner."¹¹⁸ The Legislature stated that: "the current pupil assessment system does not meet [these] purposes:"

There is no consistent system that pupils and parents can use to assess the performance of schools and school districts in providing effective programs and to measure the academic achievement of pupils. The five grade levels currently tested under the California school assessment program do not provide the most efficient assessment of overall pupil achievement.¹¹⁹

Statutes of 1991, chapter 760 modified the state's achievement testing to require the testing of pupils in grades 4, 5, 8, and 10. Former Education Code section 60600.1, as added by Statutes of 1991, chapter 760, provided that the testing requirement would remain in effect until January 1, 1995, unless a later-enacted statute deleted or extended that date.

The Leroy Greene Act

The Legislature did not enact a statute before January 1, 1995 that either deleted or extended the date regarding the administration of achievement tests. However, later that year, Statutes 1995, chapter 975 enacted the Leroy Greene California Assessment of Academic Achievement Act,¹²⁰ which required the Superintendent of Public Instruction (SPI) to design and implement a statewide pupil assessment system, as specified.¹²¹ The Act required the State Board of Education (SBE) to adopt statewide content and performance standards for each grade level, and to adopt tests that yield reliable data on school performance, district performance, and statewide performance for pupils in grades 4, 5, 8, and 10.¹²² In addition, the Act provided an incentive of \$5 per pupil tested using an achievement test selected from among those approved by the SBE for pupils in grades 2 through 10.¹²³ As a condition of receiving those funds, the Act required that a school district certify to the SPI its compliance with the requirements of former section 60641: tests were required to be administered at the time of year specified by the SPI; test results must be reported to pupils' parents or guardians; test results must be reported to the school and teachers, and included in pupils' records; and district-wide and school-level results must be reported to the governing board of the school district at a regularly scheduled meeting.¹²⁴ The 1995 act stated that it would remain in effect only until January 1, 2000 unless

¹¹⁷ Former Education Code section 12821 (added, Stats. 1972, ch. 930, p. 1678).

¹¹⁸ Statutes 1991, chapter 760, section 1.

¹¹⁹ Statutes 1991, chapter 760, section 1.3.

¹²⁰ Education Code section 60600 (Stats. 1995, ch. 975).

¹²¹ Education Code section 60604 (Stats. 1995, ch. 975).

¹²² Education Code section 60605 (Stats. 1995, ch. 975).

¹²³ Education Code section 60640 (Stats. 1995, ch. 975).

¹²⁴ Education Code section 60641 (Stats. 1995, ch. 975).

another statute deleted or extended that date.¹²⁵ The following year, Statutes 1996, chapter 69 (SB 430) extended that date to January 1, 2002.¹²⁶

The Standardized Testing and Reporting Program (STAR)

Statutes 1997, chapter 828 repealed the option for school districts to select standardized tests from a list approved by the SBE, and instead enacted the Standardized Testing and Reporting (STAR) program, which required all school districts, charter schools, and county offices of education to administer to all pupils in grades 2 to 11 (with exceptions, as specified) the single achievement test designated by the SBE.¹²⁷ The statewide testing was thus renamed STAR, expanded to include grade 11 pupils, and made compulsory by the amended code section. The amended section *permitted*, but did not require, school districts to provide to English learners an achievement test in their primary language, and required the same for pupils who had been enrolled less than one year in any public school in the state.¹²⁸ The amended section continued to provide for per pupil funding to administer the tests, of “up to eight dollars (\$8) per test administered to a pupil in grades 2 to 11, inclusive.”¹²⁹ And, amended section 60640 made the apportionment conditional upon the school district reporting the number of pupils enrolled and to whom the achievement test was administered, and the number of students exempted from the test either under section 60640 or at the request of a parent or guardian.¹³⁰ In addition, amended section 60641 made the reporting requirements to pupils’ parents or guardians, their schools and teachers, and to the governing board of the school district and the county office of education mandatory, rather than conditioning the funding on satisfying these requirements, as before.¹³¹

In accordance with the statute, the SBE selected the Stanford Achievement Test Series, Ninth Edition (Stanford 9) test, as the national norm-referenced achievement test for the 1997-1998 through 2001-2002 school years.¹³²

In 2000, the STAR program was further amended, repealing and simplifying some requirements of the augmented California achievement tests, but also requiring an additional standards-based achievement test pursuant to Education Code section 60642.5, including, at a minimum, reading, spelling, written expression, and mathematics to be tested in grades 2-8, and reading, writing, mathematics, history-social science, and science to be tested in grades 9 to 11. In addition, the

¹²⁵ See former Education Code section 60601 (Stats. 1995, ch. 977).

¹²⁶ See former Education Code section 60601 (Stats. 1996, ch. 69).

¹²⁷ See Exhibit X, Senate Floor Analysis, AB 2812 (2000); Education Code section 60640 (Stats. 1997, ch. 828).

¹²⁸ Education Code sections 60640(f-g) (Stats. 1997, ch. 828).

¹²⁹ Education Code section 60640(h) (Stats. 1997, ch. 828).

¹³⁰ Education Code section 60640(j) (Stats. 1997, ch. 828).

¹³¹ Compare Education Code section 60641 (Stats. 1997, ch. 828) with Education Code section 60641 (Stats. 1995, ch. 975).

¹³² Exhibit X, California STAR Program; Former Education Code section 60642 (as added by Stats. 1997, ch. 828).

new test required a writing assessment once during elementary school and once during middle or junior high school.¹³³

In 2001, the sunset date for the STAR program was extended through January 1, 2005, and the achievement test called for by section 60642.5 was renamed the California Standards Tests (CST).¹³⁴ In addition, the CST was amended to require a history-social science assessment and science assessment in at least one elementary or middle school grade level, as selected by SBE.¹³⁵ At the same time, the prior national norm-referenced achievement test (at that time the Stanford 9) was limited in scope, excluding the previously required yearly history-social science test for grades 9 to 11.¹³⁶ Beginning in the 2002-2003 school year, the Stanford 9 was replaced by the California Achievement Tests, Sixth Edition Survey (CAT/6), and the California Alternate Performance Assessment (CAPA) was added.¹³⁷

In 2004, the sunset date for the STAR program was extended again to January 1, 2011, and the required tests were limited by excluding pupils in grade 2 beginning July 1, 2007 from the standards-based achievement test required pursuant to section 60642.5 (the CST). In addition, beginning in the 2004-2005 school year, the CAT/6 was limited to grades 3 and 7.¹³⁸

In 2007 the sunset date for the STAR program was extended again to January 1, 2012, and the law was amended to include pupils in grade 2 in the standards-based achievement tests provided for in section 60642.5 (the CST).¹³⁹ In 2008, the CAT/6 was repealed.¹⁴⁰

In 2010 the sunset date for STAR was extended again to July 1, 2013, and the Legislature expressed its intent that the state transition to “a system of high-quality assessments, as defined in the federal Race to the Top guidance and regulations.”¹⁴¹ Finally, in 2011, the sunset date was

¹³³ See Exhibit X, Senate Floor Analysis, AB 2812 (2000), dated August 25, 2000; Education Code section 60642.5 (added, Stats. 2000, ch. 576). See also, former section 60603 (as amended, Stats. 1999, ch. 83).

¹³⁴ Education Code sections 60601; 60642.5 (as amended, Stats. 2001, ch. 722).

¹³⁵ Education Code section 60642.5 (Stats. 2001, ch. 722).

¹³⁶ Education Code section 60642 (Stats. 2001, ch. 722). Compare to former Education Code section 60603(e) (Stats. 1999, ch. 83).

¹³⁷ Exhibit X, California STAR Program.

¹³⁸ Education Code section 60640 (as amended, Stats. 2004, ch. 233).

¹³⁹ Education Code sections 60601; 60603; 60640 (as amended, Stats. 2007, ch. 174).

¹⁴⁰ Former Education Code section 60642 (repealed, Stats. 2008, ch. 757). See also section 60640 (as amended, Stats. 2008, ch. 757).

¹⁴¹ Education Code sections 60601; 60604.5 (as added or amended, Stats. 2009-2010, 5th Ex. Sess., ch. 2).

extended through July 1, 2014,¹⁴² but then the STAR program was superseded by the test claim statutes at issue here as of January 1, 2014.¹⁴³

Thus, immediately prior to the test claim statutes pled in this claim, the STAR program consisted of the following components:

- The California Standards Tests (CSTs) for English language arts (ELA) and mathematics, in grades 2 to 11, inclusive;
- CSTs in science for grades 5, 8, and 10;
- CSTs in history-social science for grades 8 and 11;
- The California Modified Assessment (CMA) and the California Alternate Performance Assessment (CAPA), for eligible pupils in accordance with an individualized education plan (IEP), for English language arts and mathematics in grades 3 to 8 and 11; and for science in grades 5, 8, and 10.
- The Primary Language assessments for Reading/Language Arts and mathematics in grades 2 to 11 (also called the Standards-based Test in Spanish);
- Specified end-of-course assessments in mathematics and science; and,
- The Early Assessment Program (EAP) in Grade 11.¹⁴⁴

As discussed below, the test claim statutes leave in place, pending recommendations of the SBE to replace them, the CSTs for science in grades 5, 8, and 10; the CMA and CAPA for science in grades 5, 8, and 10; The CAPA for ELA and mathematics in grades 2 through 11; the primary language assessments (STS) in reading/language arts; the EAP; and end-of-course examinations.¹⁴⁵ The Smarter Balanced Summative Assessments, as described below, replace the CSTs for English language arts and mathematics in grades 3 to 8 and 11.

C. The STAR Test Claims

STAR/National Norm-Referenced Achievement Test

In August 2000, the Commission made a determination on the STAR program, as it existed in 1997, in test claim *Standardized Testing and Reporting (STAR)*, 97-TC-23. The Commission found reimbursable activities related to administering only the norm-referenced test (then the Stanford 9, and later the CAT/6) and the designated primary language test (SABE/2).

In 2004, the Legislature ordered the Commission to reconsider the STAR decision.¹⁴⁶ On reconsideration, the Commission found that the SABE/2 was a federal mandate and, thus, denied

¹⁴² Statutes 2011, chapter 608, by making the STAR program inoperative on July 1, 2014, and repealing it on January 1, 2015.

¹⁴³ Statutes 2013, chapter 489.

¹⁴⁴ Exhibit X, STAR 2013 Legislative Report, June 2013, pages 5-6.

¹⁴⁵ Education Code sections 60640; 60603. See also, Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, October 2014, page 9.

¹⁴⁶ Statutes 2004, chapter 216, § 34.

reimbursement to administer that test. The Commission determined that administering the CAT/6 exam in grades 3 and 7 imposed a reimbursable state mandate on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514, effective July 1, 2004.¹⁴⁷ Specifically, the Commission found the following activities to be reimbursable:

1. Administration of the CAT/6 (or a successor national norm-referenced test) to all pupils in grades 3 and 7. (Ed. Code, §§60640(b) and (c), 60641(a); Cal. Code Regs., tit. 5, §§ 851, 852, (b), 853, and 855.) Costs associated with teacher time to administer the test are not reimbursable.
2. Designation of a STAR Program district coordinator. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.) This would only be reimbursable to the extent it applies to the CAT/6.
3. Designation of a STAR Program test site coordinator at each test site. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.) This would only be reimbursable to the extent it applies to the CAT/6.
4. Inclusion of CAT/6 test results in each pupil's record of accomplishment. (Ed. Code, §§ 60607(a), 60641(a).)
5. Reporting of individual CAT/6 (or successor national norm referenced test) test results in writing to each pupil's parent or guardian and to the pupil's school and teachers. (Ed. Code, § 60641(b) and (c); Cal. Code Regs., tit. 5, § 863.)¹⁴⁸
6. Reporting of district-wide, school-level, and class-level CAT/6 test results to the school district's governing board or county office of education. (Ed. Code, § 60641(d)¹⁴⁹; 147 Cal. Code Regs., tit. 5, § 864.)
7. Submission of a report on the CAT/6 test to the Superintendent of Public Instruction. (Ed. Code, § 60640(j); Cal. Code Regs., tit. 5, § 862.)
8. Exemption of pupils from the CAT/6 test upon request of their parent or guardian. (Ed. Code, §§ 60615, 60640(j); Cal. Code Regs., tit. 5, § 852(a).)
9. Submission to the State Department of Education whatever information the Department deems necessary to permit the Superintendent of Public Instruction to prepare a report analyzing, on a school-by-school basis, the results and test scores of the CAT/6 test. (Ed. Code, § 60630(b); Cal. Code Regs., tit. 5, § 861.)

¹⁴⁷ *Reconsideration of Standardized Testing and Reporting*, adopted July 28, 2005 (04-RL-9723-01).

¹⁴⁸ This requirement had been moved to Education Code section 60641(a)(2) since the adoption of the original test claim decision, but was still included as reimbursable as renumbered in the reconsideration and in the later adopted parameters and guidelines.

¹⁴⁹ This requirement was later moved to Education Code section 60641(a)(3) but was still included as reimbursable in the reconsideration and in the later adopted parameters and guidelines.

10. Training and review of the CAT/6 test requirements as outlined in the test claim legislation and regulations by school district staff.

11. Implementation of procedures relating the administration of the CAT/6 test.¹⁵⁰

The Commission also found that the following activities initially approved in the test claim decision were not reimbursable because they were mandated by the federal government:

1. Administration of an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. (Ed. Code, § 60640(g); Cal. Code Regs., tit. 5, § 851(a).)
2. Exemption from testing for pupils if the pupil's IEP has an exemption provision. (Ed. Code, § 60640 (e) and (j); Cal. Code Regs., tit. 5, § 852(b).)
3. Determination of the appropriate grade level test for each pupil in a special education program. (Cal. Code Regs., tit. 5, § 852(b).)
4. Provision of appropriate testing adaptation or accommodations to pupils in special education programs. (Cal. Code Regs., tit. 5, § 852(b).)¹⁵¹

Finally, the Commission found that:

- All state funds appropriated for STAR must be used to offset all activities associated with administration of the CAT/6 exam; and that in any fiscal year in which school districts are legally required to, they must, “reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them” from appropriated state funds;¹⁵² and
- School districts are not required to use Title I funds to offset the activities in the *STAR* statement of decision (i.e., to administer the CAT/6); and
- All federal Title VI funds appropriated for STAR, in any fiscal year in which school districts are legally required to do so, must be used to offset all activities associated with administration of the CAT/6 exam, and that school districts must “reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them” from appropriated federal Title VI funds.¹⁵³

The Commission did not make findings in either *STAR* or the reconsideration of *STAR*, on any other tests or components of the program: only Statutes 1997, chapter 828, adding the Stanford 9

¹⁵⁰ *Reconsideration of Standardized Testing and Reporting*, adopted July 28, 2005 (04-RL-9723-01).

¹⁵¹ *Reconsideration of Standardized Testing and Reporting*, adopted July 28, 2005 (04-RL-9723-01).

¹⁵² Statutes 2004, chapter 208, Item 6110-113-0001, Schedule 3, Provision 8. Statutes 2005, chapter 38, Item 6110-113-0001, Schedule 2, Provision 8.

¹⁵³ Statutes 2004, chapter 208, Item 6110-113-0890, Schedule 2, Provision 11. Statutes 2005, chapter 38, Item 6110-113-0890, Schedules 4, 7, and 10, Provision 10.

and the SABE 2 was pled in test claim 97-TC-23, and the Commission found in its reconsideration decision that its jurisdiction was limited to the statutes pled in the original test claim.¹⁵⁴

On May 29, 2009, the Commission amended the parameters and guidelines to end the *STAR* program as of September 29, 2008, based on the effective date of Statutes 2008, chapter 757, which repealed the requirement of school districts to administer the CAT/6 in grades 3 and 7.¹⁵⁵

STAR II and III

On August 2005, claimant San Diego Unified School District (SDUSD) filed the *STAR II*, 05-TC-02, test claim with the Commission, alleging that Education Code sections 60601, 60602, 60603, 60604, 60605, 60605.6, 60606, 60607, 60611, 60640, and 60641, as added or amended by Statutes 2004, chapter 233, imposed a new program or higher level of service to administer the achievement test specified by the State Board of Education to all students in grades 3 and 7 and the standards based achievement test to all students in grades 3 - 11, inclusive, commencing in the 2004-2005 fiscal year and each year thereafter.¹⁵⁶

On September 21, 2005, claimant Grant Joint Union High School District (GJUHS) filed another *STAR* test claim (05-TC-03) with the Commission alleging that Education Code sections 60640, 60641, 60642.5, as added or amended by Statutes 2003, chapter 733, and California Code of Regulations, title 5, sections 850, 851, 852, 853, 855, 857, 858, 859, 861, 862, 863, 864.5, 865, 866, 867, 867.5, 868 as added or amended by Register 2005, No. 34 (eff. 9/21/2005) imposed a new program or higher level of service to administer the *STAR* testing program beginning in the 2004-2005 fiscal year and each year thereafter.¹⁵⁷

Test claims 05-TC-02 and 05-TC-03 were consolidated on October 6, 2005 and named *STAR II*.

On June 25, 2009, claimant Twin Rivers Unified School District (which succeeded and took over GJUHS pursuant to Measure B) filed a test claim that was named *STAR III*, 08-TC-06, alleging the following statutes and regulations imposed a new program or higher level of service to administer the *STAR* testing program beginning in the 2004-2005 fiscal year and each year thereafter:

Education Code Sections 60640, 60641, 60642.5 60607, 60615, and 60630 as added or amended by Statutes 1995, chapter 975; Statutes 1997, chapter 828; Statutes 1999, chapter 735; Statutes 2000, chapter 576; Statutes 2001, chapter 20; Statutes 2001, chapter 722; Statutes 2002, chapter 1168; Statutes 2003, chapter 773; Statutes 2004, chapter 183; Statutes 2004, chapter 233; Statutes 2005, chapter 676; Statutes 2007, chapter 174; Statutes 2007, chapter 730; Statutes, 2008, chapter 473; Statutes 2008, chapter 757, and, California Code of Regulations, title 5, sections 850, 851, 852, 853, 855, 857, 858, 859, 861, 862,

¹⁵⁴ See *Reconsideration of Standardized Testing and Reporting*, adopted July 28, 2005 (04-RL-9723-01), page 23.

¹⁵⁵ See, Parameters and Guidelines Amendment for *National Norm-Referenced Achievement Test (STAR)*, adopted May 29, 2009. (05-PGA-03.)

¹⁵⁶ Test Claim *STAR II*, 05-TC-02, page 19.

¹⁵⁷ Test Claim *STAR II*, 05-TC-03, page 18.

863, 864.5, 865, 866, 867, 867.5, and 868, as added or amended by Register 2005, No. 34 (Sept. 21, 2005), Register 2006, No. 45 (Dec. 8, 2006).

Test claims 05-TC-02, 05-TC-03, and 08-TC-06 were consolidated for hearing. On December 12, 2013, the Commission adopted a decision denying the consolidated test claim on two bases:

1. Many of the statutes pled were denied for lack of jurisdiction, since the test claim was filed after the statute of limitations had run. Most relevant to this test claim, are Statutes 2000, chapter 576 and Statutes 2001, chapter 72, (adding and amending section 60642.5) which originally imposed the CST. As a result, there has never been a mandate finding on the CST program which has been required since 2001.¹⁵⁸
2. The state appropriated state and federal funds that were sufficient as a matter of law to cover the costs of the following new required activities:¹⁵⁹
 - Beginning July 1, 2004, administer the primary language test to pupils of limited English proficiency enrolled for less than 12 months in a nonpublic school in grades 2 to 11. Beginning October 7, 2005, school districts are required to administer the primary language test to those pupils in nonpublic schools in grades 3 to 11, instead of grades 2 to 11. (Ed. Code, § 60640(g), as amended by Stats. 2004, ch. 233.)
 - Effective September 21, 2005, district STAR coordinators are required to:
 - Immediately notify CDE of any security breaches or testing irregularities in the district before, during, or after the test administration. (Cal. Code Regs., tit. 5, § 857(b)(9); Register 2005, No. 34.)
 - Ensure that an answer document is submitted for scoring for each eligible pupil enrolled in the district on the first day of testing. (Cal. Code Regs., tit. 5, § 857(b)(10), as added by Register 2005, No. 34.)
 - Train test site coordinators to oversee the test administration at each school. (Cal. Code Regs., tit. 5, § 857(b)(12); Register 2005, No. 34.)
 - Effective September 21, 2005, the STAR test site coordinators are required to:
 - Submit the signed security agreement to the district STAR coordinator prior to the receipt of test materials. (Cal. Code Regs., tit. 5, § 858(b)(4); Register 2005, No. 34.)
 - Ensure that an answer document is submitted for scoring for those pupils enrolled on the first day of testing, but excused from testing. (Cal. Code Regs., tit. 5, § 858(b)(9), as added by Register 2005, No. 34.)
 - Immediately notify the district STAR coordinator of any security breaches or testing irregularities that occur in the administration of the designated

¹⁵⁸ See Statement of Decision, *STAR II and III*, 05-TC-02, 05-TC-03, 08-TC-06, pages 3-5.

¹⁵⁹ See Statement of Decision, *STAR II and III*, 05-TC-02, 05-TC-03, 08-TC-06. Note that since funding was sufficient to cover the costs of all required activities, this decision contained no analysis on whether the required activities mandated a new program or higher level of service.

achievement test, the standards-based achievement tests, or the CAPA that violate the terms of the STAR Security Affidavit in Section 859. (Cal. Code Regs., tit. 5, § 858(b)(11); Register 2005, No. 34.)

- Train all test examiners, proctors, and scribes for administering the tests. (Cal. Code Regs., tit. 5, §§ 851(e) and 858(b)(12); Register 2005, No. 34.)
- Effective September 21, 2005, provide all information specified in section 861(a) to the contractor for those pupils enrolled on the first day the tests are administered and who do not in fact take a STAR test. (Cal. Code Regs., tit. 5, § 861(a); Register 2005, No. 34.)
- Effective September 21, 2005, provide the following new information to the contractor for each pupil tested:
 - The pupil's full name;
 - Date of English proficiency reclassification;
 - If R-FEP pupil scored proficient or above on the California English-language arts test three (3) times since reclassification to English proficient;
 - California School Information Services (CSIS) Student Number once assigned;
 - For English learners, length of time in California public schools and in school in the United States;
 - Participation in the National School Lunch Program;
 - County and district of residence for pupils with Individualized Education Programs (IEPs);
 - Special testing conditions and/or reasons for not being tested. (Cal. Code Regs., tit. 5, § 861(a); Register 2005, No. 34.)
- Effective September 21, 2005, establish a periodic delivery schedule, which conforms to section 866(a) and (b), to accommodate test administration periods within the school district. (Cal. Code Regs., tit. 5, § 866(b); Register 2005, No. 34.)

The STAR program activities remained in the law, and continued to be required for school districts until the STAR program was replaced with CAASPP by the test claim statutes.

D. Replacement of STAR with CAASPP by the Test Claim Statutes

Statutes 2013, chapter 489 replaces the STAR program, effective January 1, 2014, with the "Measurement of Academic Performance and Progress," which in turn is renamed the California Assessment of Student Progress and Performance (CAASPP) by Statutes 2014, chapter 32, and further refined by Statutes 2014, chapter 327. Statutes 2013, chapter 489, Statutes 2014, chapter 32, and Statutes 2014, chapter 327, as well as California Code of Regulations, title 5, sections 850-864, as amended by Register 2014, Nos. 6, 30, and 35, constitute the test claim statutes and regulations pled in this consolidated claim.

The test claim statutes and regulations require school districts to transition from a set of paper and pencil multiple choice tests by no later than 2017 to computer-based tests aligned to the Common Core State Standards (CCSS), and which are adaptive to the individual pupil's response, considered highly reliable, and provide the best possible information to pupils, parents, teachers and schools, and help students prepare for college and careers. For the time being, CAASPP includes the Smarter Balanced Summative Assessments (which, beginning in 2014-2015 are computer-adaptive) for English language arts and mathematics in grades 3-8 and 11, and the CST remains for science in grades 5, 8, and 10. In addition, for certain eligible students, the CMA, the CAPA, and Alternative Assessment Field Testing remain in place.¹⁶⁰ Section 60640 provides that the CST for science and the CAPA shall be replaced in the future with a new assessment recommended by the SPI.¹⁶¹ Thus, the CAASPP program replaces the CSTs for English language arts and mathematics for grades 3 to 8 and grade 11, with the expressed intent of later replacing the CAPA and the CST for science, all of which are intended to be computer-adaptive assessments aligned with the CCSS.¹⁶²

The goal of CAASPP is “to provide assessments that can assist teachers, administrators, students and parents/guardians with a better understanding of college and career readiness.”¹⁶³ California Code of Regulations, title 5, section 850, identifies the “Smarter Balanced Assessment Consortium” as “the multi-state consortium responsible for the development of the English language arts and mathematics summative assessments administered pursuant to Education Code section 60640(b)(1)...”¹⁶⁴ The Smarter Balanced Assessment Consortium, for its part, states that the new computer-adaptive assessments are intended to provide more accurate and faster results

¹⁶⁰ See Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 9.

¹⁶¹ Education Code section 60640(b)(2-3) (Stats. 2013, ch. 489). See also, Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 21:

California students with significant cognitive disabilities did not participate in the 2013–14 Smarter Balanced Field Test, but continued to participate in the CAPA with test results reported and used for accountability. California is eager to move forward with an alternate assessment that is aligned with the CCSS in ELA and mathematics and provide a similar opportunity for students with significant cognitive disabilities to receive the same valuable opportunity to “test the system” as our general education students did.

In the 2014–15 school year, California will implement a new computer-based alternate assessment in ELA and mathematics aligned with the CCSS with the intent of field testing all eligible students. This plan is in the best interest of our students, teachers, and schools and consistent with our successful Smarter Balanced Field Test.

¹⁶² See Education Code sections 60602.5; 60640 (Stats. 2013, ch. 489).

¹⁶³ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 8.

¹⁶⁴ California Code of Regulations, title 5, section 850 (Register 2014, No. 6).

for teachers and pupils.¹⁶⁵ Section 853 of the implementing regulations states that the primary mode of administration of the CAASPP shall be via computers, including “the use of an assessment technology platform, and the adaptive engine”, but that “[i]f available, an LEA may utilize a paper-pencil version” of the new assessment for up to three years, in accordance with section 60640(e), if the LEA first identifies the pupils that are unable to access the computer-based version.¹⁶⁶

California adopted the CCSS in 2010, and became a governing member of the Smarter Balanced in 2011. After Statutes 2013, chapter 489 was enacted, but before it became operative on January 1, 2014, school districts began preparing for the 2014 field test.¹⁶⁷ The field test served multiple purposes: one purpose was to evaluate the effectiveness of the test, and give students and teachers a glimpse of the types of questions; the second was to allow school districts and CDE to gauge their readiness to administer the full test in 2014-2015.¹⁶⁸ In the Fall of 2013, prior to the effective date of the test claim statutes and regulations, and prior to the administration of the 2014 field test, CDE asked school districts to rate their level of confidence of readiness to administer the Smarter Balanced assessments. In its “Findings from the California Department of Education Technology Preparedness Survey” dated September 26, 2013, CDE reported that 85 percent of respondents stated they had considerable or some level of confidence that they had an adequate number of computers with the minimum operating system requirements, and 90 percent indicated considerable or some confidence that they had adequate network bandwidth.¹⁶⁹ Ultimately, 90 percent of eligible pupils in grades 3-8 completed the computer-based Spring 2014 ELA field test, and 92 percent completed the computer-based field test in mathematics.¹⁷⁰ There was no paper-pencil alternative for the 2014 field test.¹⁷¹ After the field test, several focus groups were held, beginning in July 2014, to discuss best practices, and areas of improvement.¹⁷² In particular, LEA CAASPP coordinators identified the following needs for the 2015 test and beyond:

¹⁶⁵ See www.smarterbalanced.org [entries “About” and “Computer Adaptive Testing”].

¹⁶⁶ California Code of Regulations, title 5, section 853 (Register 2014, No. 35).

¹⁶⁷ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 11.

¹⁶⁸ Exhibit X, Field Test – Smarter Balanced Assessment Consortium; Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 12.

¹⁶⁹ Exhibit X, Findings from the California Department of Education Technology Preparedness Survey, page 2.

¹⁷⁰ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, Appendix E, pages 37; 39.

¹⁷¹ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 13.

¹⁷² Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 14.

- Preparation – students and staff need to work with and practice with the test, and improve computer literacy and skills;
- Scheduling – a large proportion of coordinators reported difficulty in predicting the amount of time students need to complete the test;
- Technology – coordinators reported a need for increased bandwidth, and more devices for testing;
- Support – coordinators reported a need for onsite technology support;
- Accommodations and Designated Supports – coordinators reported needing a better understanding of designated supports and a process for identifying students’ eligibility for certain supports.¹⁷³

In the 2013-2014 budget, the state provided \$1.25 billion to support the implementation of CCSS, including, “expenditures necessary to support the administration of computer-based assessments and provide high-speed, high-bandwidth Internet connectivity for the purpose of administration of computer-based assessments.”¹⁷⁴ Additionally, the 2013-2014 budget provided approximately \$72.7 million in state funds “for purposes of California’s pupil testing program,” approximately \$42 million of which was specifically tagged for the STAR program under Provision (2).¹⁷⁵ In addition, the 2013-2014 budget included \$25 million in federal funds for pupil testing, approximately \$9.4 million of which was specifically identified for the STAR program, with instructions that federal funding should be applied to mandated costs first, then the state funding.¹⁷⁶

In the 2014 budget, the Legislature identified \$8.2 million for the STAR program, \$23.5 million for apportionment for 2013-2014 costs, and \$75 million for “the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013.”¹⁷⁷ In addition, approximately \$8 million in federal funds was identified for statewide testing.¹⁷⁸

¹⁷³ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 18.

¹⁷⁴ Statutes 2013, chapter 48, section 85 (AB 86).

¹⁷⁵ Statutes 2013, chapter 20, Line Item 6110-113-0001.

¹⁷⁶ Statutes 2013, chapter 20, Line Item 6110-113-0890 [The amounts cited reflect the figures specifically attributed to the STAR testing, and exclude funding for the California High School Exit Examination, the California English Language Development Test, and others].

¹⁷⁷ Statutes 2014, chapter 25, Line Item 6110-113-0001 [The amounts cited reflect the figures specifically attributed to the statewide pupil assessment system established pursuant to Statutes 2013, chapter 489, and exclude funding for the California High School Exit Examination, the California English Language Development Test, and others].

¹⁷⁸ Statutes 2014, chapter 25, Line Item 6110-113-0890 [The amounts cited reflect the figures specifically attributed to the statewide pupil assessment system established pursuant to Statutes 2013, chapter 489, and exclude funding for the California High School Exit Examination, the California English Language Development Test, and others].

III. Positions of the Parties

A. Claimants

Claimants allege that the test claim statutes and regulations will result in reimbursable statewide increased costs mandated by the state totaling \$1 billion in the 2014-2015 fiscal year.¹⁷⁹ More specifically, claimants pled their own 2013-2014 and 2014-2015 costs as follows: Santa Ana Unified School District alleges \$3,217,495.70 in increased costs for fiscal year 2013-2014, and estimates \$8,609,854.23 for fiscal year 2014-2015. Porterville Unified School District alleges \$3,831,924.79 in increased costs for fiscal year 2013-2014, and estimates \$3,340,840.67 for fiscal year 2014-2015. Plumas Unified School District alleges \$509,533.07 in increased costs for fiscal year 2013-2014, and estimates \$1,934,744.40 for fiscal year 2014-2015. And the Plumas County Office of Education alleges \$356,783.08 in increased costs for fiscal year 2013-2014, and estimates \$380,061.64 for fiscal year 2014-2015.¹⁸⁰

The claimants allege that those increased costs result from the following mandated new or modified activities:

- Administration of the new assessments, in accordance with sections 60640 and 60641;
- Administration of the 2013-2014 field tests;
- Administration of the tests at the time specified in the regulations;
- Making arrangements to test all eligible pupils, including those in alternative education programs or programs conducted off campus;
- Administration of an additional test to pupils with limited English proficiency, as specified;
- Exempting students from CAASPP testing upon request by a pupil's parent or guardian, or if called for by the pupil's individualized education plan (IEP);
- Determination of the appropriate grade level test for pupils enrolled in a special education program;
- Notifying parents or guardians, each year, of their pupil's participation in CAASPP, and of their right to opt-out pursuant to section 60615;
- Administering, scoring, transmitting, and returning the assessments in accordance with the manuals or other instructions provided by the contractor or by CDE;
- Administering the CAASPP test via computer, unless the LEA identifies pupils that are unable to access the computer-based version of the test for the first three years of implementation;
- Providing embedded and non-embedded universal tools, designated supports, and accommodations, as specified;

¹⁷⁹ Exhibit A, Amended Test Claim 14-TC-01, page 75.

¹⁸⁰ Exhibit A, Amended Test Claim 14-TC-01, pages 73-74.

- Requesting and providing individualized aids, as necessary;
- Providing embedded and non-embedded supports to English learners, as specified;
- Designating a CAASPP coordinator for the LEA, who shall be available through September 30 to complete the LEA testing activities;
- Designating a CAASPP test site coordinator for each test site, who shall be available through September 30 following the school year to resolve discrepancies in materials or errors;
- Ensuring that all LEA CAASPP coordinators and CAASPP test site coordinators sign the security agreement and affidavit, prior to receiving any test materials; and that all coordinators immediately report any security breaches or testing irregularities;
- Including CAASPP assessment results in each pupil’s records;
- Providing any and all program and demographic data requested by CDE for inclusion in the California Longitudinal Pupil Achievement Data System;
- Forwarding or transmitting pupil results to the pupil’s parent or guardian within 20 days of receipt from the contractor;
- Reporting district-wide, school-level, and class-level results to the school district’s governing board or county office of education;
- Abiding by any and all instructions provided by the CAASPP contractor or consortium;
- Providing interim and formative assessments for kindergarten and grades 1-12;
- Training and reviewing the CAASPP program requirements imposed by the test claim statutes and regulations; and
- Developing and implementing policies, training, procedures and forms.¹⁸¹

Claimants further allege that they are “unaware” of any dedicated state or federal funds, except the “Common Core Implementation Block Grant.”¹⁸²

In rebuttal comments, the claimants further argue that CAASPP is “fundamentally new” as compared to the prior STAR tests. Specifically, claimants point out that the computer-based assessment is adaptive: “students who answer the first few questions correctly will get progressively harder questions, while students who answer the first few questions incorrectly will get progressively easier questions.” In addition, claimants argue that CAASPP is a new program or higher level of service because “the assessment *mechanism* is entirely different.”¹⁸³

¹⁸¹ Exhibit A, Amended Test Claim 14-TC-01, pages 90-96.

¹⁸² Exhibit A, Amended Test Claim 14-TC-01, page 76.

¹⁸³ Exhibit F, Claimants’ Rebuttal on 14-TC-01, filed March 13, 2015, page 4.

The claimants further argue that CAASPP is not mandated by the federal No Child Left Behind Act. Although previous test claims on the STAR requirements did not reach the federal mandate issue, the claimants argue that “California was compliant with NCLB’s requirement...[to test its pupils, but]...California chose – without any change to NCLB – to adopt a new assessment regime that was much more expansive (and expensive).”¹⁸⁴

And, the claimants argue that the funding cited by Finance as applicable to or available for the implementation of CAASPP is not sufficient to fund the costs of the mandate, and is mostly one-time. Specifically, the claimants argue that \$1.25 billion in the 2013-2014 budget appropriated for CCSS implementation does not constitute additional revenue specifically intended to fund the costs of the mandate, within the meaning of section 17556(e), because the \$1.25 billion is not specifically aimed at funding CAASPP. Upgrading technology, including network bandwidth “necessary to support the administration of computer-based assessments...” is only one of several permissible purposes of the added funding, and districts are free to use the funds in other ways or for other purposes.¹⁸⁵ Similarly, an additional \$400.5 million included in the 2013-2014 budget for reimbursement of outstanding mandate debt is not “specifically intended to fund the costs of the state mandate...” the claimants argue, because it is intended first to satisfy old debt, not new programs, and once outstanding debt is satisfied, there is no legal restriction on the use of any remaining funds.¹⁸⁶ And, the claimants argue that \$26.7 million in the 2013-2014 budget for the California K-12 High Speed Network does not constitute additional revenue to satisfy costs of the mandate because “districts and county offices of education do not actually receive these funds directly; they only receive the benefit.”¹⁸⁷ Finally, claimants argue that \$22.7 million federal pass-through funding in the 2014 Budget Act should not be considered additional revenues specifically intended to fund the mandate, because California schools received a waiver under the federal No Child Left Behind Act for 2013-2014 and 2014-2015. However, claimants concede that \$126.8 million in state funding constitutes additional revenues within the meaning of section 17556(e), but the amount “is simply woefully inadequate to offset the significant financial need the test claimants have demonstrated in the claim.”¹⁸⁸

In response to the draft proposed decision on 14-TC-01, claimants submitted additional declarations from 77 school districts estimating their technology-related and staffing-related costs for fiscal years 2013-2014 and 2014-2015, combined. This additional documentation also purports to show that the per-pupil cost of administering the CAASPP exceeds the per-pupil funding appropriated, based on 2013-2014 enrollment as a proxy for the number of examinations administered in both 2013-2014 and 2014-2015, and based on the average annual cost over the first two years of implementation, as reported by the 77 survey respondents.¹⁸⁹ Claimants further assert that the cost data already provided, “extrapolated out to all districts in the state greatly,

¹⁸⁴ Exhibit F, Claimants’ Rebuttal on 14-TC-01, filed March 13, 2015, page 5.

¹⁸⁵ Exhibit F, Claimants’ Rebuttal on 14-TC-01, filed March 13, 2015, pages 6-7.

¹⁸⁶ Exhibit F, Claimants’ Rebuttal on 14-TC-01, filed March 13, 2015, page 7.

¹⁸⁷ Exhibit F, Claimants’ Rebuttal on 14-TC-01, filed March 13, 2015, page 8.

¹⁸⁸ Exhibit F, Claimants’ Rebuttal on 14-TC-01, filed March 13, 2015, page 8.

¹⁸⁹ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, page 11 and following.

exceed the \$145 million identified as offsetting revenue [for fiscal year 2014-2015].”¹⁹⁰ In addition, claimants vigorously dispute the conclusion in the draft proposed decision that technology upgrades and acquisitions required to administer the CAASPP are a one-time required activity, rather than an ongoing requirement.¹⁹¹ And, claimants argue that it was not necessary to plead Register 2014, No. 6 in their test claim, because that emergency regulatory package was repealed by operation of law.¹⁹²

In 14-TC-04, which was consolidated with 14-TC-01, the claimants nevertheless plead the implementing regulations as amended by Register 2014, No. 6, and declare, under penalty of perjury, that they first incurred costs under these regulations “subsequent to February 3, 2014.”¹⁹³ The claimants allege that school districts and county offices of education have incurred or will incur costs to review and implement the regulations, and to train and hire administrators, teachers, and other school district personnel.¹⁹⁴ Attached to this second test claim, claimants submitted declarations including cost information: specifically, invoices and purchase orders for technology costs incurred between February 3, 2014 and June 30, 2014.¹⁹⁵

B. Department of Finance

Finance asserts in its comments that the test claim statutes are not reimbursable primarily because:

- A. The No Child Left Behind Act (NCLB) is a federal mandate; therefore administering the CAASPP System is not a state mandate because it is required to ensure California’s compliance with NCLB.
- B. The CAASPP System replaced the Standardized Testing and Reporting (STAR) Program. The Commission has previously denied similar claims relating to the administration of the STAR Program, concluding that the test claim statutes and regulations did not impose a reimbursable state-mandated program on school district because the state has appropriated state and federal funds sufficient to pay for the costs of the claimed activities that were beyond those activities necessary to implement the testing requirements of federal law.¹⁹⁶

Finance asserts that the adoption of CCSS by the State Board of Education on August 2, 2010 created “a need to replace STAR with the CAASPP System, which is aligned to the standards.” The new system of assessments, Finance asserts, “will be operational in Spring 2015.” And, Finance states that while the new assessments are “computer-adaptive”, Statutes 2013, chapter

¹⁹⁰ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, page 2.

¹⁹¹ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, pages 4-8.

¹⁹² Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, page 9.

¹⁹³ Exhibit B, Test Claim 14-TC-04, pages 13; 42; 52; 66; 70; 79; 88.

¹⁹⁴ Exhibit B, Test Claim 14-TC-04, pages 16-17.

¹⁹⁵ Exhibit B, Test Claim 14-TC-04, page 42 and following.

¹⁹⁶ Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015, page 1.

489 “authorizes schools to administer any computer-based CAASPP assessments on paper for up to three years after a new operational test is first administered.”¹⁹⁷

Finance goes on to assert that because Statutes 2013, chapter 489 “repealed STAR and replaced it with the CAASPP System,” the new assessments “should not be considered a new program.” In addition, Finance notes that prior to the enactment of NCLB, the Improving America’s Schools Act (IASA) required “statewide systems of assessment and accountability for schools and districts receiving Title I funds.” Those assessment requirements included: “(1) the testing of all students in each of three grade spans (grades 3 through 5, 6 through 9, and 10 through 12); (2) the provision of reasonable adaptations and accommodations for students with special learning needs; and (3) the provision of individual student assessment results to parents.” Finance notes that NCLB replaced the IASA in 2002, and required states to develop assessments that met specific criteria; specifically, annual testing in mathematics and reading is required for grades 3 through 8 and once in grades 9 through 12, and states are required to begin assessing students in science in the 2007-2008 school year and thereafter. Finance notes that a state not meeting these requirements “would jeopardize the receipt of federal NCLB funds.” Therefore, Finance concludes that “CAASPP is a federal mandate, as defined in Government Code Section 17513...and subsection (c) of Government Code Section 17556...”¹⁹⁸

Finance further asserts that to receive Title I and Title VI funding under NCLB, a state must submit a plan to the Secretary of Education “that satisfies the requirements of this section...”, including establishing a statewide assessment and accountability system for all public school students, which must be based on academic standards, and must demonstrate what constitutes “adequate yearly progress of the State, and of all public elementary schools, secondary schools, and local educational agencies in the State, based on those academic assessments.” Finance also notes that “Title I funds are clearly provided for school districts for the CAASPP System, which is the central element of the State’s assessment and accountability system used to satisfy the federal requirements under NCLB.” Moreover, Finance notes that under Title VI of the NCLB Act, “Section 6111 provides that the grants be available for states to enable them to ‘pay the costs of the development of the additional State assessments and standards required by section 1111(b),’ which is referenced above under Title I.”¹⁹⁹

Additionally, Finance asserts that if the Commission determines that the CAASPP is not a federal mandate, “the following items and provisions of the 2014 Budget Act explicitly require the offset of state-mandated reimbursable costs for the CAASPP System:”

- \$126.8 million in local assistance provided in item 6110-113-0001. Provision 7 of that item states that funds “shall be first used to offset any state-mandated reimbursable costs...for the remaining costs of the STAR 2013-2014 test administration, the California English Language Development Test, the California High School Exit Examination, and the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013.”

¹⁹⁷ Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015, page 1.

¹⁹⁸ Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015, page 2.

¹⁹⁹ Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015, page 3.

- \$22.7 million in Federal Trust Fund local assistance provided in item 6110-113-0890. Provision 6 states that “[f]unds provided to local educational agencies from Schedules (2), (3), and (5) shall first be used to offset any state-mandated reimbursable cost...for the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013...”²⁰⁰

Finance argues that these appropriations provide sufficient funds to cover the costs of the CAASPP activities and “should result in no costs mandated by the state pursuant to Government Code section 17556(e).”²⁰¹

Finance further argues that this test claim presents essentially the same facts and issues as prior test claims on STAR, which the Commission denied. Finance notes that the Commission previously denied test claim *STAR II and III* because the state has appropriated state and federal funds, and there was no evidence in the record showing increased costs beyond the funding provided.²⁰²

Finance further argues that if the Commission were to approve the test claim, it should also consider the \$1.25 billion in common core implementation funds as offsetting revenues, in part because the budget provision states that the funds shall be used for technology upgrades, including “expenditures necessary to support the administration of computer-based assessments and provide high-speed, high-bandwidth Internet connectivity for the purpose of administration of computer-based assessments.”²⁰³ And, Finance notes that the 2014 Budget Act included \$400.5 million in one-time funding for outstanding mandate claims, which could be used for any one-time purpose determined by the LEAs, including technology infrastructure.²⁰⁴ Additionally, Finance asserts that \$26.7 million included in the 2014 budget is intended to help schools “enhance their network connectivity...”

And, Finance argues that “schools are naturally compelled to invest in technology to adapt instructional delivery and student learning for the 21st century.” Finance asserts: “We believe the claimants have the burden to show that any costs cited under this test claim were incurred solely to accommodate the CAASPP System, and not in part for other education or instructional purposes.”²⁰⁵ Finance then notes that even though the test claim statutes call for computer-based assessments, the schools are authorized to administer the CAASPP assessments on paper for up to three years, if necessary, and therefore any new costs prior to the 2016-2017 school year are voluntarily incurred.

In answer to claimants’ rebuttal comments, Finance filed additional late comments, in which it argued that the K-12 High Speed Network funding, even though it provides a service, rather than directly providing funds, results in a school district that is able to avoid incurring new costs, because CDE assumes the procurement and contract costs on a grant basis. Finance reasons as

²⁰⁰ Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015, page 3.

²⁰¹ Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015, page 4.

²⁰² Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015, page 4.

²⁰³ Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015, pages 5-6.

²⁰⁴ Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015, page 6.

²⁰⁵ Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015, page 7.

follows: “Had the \$26.7 million not been available, grant recipients that identified lack of adequate internet connectivity as a barrier to administering the CAASPP would have incurred costs to enter into the private market to procure increased broadband services.”²⁰⁶

In addition, Finance’s comments assert that even though California received a waiver under NCLB for 2013-2014 and 2014-2015, “[t]he waiver granted by the federal government...does not exempt California from the requirement to administer assessments as a condition of meeting NCLB.” Rather, Finance asserts that the waiver “was contingent on California local education agencies ensuring that, with the exception of students with the most significant cognitive disabilities, all students in grades 3 through 8 participated in the...field test...”²⁰⁷

In comments on the draft proposed decision on 14-TC-01, Finance reiterates that the test claim statutes “included a three-year period for local educational agencies to transition to computer-based assessments and specified that costs to administer the CAASPP be incurred up to the amount available for that purpose.” Finance refers to Education Code section 60640(f), as amended, which provides that “[f]rom the funds available for that purpose, each local educational agency shall administer...” In addition, Finance argues that the 2013 Budget Act referenced pupil testing programs authorized by the same Education Code sections which were amended by the test claim statutes (in other words, the former STAR testing program), and thus Finance concludes that “[i]f the Commission finds that local educational agencies were required to incur technology costs...we argue that adequate funds were provided for this purpose.”²⁰⁸

IV. Discussion

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

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service...

The purpose of article XIII B, section 6 is to “preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”²⁰⁹ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”²¹⁰

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

²⁰⁶ Exhibit G, Finance’s Late Comments on 14-TC-01, filed April 27, 2015, page 1.

²⁰⁷ Exhibit G, Finance’s Late Comments on 14-TC-01, filed April 27, 2015, pages 1-2.

²⁰⁸ Exhibit K, Finance’s Comments on Draft Proposed Decision on 14-TC-01, pages 1-2.

²⁰⁹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²¹⁰ *County of Los Angeles v. State of California (County of Los Angeles I)* (1987) 43 Cal.3d 46, 56.

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.²¹¹
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.²¹²
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.²¹³
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.²¹⁴

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 6.²¹⁵ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.²¹⁶ 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.”²¹⁷

A. Many of the Code Sections and Regulations Pled Do Not Contain Mandatory or Directory Language; Do Not Impose Any Activities on Local Government; or Are Not New, and Thus, Do Not Mandate a New Program or Higher Level of Service Within the Meaning of Article XIII B, Section 6 of the California Constitution.

1. **Education Code sections 60602, 60602.5, 60603, and 60604, 60611, 60612, 60642.6, 60643, 60643.6, 60648, 60648.5, 60649, and 60810; and California Code of Regulations, title 5, sections 850 and 862.5, do not contain any mandatory or**

²¹¹ *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, 874.

²¹² *Id.*, pages 874-875 (reaffirming the test set out in *County of Los Angeles, supra*, 43 Cal.3d 46, 56.)

²¹³ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

²¹⁴ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (Cal. Ct. App. 1st Dist. 2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

²¹⁵ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

²¹⁶ *County of San Diego, supra*, 15 Cal.4th 68, 109.

²¹⁷ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817

directory provisions, or are directed toward state entities or other actors, and therefore do not impose any mandated activities on local government.

Education Code sections 60602, 60602.5, 60603, and 60604, 60611, 60612, 60642.6, 60643, 60643.6, 60648, 60648.5, 60649, and 60810; and California Code of Regulations, title 5, sections 850 and 862.5, do not impose any required activities on local government. These sections state the Legislature’s intent to provide a system of individual assessment of pupils, define terms of the CAASPP program, and provide for the apportionment of funds for the program; or, are directed to state agencies. Although these code sections and regulations provide background and help explain the scope of the program, they do not, themselves, impose any required activities on local school districts.

2. Education Code sections 60607, 60610, 60641, 99300, and 99301 as added or amended by Statutes 2013, chapter 489 and Statutes 2014, chapter 327, and California Code of Regulations, title 5, sections 851, 853.5, 853.7, 855, 859, 862, and 863 as amended by Register 2014, Nos. 6, 30, and 35 do not impose any new activities or costs on school districts.

In *Lucia Mar Unified School District v. Honig*, the Court held a mandated activity must be new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order, to impose a new program or higher level of service.²¹⁸

Here, the requirements of sections 60607, 60610, 60641, 99300, 99301, and California Code of Regulations, title 5, sections 851, 853.5, 853.7, 855, 859, 862, and 863 do not impose new activities on school districts.

- a) Education Code section 60607, regarding the inclusion of the CAASPP results in a pupil’s permanent school record, does not impose new requirements.

Section 60607, as amended, provides that the new computer-based assessments shall be included in pupils’ permanent school records, as follows:

Each pupil shall have an individual record of accomplishment by the end of grade 12 that includes the results of the achievement test required and administered annually as part of the Measurement of Academic Performance and Progress (MAPP), or any predecessor assessments, established pursuant to Article 4 (commencing with Section 60640), results of end-of-course exams he or she has taken, and the vocational education certification exams he or she chose to take.²¹⁹

In addition, amended section 60607 provides that “It is the intent of the Legislature that local educational agencies and schools use the results of the academic achievement tests administered annually as part of the MAPP to provide support to pupils and parents or guardians to assist pupils in strengthening their development as learners, and thereby to improve their academic achievement...”²²⁰ The claimants cite the entirety of amended section 60607 in their test claim, alleging that the section imposes new activities.²²¹ However, the language of former section

²¹⁸ (1988) 44 Cal.3d 830, 835.

²¹⁹ Education Code section 60607 (Stats. 2013, ch. 489; Stats. 2014, ch. 327).

²²⁰ *Ibid.*

²²¹ Exhibit A, Amended Test Claim 14-TC-01, page 19.

60607 was substantially the same, with respect to the California Standards Test (CST), and only minor, non-substantive changes were made by the amendment. Former section 60607(a), for example, provided:

Each pupil shall have an individual record of accomplishment by the end of grade 12 that includes the results of the achievement test required and administered annually as part of the Standardized Testing and Reporting (STAR) Program established pursuant to Article 4 (commencing with Section 60640), results of end-of-course exams he or she has taken, and the vocational education certification exams he or she chose to take.²²²

Therefore, the only change to subdivision (a) is the replacement of “STAR” with “MAPP.” The later amendments made by Statutes 2014, chapter 327, changed all references to the MAPP to CAASPP, and clarified a reference to “*former* Section 49079.6, as it read on December 31, 2013...”²²³ There are no new activities or requirements imposed on school districts in the later-amended section.

Other changes made by Statutes 2013, chapter 489 include substituting “local educational agencies” for “schools” in subdivision (b), and “MAPP” for “statewide pupil assessment program” in subdivision (b) and “California Standards Test” in subdivision (c).²²⁴ In each case “MAPP” was then amended to “CAASPP” by Statutes 2014, chapter 327.²²⁵ These changes are non-substantive in nature; subdivision (a) requires that schools or school districts must maintain each pupil’s “individual record of accomplishment,” but prior section 60607 imposed the same requirement. The amendment effected by the test claim statute only substitutes the “MAPP” for the “STAR,” and therefore does not change the nature or scope of any required activities.²²⁶ Subdivision (b) states only the *intent of the Legislature* that LEAs use the results of the MAPP to support and assist pupils; that language is not new, and is intent language, which is not, in itself, mandatory or directory.²²⁷

The only remaining change to the section made by the test claim statute is to add the phrase “[e]xcept for research provided for in Section 49079.6...” when describing the requirement that pupils’ records of accomplishment and results of their assessments be kept private without written consent from the pupil or a parent or guardian.²²⁸ However, because that provision does not contain any mandatory or directory language, but is instead prohibitive, or limiting in nature, the change does not result in a mandated new activity or task.

²²² Education Code section 60607(a) (as amended, Stats. 1997, ch. 828; Stats. 2001, ch. 722; Stats. 2004, ch. 233).

²²³ Statutes 2014, chapter 327.

²²⁴ Education Code section 60640 (Stats. 2013, ch. 489).

²²⁵ Education Code section 60640 (Stats. 2014, ch. 327).

²²⁶ Compare Education Code section 60607(a) (Stats. 2004, ch. 233) with Education Code section 60607(a) (Stats. 2013, ch. 489; Stats. 2014, ch. 327).

²²⁷ See Former Education Code section 60607 (Stats. 2004, ch. 233; Education Code section 60607(b) (Stats. 2013, ch. 489; Stats. 2014, ch. 327).

²²⁸ Education Code section 60607(c) (Stats. 2013, ch. 489; Stats. 2014, ch. 327).

b) Education Code sections 60610 and 60641 do not impose new requirements.

Sections 60610 and 60641, and California Code of Regulations, title 5, section 851, as amended, expressly include charter schools in a school district's testing program, and make other clarifying changes that are not new, with respect to prior law. These changes do not impose new activities on local government.

Section 60610, as amended, provides that at the request of the state board, and in accordance with the rules and regulations of the state board, "each county superintendent of schools shall cooperate with and assist school districts and charter schools under his or her jurisdiction in carrying out the testing programs...and other duties imposed on school districts by this chapter."²²⁹ The plain language is mandatory, and imposes upon the county superintendent a duty to cooperate with and assist the schools within its jurisdiction with respect to the testing requirements of the test claim statutes. However, former section 60610 required county superintendents to perform the same activity, except that charter schools were not expressly named in the prior statute.²³⁰ Former section 60610 stated that the county superintendent of schools "shall cooperate with and assist school districts under his or her jurisdiction in carrying out the testing programs of those districts and other duties imposed on school districts by this chapter." Charter schools were required under prior law to carry out the testing programs pursuant to Education Code section 60640(b), and county superintendents also had jurisdiction over charter schools under prior law.²³¹

Section 60641, as amended, provides that the assessments "are scheduled to be administered to all pupils," including charter school pupils, except those exempted pursuant to section 60640, "during the period prescribed in subdivision (b) of Section 60640." In addition, the section requires that each pupil's individual results "shall be reported, in writing, to the parent or guardian of the pupil." That report must include a clear explanation of the purpose of the test, the pupil's score, and the LEA's intended use of that score. The section further provides that valid individual results shall be reported to the school and teachers of a pupil, and shall be included in pupil records. And, the section provides that districtwide, school-level, and grade-level results in each of the grades designated pursuant to section 60640, "but not the score or relative position of any individually ascertainable pupil," shall be reported to the governing board of the school district and the county office of education at a regularly scheduled meeting. The section further provides that the state board shall adopt regulations for these reporting requirements, including "a calendar for delivery" of the results. And, the section prohibits any reporting other than to the school or LEA where a group of scores includes 10 or fewer pupil assessments; except as required by section 60630, "in no case shall any group score or report be displayed that would deliberately or inadvertently make the score or performance of any individual pupil or teacher identifiable." Finally, the section provides that pupils in grade 11, or their parents, may request results "for the purpose of determining credit, placement, or readiness for college-level coursework be released to a postsecondary educational institution."²³² The later

²²⁹ Education Code section 60610 (Stats. 2013, ch. 489).

²³⁰ Education Code section 60610 (Stats. 1995, ch. 975).

²³¹ Education Code section 60640, as last amended by Statutes 2009-2010, chapter 2 (5th Ex Sess.); Education Code section 47605, as last amended by Statutes 2008, chapter 179.

²³² Education Code section 60641 (Stats. 2013, ch. 489; Stats. 2014, ch. 372).

amendments made by Statutes 2014, chapter 327 changed all “MAPP” references to “CAASPP,” and eliminated an obsolete reference to section 49079.6.

The provision stating that the assessments “are scheduled to be administered” in accordance with section 60640 is not mandatory or directory; rather, it refers to the time in which an activity will be conducted. It appears from the context of this section and section 60640 that LEAs are required to administer the assessments. In any event, however, LEAs were required to administer the STAR tests under prior law, as explained above, and therefore if a requirement can be read into this section it is not new.

Furthermore, subdivision (d) provides that CDE “shall ensure that pupils in grade 11, or parents or legal guardians of those pupils *may request* results from grade 11 assessments...”²³³ for the purpose of determining credit, placement, or readiness for college-level coursework. The plain language refers to a requirement placed on CDE, but it may be expected that schools and LEAs will control the results that pupils or parents seek, and therefore this section might be argued to implicate duties also for schools or LEAs. However, this requirement, too, is found in the prior section: “The department shall ensure that a California Standards Test that is augmented for the purpose of determining credit, placement, or readiness for college-level coursework of a pupil in a postsecondary educational institution inform a pupil in grade 11 that he or she may request that the results from that assessment be released to a postsecondary educational institution.”²³⁴

Indeed, none of the substantive requirements of section 60641 are new. The CAASPP assessment replaces the STAR tests, and specifically the Smarter Balanced summative assessments replace the CSTs for English language arts and mathematics. Therefore a new and different test is required to be administered, but as the foregoing analysis demonstrates, many of the activities and tasks associated with administering the test are no different, based on the plain language of section 60641. Former section 60641 provided: “The standards based achievement test provided for in Section 60642.5 is scheduled to be administered to all pupils during the period prescribed in subdivision (b) of Section 60640.”²³⁵ As amended, section 60641 now provides: “The achievement tests provided for in Section 60640 are scheduled to be administered to all pupils, inclusive of pupils enrolled in charter schools and exclusive of pupils exempted pursuant to Section 60640, during the period prescribed in subdivision (b) of Section 60640.” The only difference is the source of the test, whether section 60640 (the summative assessments, and the other tests preserved in the law pending a successor test being adopted) or 60642.5 (the CSTs), and the express inclusion of charter school pupils, who were required to be tested under prior law also.²³⁶ Additionally, the reporting requirements, including maintaining pupil records, were substantially the same in prior law. For example, former section 60641 provided:

²³³ Education Code section 60641 (Stats. 2013, ch. 489; Stats. 2014, ch. 372 [emphasis added]).

²³⁴ Education Code section 60641 (Stats. 2009, ch.187).

²³⁵ As amended, Statutes 2009, chapter 187.

²³⁶ Compare Education Code section 60641 (as amended, Stats. 2009, ch. 187) with Education Code section 60641 (as amended, Stats. 2013, ch. 489). See also, Exhibit X, Assembly Bill 484, Assembly Floor Analysis.

The individual results of each pupil test administered pursuant to Section 60640 shall be reported, in writing, to the parent or guardian of the pupil. The written report shall include a clear explanation of the purpose of the test, the score of the pupil, and the intended use by the school district of the test score. This subdivision does not require teachers or other school district personnel to prepare individualized explanations of the test score of each pupil.²³⁷

As amended by Statutes 2013, chapter 489, section 60641 provides:

For assessments that produce valid individual pupil results, the individual results of each pupil tested pursuant to Section 60640 shall be reported, in writing, to the parent or guardian of the pupil. The report shall include a clear explanation of the purpose of the test, the score of the pupil, and the intended use by the local educational agency of the test score. This subdivision does not require teachers or other local educational agency personnel to prepare individualized explanations of the test score of each pupil. It is the intent of the Legislature that nothing in this section shall preclude a school or school district from meeting the reporting requirement by the use of electronic media formats that secure the confidentiality of the pupil and the pupil's results. State agencies or local educational agencies shall not use a comparison resulting from the scores and results of the Measurement of Academic Performance and Progress (MAPP) assessments and the assessment scores and results from assessments that measured previously adopted content standards.²³⁸

The amended section thus limits the reporting requirement to “assessments that produce valid individual pupil results,” as well as replacing “school district” with “local educational agency,” and stating the intent of the Legislature that nothing in this section should *preclude* a school or district from providing results electronically, so long as the form is secure. When the former and amended sections are compared further, the reporting requirements that apply to the school and teachers, and the inclusion in pupil records, are also found in the prior law. In other words, nothing in this section imposes new activities on local government.²³⁹

- c) Education Code sections 99300 and 99301, regarding the Early Assessment Program and the provision of the CAASPP results to the Chancellor of the Community Colleges, do not impose any new requirements on school districts.

Sections 99300 and 99301, as amended, make clarifying changes to the Early Assessment Program that do not impose any new activities on local government. Section 99300 provides that for purposes of the Early Assessment Program, established by the California State University in 2004, the former California Standards Test (CST) and augmented CST “may be replaced with the grade 11 consortium computer-adaptive assessments in English language arts and mathematics.” The section does not contain any mandatory or directory language aimed at local government, and primarily states the intent of the Legislature with respect to the EAP.

²³⁷ As amended, Statutes 2009, chapter 187.

²³⁸ As amended by Statutes 2014, chapter 327, “MAPP” is replaced with “CAASPP.”

²³⁹ Compare Education Code section 60641 (Stats. 2009, ch. 187) with Education Code section 60641 (Stats. 2013, ch. 489; Stats. 2014, ch. 327).

Section 99301, as amended, provides for “individual grade 11 assessment results,” “or a standards-aligned successor assessment,” to be used by community college districts and the CSU system “to provide diagnostic advice to, or for the placement of, prospective community college students participating in the [Early Assessment Program].” Pupils’ individual results are “provided to the office of the Chancellor of the California Community Colleges,” which “shall coordinate” with community college districts voluntarily participating in the EAP, and the Chancellor shall release the results to participating districts so that they may provide diagnostic advice to prospective students. The results shall also be used to assess college readiness, and to provide “additional preparation in grade 12 for prospective community college students” but not as a criterion for admission.²⁴⁰

The claimants cite only paragraph (b)(1), and subparagraph (b)(2)(C) as imposing an alleged mandate. Section 99301(b)(1) provides: “...the individual assessment results, as referenced in Section 60641, or a standards-aligned successor assessment, shall be provided to the office of the Chancellor of the California Community Colleges.” Section 99301(b)(2)(C) provides that the Chancellor shall: “Provide access to the individual assessment results, as referenced in Section 60641, or a standards-aligned successor assessment, to participating community college districts.”²⁴¹

Prior to this amendment, however, section 99301 provided substantially the same with respect to pupils’ individual results on the CST.²⁴² For example, section 99301(b)(1) stated as follows:

As authorized pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 60641, the individual results of the CST and the augmented CST, as referenced in Section 60641, shall be provided to the office of the Chancellor of the California Community Colleges.²⁴³

The amended section replaces “the California Standards Test (CST) and the augmented CST” with “grade 11 assessment” or “assessment” or “assessment referenced in Section 60641,” in accordance with section 99300, discussed above. The amendment makes no substantive change to the requirement to provide results to the Chancellor, or to participating community college districts’ requirements to use the assessments to provide diagnostic advice or for placement purposes. Therefore, this requirement, though now applicable to a successor academic achievement test, is not new.

- d) California Code of Regulations, title 5, section 851, as amended by the test claim regulations addresses general pupil testing requirements and prohibitions, and does not impose any new requirements on school districts.

Section 851 of the regulations generally requires LEAs to administer the assessments to each of its pupils within a specified window of time, and to make arrangements for testing pupils in alternative education programs or programs conducted off campus. Prior to the test claim regulations, section 851 provided that school districts “shall administer the standards-based

²⁴⁰ Education Code section 99301 (Stats. 2013, ch. 489).

²⁴¹ Exhibit A, Amended Test Claim 14-TC-01, page 26.

²⁴² Education Code section 99301 (Stats. 2008, ch. 473).

²⁴³ Education Code section 99301 (Stats. 2008, ch. 473).

achievement tests and the primary language test, if any, to each pupils enrolled...on the date testing begins in the pupil's school or school district." In addition, the former section required school districts to "make whatever arrangements are necessary to test all eligible pupils in alternative education programs or programs conducted off campus, including...continuation schools, independent study, community day schools, county community schools, juvenile court schools, or nonpublic schools." And, the former section prohibited the administration of any test in a home or hospital except by a test examiner, and prohibited testing of any pupil by the parent or guardian of the pupil. As amended by the test claim regulations, section 851 now refers to "LEAs" instead of "school districts;" and states that LEAs "*may administer* the primary language test pursuant to Education Code section 60640..."²⁴⁴ Finally, the amended section expressly includes charter schools in the statewide testing, and directs all those not direct-funded to test with the LEA that granted the charter.²⁴⁵ However, charter schools were required to participate in statewide testing under prior law, and therefore this is not a new provision.²⁴⁶

These changes do not result in any new mandated activities. Nearly all changes to section 851 are non-substantive, and in fact, by making the primary language test permissive, the test claim regulations may result in a *lower* level of service required.

- e) California Code of Regulations, title 5, sections 853.5 and 853.7, as added and amended by the test claim regulations, address universal tools, designated supports, and accommodations for pupils taking the CAASPP, and do not impose any new requirements on school districts.

Prior to the test claim regulations, section 853.5, described the "Use of Variations, Accommodations, and Modifications" by pupils taking the STAR exam. That section provided that school districts "may provide" to all pupils taking the CST, the CMA, and the Standards-based Tests in Spanish (STS) such supports as having the test directions simplified or clarified; allowing the pupil to write in the test booklets; testing in small group settings; and having as much time as needed within a single sitting to complete a test or part of the standards based achievement tests. Former section 853.5 also required that eligible pupils with disabilities who have an IEP or 504 Plan to have the same presentation, response, or setting accommodations that are specified in the pupil's IEP or 504 Plan for the CST, the CMA, and the Standards-based Tests in Spanish (STS). These may include, for example, large print versions of the test, Braille transcriptions, Manually Coded English or American Sign Language to present test questions, responses marked in a test booklet transferred to the answer document, responses dictated orally to a scribe, the use of word processing software with spell and grammar check tools, the use of an assistive device that does not interfere with the independent work of the pupil, supervised breaks, administration of the test at the most beneficial time of day to the pupil, administration of the test at home or in the hospital, use of a calculator on the mathematics test, use of manipulatives on the mathematics and science tests, and a dictionary. In addition, the former section required the school district to provide testing variations for English learners, which included testing in separate rooms with other English learners, additional supervised breaks

²⁴⁴ California Code of Regulations, title 5, section 851 (Register 2014, No. 35).

²⁴⁵ California Code of Regulations, title 5, section 851(b) (Register 2014, No. 6).

²⁴⁶ Education Code section 60640, as last amended by Statutes 2009-2010, chapter 2 (5th Ex Sess.); Education Code section 47605, as last amended by Statutes 2008, chapter 179.

following each section within a test part, translation of the test directions into the pupil’s primary language with an opportunity for the pupil to ask clarifying questions, and access to translation glossaries and word lists for the test.

As amended by the test claim regulations in Register 2014, Nos. 6, 30, and 35, sections 853.5 and 853.7, for English learners, now provide for the use of “universal tools, designated supports, and accommodations.” “Universal tools” are resources of the CAASPP tests that are available to all pupils.²⁴⁷ “Designated supports” are resources which the pupil regularly uses in the classroom for instruction and/or assessment(s) that are available for use by any pupil for whom the need has been indicated, prior to the assessment administration, by an educator or group of educators; or specified in a pupil’s IEP or Section 504 plan.²⁴⁸ And “accommodations” means resources documented in a pupil’s IEP or Section 504 Plan which the pupil regularly uses in the classroom for instruction and/or assessment(s) and that are either utilized in the assessment environment or consist of changes in procedures or materials that increase equitable access during the assessment and that cannot fundamentally alter the comparability of scores.²⁴⁹

As discussed below, the Commission finds that sections 853.5 and 853.7, as added and amended by the test claim regulations, do not impose any new activities or costs on school districts.

- 1) *Permitting a pupil to use an embedded universal tool, designated support, or accommodation on the CAASPP tests, pursuant to section 853.5(a), (c), and (e) does not require a school district to incur additional new costs since embedded supports are part of the computer technology platform.*

Section 853.5(a), as amended by the test claim regulations, provides that all pupils, including English learners and students with disabilities, shall be permitted “embedded universal tools” on the CAASPP test for English language arts and mathematics. These embedded tools include breaks, calculators, digital notepads, English dictionary, highlighter, spell check, and math tools. Section 853.5(c) and (e) further provide for “embedded designated supports” for all pupils when determined for use by an educator or group of educators (which include color contrast and masking for reading, writing, listening, and mathematics; text-to speech for writing, listening, mathematics, and reading items; and translations), and “embedded accommodations” specified in a pupil’s IEP or 504 plan (which include American Sign Language, Braille, closed captioning for listening, text-to-speech). “Embedded” means a resource, whether a universal tool, designated support, or an accommodation, that is part of the assessment technology platform for the

²⁴⁷ California Code of Regulations, title 5, section 850(aa).

²⁴⁸ California Code of Regulations, title 5, section 850(k). See also, Exhibit X, US Department of Education Publication on IEP Regulations, page 1 [IEP is a written statement prepared for each child with a disability pursuant to federal regulations and must include a statement of present academic achievement and functional performance, a statement of goals, and a statement of “the special education and related services and supplementary aids and services...to be provided...,” as well as a statement of “any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments...”]. See also, *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1584.

²⁴⁹ California Code of Regulations, title 5, section 850(a).

computer-based CAASPP tests.²⁵⁰ In March 2015, CDE issued a matrix describing the embedded universal tools, designated supports, and accommodations as “digitally-delivered features or settings available as part of the technology platform for the computer-administered CAASPP tests.”²⁵¹

In other words, an embedded support is by definition built into the computer-based tests, or the computers themselves that are used for testing, and therefore the provisions in section 853.5(a), (c), and (e) do not require any new activity of school districts, other than providing a computing device and the use of an assessment technology platform as required by Education Code section 60640, which is discussed below.

- 2) Permitting a pupil to use non-embedded universal tools and non-embedded designated supports, pursuant to section 853.5(b) and (d) does not impose any new costs.

Section 853.5(b) requires that all pupils be permitted to use non-embedded universal tools, as specified, on the CAASPP tests. As indicated above, “non-embedded” means a resource that is *not* part of the technology platform for the computer-based CAASPP tests, and “universal tools” means that those resources are available to all pupils.²⁵² Section 853.5(b) specifically states the following:

All pupils shall be permitted the following non-embedded universal tools on the CAASPP tests for English language arts (including the components of reading, writing, and listening), mathematics, science, and primary language as specified below:

- (1) Breaks;
- (2) English dictionary for ELA performance task – pupil long essay(s) not short paragraph responses;
- (3) scratch paper;
- (4) thesaurus for ELA performance task – pupil long essay(s) not short paragraph responses;
- (5) color overlay for science and primary language test;
- (6) math tools (i.e., ruler, protractor) for specific mathematics items;
- (7) simplify or clarify test administration directions (does not apply to test questions); or
- (8) pupil marks in paper-pencil test booklet (other than responses including highlighting).

Section 853.5(d), as amended by the test claim regulations, provides that all pupils shall be permitted to use “non-embedded designated supports” when determined for use by an educator

²⁵⁰ California Code of Regulations, title 5, section 850(m).

²⁵¹ Exhibit X, Matrix entitled “Universal Tools, Designated Supports, and Accommodations for the California Assessment of Student Performance and Progress for 2014–15,” revised March 12, 2015.

²⁵² California Code of Regulations, title 5, section 850(aa) and (q).

or group of educators or specified in a pupil’s IEP or Section 504 Plan on the CAASPP tests for English language arts, mathematics, science, and primary language. “Designated supports” are “resources which the pupil regularly uses in the classroom for instruction and/or assessment(s) and that are available for use by any pupil for whom the need has been indicated, prior to the assessment administration, by an educator or group of educators or specified in a pupil’s IEP or Section 504 plan.”²⁵³ These non-embedded designated supports include translated directions, bilingual dictionary for writing, color contrast and overlay, magnification, read aloud, scribe, separate setting, translations, noise buffers, special lighting, special adaptive furniture, and administration of the test at the most beneficial time of the day for the pupil.

Therefore, sections 853.5(b) and (d) provide that all pupils “shall be permitted” the universal tools, as specified; and pupils for whom a need has been identified by an educator or group of educators, or specified in a pupil’s IEP “shall be permitted” designated supports, as specified. However, some of the tools and supports described are not new, by definition, and some are not new for specific subgroups of pupils; and finally, none constitute a new required activity or cost.

Supervised breaks, calculators and other “mathematics manipulatives,” and dictionaries, were required to be permitted under prior law for pupils with disabilities if the resource was identified in the pupil’s IEP or 504 Plan and, therefore, permitting the use of these tools is not new for these pupils.²⁵⁴ Likewise, under prior law, school districts were required to permit pupils with an IEP or Section 504 Plan to use many of these same resources for the STAR tests, pursuant to former section 853.5(c).²⁵⁵ Thus, permitting pupils with an IEP or Section 504 plan to continue to use the same non-embedded designated supports on the CAASPP tests is not new.

Furthermore, as noted above, the regulations define a designated support as a resource that a pupil *regularly uses in the classroom* for instruction and/or assessment(s). Therefore permitting a pupil to use a non-embedded designated support that is already used regularly in the classroom is not new.

Moreover, prior law *allowed* school districts to “provide” certain testing variations for all pupils, including special lighting, special acoustics, noise canceling devices, visual magnifying or audio amplification equipment, an individual carrel or study enclosure, test individually in a separate room, color overlay or mask to maintain visual attention to the test, Manually Coded English or American Sign Language to present directions for administration of the tests.²⁵⁶ To the extent some of these testing variations that schools were allowed to provide under prior law are the same or substantially similar to the universal tools or designated supports that schools are now directed “shall be permitted,” the difference between providing such variations at their discretion, and being required to “permit” tools or supports, may constitute a new requirement.

However, the non-embedded tools now universally required to be permitted as a resource for the use by all pupils taking the CAASPP consist of materials that can be used by a pupil taking the tests, like an English dictionary, scratch paper, thesaurus, color overlay, and math tools. And, the plain language of section 853.5(b) states that “all pupils *shall be permitted* the following non-

²⁵³ California Code of Regulations, title 5, section 850(k) (Register 2014, No. 35).

²⁵⁴ California Code of Regulations, title 5, section 853.5(c), (d), and (e) (Register 2011, No. 15.)

²⁵⁵ Register 2011, No. 15.

²⁵⁶ California Code of Regulations, title 5, section 853.5(b) (Register 2011, No. 15).

embedded tools, but does not require any affirmative action on the part of schools. To “permit” means to “give permission for,” and to “allow, have, let, or tolerate.”²⁵⁷ The language does not require a school district “to provide” these materials, as it does in subdivision (f) for non-embedded accommodations. To “provide” means to “furnish” or “supply.”²⁵⁸ When different words are used as part of the same statutory scheme, the words are presumed to have different meanings.²⁵⁹ Thus, this regulation does not require school districts to incur any new costs to provide, furnish, or supply these materials. Similarly, the amended regulatory section now requires that “[a]ll pupils *shall be permitted* the following non-embedded designated supports when determined for use by an educator or group of educators...” Although the amended section imposes a requirement to permit the use of the support where the prior section authorized school districts to “provide” these supports for pupils that do not have an IEP or Section 504 Plan, *permitting* these non-embedded designated supports does not require a school district to incur any new costs.

This conclusion is further supported by the Smarter Balanced Usability, Accessibility, and Accommodations Guidelines. Appendix C of those guidelines addresses Frequently Asked Questions, and question 14 on page 30, contains the following question: “Are there any supplies that schools need to provide so that universal tools, designated supports, and accommodations can be appropriately implemented?” The response, provided below, states that students can provide these items on their own:

Schools should determine the number of headphones they will provide (for text-to-speech, as well as for the listening test) and other non-embedded universal tools (e.g., thesaurus), designated supports (e.g., bilingual dictionary), and accommodations (e.g., multiplication table) for students. *An alternative is to identify these as items that students will provide on their own.*²⁶⁰

Other non-embedded universal tools identified in section 853.5(b) involve a pupil’s time during the administration of the test; i.e., breaks and pupil marks in paper-pencil test booklet. These resources were authorized to be provided under prior law to all pupils. For example, former section 853.5(a) authorized school districts to allow pupils to write in test booklets and have as much time as needed within a single sitting to complete a test.²⁶¹ Although pupils are now required to be permitted to take breaks and mark up the test booklet, there is no evidence in the law or in the record that this results in any new increased cost for a school district. Similarly, other non-embedded designated supports identified in section 853.5(d) address supports for the administration of the test. For example, pupils are permitted to read aloud provisions of the test, take the test in a separate setting, or at the most beneficial time of the day, if these supports are regularly used by the pupil in the classroom. There is no evidence in the law or in the record that these supports result in any new increased cost for a school district to administer the test when

²⁵⁷ Webster’s II New College Dictionary (1999), page 819.

²⁵⁸ Webster’s II New College Dictionary (1999), page 891.

²⁵⁹ *Craven v. Crout* (1985) 163 Cal.App.3d 779, 783.

²⁶⁰ Exhibit X, The Smarter Balanced Usability, Accessibility, and Accommodations Guidelines, dated August 15, 2015 (emphasis added).

²⁶¹ Register 2011, No. 15.

compared to prior law. As previously stated, the requirement to administer the standardized test is not new, and the grade levels of pupils taking the CAASPP test has decreased when compared to prior law.

Accordingly, the Commission finds that section 853.5(b) and (d), as amended by the test claim regulations, does not require school districts to incur any new costs.

3) Providing non-embedded accommodations when specified in a pupil's IEP or Section 504 plan, in accordance with section 853.5(f), is not a new requirement.

Section 853.5(f), as amended by the test claim regulations, requires the school district “to provide” certain non-embedded accommodations on the CAASPP tests when specified in a pupil’s IEP or Section 504 plan. “Accommodations” means “resources documented in a pupil’s IEP or Section 504 Plan which the pupil regularly uses in the classroom for instruction and/or assessment(s) and that are either utilized in the assessment environment or consist of changes in procedures or materials that increase equitable access during the assessment and that cannot fundamentally alter the comparability of scores.”²⁶² The “accommodations” are non-embedded, meaning they are *not* part of the technology platform for the computer-based CAASPP tests.²⁶³ The accommodations include the following: read aloud for specified tests and subjects; American Sign Language for listening, mathematics, and science; braille for paper-pencil tests; abacus for mathematics and science; alternate response options for reading, writing, listening, and mathematics; calculator for specific mathematics items; multiplication table for mathematics; print on demand; scribe; and speech-to-text or large print version of a paper-pencil test.

The Commission finds that providing accommodations on the CAASPP tests when the accommodation is required by the pupil’s IEP or 504 Plan is not new. Under existing state and federal law, pupils with disabilities are guaranteed the right to receive a free and appropriate public education, including special education and related services that are identified in the pupil’s IEP.²⁶⁴ Federal law, in NCLB, also requires that all students participate in the standardized assessments, and that “the reasonable adaptations and accommodations for students with disabilities ... necessary to measure the academic achievement of such students relative to State academic content and State student academic achievement standards” shall be provided.²⁶⁵ And, under prior state law, former Education Code section 60604 required that individuals with exceptional needs “shall be included in the testing requirement [of the STAR exam]. . . with appropriate accommodations in administration, where necessary. . . .”²⁶⁶

²⁶² California Code of Regulations, title 5, section 850(a).

²⁶³ California Code of Regulations, title 5, section 850(q).

²⁶⁴ 20 United State Code section 1400(d); 34 Code of Federal Regulations, sections 300.340–300.350; Education Code sections 56000, et al.

²⁶⁵ 20 United States Code section 6311(b)(3)(C)(ix).

²⁶⁶ Former Education Code section 60640, as amended by Statutes 2009-2010, 5th Ex. Sess., chapter 2.

Thus, providing a non-embedded accommodation to a pupil with a disability does not require a school district to provide a new resource or cost, when the resource is already required by the pupil's IEP.

Accordingly, the Commission finds that section 853.5(f) does not impose any new requirements or costs on school districts.

4) Submitting a request for approval for an individualized aid pursuant to section 853.5(g) is not a new requirement.

Section 853.5(g), as amended by the test claim regulations, provides that an LEA may submit a request in writing to the CDE prior to the administration of a CAASPP test for approval for the use of an individualized aid. An "individualized aid" is defined in section 850 as "a type of resource that a pupil regularly uses in a classroom for instruction and/or assessment that has not been previously identified as a universal tool, designated support or accommodation."²⁶⁷ The LEA CAASPP coordinator or the CAASPP test site coordinator shall make the request on behalf of the LEA ten days before the pupil's first day of CAASPP testing, and CDE is required to respond within four business days from the date of receipt of the request. The final statement of reasons for these regulations includes CDE's response to a comment received during the regulatory process that the supports enumerated in the regulations are not exhaustive and that there may be supports included in a pupil's IEP or Section 504 Plan that are not listed in the regulation. The commenter suggested that the regulation provide that any testing accommodations listed in an IEP or 504 Plan automatically be provided. CDE rejected this proposal, stating the following:

Reject: It is not possible to develop a comprehensive listing of all the possible testing resources for students with every type of disability for all different tests or test items. Section 853.5(g) provides a mechanism to seek approval for the use of a resource that is included in a pupil's IEP or Section 504 Plan but that is not included in the list of universal tools, designated supports or accommodations in these regulations.²⁶⁸

However, the authorization to request an accommodation that is already provided in the IEP or 504 Plan is not new. Prior law also provided that if a variation was not listed in the regulation, the school district or pupil's IEP team may submit to the CDE for review of the proposed variation.²⁶⁹ A "variation" was defined as "a change in the manner in which a test is presented or administered, or in how a test taker is allowed to respond, and includes, but is not limited to accommodations and modifications."²⁷⁰

Accordingly, the Commission finds that section 853.5(g) does not impose any new requirements or costs on school districts.

5) Section 853.7, as added by Register 2014, No. 35 does not impose any new activities on school districts.

²⁶⁷ California Code of Regulations, title 5, section 850(o) (Register 2014, No. 35).

²⁶⁸ Exhibit X, Final Statement of Reasons for the CAASPP regulations, page 6.

²⁶⁹ Former California Code of Regulations, title 5, section 853.5(f) (Register 2011, No. 15).

²⁷⁰ Former California Code of Regulations, title 5, section 850(x) (Register 2011, No. 15).

Register 2014, No. 35 restated the substance of subdivisions (c) and (d) of section 853.5, describing embedded and non-embedded designated supports, as a new section 853.7, which applies specifically and exclusively to English learner pupils.²⁷¹ Section 853.7 simply continues the requirements of section 853.5, as amended by Register 2014, No. 6, without interruption and therefore no new activities are imposed.

- f) California Code of Regulations, title 5, section 855, as amended by the test claim regulations, describes the timing of the CAASPP tests, and does not impose any new requirements on school districts.

Code of Regulations, section 855, prior to the test claim amendments, provided that the standards-based achievement tests and the primary language test, if applicable, “shall be administered to each pupil 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.” The prior section also provided for makeup days, and made exceptions for multitrack year round schools.²⁷² As amended by Register 2014, No. 6, section 855 provides that for the same testing window for the 2013-2014 CAASPP field test, described below, and for the CST, CMA, and CAPA. Also beginning in the 2014-2015 school year, section 855 provides that the CAASPP testing window “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.” And, section 855 provides that “[f]or grade 11 Smarter Balanced assessments and CAASPP tests administered after January 2015, the testing window shall not begin until at least 80 percent of a school’s annual instructional days have been completed...” And finally, section 855 provides that CDE, with approval of SBE, “may require LEAs to more fully utilize the testing window...”²⁷³

Although section 855 contains some mandatory language (“shall administer” and “shall be administered”), reading the section in context, it does not itself mandate providing the tests. Section 855 describes the timing of the tests, while the requirements to administer or provide the tests, and all other things that administering a statewide assessment entails, are imposed by section 60640 of the Education Code and other provisions of the implementing regulations. Moreover, prior section 855 was also substantially similar: a description of the timing of the various tests required under the STAR program. Therefore, no new requirements or activities are imposed by the amendments to section 855.

- g) California Code of Regulations, title 5, section 859, as amended by the test claim regulations, addresses the security agreement and affidavit for the CAASPP tests, and does not impose any new requirements on school districts.

Prior section 859 of the STAR regulations required all district and test site coordinators to sign a STAR Test Security Agreement before receiving any test materials, and required all test

²⁷¹ Compare California Code of Regulations, title 5, section 853.5 (Register 2014, No. 30) with California Code of Regulations, title 5, section 853.5 (Register 2014, No. 35). See also California Code of Regulations, title 5, section 853.7 (Register 2014, No. 35); Exhibit X, CAASPP Final Statement of Reasons, page 2.

²⁷² See Exhibit X, February Emergency Regulations, page 22.

²⁷³ California Code of Regulations, title 5, section 855 (Register 2014, No. 6).

examiners, proctors, translators, scribes, and any other persons having access to any of the test materials or tests administered pursuant to Education Code section 60640 to acknowledge the limited purpose of their access by signing a STAR Test Security Affidavit.²⁷⁴

As amended by the test claim regulations, section 859 provides similarly with respect to who is required to sign the CAASPP Test Security Agreement and CAASPP Test Security Affidavit; and much of the content of the Agreement and Affidavit is similar to prior law. However, because the CAASPP is administered via computer, the Agreement and Affidavit contain certain provisions more applicable to electronic media than paper tests, for example:

(4) I will limit access to the test(s) and test materials by test examinees to the actual testing periods when they are taking the test(s). I understand that only pupils who are testing and LEA staff participating in the test administration who have signed a test security affidavit may be in the room when and where a test is being administered.

(A) I will keep all assigned, generated, or created usernames, passwords and logins secure and not divulge pupil personal information to anyone other than the pupil to whom the information pertains for the purpose of logging on to the assessment delivery system.

(B) I will not allow anyone other than the assigned pupils to log into their assigned test. I may assist a pupil with using their information to log into their assigned test.

(C) I will not use a pupil's information to log in as a pupil or allow a pupil to log in using another pupil's information.²⁷⁵

These changed provisions of the security agreement and affidavit do not of themselves impose a new activity on local government. The activity required of school districts is to ensure that all coordinators, examiners, translators, proctors, and scribes agree to and sign the security agreement or affidavit, as specified. The changes to the content of the agreement do not alter the scope of the activity required. Therefore, amended section 859 does not impose any new activities on local government.

- h) California Code of Regulations, title 5, section 862, as amended by the test claim regulations, governs the apportionment information report, and does not impose any new requirements on school districts.

Code of Regulations, title 5, section 862, prior to the test claim regulation amendments, provided that each school district shall receive an annual apportionment information report, including the number of pupils enrolled in the district on the first day of testing, the number tested, the number exempted, the number administered any portion of the CSTs of the modified assessment excluding the STAR writing portion of the ELA tests, the number with demographic information only who were not tested for any reason other than a parental exemption, and the number of English language learners who were administered a primary language test. In addition, prior

²⁷⁴ Former California Code of Regulation, title 5, section 859 (Register 2011, No. 15).

²⁷⁵ California Code of Regulation, title 5, section 859(d) (as amended, Register 2014, Nos. 6, 30, and 35).

section 862 stated that to be eligible for apportionment payment for the standards-based achievement tests and the primary language test, school districts must have returned all test materials, and certified the accuracy of the apportionment information report by December 31.²⁷⁶

Amended section 862 clarifies that the apportionment information report shall be *made available* electronically to each LEA (replacing “school district”) *by CDE*, but the information included in the report is essentially the same, except that the report must also include the number of pupils who were administered any portion of the CAASPP using paper and pencil assessments, and the number of pupils administered a diagnostic assessment pursuant to Education Code section 60644. In addition, amended section 862 provides that, to be eligible for apportionment, the LEA must return all test materials (just as before) and the LEA CAASPP coordinator must certify the accuracy of the apportionment information report electronically by December 31. The former section placed this responsibility on the district superintendent and required a postmark by December 31.²⁷⁷

Based on the plain language of this section, very little has changed, and none of it substantively. More importantly, the requirement to “make available” the apportionment information report is directed to CDE, not to local government. And, the requirement of the CAASPP coordinator to certify the report within a certain time, and the requirement to return test materials, are not new requirements, with respect to the school district as an entity of local government. And finally, though the section might be read to require school districts to first report the information listed to the contractor, including, for example the number of pupils administered any portion of the CAASPP test using paper and pencil, the reporting is in fact required by California Code of Regulations, title 5, section 861, as discussed below. Section 862 merely clarifies that the apportionment information report contains “the following information provided to the contractor by the LEA pursuant to sections 853 and 861...”²⁷⁸

- i) California Code of Regulations, title 5, section 863, as amended by the test claim regulations, addresses CAASPP pupil reports and cumulative record labels, and does not impose any new activities on school districts.

Finally, California Code of Regulations, section 863, prior to the test claim regulation amendments, required school districts to forward the STAR Student Reports provided by the contractor to the pupil’s parent or guardian no more than 20 working days from receipt from the contractor. If the school district received the reports from the contractor after the last day of instruction, it was required to forward the scores to parents within the first 20 working days of the next school year. And, prior section 863 held schools “responsible for affixing cumulative record labels reporting each pupil’s scores to the pupil’s permanent school records or for entering the scores into electronic pupil records...” and forwarding those records if pupils transferred.²⁷⁹

Amended section 863 changes “school district” to “LEA,” and requires an LEA to “forward or transmit pupil results for the tests conducted pursuant to Education Code section 60640 to each

²⁷⁶ See Exhibit X, February Emergency Regulations, pages 37-38.

²⁷⁷ California Code of Regulations, title 5, section 862 (Register 2014, No. 6.).

²⁷⁸ California Code of Regulations, title 5, section 862 (Register 2014, No. 6.).

²⁷⁹ See Exhibit X, February Emergency Regulations, page 40.

pupil's parent or guardian within 20 working days, and states that schools are responsible for "maintaining pupil's scores with the pupil's permanent school records..." and "forwarding or transmitting" the results to schools to which pupils matriculate or transfer.²⁸⁰ These are clarifying and consistency changes, and do not alter the scope of activities required of the schools and school districts. Therefore, there are no new required activities imposed by this amended section.

B. Education Code Section 60640 and Sections 852, 853, 857, 858, 861, and 864 of the Title 5 Regulations, as Amended by the Test Claim Statutes and Regulations, Require School Districts to Perform Some New Activities That Were Not Required Under Prior Law.

1. Education Code section 60640, as amended by Statutes 2013, chapter 489, beginning January 1, 2014, and interpreted in light of the implementing regulations imposes a new requirement to administer the CAASPP assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology requirements.

Section 60640, as amended by the test claim statutes, replaces the STAR exam with CAASPP, beginning in the 2013-2014 school year. The statute replaces the former CSTs required for grades 2 to 11, inclusive, in English language arts and mathematics with the Smarter Balanced summative assessments for grades 3 to 8 and grade 11, which are designed to be administered on computer, and to be adaptive to student responses. Grades 2, 9, and 10 are no longer required to take the annual assessments previously required,²⁸¹ and the California Modified Assessment is no longer necessary with the appropriate "universal tools" and "designated supports" available within the computer adaptive Smarter Balanced tests.²⁸² Therefore, pursuant to section 60640, as amended, only the following tests are now required:

- A consortium summative assessment in English language arts and mathematics for grades 3-8 and 11, aligned with the Common Core State Standards;
- Science grade level assessments in grades 5, 8, and 10, aligned with standards adopted by SBE, until a successor assessment is implemented on the Superintendent's recommendation;
- The California Alternate Performance Assessment (CAPA) in grades 2 to 11, inclusive, for pupils with significant cognitive disabilities who are unable to take the other tests, in English language arts and mathematics, and the CAPA for science in grades 5, 8, and 10, which measures content standards adopted pursuant to Section 60605 until a successor assessment is implemented; and
- The Early Assessment Program established by Chapter 6 (commencing with Section 99300).

²⁸⁰ California Code of Regulations, title 5, section 863 (Register 2014, No. 6.).

²⁸¹ Assembly Third Reading, AB 484, as amended May 24, 2013.

²⁸² See Exhibit X, CMA Pilot Test, California Department of Education.

School districts are authorized, but not required, to administer a primary language assessment aligned to the English language arts standards adopted pursuant to Section 60605 to pupils who are identified as limited English proficient and enrolled in any of grades 2 to 11, inclusive, until a subsequent primary language assessment aligned to the common core standards in English language arts is developed.²⁸³ A school district may also “administer achievement tests in grades other than those required by this section as it deems appropriate.”²⁸⁴

For the 2013-2014 school year, the summative assessments in English language arts and mathematics “shall be a field test only,” meaning that the results will not be used for state and federal accountability purposes.²⁸⁵ The field test is intended to “enable the consortium to gauge the validity and reliability of these assessments and to conduct all necessary psychometric procedures and studies, including, but not necessarily limited to, achievement standard setting, and to allow the department to conduct studies regarding full implementation of the assessment system.” The full administration of the CAASPP test began in Spring 2015.²⁸⁶

Section 60640(f) requires each LEA, “[f]rom the funds available for that purpose,” to “administer assessments to each of its pupils pursuant to subdivision (b),”²⁸⁷ except that recently arrived English learner pupils are exempted from taking the assessment in English language arts.²⁸⁸ For the 2013-2014 school year, each LEA is required to administer the field test in a manner described by the CDE in consultation with the president or executive director of the state board. “Funds for this purpose shall be utilized to allow for maximum participation in the field test across the state.”²⁸⁹ “As feasible, the CAASPP field tests shall be conducted in a manner that will minimize the testing burden on individual schools...” and shall not produce individual pupil scores unless it is determined that these scores are valid and reliable.²⁹⁰

Pursuant to NCLB, individuals with exceptional needs shall be included in the testing requirements of subdivision (b) with appropriate accommodations in administration, where necessary, and the individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.²⁹¹

And finally, section 60640(n) provides that “[a]s a condition to receiving an apportionment pursuant to subdivision (l), a local educational agency shall report to the Superintendent all of the following:

²⁸³ Education Code section 60640(b) (Stats. 2013, ch. 489; Stats. 2014, ch. 32).

²⁸⁴ Education Code section 60640(i) (Stats. 2013, ch. 489; Stats. 2014, ch. 32).

²⁸⁵ Education Code section 60640(b) (Stats. 2013, ch. 489; Stats. 2014, ch. 32).

²⁸⁶ Exhibit X, Field Test – Smarter Balanced Assessment Consortium; Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 12.

²⁸⁷ Education Code section 60640(f)(1) (Stats. 2013, ch. 489).

²⁸⁸ Education Code section 60640(b)(5) (Stats. 2013, ch. 489).

²⁸⁹ Education Code section 60640(f)(2) (Stats. 2013, ch. 489).

²⁹⁰ Education Code section 60640(h) (Stats. 2013, ch. 489; Stats. 2014, ch. 32).

²⁹¹ Education Code section 60640(k) (Stats. 2013, ch. 489).

- (1) The pupils enrolled in the local educational agency in the grades in which assessments were administered pursuant to subdivisions (b) and (c).
- (2) The pupils to whom an achievement test was administered pursuant to subdivisions (b) and (c) in the local educational agency.
- (3) The pupils in paragraph (1) who were exempted from the test pursuant to this section.”²⁹²

- a) Many of the plain-language requirements in section 60640, as amended by the test claim statutes, are not new, or require a lower level of service when compared to prior law.

Many of the requirements in section 60640, as amended by the test claim statutes, are not new or require a lower level of service when compared to prior law. For example, the requirement *to administer a statewide assessment* pursuant to section 60640(b), (f), (g), and (k) is no different from that under prior law. Former section 60640(b) provided: “From the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 2 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5.”²⁹³ Section 60642.5, in turn, required the Superintendent to develop an assessment, “to be called the California Standards Tests,” which included “reading, spelling, written expression, and mathematics” for pupils in grades 2 to 8, and “reading, writing, mathematics, history-social science, and science” for pupils in grades 9 to 11.²⁹⁴ Amended section 60640(f) requires that “[f]rom the funds available for that purpose, each local agency shall administer assessments to each of its pupils pursuant to subdivision (b).” Amended section 60640(b) provides for the assessments to include “[a] consortium summative assessment in English language arts and mathematics for grades 3 to 8, inclusive, and grade 11...” and “[s]cience grade level assessments in grades 5, 8, and 10...” Therefore, the subject matter of the assessments under the prior law is substantively the same as under CAASPP, but because pupils in grades 2, 9, and 10 are no longer required to participate in the English and mathematics assessments, the number of pupils required to be assessed under sections 60640(f) and 60640(b) is fewer than that required under former sections 60640 and 60642.5.

Moreover, section 60640(b)(1)(B) explains that “[i]n the 2013-14 school year, the consortium summative assessment in English language arts and mathematics *shall be a field test only*, to enable the consortium to gauge the validity and reliability of these assessments... and to allow the department to conduct studies regarding full implementation of the assessment system.” The field test is not intended to include all of the otherwise-applicable components of the assessments, and indeed the field test was implemented in that manner. In the CDE report to the State Board and the Legislature, it is clear that students in grade 11 were not required to participate in the field test, and many students only participated in either the computer-based test

²⁹² Education Code section 60640(n) (Stats. 2013, ch. 489; Stats. 2014, ch. 32).

²⁹³ Former Education Code section 60640(b) (Stats. 2009-2010, 5th Ex. Sess., ch. 2).

²⁹⁴ Education Code section 60642.5 (Stats. 2008, ch. 752); See also, former Education Code section 60603 (Stats. 2004, ch. 233).

or the performance task, but not both.²⁹⁵ In addition, school districts were not required to report the results of the field test, either to parents, or for state and federal accountability purposes.²⁹⁶ Therefore, the requirements of section 60640 for the 2013-2014 school year to administer the field test assessments to all eligible pupils are a lower level of service, and not new, *except with respect* to the use of computers, as discussed below.

As indicated above, school districts have long been required to administer standardized assessments to pupils under the STAR program and, thus, the requirement to administer assessments is not new. In addition, prior law required pupils with disabilities to be included in statewide testing; that requirement in section 60640(k) is not new.²⁹⁷

And finally, section 60640(n) provides that “[a]s a condition to receiving an apportionment pursuant to subdivision (l), a local educational agency shall report to the Superintendent all of the following:

- (1) The pupils enrolled in the local educational agency in the grades in which assessments were administered pursuant to subdivisions (b) and (c).
- (2) The pupils to whom an achievement test was administered pursuant to subdivisions (b) and (c) in the local educational agency.
- (3) The pupils in paragraph (1) who were exempted from the test pursuant to this section.”²⁹⁸

This requirement was added to section 60640 by Statutes 2009-2010, 5th Extraordinary Session, chapter 2 (SB 1), and is therefore not new.

Based on the foregoing, there is very little in the plain language of amended section 60640 that imposes any new requirements or activities, and indeed some of the prior requirements have been reduced or eliminated.

- b) A new requirement is imposed, however, 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.

Notwithstanding the findings above, that the majority of section 60640 does not impose any new requirements on school districts, there is a new requirement inherent in the administration of the new CAASPP tests via computer, which is best understood when interpreted in light of sections 850, 853, and 853.5 of the implementing regulations. These regulations elucidate the essential

²⁹⁵ Education Code section 60640(f)(2) (Stats. 2013, ch. 489); Education Code section 60603 (Stats. 2013, ch. 489). See also, Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, pages 16; 41.

²⁹⁶ Exhibit X, Smarter Balanced Field Test Questions and Answers, page 1.

²⁹⁷ Compare Former Education Code section 60640(e) (as amended, Stats. 2009-2010, 5th Ex. Sess., ch. 2) with Education Code section 60640(k) (as amended, Stats. 2013, ch. 489).

²⁹⁸ Education Code section 60640(n) (Stats. 2014, ch. 32).

nature of the CAASPP tests as a battery of computer-based assessments, which section 857 expressly makes an ongoing requirement.²⁹⁹

Section 60640(f)(1) states: “From the funds available for that purpose, each local educational agency shall administer the assessments to each of its pupils pursuant to subdivision (b).”

Section 60640(b) states that beginning in the 2013-2014 school year, the CAASPP shall include “[a] consortium summative assessment in English language arts and mathematics for grades 3 to 8 and grade 11...” and “[s]cience grade level assessments in grades 5, 8, and 10 that measure content standards pursuant to Section 60605, until a successor assessment is implemented...”

And, section 60640(b) provides that “[i]n the 2013–14 school year, the consortium summative assessment in English language arts and mathematics shall be a field test only, to enable the consortium to gauge the validity and reliability of these assessments and to conduct all necessary psychometric procedures and studies...”³⁰⁰ As discussed above, the elements of the consortium summative assessment, and the grade levels tested in particular subjects, represent a lower level of service than under prior law, based only on the number and frequency of subject matter tests required.

However, the Assembly Appropriations Committee analysis states:

The consortium assessments are vastly different than the current STAR assessments. For example, these assessments are designed to be online and computer adaptive as opposed to the paper - and - pencil STAR assessments currently administered to pupils.³⁰¹

Additionally, the definitions found in section 60603 and California Code of Regulations, title 5, section 850, demonstrate the Legislature’s intent that the new assessments are to be computer-based. Education Code section 60603(d-e), as amended by Statutes 2013, chapter 489, provides that: “‘Computer-adaptive assessment’ means a computer-based test that utilizes a computer program to adjust the difficulty of test items through a testing session based on a test taker’s responses to previous test items during that testing session”; and, “‘Computer-based assessment’ means a test administered using an electronic computing device.”³⁰² Moreover, section 853 of the title 5 regulations, as amended by Register 2014, No. 35, states the following: “The primary mode of administration of a CAASPP test shall be via a computing device, the use of an assessment technology platform, and the adaptive engine.”³⁰³ Section 850(e), in turn defines an “assessment technology platform” as follows:

²⁹⁹ California Code of Regulations, title 5, section 850, 853, 853.5, and 857 are evaluated independently elsewhere in this analysis; these sections are discussed here only to the extent that they help to elucidate the requirements of section 60640 with respect to the acquisition and ongoing maintenance of adequate minimum technology requirements to administer the CAASPP.

³⁰⁰ Education Code section 60640(b) (Stats. 2013, ch. 489).

³⁰¹ Exhibit X, AB 484, Appropriations Committee Analysis, page 1.

³⁰² See also, California Code of Regulations, title 5, section 850(i) (definition originally added by Register 2014, No. 6).

³⁰³ California Code of Regulations, title 5, section 853(b) (Register 2014, No. 35).

...the electronic systems used to display items, accept item responses, store, deliver, score the tests and restrict access to outside sources, as well as report and manage assessment results. Assessment technology includes, but is not limited to, computing devices, testing software applications, network hardware, and other technology required to administer the tests.³⁰⁴

Moreover, section 853.5 of the regulations requires that English learners and all pupils with disabilities be provided “embedded” tools on the CAASPP tests for English language arts and mathematics, and while those requirements are specifically denied above because they are built into the software of the computer-based assessments, and not required of the local government, the phrase “embedded tools” is important in the interpretation of what is required to provide the technology necessary for the CAASPP. Section 850(l) of the regulations defines “embedded” to mean “a resource, whether a universal tool, designated support, or accommodation, *that is part of the assessment technology platform* for the computer-based CAASPP tests.”³⁰⁵ Thus, the CAASPP test includes embedded tools, which are built into the testing technology. These embedded tools are necessary because, as discussed above, the CAASPP is intended to be adaptive to the needs of students who would formerly have been assessed using the CMA.³⁰⁶

And finally, the LEA CAASPP coordinator is required by section 857 of the regulations to “ensure current and ongoing compliance with the minimum technology specifications as identified by the CAASPP contractors.”³⁰⁷ This ongoing duty not only aids in understanding the requirements of the test claim statute, but it also expressly requires continuing activity and expenditures for school districts. In addition to the likely inevitable, but intermittent, replacement of testing devices and hardware, the Smarter Balanced Assessment Consortium has also published a projected schedule of the “End-of Support Date[s]” for various operating systems. For example, “Mac OS 10.5” and “Windows Vista” are two common operating systems that SBAC expects to cease supporting after the 2016-2017 school year, and newer operating system software will be required at that time.³⁰⁸ Thus, not only do section 857 and Education Code section 60640, require replacing or upgrading testing devices and hardware, but a certain degree of obsolescence for various software, including the underlying operating systems, is also planned.

School districts were not required under prior law to provide computers and adequate technology necessary to administer standardized assessments under the STAR program. Thus, beginning January 1, 2014, the requirement to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” to administer the CAASPP test on computers, is new. Based on the committee analysis noted above, and the definitions in Education Code section 60603 and California Code of Regulations, title 5, section 850, an interpreted in light of references made in California Code of Regulations, title 5, sections 853, 853.5, and 857 to

³⁰⁴ California Code of Regulations, title 5, section 850(f) (Register 2014, No. 35).

³⁰⁵ California Code of Regulations, title 5, section 850(m) (Register 2014, No. 35).

³⁰⁶ See Exhibit X, CMA Pilot Test, California Department of Education.

³⁰⁷ California Code of Regulations, title 5, section 857 (Register 2014, No. 6).

³⁰⁸ Exhibit X, Smarter Balanced Technology Strategy Framework and Testing Device Requirements, page 26.

computer and technology requirements, the CAASPP program imposes new requirements to acquire and maintain adequate “minimum technology” to administer the assessments via computer.³⁰⁹

Finance argues, however, that the plain language of sections 60640(e) and (f) demonstrates the Legislature’s intent that statewide testing under CAASPP was not meant to impose a reimbursable state mandate, and does not impose any new requirements for the first three years.³¹⁰ Section 60640(e) provides as follows:

The Superintendent shall make available a paper and pencil version of any computer-based CAASPP assessment for use by pupils who are unable to access the computer-based version of the assessment for a maximum of three years after a new operational test is first administered.³¹¹

Finance reasons that “[t]hese statutes established the CAASPP system to eventually be administered exclusively on computers...[however]...[d]uring this three year period, including from January 1, 2014 to June 30, 2014, administering the CAASPP on computers is optional.”³¹² In addition, and relatedly, Finance further argues that section 60640(f) expresses a “clear intent that local educational agencies are not required to bear the financial burden of immediately implementing the CAASPP on computers before state funding is specifically provided...”³¹³

The Commission disagrees with Finance’s interpretation. Interpreting the statutes as a whole, the Commission finds, as explained below, that the three year “grace period” is intended to be the rare exception, not to undermine the state requirement to administer the test via computer; and that the language “from the funds available” in subdivision (f) does not undermine the state’s requirement that all LEAs comply with CAASPP in time for the 2013-2014 field test (i.e., beginning January 1, 2014).

The plain language of section 60640(e) requires the Superintendent to assist schools that are not able to administer the CAASPP to all pupils by providing a paper and pencil version of the test. Therefore, a district that is not able to fully implement the computer-based CAASPP tests within the first one to three years will not be entirely out of compliance with the law. However, the regulations make clear that the paper and pencil version of the CAASPP is not the required method: section 853 states expressly that “[t]he primary mode of administration of a CAASPP test *shall be via a computing device...*” In addition, section 853 provides that LEAs may make use of the paper and pencil version of the CAASPP “*if the LEA identifies the pupils that are*

³⁰⁹ California Code of Regulations, title 5, sections 853, 853.5, and 857 are analyzed below on their merits, to the extent that the plain language of each imposes some new activities; the analysis here relies on these sections only to the extent that they provide context for the imperative nature of Education Code section 60640, and demonstrate that the Legislature intended for technology requirements to be ongoing.

³¹⁰ Exhibit K, Finance’s Comments on the Draft Proposed Decision on 14-TC-01, page 1.

³¹¹ Education Code section 60640(e) (Stats. 2013, ch. 489; Stats. 2014, ch. 32).

³¹² Exhibit K, Finance’s Comments on the Draft Proposed Decision on 14-TC-01, page 1.

³¹³ Exhibit K, Finance’s Comments on the Draft Proposed Decision on 14-TC-01, page 1.

unable to access the CBA version of the test.”³¹⁴ These provisions make clear that school districts are required to implement the computer-based assessments broadly, and expediently. Moreover, section 851 requires LEAs to make arrangements for the CAASPP testing for *all pupils*, as follows:

LEAs shall make arrangements for the testing of all eligible pupils in alternative education programs or programs conducted off campus, including, but not limited to, non-classroom based programs, continuation schools, independent study, community day schools, county community schools, juvenile court schools, or NPSs.³¹⁵

And finally, because the underlying purpose of the CAASPP is that the test should be adaptive to student responses, and thus require less time and provide more accurate assessment, Finance’s presumption that the paper and pencil version of the test could suffice undermines the entire program. In other words, a paper and pencil version of the CAASPP is not the CAASPP, because it is not adaptive, and not computer-based.³¹⁶ Therefore, the Commission finds that the three year “grace period” provided in section 60640(e) cannot be interpreted to delay the operative date of the state requirement, or otherwise provide for a gradual implementation of the Legislature’s intent. Rather, the paper and pencil version of the assessments is intended to be a rare exception, utilized only for a small number of students, as *identified by the LEA*, who are unable to access the computer-based version of the test.

Finance also argues that the phrase “from the funds available for that purpose” should be interpreted to limit section 60640 to require the Commission to find that the activities are required only *when and to the extent* funding is provided. And indeed, the Commission has previously found language referencing available funds to constitute a conditional statement affecting whether certain statutory duties were in fact mandated. In *Williams Case Implementation I, II, and III*, (05-TC-04, 07-TC-06, 08-TC-01), for example, the Commission found that all of the new requirements of Education Code section 1240, as amended from 2004 to 2007, were required only, based on the plain language, “*to the extent that funds are appropriated for purposes of this paragraph.*”³¹⁷ Similarly, the Commission found that the phrase “*to the extent possible and with funds provided for that purpose...*” as used in section 44258.9 “means that the activities provided for are mandated insofar as funds are provided, and

³¹⁴ California Code of Regulations, title 5, section 853 (Register 2014, No. 35) [emphasis added].

³¹⁵ California Code of Regulations, title 5, section 851 (Register 2014, No. 35) [emphasis added].

³¹⁶ See also, Exhibit X, Assembly Floor Analysis, AB 484 [“[T]hese assessments are designed to be online and computer adaptive as opposed to the paper - and - pencil STAR assessments currently administered to pupils.”].

³¹⁷ Statement of Decision, *Williams Case Implementation I, II, and III*, 05-TC-04; 07-TC-06; 08-TC-01, Adopted December 7, 2012, page 29 [discussing Education Code section 1240(c)(2), as amended by Stats. 2004, ch. 900 § 1; Stats. 2005, ch.118 § 1; Stats. 2006, ch. 704 § 1; Stats. 2007, ch. 526 § 1].

only mandated to the extent that the activities are capable of completion with the funds provided.”³¹⁸

But here, the Legislature chose a different phrase. The phrase “from the funds available for that purpose,” when interpreted with section 862.5 of the implementing regulations, does not limit the activities required by the state. Rather, this phrase directs the use of offsetting revenues appropriated by the state for this program, which will be further analyzed below in Section F of this decision addressing the issue of costs mandated by the state.

This interpretation is also consistent with how the Commission has historically interpreted the phrase in prior *STAR* test claims. The phrase “from funds available for that purpose” has been included in section 60640 from 1997 to the present.³¹⁹ The Commission found in *STAR*, 97-TC-23, that Education code section 60640, as amended by Statutes 1997, chapter 828, imposed a reimbursable state mandate for school districts and county offices of education to administer “the achievement test designated by the State Board of Education pursuant to Section 60642” despite the existence of the phrase “[c]ommencing in the 1997-98 fiscal year...and from the funds available for that purpose...”³²⁰ In the reconsideration of *STAR*, 04-RL-9723-01, the Commission restated its determination that only the achievement test designated by the SBE pursuant to section 60642 was reimbursable; however, the Commission did not consider that the language “from the funds available for that purpose...” in Education Code section 60640 should limit the required activities.³²¹ The Commission’s decision on *STAR II and III* addressed former section 60640, as amended by Statutes 2003, chapter 773, which begins: “Commencing in the 2004–05 fiscal year and each fiscal year thereafter, and from the funds available for that purpose...” The Commission found that the amended section “reduces existing requirements” because certain grade-levels were exempted from testing beginning in the 2004-2005 school year; but the Commission *did not* make findings that “from the funds available for that purpose...” should limit the required activities to the extent of funding available. Rather, the Commission, in these prior test claims, interpreted the language as identifying offsetting revenue provided by the state for the *STAR* program.

Based on the foregoing, the Commission finds that Education Code section 60640, as amended by Statutes 2013, chapter 489, beginning January 1, 2014, and interpreted in light of the

³¹⁸ Statement of Decision, *Williams Case Implementation I, II, and III*, 05-TC-04; 07-TC-06; 08-TC-01, Adopted December 7, 2012, page 41 [discussing Education Code section 44258.9, as amended by Stats. 2004, ch. 902 § 3; Stats. 2005, ch. 118 § 9].

³¹⁹ Former Education Code section 60640 was added by Statutes 1997, chapter 828; amended by Statutes 1998, chapter 485; Statutes 1998, chapter 330; Statutes 1999, chapter 78; Statutes 1999, chapter 83; Statutes 1999, chapter 735; Statutes 2000, chapter 576; Statutes 2001, chapter 20; Statutes 2002, chapter 492; and Statutes 2003, chapter 773, section 4. Current section 60640 was first added by Statutes 2003, chapter 773, section 5, and amended by Statutes 2004, chapter 183; statutes 2004, chapter 233; Statutes 2005, chapter 676; Statutes 2007, chapter 174; Statutes 2007, chapter 730; Statutes 2008, chapter 757; Statutes 2009-2010, 5th Extraordinary Session, chapter 2; Statutes 2013, chapter 489; and Statutes 2014, chapter 32.

³²⁰ Former Education Code section 60640(b) (Stats. 1997, ch. 828).

³²¹ Former Education Code section 60640(b) (Stats. 2001, ch. 20).

implementing regulations, including California Code of Regulations, title 5, sections 850, 853, 853.5, and 857, imposes a new requirement 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.

2. California Code of Regulations, title 5, section 852, as amended by Register 2014, No. 6, imposes a new requirement on school districts to provide an annual parental notification of CAASPP testing containing information about the test and information on the right to request an exemption from testing for their child.

Under existing law, Education Code section 60615 requires a school district to grant a written request by a parent or guardian to excuse his or her pupil from any or all parts of the assessments. Prior section 852 of the regulations stated that a parent or guardian “may submit to the school a written request to excuse his or her child from any or all parts of any test provided...” under the STAR program, and that “[a] school district and its employees may discuss the STAR Program with parents and may inform parents of the availability of exemptions under Education Code section 60615.” However, the school district was forbidden to “solicit or encourage any written exemption request...”³²² These provisions have remained, with clarifying changes, including clarification that an exemption request must be renewed annually.³²³ And, section 852(c) continues to provide, as before, that school district employees may discuss the testing with parents and inform them of the exemption, but may not solicit or encourage any written exemption request on behalf of any child or group of children.³²⁴ These provisions, now applicable to CAASPP, are not new, and the small consistency or clarifying changes do not impose new required activities.

However, as amended by the test claim regulations, section 852 now also requires school districts to *notify parents each year* of their pupil’s participation in the CAASPP testing, and that notification must include “a notice of the provisions outlined in Education Code section 60615.”³²⁵ Section 60615, in turn, states, in its entirety: “Notwithstanding any other provision of law, a parent’s or guardian’s written request to school officials to excuse his or her child from any or all parts of the assessments administered pursuant to this chapter shall be granted.”³²⁶ Therefore, although parents were already permitted under the Education Code to request an exemption, school districts are now required to inform them of the availability of the exemption, and to do so each year that the pupil is participating in the CAASPP testing.

Therefore, based on the foregoing, the Commission finds that California Code of Regulations, title 5, section 852, as amended, requires school districts, beginning February 3, 2014, to notify

³²² See Exhibit X, February Emergency Regulations, page 12.

³²³ And, in keeping with the amendments made elsewhere in the regulations and the statutes, “STAR Program” is now “CAASPP assessment system,” and “school district” is now “LEA.”

³²⁴ Exhibit X, February Emergency Regulations, page 12.

³²⁵ California Code of Regulations, title 5, section 852(a-b).

³²⁶ Education Code section 60615 (Stats. 1995, ch. 975).

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

3. California Code of Regulations, title 5, section 853, as amended by Register 2014, Nos. 6, 30, and 35, imposes a new requirement on school districts to score and transmit the CAASPP tests in accordance with the manuals or other instructions provided by the contractor or CDE, and to identify pupils, if applicable, who are unable to access the computer-based version of the test.

Prior to the test claim regulations, former section 853 provided that the STAR tests shall be administered and returned by school districts in accordance with the manuals or other instructions provided by the contractor, including instructions for administering the test with variations, accommodations, and modifications. As amended by Register 2014, No. 6, effective February 3, 2014, the section now refers to "CAASPP tests pursuant to Education Code section 60640...", and requires that they be "administered, scored, transmitted, and/or returned" by "LEAs" (replacing "school districts") in accordance with the instructions provided by the contractor "or CDE." The amended section also provides, as discussed above, that "[i]f available, an LEA may utilize a paper-pencil version of any [computer based test (CBT)] of the CAASPP assessment system... if the LEA identifies the pupils that are unable to access the CBT version of the test." And, the amended section provides that interim assessments and "formative assessment tools" shall be made available for school districts, and that use of interim assessments and formative assessment tools "shall not be considered advance preparation for a CAASPP test..."³²⁷ As further amended by Register 2014, No. 35, effective August 27, 2014, section 853 more explicitly provides that the "primary mode of administration of a CAASPP test shall be via a computing device, the use of an assessment technology platform, and the adaptive engine."³²⁸

As discussed above, Education Code section 60640 already required school districts, beginning January 1, 2014, to administer the CAASPP tests via computer. And section 60640(e) requires the Superintendent to make available a paper and pencil version of any computer-based CAASPP assessment for pupils who are unable to access the computer-based version, for up to three years. The amended section 60640 has an effective date of January 1, 2014, while California Code of Regulations, title 5, section 853 was amended effective February 3, 2014, and again effective August 27, 2014.³²⁹ Therefore, the provisions of section 853, which state that the primary mode of administration of the CAASPP shall be via a computing device, but that a school district may utilize a paper and pencil version of "any CBT of the CAASPP assessment system," are clarifying changes, and do not impose any new activities on local school districts.

In addition, provisions of section 853 describing the availability of interim assessments and formative assessments tools do not contain any mandatory or directory language requiring school districts to use these assessments or tools.

³²⁷ California Code of Regulations, title 5, section 853 (Register 2014, No. 6).

³²⁸ California Code of Regulations, title 5, section 853 (Register 2014, No. 35).

³²⁹ Register 2014, Nos. 6, 30, and 35.

However, section 853 does impose new requirements on school districts to score and transmit the tests in accordance with manuals and instructions provided by the contractor or CDE. The prior regulation did not require school districts to score and transmit the tests to the contractor or CDE, and because all tests were given with paper and pencil, a lack of computer access for some pupils was not an issue.

Based on the foregoing, the Commission finds that California Code of Regulations, title 5, section 853 requires school districts, beginning February 3, 2014, to score and transmit the CAASPP tests in accordance with manuals or other instructions provided by the contractor or CDE.

- 4. California Code of Regulations, title 5, section 857, as amended by Register 2014, Nos. 6 and 35, imposes new requirements on the school district and LEA CAASPP coordinator to identify pupils unable to access the computer-based version of the CAASPP tests; report to the CAASPP contractor the number of pupils unable to access the computer-based version of the test; and to ensure current and ongoing compliance with the minimum technology specifications required for the new computer based assessment.**

Prior to the test claim regulations, section 857 provided that on or before September 30 of the school year, the superintendent of each school district shall designate a “district STAR coordinator,” who, according to the prior section “shall be available through August 15 of the following school year to complete school district testing.” The district STAR coordinator’s responsibilities “shall include, but not be limited to...” responding to correspondence and inquiries from the testing contractor and CDE; determining school district and test site needs; ensuring delivery of tests and test materials; coordinating makeup tests; maintaining security over the tests; overseeing the administration of the tests, and the collection and return of all test materials; assisting the contractor and CDE in resolving any discrepancies; notifying CDE of any security breaches or testing irregularities; ensuring that an answer document is submitted for each pupil; and reviewing files and reports from the contractor for accuracy and completeness.³³⁰

Section 857, as amended by the test claim regulations, is not substantially different from prior law with respect to the STAR program. For example, the activities in section 857(b) of designating an LEA CAASPP coordinator, to be available through September 30 of the following school year to complete testing activities, to notify the contractor of the identity and contact information for the LEA coordinator and superintendent, and to serve as the LEA representative and liaison between the LEA and the contractor and between the LEA and CDE for all matters relating to CAASPP, are not new. And, section 857(e) requires the district’s CAASPP coordinator to ensure the training of test site coordinators who will oversee the test administration at each school site.³³¹ Although the Commission recognizes that the training required to administer the CAASPP is likely new, the requirement for the coordinator to

³³⁰ California Code of Regulations, title 5, section 857 (Register 2011, No. 15).

³³¹ Former California Code of Regulations, section 857(b)(12) (Register 2011, No. 15.)

“ensure” training is no different than under prior law.³³² These activities are identical to those imposed by former section 857 on the district STAR coordinator under prior law.³³³

In addition, section 857(c) provides that the responsibilities of the coordinator “shall be those defined in the contractor’s(s’) or consortium’s administrative manuals and documentation...” including overseeing the LEA’s preparation, registration, coordination, training, assessment technology, administration, security, and reporting of the CAASPP tests. Though the description of the LEA coordinator’s responsibilities is abbreviated in the amended section 857(c), preparation, coordination, administration, security, and reporting are all terms that generally describe the same responsibilities held by the district STAR coordinator that were described in somewhat greater detail under prior law. The Commission finds that these activities are not new.

However, section 857, as amended by the test claim regulations does include certain requirements that are entirely new, as compared to prior law. Section 857(a) requires the superintendent of each school district to identify pupils unable to access the computer-based version of the CAASPP tests; and to report to the CAASPP contractor the number of pupils unable to access the computer-based version of the test.³³⁴ These requirements were not imposed by prior law and are new.

In addition, section 857(c) and (d) requires that the CAASPP coordinator be responsible for assessment technology, and “shall ensure current and ongoing compliance with the minimum

³³² As indicated above, the Legislature recognized that the “consortium assessments are vastly different than the current STAR assessments,” since the assessments are designed to be online and computer adaptive as opposed to the paper-and-pencil STAR assessments formerly administered to pupils (Exhibit X, Assembly Appropriations Committee analysis.) In addition, the Smarter Balanced Test Administration Manual states that:

Test Administrators (and any other individuals who will be administering any secure Smarter Balanced assessment) will 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. (Exhibit X, Online Test Administration Manual Excerpt, page 9.)

The Online Test Administration Manual for 2015 runs to nearly 100 pages of instruction, while the Test Administrator Reference Guide holds another 90 pages of required reading. In addition, the training modules currently available include a number of archived “webcast” videos and audio-video slide presentations that require several hours to view in full. (Exhibit X. <http://www.caaspp.org/training/sbft/index.html>, accessed October 5, 2015.)

However, even though the content of the training may be different, the plain language requirement of section 857 is for the CAASPP coordinator to ensure the training of CAASPP test site coordinators. To the extent the training itself results in increased costs, those issues can be best addressed as a reasonably necessary activity at the parameters and guidelines stage of this claim.

³³³ Register 2011, No. 15.

³³⁴ California Code of Regulations, title 5, section 857(a) (Register 2014, No. 6).

technology specifications as identified by the CAASPP contractor(s) or consortium.” These activities are newly required.

Accordingly, the Commission finds that California Code of Regulations, title 5, section 857, as amended by Register 2014, Nos. 6 and 35, beginning February 3, 2014, imposes new requirements on school district superintendents to identify pupils unable to access the computer-based version of the CAASPP tests; and to report to the CAASPP contractor the number of pupils unable to access the computer-based version of the test. The regulation also requires the LEA CAASPP coordinator to be responsible for assessment technology, and “ensure current and ongoing compliance with the minimum technology specifications as identified by the CAASPP contractor(s) or consortium.”

5. California Code of Regulations, title 5, section 858, as amended by Register 2014, Nos. 6 and 35 imposes new requirements on school district CAASPP test site coordinators to be responsible for ensuring that all designated supports, accommodations, and individualized aids are entered into the registration system.

Under prior law section 858 of the STAR regulations provided that at each test site, the superintendent or the district STAR coordinator shall designate a STAR test site coordinator, who is required to be available through August 15 of the following school year to resolve “discrepancies or inconsistencies in materials or errors in reports.”³³⁵ In addition, former section 858 provided that a STAR test site coordinator’s duties shall include determining test site material needs and communicating to the district STAR coordinator; overseeing the acquisition and distribution of tests and test materials; cooperating with the district STAR coordinator to provide testing days and makeup days within required time periods; maintaining security over the tests and test data; signing the security agreement set forth in section 859; arranging for and overseeing the administration of the tests and the collection and return of all test materials; assisting the district STAR coordinator, the contractor, and CDE in the resolution of discrepancies; overseeing the collection of pupil data required by sections 861 and 862; ensuring that an answer document, and only one answer document, is submitted for each eligible pupil; notifying the STAR district coordinator of any security breaches or testing irregularities; and training test examiners, translators, proctors, and scribes.³³⁶

Section 858(a) as amended by the test claim regulations, similarly provides that the CAASPP coordinator shall designate a test site coordinator to be available to the CAASPP coordinator by telephone through September 30 of the following school year for purposes of resolving discrepancies or inconsistencies in materials or errors in reports. This activity is not new.³³⁷

Section 858(b) also provides that the test site coordinator’s responsibilities shall be those defined in the contractor’s and CDE’s administrative manuals and documentation, and shall include, but not be limited to, overseeing the test site’s preparation, coordination, administration, security and reporting of the CAASPP tests. Though the description of the test site coordinator’s responsibilities is abbreviated in the amended section 858(b), preparation, coordination,

³³⁵ California Code of Regulations, title 5, section 858(a) (Register 2011, No. 15).

³³⁶ California Code of Regulations, title 5, section 858 (Register 2011, No. 15).

³³⁷ California Code of Regulations, title 5, section 858(a) (Register 2011, No. 15).

administration, security, and reporting are all terms that generally describe the same responsibilities held by the district STAR coordinator that were described in somewhat greater detail under prior law.³³⁸ The Commission finds that these activities are not new.

In addition, section 858(d) as amended, requires the test site coordinator to be responsible for ensuring that all designated supports, accommodations, and individualized aids are provided to the pupils identified to receive these resources. This activity is not new. As indicated in the analysis above, providing these resources for the tests is not new. In addition, the STAR test site coordinator was required to determine the test material needs and distribute the test materials to the test examiners on each day of testing.³³⁹ And, as above, the language in section 858(c), as amended by Register 2014, No. 6, requiring the test site coordinator to be responsible for the training of test examiners, translators, proctors, and scribes, is substantially the same as prior law,³⁴⁰ and therefore the Commission finds that the requirement of section 858(c) is not new.

However, a new activity is imposed by section 858(d), as amended by Register 2014, No. 35 beginning August 27, 2014, to provide that the CAASPP test site coordinator “shall be responsible for ensuring that all designated supports, accommodations and individualized aids are entered into the registration system” This activity was not required under prior law.

6. California Code of Regulations, title 5, section 861, as amended by Register 2014, No. 6 (eff. February 3, 2014), imposes a new requirement on school districts to 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.

Under prior law, section 861 of the Title 5 regulations required school districts to “provide the contractor for the standards-based achievement tests and the primary language test...the following information for each pupil enrolled on the first day the test are administered for purposes of the reporting required by the Academic Performance Index of the Public Schools Accountability Act...” The reporting information required included, for example, each pupil’s name, date of birth, grade level, gender, English proficiency, program participation, use of accommodations or modifications, the education level of parents or guardians, eligibility to participated in the National School Lunch Program, race or ethnicity, any disability, whether a pupil was enrolled in a nonpublic school based on an IEP and that school’s code, and any special testing conditions or reasons for not being tested. School districts were also required to provide the same information for each pupil enrolled in an alternative or off campus program or for pupils placed in nonpublic schools. The information was for purposes of aggregate analyses only and was required to be provided and collected as part of the testing materials for STAR tests.³⁴¹

As amended by Register 2014, No. 6, section 861(a) requires school districts to report “any and all program and demographic pupil data requested by CDE...” to assess pupils under the

³³⁸ California Code of Regulations, title 5, section 858(b) (Register 2011, No. 15)

³³⁹ California Code of Regulations, title 5, section 858(b)(1), (2) (Register 2011, No. 15).

³⁴⁰ California Code of Regulations, title 5, section 858(b)(12) (Register 2011, No. 15.)

³⁴¹ Register 2011, No. 15.

CAASPP requirements of Education Code section 60640 and for inclusion in the California Longitudinal Pupil Achievement Data System (CALPADS).³⁴² And section 861(c) requires school districts to ensure that the CALPADS data elements are up to date and accurate prior to registration and throughout the testing window. The “program and demographic pupil data” collected for CALPADS is not substantively different from what was required to be collected under the STAR program. Indeed, CALPADS was authorized prior to the enactment of CAASPP, and was required to have “[t]he ability to sort by demographic element collected from the STAR tests...”³⁴³ Moreover, pursuant to section 6311 of NCLB, states are required to submit a plan to the Secretary of the Department of Education that details academic assessments that enable the state to measure “adequate yearly progress,” including “separate measurable annual objectives for continuous and substantial improvement for...” disadvantaged students, students from racial and ethnic groups, students with disabilities, and students with limited English proficiency.³⁴⁴ Accordingly, the academic assessments implemented in each state must “enable results to be disaggregated within each State, local educational agency, and school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged...”³⁴⁵ The bill authorizing the creation of CALPADS included \$10.3 million “for data gathering and to develop longitudinal databases, including unique student identifiers to obtain the individual student-level assessments required by NCLB.”³⁴⁶ Thus, the requirement in section 861(a) to report program and demographic pupil data is not new.

Section 861(b), as amended by Register 2014, No. 6, also requires school districts to report to CDE the following information: if a pupil is not tested due to a significant medical emergency; if a pupil used an accommodation; if a pupil has special testing conditions and/or reasons for not being tested (e.g., parent or guardian exemption); if a pupil is enrolled in a nonpublic school based on an IEP; and 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 60644.³⁴⁷ Register 2014, No. 35 added to section 861(b) the

³⁴² CALPADS is a longitudinal data system used to maintain individual-level data including student demographics, course data, discipline, assessments, staff assignments, and other data for state and federal reporting.

³⁴³ See Exhibit X, SB 1453 (2002) Floor Analysis, page 4.

³⁴⁴ 20 U.S.C. § 6311(b)(2)(C) (Pub. L. 107-110).

³⁴⁵ 20 U.S.C. § 6311(b)(3)(C) (Pub. L. 107-110).

³⁴⁶ See Exhibit X, Senate Floor Analysis of SB 1453 (2002), page 5.

³⁴⁷ Education Code section 60644 was added by Statutes 2013, chapter 479, to provide for diagnostic assessments of second grade students in language arts and mathematics that are aligned to the common core academic content standards. The assessments are used to aid teachers and gain information about the developing language arts and computational skills of pupils in grade two. Education Code section 60644(b) provides that the cost savings realized from the elimination of the grade two standards-based achievement testing shall be used by local educational agencies to administer the assessments.

requirement to report to CDE if a pupil used a designated support or individualized aid. Some of these reporting requirements are not new. For example, prior section 861 also required school districts to report program participation, use of accommodations or modifications used by a pupil, any special testing conditions or reasons for not being tested, and whether the pupil was enrolled in a nonpublic school based on an IEP.³⁴⁸ Thus, these activities are not new.

However, the activity required by section 861(b)(5), to 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, is a new reporting requirement.

In addition, section 861(b) as further amended by Register 2014, No. 35, which added two additional items to be reported to CDE: if a pupil used a designated support, and if a pupil used an individualized aid. The reporting of this information is not new. “Designated supports” are “resources which the pupil regularly uses in the classroom for instruction and/or assessment(s) and that are available for use by any pupil for whom the need has been indicated, prior to the assessment administration, by an educator or group of educators or specified in a pupil’s IEP or Section 504 Plan.”³⁴⁹ “Individualized aid” means “a type of resource that a pupil regularly uses in a classroom for instruction and/or assessment that has not been previously identified as a universal tool, designated support or accommodation, and it “may or may not invalidate the measurement of the test.”³⁵⁰ Although the terminology has changed, school districts were required by prior law to report the same information regarding the use of “accommodations” or “modifications” on the test.³⁵¹ “Accommodations” were defined as “any variation in the assessment environment or process that does not fundamentally alter what the test measures or affect the comparability of scores.”³⁵² “Modification” was defined as “any variation in the assessment environment or process that fundamentally alters what the test measures or affects the comparability of scores.”³⁵³ Thus, the reporting of designated supports and individualized aids is not new.

Accordingly, the Commission finds that section 861(b)(5) imposes a new requirement on school districts, beginning February 3, 2014, to 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.

7. California Code of Regulations, title 5, section 864, as amended by Register 2014, No. 6, imposes new requirements on school districts to comply with any and all requests from CAASPP contractors and abide by any and all instructions provided by the CAASPP contractor or consortium.

³⁴⁸ California Code of Regulations, title 5, former section 861(a)(9), (10), (20), (21), (22). (Register 2011, No. 15.)

³⁴⁹ California Code of Regulations, title 5, section 850(k) (Register 2014, No. 35).

³⁵⁰ California Code of Regulations, title 5, section 850(o) (Register 2014, No. 35).

³⁵¹ California Code of Regulations, title 5, former section 861(a)(10) (Register 2011, No. 15).

³⁵² California Code of Regulations, title 5, former section 850(a). (Register 2011, No. 15.)

³⁵³ California Code of Regulations, title 5, former section 850(k). (Register 2011, No. 15.)

Former Code of Regulations, title 5, section 864, addressed the reporting of test scores. As repealed and replaced by Register 2014, No. 6, section 864 now provides that an LEA is an agent of CDE for purposes of the CAASPP program, and that in order for the state to meet its obligations in the development, administration, and security of valid and reliable tests, LEAs shall:

- (1) comply with any and all requests from CAASPP contractor(s) in accordance with Education Code section 60641; and
- (2) abide by any and all instructions provided by the CAASPP contractor or consortium, whether written or oral, that are presented for training or provided for in the administration of a CAASPP test.

These requirements, though non-specific, are newly required by the amended section, beginning February 3, 2014.

C. The New Requirements Impose a State-Mandated New Program or Higher Level of Service on School Districts.

As indicated above, the Commission finds that the following activities are newly required of school districts:

- 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 requirements.³⁵⁴
- 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.³⁵⁵
- 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 or guardian’s written request to excuse his or her child from any or all parts of the CAASPP assessments shall be granted.³⁵⁶
- Beginning February 3, 2014, score and transmit the CAASPP tests in accordance with manuals or other instructions provided by the contractor or CDE.³⁵⁷
- 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.³⁵⁸

³⁵⁴ Education Code section 60640 (Stats. 2013, ch. 489), interpreted in light of California Code of Regulations, title 5, sections 850, 853, 853.5, and 857 (Register 2014, Nos. 6, 30, 35).

³⁵⁵ California Code of Regulations, title 5, section 857(d) (Register 2014, No. 6).

³⁵⁶ California Code of Regulations, title 5, section 852 (Register 2014, No. 6).

³⁵⁷ California Code of Regulations, title 5, section 853 (Register 2014, No. 6).

³⁵⁸ California Code of Regulations, title 5, section 857(a) (Register 2014, No. 6).

- 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.³⁵⁹
- 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 60644.³⁶⁰
- 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.³⁶¹

Finance argues that the CAASPP program, like the STAR testing program that preceded it, is not mandated by the state, but is required to meet federal program requirements and was enacted to avoid a loss of federal funding. Finance states: “we reiterate comments previously submitted as part of the proceedings for the STAR test claim...that NCLB is a federal mandate, and therefore the STAR program could not be found to be a state mandate because it is required to comply with NCLB.”^{362,363} In this respect, during the reconsideration of the *STAR* mandate, Finance asserted that nonparticipation in the statewide testing requirements “incentivized” by federal funding “would jeopardize the receipt of approximately \$4.3 billion *annually* in federal NCLB funds.”³⁶⁴ The Director of Fiscal and Administrative Services for CDE at the time stated that the loss would represent “approximately 7.6% of our state’s K-12 education expenditures.” The Director continued:

In order to receive the more than \$3 Billion under NCLB, California is required to implement a statewide accountability system that is effective in every district in the State and that ensures all public elementary and secondary schools make adequate yearly progress in meeting academic goals as defined by NCLB. *STAR* is a primary component of this accountability system.³⁶⁵

³⁵⁹ California Code of Regulations, title 5, section 858(d) (Register 2014, No. 35).

³⁶⁰ California Code of Regulations, title 5, section 861(b)(5) ((Register 2014, No. 6).

³⁶¹ California Code of Regulations, title 5, section 864 (Register 2014, No. 6).

³⁶² Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015, pages 1-2.

³⁶³ SBE, for its part, asserts that the test claim regulations do not impose a state mandate because they do not extend beyond the scope and purpose of the test claim statutes. See, e.g., Exhibit X, Final Statement of Reasons for CAASPP Regulations [discussing proposed changes to sections 853.5 and 853.7: “Mandating in the regulations that LEAs make an affirmative determination concerning every ELs need for a designated support(s) is not required by federal law and would create an unfunded mandate when there is nothing in the CAASPP law creating a state mandate.”].

³⁶⁴ Exhibit X, Finance’s Comments on *STAR* Reconsideration, February 24, 2005, page 1.

³⁶⁵ Exhibit X, CDE Comments on *STAR* Reconsideration, June 9, 2005, page 3.

These state agencies relied on the Supreme Court’s decision in *City of Sacramento*, where the court found federal legislation that contained incentives and penalties (“carrot and stick”) to encourage state participation would constitute a federal mandate in circumstances when the state does what is “necessary to avoid certain and severe federal penalties”; i.e., where “[t]he alternatives [to participating] were so far beyond the realm of practical reality that they left the state ‘without discretion’ to depart from federal standards.”³⁶⁶

The claimants counter that the *STAR* test claim determined that some of the testing requirements were a reimbursable mandate, notwithstanding the underlying federal requirement to administer standardized academic assessments; and that the *STAR II and III* test claim did not reach the federal mandate issue. And, the claimants argue, “regardless of whether *STAR* itself was a federal mandate, *CAASPP* certainly is not.” The claimants reason that “California was compliant with NCLB’s requirement to administer assessments to determine students’ levels of academic achievement under *STAR*...[but the Legislature] chose – without any change to NCLB – to adopt a new assessment regime that was much more expansive (and expensive).”³⁶⁷

Fundamentally, NCLB is an incentive program, consistent with “the vast bulk of cost-producing federal influence on government at the state and local levels [being] by inducement or incentive rather than direct compulsion.”³⁶⁸ States are required to comply with NCLB to receive federal funding for education. Federal law also states that if “any recipient of funds under any applicable program is failing to comply substantially with any requirement of law applicable to such funds...” the Secretary of Education may “withhold further payments under that program...” and may seek a recovery of funds already provided.³⁶⁹

The Commission, however, finds that even if NCLB imposes a federal mandate on the states to provide “a set of high-quality, yearly student academic assessments” in mathematics, reading or language arts, and science,³⁷⁰ the new activities required by the test claim statutes and regulations go beyond that requirement, are mandated by state law, and do not impose costs mandated by the federal government.

Like the *STAR* program that preceded it, there is no dispute that the *CAASPP* tests satisfy the requirements of NCLB. In fact, the elimination of grades 2, 9, and 10 from yearly English language arts and mathematics testing appears to track the requirements of NCLB more precisely than before.³⁷¹ In *Hayes*, the court held that even if the state enacts legislation to comply with a federal mandate, the activities required by the legislation may still impose a state-mandated program if the manner of implementation of the federal program is left to the true discretion of the state. “If the state freely chooses to impose the costs upon the local agency as a means of implementing a federal program[,] then the costs are the result of a reimbursable state mandate

³⁶⁶ *City of Sacramento*, *supra*, 50 Cal.3d 51, 74.

³⁶⁷ Exhibit F, Claimants’ Rebuttal on 14-TC-01, filed March 13, 2015, page 5.

³⁶⁸ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 73.

³⁶⁹ 20 USC § 1324c.

³⁷⁰ 20 USC 6311 (b)(3)(A) (Pub. L. 107-110, Jan. 8, 2002).

³⁷¹ 20 USC 6011 (b)(3)(C) (Pub. L. 107-110, Jan. 8, 2002).

regardless whether the costs were imposed upon the state by the federal government.”³⁷² In addition, Government Code section 17556(c) provides that the Commission shall not find costs mandated by the state where the test claim statute or regulations impose a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, “*unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation.*”³⁷³

The court’s holding in *Hayes* applies in this case. Here, the state was not forced to adopt the computerized CAASPP tests to comply with federal law. The state, within its discretion, chose to adopt the CAASPP program, in part, to receive grant funding under the Race to the Top program.³⁷⁴ However, that grant funding was awarded between July 2010 and March 2013, prior to the effective dates of any of the test claim statutes, and California was not awarded any of that funding, despite having promptly adopted the Common Core in 2010 and actively participating in the Smarter Balanced consortium to develop the new assessments which would eventually be adopted as a part of CAASPP.³⁷⁵ Therefore, the Commission finds that the new requirements imposed by the test claim statutes and regulations are mandated by the state.

In addition, the new mandated activities are unique to government in that they are only required of school districts and they provide a service to the public “to provide assessments that can assist teachers, administrators, students and parents/guardians with a better understanding of college and career readiness.”^{376,377}

³⁷² *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-1594.

³⁷³ Government Code section 17556(c) (Stats. 2010, ch. 719) [emphasis added].

³⁷⁴ Exhibit X, Race to the Top Executive Summary, page 3 [The Race to the Top program, enacted as a part of the American Recovery and Reinvestment Act of 2009, provided grant funding to two multistate consortia for the development of new high-quality standards-aligned assessments: the Smarter Balanced Assessment Consortium and the Partnership for Assessment of Readiness for College and Careers (PARCC). That funding was provided to the consortia, respectively, to develop new assessments; it was not intended to incentivize the states to adopt and implement the new assessments. (Exhibit X, US Department of Education, “US Secretary of Education Duncan Announces Winners of Competition to Improve Student Assessments.”). An additional fund of \$4.35 billion was made available on a competitive basis to states that could demonstrate a commitment to improving education outcomes and closing achievement gaps among different populations. One criteria for the awarding of those grants was the adoption of common standards (i.e., the Common Core State Standards or other common standards) and a commitment to adopt standards-aligned common high-quality assessments (i.e., either the Smarter Balanced or the PARCC consortium assessments). (Exhibit X, Race to the Top Program, Executive Summary, November 2009, pages 2; 7-8.)].

³⁷⁵ Exhibit X, Race to the Top Executive Summary; Awards – Race to the Top Program Fund; “Four Years Later, Are Race to the Top States on Track?” Center for American Progress.

³⁷⁶ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 8.

³⁷⁷ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875; See also, *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 172, where the court

Accordingly, the activities required by the test claim statutes and regulations impose a state-mandated a new program or higher level of service on school districts.

D. There Are Costs Mandated by the State Pursuant to Government Code Section 17514, from January 1, 2014 Until June 30, 2014 Only.

Government Code section 17514 defines “costs mandated by the state” as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service. The claimants have alleged a total of \$8,568,068 in increased costs for the fiscal year 2013-2014,³⁷⁸ and allege “a total of more than \$15 million in increased costs for 2014-2015.”³⁷⁹ Claimants have further stated in their test claim that they are “unaware at this time” of any dedicated state or federal funds “available for this program.”³⁸⁰ The claimants identify the “Common Core Implementation Block Grant” as a potential source of “other nonlocal agency funds,” but do not identify the legislation or any budget language that provides for the block grant.³⁸¹ In addition, the claimants argue that only an estimate of 2014-2015 costs is necessary, and “a ‘substantial evidence’ requirement is baseless as there is no such requirement at this stage in the process.”³⁸²

Finance has argued that several sources of funding are or may be available to cover the costs of any mandate, and therefore the Commission must not find costs mandated by the state, pursuant to section 17556(e).³⁸³ Finance also argues that “the claimants may be seeking reimbursement for purchases that were already planned and would have been made regardless of the creation of the CAASPP.” Finance explains that pursuant to Education Code section 42127, “governing boards of school districts must adopt their local budgets no later than July 1...”, and the county office of education “must approve, conditionally approve, or disapprove a school’s budget no later than August 15, 2013.” Therefore, Finance argues that “each of these school district budget deadlines were prior to the implementation of Chapter 489, Statutes of 2013...” and the claimants must “clearly demonstrate that the items purchased were added as an amendment to their budgets...” In other words, Finance argues that the expenditures reported may not in fact be attributable to the mandate.

Government Code section 17556(e) provides that the Commission shall not find costs mandated by the state if:

finds that “education in our society is considered to be peculiarly governmental function;” that “public education is administered by local agencies to provide service to the public;” and that, therefore, “public education constitutes a ‘program’ within the meaning of Section 6.”

³⁷⁸ Exhibit A, Amended Test Claim 14-TC-01, page 74; Exhibit C, Vallejo City Unified School District Request to Join Claim, pages 5-6.

³⁷⁹ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, page 2.

³⁸⁰ Exhibit A, Amended Test Claim 14-TC-01, pages 73-74.

³⁸¹ *Id.*, page 74.

³⁸² Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, page 2.

³⁸³ See Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015; Exhibit G, Finance’s Late Comments on 14-TC-01, filed April 27, 2015.

The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

Government Code section 17556(e) implements article XIII B, section 6, which requires subvention only when the costs in question can be recovered solely from local tax revenues. The Supreme Court has determined that

[Article XIII B, section 6] was intended to preclude the state from shifting financial responsibility for carrying out governmental functions onto local entities that were ill equipped to handle the task. [Citations omitted.] Specifically, it was designed to protect the tax revenues of local governments from state mandates that would require expenditures of such revenues. Thus, although its language broadly declares that the “state shall provide a subvention of funds to reimburse . . . local government for the costs [of a state-mandated new] program or higher level of service,” read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.

. . . . As the discussion makes clear, the Constitution requires reimbursement only for those expenses that are recoverable solely from taxes.³⁸⁴

Accordingly, in *Kern*,³⁸⁵ the Supreme Court held that claimant school districts were *not entitled to reimbursement* for costs incurred in complying with notice and agenda requirements for meetings of a school site council, without reaching the issue of whether the underlying funded school site council program was itself mandated, “because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary notice and agenda-related expenses.” In that case, the court “found nothing to suggest that a school district is precluded from using a portion of the [program] funds obtained from the state for the implementation of the underlying funded program to pay the associated [mandated] costs.” In fact, the court found that the program “explicitly authorizes school districts to do so,” quoting the statute authorizing the appropriation of program funds to allow school districts to “claim funds appropriated for purposes of this article for expenditures in, but not limited to, reasonable district administrative expenses.”³⁸⁶ The court concluded, therefore, that “we view the state’s provision of *program funding as satisfying, in advance, any reimbursement requirement.*” (Emphasis added.)

Below, the Commission finds that during fiscal year 2013-2014, there are sources of funding available that may be applied to the activities found above to be new requirements mandated by the state, but none that are specifically intended to cover the costs of the mandate within the meaning of Government Code section 17556(e). Thus, to the extent a school district complied with the new activities required to administer the CAASPP at any time from January 1, 2014,

³⁸⁴ *County of Fresno*, 53 Cal.3d 482, page 487.

³⁸⁵ *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727.

³⁸⁶ *Kern*, *supra*, page 747.

through June 30, 2014, and did not receive and apply funds (which are not local proceeds of taxes) to cover the entire cost of this activity, then reimbursement is required under article XIII B, section 6 for the increased local costs.

However, beginning July 1, 2014, there is additional funding provided, both in the test claim statutes and in the Budget Acts for 2014-2015 and 2015-2016, which is specifically intended to cover the costs of the mandated activities. Absent substantial evidence in the record to the contrary, the funding is sufficient as a matter of law to cover the costs of the mandated activities, is required to be applied to the activities, and bars a finding of costs mandated by the state pursuant to Government Code section 17556(e). Thus, beginning July 1, 2014, reimbursement under article XIII B, section 6 is not required for the new mandated activities.

1. The 2013-2014 Budget Act contains only potentially offsetting revenues, pursuant to Government Code sections 17556(e) and 17557, and therefore some school districts may have incurred costs mandated by the state from January 1, 2014 through June 30, 2014.

The 2013-2014 Budget Act and other appropriations made for fiscal year 2013-2014 include the following funding sources that Finance alleges are available to cover costs of this mandated program:

- Line Item 6110-113-0001, Statutes 2013, chapter 20 (AB 110) provides \$72,706,000 in local assistance, “for purposes of California’s pupil testing program...,” and states: “The funds appropriated in this item shall be for the pupil testing programs authorized by Chapter 3 (commencing with Section 48410) of Part 27 of Division 4 of Title 2 of the Education Code and Chapter 5 (commencing with Section 60600), Chapter 6 (commencing with Section 60800), Chapter 7 (commencing with Section 60810), and Chapter 9 (commencing with Section 60850) of Part 33 of Division 4 of Title 2 of the Education Code.” In addition, Provision 7 of Item 6110-113-0001 states: “Funds provided to local educational agencies from Schedules (2), (3), (4), and (5) shall first be used to offset any state-mandated reimbursable costs within the meaning of Section 17556 of the Government Code, that otherwise may be claimed through the state mandates reimbursement process for the STAR Program, the California English Language Development Test, and the California High School Exit Examination. Local educational agencies receiving funding from these schedules shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules.”
- Line Item 6110-113-0890, Statutes 2013, chapter 20 (AB 110) provides \$25,111,000 in local assistance from “Department of Education – Title VI Flexibility and Accountability, payable from the Federal Trust Fund.” Provision 6 of this Item states: “Funds provided to local educational agencies from Schedules (2), (3), and (4) shall first be used to offset any state-mandated reimbursable costs, within the meaning of subdivision (e) of Section 17556 of the Government Code, that otherwise may be claimed through the state mandates reimbursement process for the STAR Program, the California English Language Development Test, the California High School Exit Examination, and the California Alternate Performance Assessment. Local educational agencies

receiving funding from these schedules shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules.

- Statutes 2013, chapter 48 (AB 86), section 85 provides for \$1.25 billion to “support the integration of academic content standards...” which may include, “expenditures necessary to support the administration of computer-based assessments and provide high-speed, high-bandwidth Internet connectivity for the purpose of administration of computer-based assessments.”

However, none of these revenues are specifically intended to cover the costs of the mandated activities for the CAASPP program during the 2013-2014 fiscal year within the meaning of Government Code section 17556(e). Line Items 6110-113-0001 and 6110-113-0890 of the 2013-2014 Budget Act address costs of the STAR assessments, which were replaced by CAASPP as of January 1, 2014.³⁸⁷ To the extent school districts applied the funds intended for STAR to the costs of the new CAASPP assessments, their annual claims should reflect an adjustment to reimbursable costs mandated by the state (i.e., offsetting revenues applied),³⁸⁸ but nothing in the 2013-2014 Budget Act *requires* school districts to apply funding to a program that did not yet exist when the Budget Act was written. For that reason, though they may be offsetting, preexisting funds cannot satisfy the test of Government Code section 17556(e) to deny the test claim.

Similarly, although Statutes 2013, chapter 48 recognizes the pending improvements in internet connectivity that may be necessary to administer computer-based assessments, the \$1.25 billion in Common Core implementation funding is not *required* to fulfill those needs first. The statute implies the Legislature’s awareness of the impending expenses to be incurred to implement Common Core, and to transition to a system of standards-aligned computer-based assessments,³⁸⁹ but the statute expressly states that a school district shall expend funds “for *any* of the following purposes...”³⁹⁰

Finance argues that “sufficient funding was provided in the 2013 Budget Act...” Finance asserts that “Provision 1 of Item 6110-113-0001 explicitly references the statutes that were amended by Chapter 489, Statutes of 2013, and, therefore, the \$72.7 million appropriated in this item is explicitly provided to support the CAASPP.”³⁹¹ In addition, Finance argues that “the \$1.25

³⁸⁷ Statutes 2013, chapter 489.

³⁸⁸ See *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487 [“...read in its textual and historical context section 6 of article XIII B requires subvention only when the costs in question can be recovered solely from tax revenues.”].

³⁸⁹ E.g., Statutes 2013, chapter 489, section 85(d) [Providing that school districts shall expend the funds for any of the following: “Integration of these academic content standards through technology-based instruction for purposes of improving the academic performance of pupils, including, but not necessarily limited to, expenditures necessary to support the administration of computer-based assessments and provide high-speed, high-bandwidth Internet connectivity for the purpose of administration of computer-based assessments.”].

³⁹⁰ Statutes 2013, chapter 48 (AB 86), section 85(d) [emphasis added].

³⁹¹ Exhibit K, Finance’s Comments on Draft Proposed Decision on 14-TC-01, pages 2-3.

billion appropriated by Section 85 of Chapter 48, Statutes of 2013, was available for these activities and, as asserted above, local educational agencies were required by statute to administer the CAASPP from funds available for that purpose.”³⁹²

However, Provision 1 of item 6110-113-0001, does not cite the test claim statutes, which were not yet enacted, but rather refers generally to Education Code “Chapter 5 (commencing with Section 60600)...”³⁹³ Finance argues that because those code sections were amended by the test claim statutes, the reference means that the funds are “explicitly provided to support the CAASPP.”³⁹⁴ But that indirect reference is not sufficient to constitute “additional revenue that was specifically intended to fund the costs of the state mandate,” within the meaning of Government Code section 17556(e). Government Code section 17556(e) proscribes a finding of increased costs mandated by the state if the Commission finds that “[t]he statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings...or includes additional revenue that was *specifically intended* to fund the costs of the state mandate *in an amount sufficient* to fund the cost of the state mandate.” The section also provides that “[t]his subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill...was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued.” However, the 2013-2014 Budget Act states that the funds are provided for approved contract costs for the California Standards Test, the Standards-Based Tests in Spanish, the California Alternate Performance Assessment, the Designated Primary Language Test, and the California Modified Assessment. Several of those elements or portions of the STAR program, as explained above, were not carried forward into the CAASPP program; and, the statewide pupil assessments are no longer referred to as the STAR program.

Additionally, though the test claim statutes do provide that the CAASPP must be administered “from the funds available for that purpose,” as discussed above, that phrase refers to the “funds appropriated for these purposes to LEAs to enable them to meet the requirements of subdivisions (b) and (c),” referring to the component assessments of the CAASPP, and the Superintendent’s authority to recommend additional standards-aligned adaptive assessments.³⁹⁵ There is no precedent for interpreting “from the funds available” to mean all possible funds, including the \$1.25 billion provided for Common Core implementation before the test claim statutes were enacted. Nor is there any precedent for interpreting “from the funds available” as a phrase that implicates Government Code section 17556(e). And in any event, the legislation that provided the Common Core implementation funding stated that the funds shall be expended for “*any of* the following purposes...” including professional development for teachers and other staff; instructional materials aligned to the new standards; or integration of the standards “through technology-based instruction...including, but not necessarily limited to, expenditures necessary to support the administration of computer-based assessments...” That last provision makes clear that the \$1.25 billion is *available* for some of the costs involved in this test claim, but not required to be used solely for this program. Moreover, the same provisions also state that “Funding apportioned pursuant to this section is specifically intended to fund, and shall first be

³⁹² Exhibit K, Finance’s Comments on Draft Proposed Decision on 14-TC-01, page 3.

³⁹³ Statutes 2013, chapter 20.

³⁹⁴ Exhibit K, Finance’s Comments on Draft Proposed Decision on 14-TC-01, pages 2-3.

³⁹⁵ See Education Code section 60640(l) (as amended, Stats. 2013, ch. 489).

used to offset, the costs of any new programs or higher levels of service associated with implementation of the academic content standards...pursuant to Sections 60605.8, 60605.85, 60605.10, 60605.11, and 60811.3...”³⁹⁶ Therefore, the first priority for the funding provided is not the assessments themselves, but “implementation of the content standards...”

As noted above, the earliest of the three test claim statutes pled, Statutes 2013, chapter 489, has an effective date of January 1, 2014. The administration of the 2013-2014 field test of the Smarter Balanced computer-based assessments was scheduled to take place, in accordance with the February 2014 emergency regulations, “during a testing window of 25 instructional days that includes 12 instructional days before and after completion of 85 percent of the school’s, track’s, or program’s instructional days.”³⁹⁷ As a result, all students were administered the field test between March 25 and June 13 of 2014.³⁹⁸ Therefore, at least some school districts likely incurred mandated costs for the activity to provide “a computing device, the use of an assessment technology platform, and the adaptive engine” in order to administer the CAASPP test on computers after January 1, 2014, but before the 2014-2015 Budget Act took effect on July 1, 2014, which, as explained below, does provide funding specifically intended to cover the costs of the mandate. To the extent school districts can show that they incurred state-mandated increased costs to comply with this requirement between January 1, 2014 and June 30, 2014, those costs are mandated by the state and are eligible for reimbursement. Note that costs incurred prior to January 1, 2014 would not be, by definition, state-mandated increased costs within the scope of the test claim statutes, because the *earliest* test claim statute pled became effective and operative on January 1, 2014.

Based on the foregoing, the Commission finds that the funding identified in the 2013-2014 Budget Act (Line Items 6110-113-0001 and 6110-113-0890) and the \$1.25 billion appropriated for Common Core implementation by Statutes 2013, chapter 48 are potentially offsetting revenues that must be deducted from the costs claimed for January 1, 2014 to June 30, 2014, to the extent that a school district expended the described revenues for any of the state-mandated activities.

2. Absent evidence to the contrary, the State has appropriated revenues sufficient to fund the cost of the mandated activities in the 2014-2015 and 2015-2016 Budget Acts; thus, there are no costs mandated by the state beginning July 1, 2014.

As noted above, Government Code section 17556(e) provides that the Commission shall not find costs mandated by the state if it determines that the test claim statute or an appropriation in a Budget Act or other bill includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. Finance has identified the following revenues appropriated by the state for the CAASPP program beginning July 1, 2014, and alleges that these revenues are specifically intended to cover the costs of the mandate, therefore barring a finding of costs mandated by the state pursuant to Government Code section 17556(e):

³⁹⁶ Statutes 2013, chapter 48.

³⁹⁷ California Code of Regulations, title 5, section 855 (Register 2014, No. 6).

³⁹⁸ Exhibit X, Report and Recommendations for the Full Implementation of Smarter Balanced Summative Assessments, page 42.

- \$126.8 million in local assistance for statewide pupil assessments provided in the 2014-2015 Budget Act, which states: “Funds provided to local agencies from Schedules (2), (3), (4), (5), (6), (7), and (8) *shall first be used to offset any state-mandated reimbursable costs...* that may otherwise be claimed through the state mandates reimbursement process for the remaining costs of the STAR 2013-14 test administration, the California English Language Development Test, the California High School Exit Examination, and the statewide pupil assessment system established *pursuant to Chapter 489 of the Statutes of 2013.*”³⁹⁹
- \$22.7 million in Federal Trust Fund local assistance for statewide pupils assessments provided in the 2014-2015 Budget Act, which states: “Funds provided to local educational agencies from Schedules (2), (3), and (5) *shall first be used to offset any state-mandated reimbursable cost...* that otherwise may be claimed through the state mandates reimbursement process for the statewide pupil assessment system established *pursuant to Chapter 489 of the Statutes of 2013*, the California English Language Development Test, the California High School Exit Examination, and the California Alternate Performance Assessment.”⁴⁰⁰
- \$400.5 million added in Statutes 2014, chapter 32 and Line Item 6110-488 of the 2014 Budget Act for outstanding mandate claims, which, Finance argues “after satisfying any outstanding mandate claims the funds could be used for any one-time purpose determined by a local educational agency’s (LEA’s) governing board, including technology infrastructure.”
- \$26,689,000 appropriated in Provision 2 of Line Item 6110-182-0001 of the 2014 Budget Act “to support network connectivity infrastructure grants and completion of a statewide report of network connectivity infrastructure by the K-12 High-Speed Network...”⁴⁰¹

The claimants acknowledge that these revenue sources exist, but argue that they are either not specifically intended to fund the costs of the mandate, or “simply woefully inadequate...”⁴⁰² Specifically, the claimants argue that the \$400.5 million provided in Statutes 2014, chapter 32 is intended to be used to reimburse outstanding mandate debt, not to cover the costs of new mandates. In addition, the claimants argue that the “K-12 High Speed Network” funding does not constitute revenue specifically intended for mandate costs “because districts and county offices do not receive these funds directly; they only receive the benefit.”⁴⁰³ With respect to the state and federal funds that expressly reference the test claim statutes, the claimants state:

³⁹⁹ Statutes 2014, chapter 25, Line Item 6110-113-0001.

⁴⁰⁰ Statutes 2014, chapter 25, Line Item 6110-113-0890.

⁴⁰¹ See Exhibit D, Finance’s Comments on Test Claim 14-TC-01, filed February 13, 2015, pages 6-7.

⁴⁰² Exhibit F, Claimants’ Rebuttal on 14-TC-01, filed March 13, 2015, pages 7-8.

⁴⁰³ Exhibit F, Claimants’ Rebuttal on 14-TC-01, filed March 13, 2015, pages 7-8 [Finance has argued, in response to claimants’ rebuttal comments, that to the extent a district or county office of education receives a portion of the K-12 High Speed Network funding, which is a grant-based program, that school district would not incur actual increased costs mandated by the state to

Finally, claimants do not contest that the \$126.8 million from Provision 7 of Item 6110-113-0001 of the 2014 Budget Act constitutes “additional revenues” under Government Code section 17556(e). This uncontested \$126.8 million (or even \$149.5 million if combined with the [federal] funds) is simply woefully inadequate to offset the significant financial need the test claimants have demonstrated in the claim.⁴⁰⁴

Because the Commission finds, as discussed herein, that the claimants have failed to establish increased costs mandated by the state in excess of the state and federal funds specifically intended to cover the costs of this mandate, it is not necessary to further analyze either the outstanding mandate debt funding (\$400.5 million in 2014-2015) or the K-12 High Speed Network funding (\$26.7 million) as potentially offsetting revenues. Rather, it is sufficient to note that while these appropriations do not directly or expressly refer to the test claim statutes, the plain language of these appropriations makes the funds, at least facially, *available* to cover *some* costs of the mandated activities, and therefore these funds could be offsetting if the Commission found costs mandated by the state.

However, the Commission finds that some of the state and federal funds identified in the first two bullets above, are indeed specifically intended to cover the costs of the mandate. The budget language for the federal appropriation of \$ \$22.7 million, expressly refers to the test claim statutes that added CAASPP, as Provision 6 of line item 6110-113-0890, and states:

Funds provided to local educational agencies from Schedules (2), (3), and (5) shall first be used to offset any state mandated reimbursable costs, within the meaning of subdivision (e) of Section 17556 of the Government Code, that otherwise may be claimed through the state mandates reimbursement process for the *statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013*, the California English Language Development Test, the California High School Exit Examination, and the California Alternate Performance Assessment.⁴⁰⁵

And, provision 7 of Line item 6110-113-0001 of the 2014-2015 Budget Act similarly states that “funds provided to local educational agencies from Schedules (2), (3), (4), (5), (6), (7), and (8) shall first be used to offset any state-mandated reimbursable costs within the meaning of Section 17556 of the Government Code, that otherwise may be claimed through the state mandates reimbursement process for the remaining costs of the STAR 2013-14 test administration, the California English Language Development Test, the California High School Exit Examination,

improve its internet connectivity. Finance further argues that the waiver received by CDE for NCLB does not render the federal funding inapplicable to the mandate; the waiver applies only to the federal accountability reporting requirements, and “was contingent on California local education agencies ensuring that, with the exception of students with the most significant cognitive disabilities, all students in grades 3 through 8 participated in the Smarter Balanced Assessment Consortium (SBAC) field test in English language arts/literacy and mathematics.” (Exhibit G, Finance’s Late Comments on 14-TC-01, filed April 27, 2015, pages 1-2.).

⁴⁰⁴ Exhibit F, Claimants’ Rebuttal on 14-TC-01, filed March 13, 2015, page 8.

⁴⁰⁵ Statutes 2014, chapter 25. (Emphasis added.)

and the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013.”

In the 2015-2016 Budget Act, Line Items 6100-113-0001 and 6100-113-0890 provide similarly, with respect to the state (\$126,463,000) and federal (\$20,439,000) funds provided for statewide testing.⁴⁰⁶

However, in both the 2014-2015 Budget Act, and the 2015-2016 Budget Act, several schedules (3, 4, 5, 6, and 7) are designated as appropriated for contract costs to be approved by the SBE for several different statewide assessment programs, and not necessarily available at all, or at least not in their entirety, for state-mandated reimbursable costs for CAASPP, as stated in provision 7. For example, Line Item 6110-113-0001, in the 2014-2015 Budget Act states, in pertinent part:

6110-113-0001 For local assistance, Department of Education (Proposition 98), for purposes of California’s pupil testing program 126,850,000

Schedule:

- (1) 20.70.030.005- Assessment Review and Reporting 1,494,000
- (2) 20.70.030.006- STAR Program8,196,000
- (3) 20.70.030.007- English Language Development Assessment6,667,000
- (4) 20.70.030.008- High School Exit Examination5,894,000
- (5) 20.70.030.012- Statewide Pupil Assessment System75,117,000
- (6) 20.70.030.033- Next Generation Science Standards Assessment4,000,000
- (7) 20.70.030.034- Primary Languages other than English Assessments
.....2,000,000
- (8) 20.70.030.209- Assessment Apportionments23,482,000
- (9) 20.70.030.015- California High School Proficiency Examination
..... 1,244,000
- (10) Reimbursements-1,244,000

Provisions:

1. The funds appropriated in this item shall be for the pupil testing programs authorized by Chapter 3 (commencing with Section 48410) of Part 27 of Division 4 of Title 2 of the Education Code and Chapter 5 (commencing with Section 60600), Chapter 6 (commencing with Section 60800), Chapter 7 (commencing with Section 60810), and Chapter 9 (commencing with Section 60850) of Part 33 of Division 4 of Title 2 of the Education Code.
2. The funds appropriated in Schedules (5), (6), and (7) are provided for contract costs for the implementation of the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013, as approved by the State Board of Education, and are contingent upon Department of Finance review of the related contract, during contract negotiations, prior to its execution.

⁴⁰⁶ Statutes 2015, chapter 10.

3. The funds appropriated in Schedule (3) shall be available for approved contract costs for the development of and transition to the English Language Proficiency Assessments for California which include initial identification and annual assessments aligned to the state English language development standards in accordance with Chapter 478 of the Statutes of 2013, and are contingent upon the submittal of the related contract by the State Department of Education and the Department of Finance. Ongoing funding for the English Language Proficiency Assessments for California shall be contingent upon an appropriation in the annual Budget Act. Incentive funding of \$5 per pupil is provided in Schedule (8) for district apportionments for the CELDT. As a condition of receiving these funds, school districts must agree to provide information determined to be necessary to comply with the data collection and reporting requirements of the federal No Child Left Behind Act of 2001 (P.L. 107110) regarding English language learners by the State Department of Education.
 4. The funds appropriated in Schedule (4) include funds for approved contract costs for the administration of the California High School Exit Examination (CAHSEE) pursuant to Chapter 9 (commencing with Section 60850) of Part 33 of Division 4 of Title 2 of the Education Code. The State Board of Education shall establish the amount of funding to be apportioned to school districts for the CAHSEE. The amount of funding to be apportioned per test shall not be valid without the approval of the Department of Finance.
 5. The funds appropriated in Schedule (4) shall be used for seven annual administrations of the California High School Exit Examination. Grade 12 pupils may take up to five administrations of the examination, grade 11 pupils may take up to two, and grade 10 pupils are required to take one.
- [Sic]
7. Funds provided to local educational agencies from Schedules (2), (3), (4), (5), (6), (7), and (8) shall first be used to offset any state-mandated reimbursable costs within the meaning of Section 17556 of the Government Code, that otherwise may be claimed through the state mandates reimbursement process for the remaining costs of the STAR 2013–14 test administration, the California English Language Development Test, the California High School Exit Examination, and the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013. Local educational agencies receiving funding from these schedules shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules.
 8. Notwithstanding Section 28.50, the Department of Finance may adjust Schedules (9) and (10) to reflect changes in actual reimbursements from the contractor for the California High School Proficiency Examination.
 9. Federal funds provided in Item 6110-113-0890 for statewide testing purposes shall be fully expended before General Fund resources provided in this item are expended for the same purposes.

10. The funds appropriated in Schedule (8) shall be used to pay approved apportionment costs from the 2013–14 and prior fiscal years for the California English Language Development Test, the California High School Exit Examination, the Standard Testing and Reporting (STAR) Program, and the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013.
11. The funds appropriated in Schedule (2) of this item are available for the necessary scoring and reporting of assessments administered in the 2013–14 school year.⁴⁰⁷

Section 862.5 of the title 5 regulations implementing the CAASPP program clearly states that the apportionment made to each LEA includes costs for staffing, “staff training, and other expenses related to testing...”, as well as “[a]ll expenses incurred at the LEA and school/test site(s) related to testing.”⁴⁰⁸ And, the plain language of schedules 5 and 8, and provisions 7 and 10, above, clearly implicate the CAASPP test, referring to “the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013.” Provision 7, in particular, contains the language relied upon by the parties: “[f]unds provided to local educational agencies from Schedules (2), (3), (4), (5), (6), (7), and (8) shall first be used to offset any state-mandated reimbursable costs within the meaning of Section 17556 of the Government Code, that otherwise may be claimed through the state mandates reimbursement process for the remaining costs of the STAR 2013–14 test administration, the California English Language Development Test, the California High School Exit Examination, and the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013.” Thus, at least some portion of the funding appropriated meets the standard in section 17556(e) that the funding was “specifically intended” to cover the costs of the new activities mandated by the CAASPP program.

However, provisions 2, 3, 4, and 5 limit the funds available for the state-mandated activities imposed on school districts. Provision 2 states that funds in schedules (5), (6), and (7) are “provided for contract costs for the implementation of the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013, as approved by the State Board of Education, and are contingent upon Department of Finance review of the related contract...” Those “contract costs” include, for example, activities performed on behalf of CDE by Educational Testing Service (ETS):

ETS, through a contract with the CDE, provided administration assistance, help with resources development, and ongoing communication to LEAs about Field Test administration. ETS staff developed a test-delivery portal customized for California to protect student-level data from leaving the state; produced a customized test administration manual; organized the Field Test administration, including test content (i.e., content areas by school and grade level) and testing window assignments to LEAs; developed Webcasts to train LEAs in the uploading of student information in conjunction with CALPADS; produced videos about key procedures and concepts; provided an online forum in collaboration with the CDE to help problem solve LEA administration issues; and provided ongoing support to LEAs through the California Technical Assistance

⁴⁰⁷ Statutes 2014, chapter 25 [Line Item 6110-113-0001].

⁴⁰⁸ California Code of Regulations, title 5, section 862.5 (Register 2014, No. 6).

Center. ETS, on behalf of the CDE, conducted 30 in-person regional workshops for LEA CAASPP coordinators and technology coordinators and, in coordination with the CDE, Smarter Balanced, and other CDE contractors, presented a series of training modules for California LEAs to prepare for the spring 2014 Field Test. ETS developed and conducted a mid-test and a post-test survey as well as eight post-test focus groups of LEA coordinators, site coordinators, and test administrators to obtain feedback on training, support, technology, scheduling, accommodations, and Field Test format issues.⁴⁰⁹

In addition, a contract extension with ETS was approved in July 2014 to, among other things, “[c]ontinue work on science assessments including development of the test blueprints, and initiate the item development of the new CAASPP science assessments aligned to the Next Generation Science Standards (NGSS).”⁴¹⁰ Schedule (6), above, provides \$4 million for the development of NGSS, which provision 2 states “are provided for contract costs for the implementation of the statewide pupil assessment system.” These are not activities performed by or required of school districts.

Similarly, Provisions 3, 4, and 5 limit schedules (3) and (4) to contract costs for the English Language Proficiency Assessments and the High School Exit Examination, respectively. And, schedule (2), by its plain language, is earmarked for remaining costs of the discontinued STAR program. Therefore, even though provision 7 states that funds “provided to” LEAs in schedules (2), (3), (4), (5), (6), (7), and (8) shall first be used to offset mandate reimbursement, it appears that the majority of these funds are not meant to be provided to LEAs in the first instance and the only funds that are clearly and completely available for CAASPP are those in schedule (8). Of \$126,850,000 appropriated for statewide testing, only the \$23,482,000 is exclusively available for the state-mandated activities in CAASPP, based on the plain language of the schedules and provisions quoted above. Therefore, to the extent provision 7 requires funds to be first used to offset mandate-related costs, it only applies to funding actually “provided to” LEAs. Additionally, the only schedule clearly dedicated to LEA costs for CAASPP specifically and exclusively is schedule (8).

Additionally, the 2014-2015 Budget Act provides for \$22.6 million in federal pass-through funding for statewide assessments, however, only schedule (5), \$7.9 million, is earmarked for CAASPP. But not even that full amount is available for local assistance, because provision 1 of Line Item 6110-113-0890 states that “funds appropriated in Schedule (5) are provided for contract costs for the implementation of the statewide pupil assessment system...” Therefore, although provision 6 states that funds provided “from Schedules (2), (3), and (5) shall first be used to offset any state-mandated reimbursable costs...” it is not clear that any funds remain from schedule (5) after contract costs are paid.

Applying the same reasoning to the 2015-2016 Budget Act, only the \$23,723,000 earmarked for “Assessment Apportionments” in schedule (7) is required to be applied to the state-mandated costs of CAASPP. Provision 7 states:

⁴⁰⁹ Exhibit X, Report and Recommendations for Full Implementation of Smarter Balanced Assessments, page 31.

⁴¹⁰ Exhibit X, July 2014 State Board of Education Hearing Item 5, page 1.

Funds provided to local educational agencies from Schedules (2), (3), (4), and (7) shall first be used to offset any state-mandated reimbursable costs within the meaning of Section 17556 of the Government Code, that otherwise may be claimed through the state mandates reimbursement process for the California English Language Development Test, the California High School Exit Examination, and the statewide pupil assessment system established pursuant to Chapter 489 of the Statutes of 2013.⁴¹¹

However, schedules (2), (3), and (4), according to provisions 2-4, are provided for *contract costs* for the English Language Proficiency Assessments, the California High School Exit Examination, and the implementation of CAASPP and it is not clear that they have been or will be provided to LEAs at all.⁴¹² Therefore, the language of provision 7 only clearly requires that all funds provided in schedule (7) first be used for the mandate. Funds from 2-4 can only be applied to the mandate to the extent that they are in fact “provided to” LEAs.

Nevertheless, the Commission finds, based on the evidence in the record, that the state and federal funds appropriated in the 2014-2015 and 2015-2016 Budget Acts are sufficient as a matter of law to cover the costs of the mandated activities, beginning July 1, 2014, and thus Government Code section 17556(e) applies.

The five named claimants for 14-TC-01 have estimated their costs for 2014-2015, totaling approximately \$15 million, and estimated that statewide costs will reach \$1 billion (or “at least \$600 million,” in 14-TC-04, which names only four of the five claimants named in 14-TC-01).⁴¹³ In support of their estimates, the claimants have submitted declarations from the superintendent of each respective school district and county office of education, which describe estimated costs for devices, bandwidth improvement, accessories, personnel, and “miscellaneous.”⁴¹⁴ In support of the claimants’ assertion that the funding is “woefully inadequate,” claimants have provided declarations from the four named claimant districts in the 14-TC-04 claim, which purport to describe costs incurred in excess of the funding available, but are not broken out to each fiscal year independently, and fail to acknowledge the funding sources identified by Finance.⁴¹⁵ In addition, claimants argue that the \$15 million alleged by the five named claimants “extrapolated out to all districts in the state greatly, exceed the \$145 million identified as offsetting revenue [sic].”⁴¹⁶ And finally, claimants have provided survey results from 77 school districts and county offices of education, accompanied also by declarations, which allege estimated “Technology-Related SBAC Costs” for fiscal years 2013-2014 and 2014-2015.⁴¹⁷ Those reported costs are then averaged over the two fiscal years and divided by the district’s or COE’s

⁴¹¹ Statutes 2015, chapter 10, [emphasis added].

⁴¹² Statutes 2015, chapter 10.

⁴¹³ Exhibit A, Amended Test Claim 14-TC-01, page 75; Exhibit C, Vallejo City Unified Request to Join Test Claim 14-TC-01, pages 5-6; Exhibit B, Test Claim 14-TC-04, page 39.

⁴¹⁴ Exhibit A, Amended Test Claim 14-TC-01, pages 77-178.

⁴¹⁵ Exhibit B, Test Claim 14-TC-04, pages 42-92.

⁴¹⁶ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, page 2.

⁴¹⁷ Exhibit J, Claimants’ Comments on Draft Proposed Decision on 14-TC-01, pages 16-106.

2013-2014 enrollment, to arrive at an estimated cost per test taker.⁴¹⁸ Claimants thus estimate the average cost, based on these survey results, to be \$183 per test taker, and estimate the state's contribution, based on \$145 million appropriated, at closer to \$44 per pupil statewide.⁴¹⁹

Although the claimants clearly allege increased costs, they have not introduced sufficient evidence in the record that the funding appropriated in the 2014 Budget Act and specifically intended to fund the mandated costs (at least \$23.5 million) is insufficient as a matter of law. In response to the draft proposed decision for 14-TC-01, the claimants protest that their "assertions of funding insufficiency are supported by uncontroverted evidence in the record, as the Department of Finance has not introduced any evidence to contradict them."⁴²⁰ The claimants argue that "a 'substantial evidence' requirement is baseless as there is no such requirement at this stage in the process."⁴²¹ However, section 1183.2 of the Commission's regulations requires assertions of fact to be supported by documentary evidence.⁴²² And, pursuant to Government Code section 17559, the Commission's findings must be based on substantial evidence in the record.⁴²³ The evidence described above is not sufficient to support the Commission's finding that the funds appropriated by the state and federal governments are insufficient as a matter of law.

As noted above, the claimants' initial estimates of costs are supported by declarations sworn under penalty of perjury, but none of the five named claimants acknowledges any state or federal funding that it received for fiscal year 2014-2015, or makes any attempt to show that the funding received does not satisfy the costs incurred.⁴²⁴ Additionally, while the 77 surveyed districts and county offices of education have provided an estimate of their per-pupil costs based on enrollment, which the claimants employ to show that the per-pupil funding statewide is insufficient to cover estimated average per-pupil yearly costs, the five named claimants are not listed among the 77 entities surveyed.⁴²⁵ And, despite the fact that the named claimants' declarations and other evidence fail to account for the funds appropriated or apportioned, and without any evidence of the named claimants' size and enrollment relative to other districts in the state, the claimants allege that the \$15 million estimated can be "extrapolated out to all districts in the state greatly..."⁴²⁶ There is no support for this reasoning.

In addition, the four named claimants in 14-TC-04 provided declarations which seek to support the costs alleged to acquire sufficient technology and other resources to implement the CAASPP, but the declarations describe only costs incurred for the 2013-2014 fiscal year, which is not in

⁴¹⁸ Exhibit J, Claimants' Comments on Draft Proposed Decision on 14-TC-01, pages 11-14.

⁴¹⁹ Exhibit J, Claimants' Comments on Draft Proposed Decision on 14-TC-01, pages 14-15.

⁴²⁰ Exhibit J, Claimants' Comments on Draft Proposed Decision on 14-TC-01, page 2.

⁴²¹ Exhibit J, Claimants' Comments on Draft Proposed Decision on 14-TC-01, page 2.

⁴²² California Code of Regulations, title 2, section 1183.2.

⁴²³ Government Code section 17559 (Stats. 1999, ch. 643).

⁴²⁴ Exhibit A, Amended Test Claim 14-TC-01, pages 77-178.

⁴²⁵ Exhibit J, Claimants' Comments on Draft Proposed Decision on 14-TC-01, pages 11-14.

⁴²⁶ Exhibit J, Claimants' Comments on Draft Proposed Decision on 14-TC-01, page 2.

issue here.⁴²⁷ The Commission finds above that there were no additional revenues specifically intended to cover the costs of the mandate, within the meaning of Government Code section 17556(e), for fiscal year 2013-2014. Therefore, the analysis with respect to section 17556(e) is limited to the 2014-2015 and 2015-2016 fiscal years. Still more confusing, the declarations of the named claimants are accompanied by documentation including purchase orders or invoices for various computers and devices, but the dates of those documents span both fiscal years 2013-2014 and 2014-2015, and therefore the attached documents are in some cases inconsistent with the declarations.⁴²⁸ This evidence therefore does not support the finding that the claimants seek.

Moreover, in addition to offering the named claimants' estimated costs as evidence to be extrapolated to the entire state, the claimants have also offered the extrapolation and averaging of survey results from 77 school districts and county offices of education, supported by declarations, which estimate each district's "Technology-Related SBAC Costs" for fiscal years 2013-2014 and 2014-2015 combined. As noted above, costs for fiscal year 2013-2014 are not in issue. Therefore, the claimants' estimate of costs incurred, offered as an average of two years, does not constitute sufficient evidence of costs incurred during 2014-2015, which is the only year in issue. For purposes of analyzing whether state funding is sufficient as a matter of law under Government Code section 17556(e), the Commission must know the costs alleged for fiscal year 2014-2015 alone, and not together with fiscal year 2013-2014, only the second half of which falls within the potential period of reimbursement. Furthermore, given that technology upgrades and acquisitions are, based on the evidence in the record and the test claim statutes themselves, expected to occur most heavily in the early years of implementation of the CAASPP, and that 90 percent of California students were able to participate in the Spring 2014 field test, an average of two years' costs is even less probative of the question whether funds provided are sufficient as a matter of law for fiscal year 2014-2015.

For the Commission to find increased costs mandated by the state in this case, claimants have to show that the costs incurred beginning July 1, 2014 to perform the new state-mandated activities exceed the funding provided by the state. The current estimation in the record of \$183 per pupil is not sufficient, for the reasons outlined above. The claimants need only make this showing for *one of the named claimants* in order to support a finding of costs mandated by the state, but based on the evidence in the record they have failed to do so. Therefore, the Commission must find, as a matter of law, that the amount of funding currently appropriated is sufficient to preclude a finding of costs mandated by the state pursuant to Government Code section 17556(e), beginning July 1, 2014. If, in the future, the state fails to appropriate funds sufficient to cover the cost of activities, school districts can then file a request for a new test claim decision under 17570 based on a subsequent change in law in the budget act on the ground that they are, then, first incurring increased local costs.

Based on the foregoing, the Commission finds that there are no costs mandated by the state for the new mandated activities within the meaning of Government Code section 17556(e), beginning July 1, 2014.

⁴²⁷ Exhibit B, Test Claim 14-TC-04, pages 52-56; 66-69; 88-92.

⁴²⁸ Compare Exhibit B, Test Claim 14-TC-04, page 52 with pages 102-106. Compare page 66 with pages 107-108; 162-169.

V. Conclusion

Based on the foregoing analysis, the Commission finds from January 1, 2014 to June 30, 2014, only, the following state-mandated activities are reimbursable:

- 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 requirements.⁴²⁹
- 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.⁴³⁰
- 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 or guardian’s written request to excuse his or her child from any or all parts of the CAASPP assessments shall be granted.⁴³¹
- Beginning February 3, 2014, score and transmit the CAASPP tests in accordance with manuals or other instructions provided by the contractor or CDE.⁴³²
- 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.⁴³³
- 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 60644.⁴³⁴
- 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.⁴³⁵

Funding identified in the 2013-2014 Budget Act (Line Items 6110-113-0001 and 6110-113-0890) and the \$1.25 billion appropriated for Common Core implementation by Statutes 2013,

⁴²⁹ Education Code section 60640 (Stats. 2013, ch. 489), interpreted in light of California Code of Regulations, title 5, sections 850, 853, 853.5, and 857 (Register 2014, Nos. 6, 30, 35).

⁴³⁰ California Code of Regulations, title 5, section 857(d) (Register 2014, No. 6).

⁴³¹ California Code of Regulations, title 5, section 852 (Register 2014, No. 6).

⁴³² California Code of Regulations, title 5, section 853 (Register 2014, No. 6).

⁴³³ California Code of Regulations, title 5, section 857(a) (Register 2014, No. 6).

⁴³⁴ California Code of Regulations, title 5, section 861(b)(5) (Register 2014, No. 6).

⁴³⁵ California Code of Regulations, title 5, section 864 (Register 2014, No. 6).

chapter 48 are potentially offsetting revenues that must be deducted from annual costs claimed to the extent a school district uses those funds for the mandated activities.

All other statutes, regulations, and claims for reimbursement are denied.

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 November 13, 2015, I served the:

Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

California Assessment of Student Performance and Progress (CAASPP),

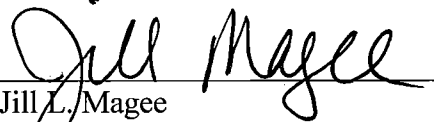
14-TC-01 and 14-TC-04

Education Code Sections 60602 et al.

Plumas County Office of Education, Plumas Unified School District, Porterville Unified School District, Santa Ana Unified School District, Vallejo City Unified School District, Claimants

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 13, 2015 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/29/15

Claim Number: 14-TC-01 and 14-TC-04

Matter: California Assessment of Student Performance and Progress (CAASPP)

Claimants: Plumas County Office of Education
Plumas Unified School District
Porterville Unified School District
Santa Ana Unified School District
Vallejo City 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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