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October 18, 2019

VIA COMMISSION'S ELECTRONIC FILLING WEBSITE

Heather Halsey
Executive Director
State of California Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: *Graduation Requirements,* 16-4435-I-56
Education Code Section 51225.3; Statutes 1983, Chapter 498
Fiscal Years: 2008-2009 and 2009-2010
Grossmont Union High School District, Claimant
Our file 3313-10416

Dear Ms. Halsey:

The Grossmont Union High School District, ("District" or "Claimant"), the claimant in this Incorrect Reduction Claim ("IRC"), submits the following comments in response to the August 28, 2019 Draft Staff Analysis and Proposed Statement of Decision. These comments incorporate herein the recitation of facts and assertion of law set forth in the complete IRC filed by the District. (IRC at pp. 1-36, plus Exhibits attached thereto)

The District also notes the California Supreme Court held oral arguments in *CSBA III* (*California School Boards Association v. State of California*, Supreme Court Case No. S247266) on October 2, 2019. The Commission may need to request additional briefing in this matter subsequent to issuance of this court decision.

I. SUMMARY OF ARGUMENT

This IRC claim presents five (5) primary issues as identified in the Commission's Staff Summary and Draft Proposed Decision (Draft Proposed Decision, p. 10):

A. Did the Controller timely initiate the audit of the fiscal year 2009-2010 reimbursement claim, and timely complete the audit of all claims by meeting the statutory deadlines imposed by Government Code section 17558.5? (Draft Proposed Decision at p. 4) (Executive Summary, pp. 3-4; Staff Analysis, pp. 10-11)

The District asserts the Controller did not either timely initiate or timely complete the audit, pursuant to the deadlines imposed by Government Code section 171558.5. This failure is jurisdictional and disposes of the remainder of the Draft Proposed Decision.

B. Is the Controller's reduction in Finding 1 of costs incurred to construct science classrooms and laboratories correct? (Executive Summary, pp. 5-7; Staff Analysis, pp. 11-12; Draft Proposed Decision, pp. 17-18)

The District raises multiple errors by the Controller in Finding 1.

C. Is the Controller's reduction and recalculation of costs incurred for materials and supplies in Finding 2 correct? (Draft Proposed Decision, pp. 18-19) (Executive Summary, pp. 7-8; Staff Analysis, pp. 13-14)

The District raises multiple errors by the Controller in Finding 2.

D. Is the Controller's reduction of costs incurred to construct science classrooms and laboratories when based upon Helix Charter High School included in Finding 1 correct? (Draft Proposed Decision, p. 25)

The Controller's reduction here is also incorrect as a matter of law. The Controller denied the District's claim for reimbursement for science classroom construction costs at the Helix Charter High School ("Helix" or "Charter School") site based upon the incorrect assumption that the Charter School was the entity seeking reimbursement. However, it was the District which sought reimbursement as the owner of the school site at issue. The District was responsible for implementing the mandate to have sufficient science classroom and laboratory facilities. Should Helix cease operations as a charter school for any reason, the District would be obligated to enroll any students attending the former Helix school who reside within the District's attendance boundaries and to provide educational services to those students in accordance with State requirements at the school site.

E. Is the Controller's Finding 4 that the local bond funds used to construct the science classrooms are offsetting revenue that should have been identified and deducted from the reimbursement claims, correct? (Executive Summary, p. 9; Draft Proposed Decision, pp. 14-15)

The Controller's Finding 4 is further incorrect as a matter of law as the Controller is not permitted to offset mandated costs with local bond funds. Local bond funds are not offsetting revenues; rather, they are proceeds of taxes intended by the will of the voters for local capital projects. To claim that proceeds from a local bond measure are an available source of funds to satisfy the State's obligation to provide subvention would have the Controller replace the will of the voters in a local bond election with the State's will and render meaningless the Article XIII B, section 6, requirement for mandate reimbursement through subvention. As set forth fully below, local bonds are proceeds of

taxes that, like general funds derived through the Local Control Funding Formula, cannot be used to offset mandates.

II. BACKGROUND

The basic Chronology in this matter is set forth in the Draft Proposed Decision at pp. 19-20. The basic Background for the Graduation Requirements Program is set forth in the Draft Proposed Decision at pp. 20-23. As noted, the background of this IRC is also set forth throughout the District's IRC and is fully incorporated into this Background Statement. (IRC at pp. 1-36, plus Exhibits attached thereto)

III. ARGUMENT

A. The Controller Failed to Timely Audit the District's Reimbursement Claims.

The District asserted at the beginning of the audit that the statute of limitations barred the audit and any findings. (IRC, pp. 7-8) Prior to January 1, 1994, no statue specifically governed the statute of limitations for audits for mandate reimbursement claims. Statutes of 1993, Chapter 906, Section 2, operative January 1, 1994, added Government Code Section 17558.5 to establish for the first time a specific statute of limitations for audit of mandate reimbursement claims:

> (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than four years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of *initial payment* of the claim. (emphasis added)

> (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of *initial payment* of the claim. (emphasis added)

The District asserts that the annual claim for FY 2009-10 was beyond the statute of limitations to start the audit based on when the Controller issued the audit entrance conference notice letter dated January 6, 2015. (IRC, p. 7-8).[1]

The Chronology of FY 2009-10 Annual Claim Action Dates is as follows:

[1] The IRC itself was timely filed. (Draft Proposed Decision, p. 32)

January 26, 2011	FY 2009-10 annual claim filed by the District
November 29, 2011	SCO payment of $10 for FY 2009-10 (MA13709B)
January 24, 2012	FY 2009-10 amended annual claim filed by the District
November 29, 2014	3-year statute to start the audit expires
January 6, 2015	Audit entrance conference notice letter

(IRC at p. 8)

As noted above, Government Code section 17558.5 (as amended by Statutes of 2004, Chapter 890, Section 18, operative January 1, 2005) controls jurisdiction. The District asserts that, in this matter, no payment was made for the original FY 2009-10 claim in the fiscal year for which the claim was made. However, a payment was made on or about November 11, 2011. (Draft Proposed Decision at p. 20)

The Staff Analysis of jurisdiction was based upon the theory that no payment was made, and the "no funds clause" in Government Code section 17558.5, controls. Staff specifically stated that, "if no funds were appropriated or no payment is made 'to a claimant for the program for the fiscal year which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of the initial payment of the claim.'" (Draft Proposed Decision at p. 10-11).

Here, payment of $10 was made upon the mandate on November 29, 2011. (Draft Proposed Decision at p. 20) The FY 2009-10 claim was filed by the District on January 26, 2011 for FY 2009-10 (MA13709B). The Draft Proposed Decision relies upon the appellate court decision in *CSBA v State of California* (2011) 192 Cal.App.4th 770, 791 ("*CSBA II*") for the proposition that:

> The nominal $1,000 appropriation for fiscal year 2009-2010, and the $10 payment made under the authority of that nominal appropriation, was not a conditionally sufficient appropriation or payment to fund the program and essentially amounts to no appropriation at all. (Draft Proposed Decision at p. 11, citing *CSBA II*, supra, 192 Cal.App.4th at 791; Draft Proposed Decision fn 43.)

However, it is undisputed a payment *was* made on November 29, 2011. The appellate court's *CSBA II*, 192 Cal.App.4th 770 decision issued on February 9, 2011, and review was denied on May 18, 2011. (*ibid*). The decision became final *before* payment from the State was issued or received on or about November 29, 2011. Whatever the State thought it was doing by issuing this payment, it certainly wasn't applying the *CSBA II* decision. Specifically, in *CSBA II*, supra, 192 Cal.App.4th at 787-788, the court only considered the totality of the $1,000 statewide payment stating in pertinent part:

> However, instead of appropriating the full amount determined by the Commission to be the total of each program, the State appropriated

> $1,000 for each program, approximately $1 per school district for each mandate. (*Id.* at p. 787).

This average or "approximate" amount considered by the appellate court in *CSBA III*, is not the specific $10 payment to the District at issue here.

Indeed, the Controller's reliance on *CSBA II* based upon the timing of the finality of the court's decision, and the timing of the appropriated amount, is disingenuous at best. The applicable jurisdictional date, pursuant to the actions taken by the State, was three (3) years from November 29, 2011, or November 29, 2014. (IRC at p. 8) The Audit was initiated January 6, 2015. (Draft Proposed Decision, p. 11). The alternative, subsequent dates asserted by the Controller of January 24, 2012 (the FY 2009-10 Amended IRC claim filed by the District) and January 6, 2015 (the audit initiation date) are contrary to statute, the timing and substance of *CSBA II*, and are simply not relevant. (Draft Proposed Decision, p. 11).

All of the above Controller (and State) positions are contrary to what the California Supreme Court has held with respect to statutes of limitations:

> [t]here are several policies underlying such statutes. One purpose is to give defendants reasonable repose, thereby protecting parties from defending stale claims, where factual obscurity through the loss of time, memory or supporting documentation may present unfair handicaps. A statute of limitations also stimulates plaintiffs to pursue their claims diligently.

(*Cal. Dep't of Corrections & Rehab. v. Personnel Board* (2007), 147 Cal.App.4th 797, 805)

B. Finding 1: The Controller's Reduction Of Cost Incurred To Acquire and Remodel Space For The Mandated Additional Science Instruction Was Incorrect

In Finding 1, the Controller found that the nearly $15 million[2] spent by the District to acquire and remodel space for science classrooms necessary to provide the additional mandated instruction was not allowable. The Draft Proposed Decision accepts the Controller's conclusion: "The Commission finds that the Controller's reduction of all costs for construction and renovation of science classrooms and laboratories in Finding 1 … is correct as a matter of law because the claimant did not comply with the documentation requirements in the Parameters and Guidelines …" (Draft Proposed Decision, p. 17.)

While the Controller's audit and the Draft Proposed Decision are couched in terms a documentation issue, neither calls into question the veracity of the documents submitted or the costs incurred and claimed. Instead, the dispute is a disagreement over a question of law and

[2] As noted in the IRC, the Controller's calculation of the total claim includes costs for which the District never claimed reimbursement. For example, while the District sought just under $15 million in reimbursement for acquisition and remodeling of science classrooms, the Controller set this amount at just under $30 million. While the District disagrees with this characterization, its arguments focus on the underlying rationale for disallowing the entire amount – regardless of how it is described.

the legal requirements. As the Draft Proposed Decision finally states: "the Commission finds that construction [cost] of new science classrooms and laboratories were not incurred as a direct result of the mandate." (Draft Proposed Decision, p. 45.)

The District disagrees with this conclusion. For purposes of these comments it will not repeat the arguments made in the IRC incorporated herein (although it maintains those positions), but does seek to address the three critical mischaracterizations on which the Draft Proposed Decision is premised:

> (1) The acquisition costs necessary to house the additional mandated science instruction are not allowable as they were incurred as part of a larger master plan to address a variety of District needs.
>
> (2) The District acquired and remodeled facilities to accommodate overall enrollment growth.
>
> (3) Upgrades and replacement costs of science classrooms and laboratories are not allowable.

As explained below, the District disagrees with these positions.

1. <u>The Record Demonstrates The Link Between The Claimed Cost & The Mandate, It Does Not Rest On An Assumption That All Construction Costs Are Allowable Given The Additional Course Requirement</u>

The Draft Proposed Decision adopts the Controller's characterization of the District's position as assuming that the costs are allowable simply because more science classes were necessary, thus *ipso facto* construction of science classrooms were required. But this is not the District's position. Instead, the IRC provides documentation that the District studied and understood that part of the District's facilities needs included the need for additional adequate science classrooms to allow for the mandated additional science instruction. For example:

> The Master Plan notes that the District's facilities do not have the room for the overall increase enrollment in the District *and* that renovations and upgrades are needed for science and technology, as follows: "The District will not be able to meet t*he proposed California state standards for science* and technology without some major renovations and upgrades of support facilities as well as classrooms…. [T]*here are not enough … science labs …at every school*."

(Draft Proposed Decision, pp. 38-39, emphasis added.) While Resolution 2003-148 stated:

> … current facilities do not satisfy the … *curriculum standards* of the District thereby creating the need to modernize, renovate, rehabilitate and expand such existing school facilities, replace portable classrooms, furnish and/or equip school facilities and/or lease school facilities; *additionally*, growth in student enrollment in the District has also

> increased … creating the need to construct a new high school to serve students residing in the Alpine/Blossom Valley region….

(Resolution 2003-148 ["2003 Bond"], emphasis added)

In addition, the District's 2008 Long Range Facilities Master Plan ("2008 Plan") noted that it considered: "key *instructional priorities* and facilities needs" (Controller's comments, p. 237, emphasis added), the need to "[c]ontinue to provide a quality learning environment … *consistent with the Education Code* …" (*id.* at p. 238, emphasis added), "classrooms, libraries and science labs are needed to meet the high school curriculum." (p. 10 of 2008 plan) In fact, the Draft Proposed Decision itself notes multiple places where District planning documents specifically called out the need for science facilities to meet instructional needs. (Draft Proposed Decision, pp. 39-40.) Finally, the District also submitted enrollment information showing the increase in student class enrollment following the mandated additional science instruction.

Central to the Draft Proposed Decision's incorrect conclusion that the District did not support the link between the mandate and the claimed costs is the assumption that all facilities upgrades must be attributed to a single need, whether that is increased enrollment, degraded facility, or instructional requirements such as the mandated additional science instruction. Following a review of portions of the record which focus on enrollment increase and the need to address deferred maintenance, the Draft Proposed Decision concludes: "the record supports the Controller's finding that construction of new science classrooms and laboratories were not incurred as a direct result of the mandate." (Draft Proposed Decision, p. 45.)

While it may be true that the Parameters and Guidelines require that the costs incurred were for "acquisition … of additional space … only to the extent … that this space would not have been otherwise acquired due to increases in the number of students enrolling in high school,"[3] they do not exclude the cost of complying with the mandate simply because those costs were incurred as part of larger construction projects which addressed multiple needs.

The Draft Proposed Decision does not point to any evidence to suggest that the District would have incurred the same costs in the absence of the mandated additional instruction. In fact, the record (including the examples above) indicates that the additional Education Code instructional requirements were specifically incorporated into the District's overall needs assessment. (For example, the "Mission Statement" of the 2002 Plan listed three challenges: (1) "adequate space for a growing population;" (2) "refurbish school sites that are in need of major repair;" and, (3) "provide facilities that are designed to *meet the educational needs* of [students].") Neither the Controller nor the Draft Proposed Decision point to any authority which prohibits the District from claiming a portion of its acquisition and remodel costs associated with the mandated additional science instruction, where these costs were incurred as part of larger projects to also address increased enrollment, degraded facilities, or other instruction needs.

Finally, adopting the Draft Proposed Decision's approach would penalize school districts which acquired the necessary facilities to provide the mandated additional science instruction as

[3] The District notes that despite the Draft Proposed Decision's suggestion to the contrary, the Parameters and Guidelines do not specifically state that the fact the costs may have been incurred for reasons other than an increase in overall enrollment, makes the costs unallowable.

part of larger plans or projects. It would suggest that school districts must entirely separate these projects in order to meet "documentation" requirements. This could substantially increase the monetary cost and administrative burden of such projects – and ultimately the reimbursable costs. The Parameters and Guidelines do not impose this requirement and the Commission should not create it by disallowing the costs necessary to acquire and remodel space to provide the mandated additional science instruction.

2. At The Time The Funds Were Expended The District Made Clear The Costs Were Incurred To Comply With The Mandate

The Draft Proposed Decision focuses heavily on the District's 2002 Plan as well as on the language of the District's 2003 resolution placing a bond measure before voters.[4] (Draft Proposed Decision, pp. 38-40) This is despite the fact that the costs at issue were incurred in 2008 and 2009. While the 2002 Plan and 2003 Bond also support the District's claim, it is more appropriate to look at documents created and adopted by the governing Board of the District ("Board") closer to the time the costs were actually incurred.

Contrary to the Draft Proposed Decision's characterization, the 2002 Master Plan was not a decision to construct classrooms or expend funds. It could not have been, as the larger majority of the funding needed to do so was not approved by voters (or available) at the time the plan was adopted. While the plan laid the ground work for future decisions on construction, it did not commit the District to any particular course of action, but rather was exactly what it said, a "plan." Even the plan itself, noted that it was an "evolving document." (*id.,* p. 12.) Thus, the Draft Proposed Decision's statements suggesting that the 2002 Plan was the decision-point, when the District fixed its construction plans, are incorrect.

More relevant would be the records contemporaneous to the expenditure of the funds in 2008 and 2009. Namely, the 2008 Long Range Plan ("2008 Plan") noted above, Resolution 2009-14 ("2008 Resolution") adopted at the beginning of the 2008 fiscal/school year, and the District's 2008 demographic study ("2008 Study").[5] (See IRC)

The most pertinent indication of the purpose of the expenditures is the resolution adopted by the District's Board just prior to the incursion of the costs in question. In July of 2008 it adopted the 2008 Resolution. The 2008 Resolution stated that that the District "continues to experience a lack of appropriate high school science classroom facilities," that it had studied the "existing appropriately configured and equipped science classrooms facilities," and based on this analysis concluded that:

[4] The Draft Proposed Decision should not place any weight on the arguments in favor of the bond measure. Those arguments were made by a political campaign and do not necessarily reflect the views or motivation of the District.

[5] While the District contests the Draft Proposed Decision's position regarding the impact of *San Diego Unified School District, et al. v. Commission on State Mandates, et al.*, Sacramento County Superior Court, Case No. 03CS01401, on the instant matter, it notes that these documents were created or adopted at or prior to the start of the 2008-09 fiscal year, before the costs in question were incurred.

> Sufficient, appropriately configured and equipped classroom science classroom facilities do not currently exist, [and the mandated additional science instruction] has cause the District's existing science facilities to fail to accommodate the current needs of the District and the [District] has therefore approved new construction, remodeling, equipment purchase, and/or temporary student classroom lease proposal as described in contemporaneous governing board agendas and related documentation.

(See IRC, Resolution 2009-14.)

Further, supporting the 2008 Plan and the 2008 Resolution was the 2008 Study which was presented to the Board in June of 2008. (Attached to Controllers' Comments.) The study clearly showed that the District's enrollment was dropping and was projected to do so through 2017. Thus, to the extent the Controller and Draft Proposed Decision suggest that the prior plan indicated that facilities were needed for enrollment growth, the more relevant 2008 Study – contemporaneous to the costs in question – shows no such enrollment growth need for such expenditures.

In short, the Controller and Draft Proposed Decision focus on the wrong documents to establish the purpose of the costs. While the 2002 Plan and 2003 Bond resolution outlined a broad facilities plan, it is the 2008 documents which specifically identify the District's needs and reasons for the expenditures made at that time. The evidence supports the District's claim and requires reversal of the Controller's incorrect reduction.

3. <u>The Parameter & Guidelines Allow Claims For Costs Incurred In Acquisition & Remodel Of Spaces, The Controller's Reading Of The Allowable Costs Is Too Narrow</u>

A final concern raised by the Draft Proposed Decision relates to its statements to the effect that: "the Parameters and Guidelines do not expressly authorize reimbursement for upgrades and replacement costs of science classrooms and laboratories, …" (Draft Proposed Decision, p. 38.) This is not accurate. The Parameters and Guidelines do authorize reimbursement for such activities in three ways.

First, as the District has previously explained, Category A of the reimbursable activities in Section V of the Parameters and Guidelines cannot be understood as limited to the creation of new space. In other words, the Controller's position appears to be that if the District has physical classrooms (in any condition or configuration) the costs to acquire[6] additional space is not allowable. This cannot be the standard. Science classroom space is not that same as fungible interior space. Instead, where a school district can show that existing space is not usable to meet the additional mandated science instruction requirements (as the District has done here), the cost of acquiring additional space is subject to reimbursement.

[6] "Acquisition" costs are defined to include "planning, design, land, demolition, building construction, fixtures, and facility rental."

Second, on a related point, it is illogical to suggest that once in existence, science classroom space will be sufficient to meet future requirements. Obviously, the curriculum needs around science instruction advance with time and the facilities needed to support this curriculum must also change. Instruction, and the facilities needed, to teach biology and physics looked very different in the 1960's than they do today. Even if space has been labeled as "science" facilities in the past, where it is not sufficient to meet current instructional needs, it cannot be considered "existing" space.

Third, Category C of the reimbursable activities in Section V of the Parameters and Guidelines specifically allows reimbursement for:

> Remodeling (planning, design, demolition, building construction, fixtures, and interim facility rental) existing space required for the mandated additional year of science instruction essential to maintaining a level of instruction sufficient to meet college admission requirements.

To the extent the Controller and Draft Proposed Decision suggest that the fact that some of the science facilities were "upgraded" disqualifies those costs from reimbursement, this provision suggests to the contrary. Moreover, the District notes that Category C does not include the same requirements as Category A. In other words, costs under Category C are not conditioned on documentation that the remodel would not have otherwise been required by increases in overall enrollment.

Thus, to the extent the Controller and Draft Proposed Decision disallow costs for "upgrades" to then-existing space, the District submits this reduction was incorrect.

C. Finding 2: The Controller's Reduction Of Cost Incurred For Materials & Supplies Needed For The Mandated Additional Science Instruction Was Incorrect

In Finding 2, the Controller finds that the approximately $460,000 spent by the District for materials and supplies to furnish and equip new science classrooms was not allowable. The Controller's finding rested on the same reasoning as Finding 1 (discussed above) and the Draft Proposed Decision also adopts this conclusion. The District disagrees with this conclusion for the reasons stated in its IRC as well as those outlined above. It would also note that the 2002 Plan and 2003 Bond are even less relevant to these expenditures as they were not facilities and not necessarily paid for with facilities funds. Again, the 2008 Resolution is the proper document for establishing the need for these expenditures.

For these reasons, the District submits this reduction was also incorrect.

D. Finding 4: The Controller's Findings Regarding Helix Charter School Are Contrary To Law

In Finding 4, the Controller found that the nearly $4.8 million costs incurred by the District for science classroom construction at the Helix Charter High School site were not reimbursable because "charter schools are not eligible claimants under the Parameters and Guidelines." This finding resulted in a reduction of $4,798,802 (out of the total construction costs incurred of $29,633,952.) (Final Audit Report, pp. 49, 51; Draft Proposed Decision, p. 25).

In the Draft Proposed Decision, the Commission makes no findings on the disputed reduction of science classroom construction costs at the Helix Charter High School. The stated reason for not making any findings is because "the Controller's finding on the claimant's lack of documentation reduced the claims by acquiring new classroom space to zero …" (Draft Proposed Decision, p. 46).

Despite the Commission's failure to make any findings regarding this reduction, the District reiterates that it is the owner of Site and facilities at issue, and it is the District, not Helix Charter High School, claiming reimbursement.

1. Background

The District is the chartering authority of the Helix Charter High School ("Helix" or "Charter School"). Pursuant to the petition process prescribed in Education Code section 47605(a)(2), Helix High School, located at 7323 University Avenue, La Mesa, California ("Site"), was converted to Helix Charter High School, on or about July 15, 1998, with operations commencing in the 1998-1999 school year. Helix has occupied and utilized facilities at the Site continuously since its first year operation in 1998-1999.

Helix was originally authorized by the District in 1998 as a District-operated charter school, commonly referred to as a "dependent" charter. On or about November 1, 2006, the District approve a material revision of Helix's charter to change the Charter School's governance/operations structure from that of a District-operated dependent charter school to an independent charter school operated/governed by a non-profit public benefit corporation.

2. Ownership of Site and Facilities

Pursuant to a Facilities Memorandum of Understanding between the District and Helix ("MOU"), the District has agreed to afford Helix use of the Site for operation of the Charter School. (IRC at p. 25). Pursuant to the MOU, title to the Site and facilities on the Site is held by the District and shall remain with the District at all times. As title holder to the Site and facilities thereon, the District expressly reserves the right in the MOU to recoup the full rights and benefits of such ownership, including use of the Site and its facilities, at the cessation of Helix's operations. Should Helix cease operations for any reason, the right to use and occupation of the Site and the District's facilities thereon shall revert to the District as owner.

3. District's Facilities Obligations to Helix

Pursuant to Education Code section 47614 and implementing regulations (Title 5, Cal. Code. Regs. § 11969 et seq.), as a matter of law the District is obligated to make available to Helix, facilities sufficient for Helix to accommodate all of its in-District students in *conditions reasonably equivalen*t to those in which the students would be accommodated if they were otherwise attending other public schools of the district. The facilities provided must be contiguous, furnished and equipped, and shall remain the property of the District. (*ibid.*)

As a matter of law, conversion charter schools like Helix are entitled to use of the existing District school site converted to a charter school site for its first year of operation and "the

condition of the facility previously used by the school district at the site shall be considered to be reasonably equivalent to the condition of the school district facilities for the first year the charter school uses the facility. (Title 5, Cal. Code Regs. § 11969.3(c)(2).) For a conversion charter school that operated at the converted existing District school site during its first year of operation, the site must be made available to the charter school for its second year of operation and thereafter upon annual request under Section 47614.

Pursuant to Title 5, Cal. Code Regs., 11969.1, Helix and the District may mutually agree to a facilities arrangement as an alternative to specific compliance with the requirements of Section 47614 and implementing regulations. The existing Facilities MOU essentially establishes a longer-term alternative facilities use arrangement in-lieu of specific compliance with the annual facilities request process under Education Code section 47614 and regulations. In return for use of the Site and facilities thereon, Helix pays the District a facilities use fee consistent with its use.

As a matter of law this existing alternative arrangement does not relieve the District of its obligation to provide Helix's in-District students with facilities conditions that are reasonably equivalent to the District schools Helix students would be accommodated if they were not attending the Site, including reasonably equivalent science laboratory space and other specialized classroom space. (Title 5, Cal. Code Regs., 11969.3.)

4. <u>District's Education Obligations to Students Within its Attendance Boundaries</u>

Classroom-based charter schools must admit all students who wish to attend regardless of where they reside in California – they do not have attendance boundaries. (Ed. Code § 47605(d).) If the number of students who wish to attend the charter school exceeds the charter school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. (Ed. Code § 47605(d).) As a "conversion" charter school, Helix shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of the existing school converted to a charter school. (Ed. Code § 47605(d).)

Unlike charter schools, school districts must enroll and provide educational services to all students who reside within the district's attendance boundaries as part of the students' fundamental right to an education. (Ed. Code § 48200.) Education Code 48204 specifies additional circumstances under which students will be deemed to meet the residency requirements for school attendance, including, but not limited to, parent/guardian employment within school district boundaries under certain conditions.

As such, should Helix cease operations as a charter school, the District would be obligated to enroll any students attending the former Helix school who reside within the District's attendance boundaries and to provide educational services to those students in accordance with State requirements. The District, not Helix, was required to make improvements to the science classrooms and laboratories at the Site in order to meet mandated graduation requirements.

G. Finding 4: The Controller's Findings Regarding Bond Proceeds Are Incorrect As A Matter Of Law

The Controller determined that the auditor's Finding 4 was correct, and disallowed Claimant's $15,247,465 in capital costs for science classroom facilities, materials and supplies acquired by Claimant to comply with the Graduation Requirements mandate[7]. (IRC, p. 30-31.) The audit report conclusion is that "[b]ased on the district's accounting records, we concluded that a combination of local restricted resources and State bonds fully funded the claimed construction costs for the science classrooms and labs buildings. There was no fiscal impact to the district to construct or remodel its science classrooms and labs buildings. Therefore, any costs claimed and charged against local restricted resources (Proposition H) should have been fully offset by these funds." (Final Audit Report, p. 22.)

The Draft Proposed Decision agrees with the Controller's Finding 4, stating that it is correct as a matter of law. However, this position is incorrect as a matter of law. (Draft Proposed decision, p. 9-10) The Controller is not permitted to offset mandated costs with local bond funds because such funds are not offsetting revenues, but rather proceeds of taxes intended by the will of the voters for local capital projects. To claim that proceeds from a local bond measure are an available source of funds to satisfy the State's obligation to provide subvention would have the Controller replace the will of the voters in a local bond election with the State's will (i.e., a mandated cost), and renders meaningless the Article XIII B, section 6, requirement for mandate reimbursement through subvention. As set forth fully below, local bonds, voted by taxpayers within a school district's jurisdiction for particular projects and supported by the *ad valorem* tax, are not offsetting revenues but rather proceeds of taxes that, like general funds derived through the Local Control Funding Formula, cannot be used to offset mandates.

1. Local Bonds are Not "Offsetting Revenues"

a. Offsetting Revenues Are Limited to State and Federal Funds.

By definition, offsetting revenues are limited to State and Federal funds. The parameters and guidelines for this mandate, as it relates to offsetting revenues, provides as follows:

> IX. OFFSETTING REVENUES AND OTHER REIMBURSEMENTS
>
> Any offsetting revenues the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not

[7] Regarding the state bond revenue, as set out in the IRC, the audit report characterizes this adjustment as offsetting state revenues from the State Office of Public School Construction not reported by the District. However, since state bond funds are identified as an offset, Claimant never reported these costs (which were a 50% match and therefore identical to the costs funded by the local bond funds ($15,247,465). Accordingly, there was no need to report state bond revenue as a cost offset. The District never claimed the Controller's incremental increased costs and so did not need to claim offsetting state bond revenues In other words, there are no claimed District costs to which the state bond funds can be applied. (See, IRC, pp. 30-31.)

> limited to, federal, state, and block grants; total science classrooms and labs teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California School Accounting Manual; funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructional Materials Program (Ed. Code, §§ 60450 et seq., repealed by Stats, 2002, ch. 1168 (AB 1818, § 71, eff. Jan. 1, 2004) and used for supplying the second science classrooms and labs course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials; funds appropriated from the State Instructional Materials Fund (Ed. Code, §§ 60240 et seq.) and used for supplying the second science classrooms and labs course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials and supplies; and other state funds, shall be identified and deducted from this claim. The State Controller's Office (SCO) will adjust the claims for any prior reimbursements received for the Graduation Requirements program from claims submitted for the period beginning January 1, 2005.
>
> If the school district or county office submits a valid reimbursement claim for a new science classrooms and labs facility, the reimbursement shall be reduced by the amount of state bond funds, if any, received by the school district or county office to construct the new science classrooms and labs facility.

(Parameters and Guidelines, p. 8.)

The Controller's conclusion that the claimed costs are fully offset or funded by the local bond revenue is contrary to the parameters and guidelines established for this mandate. Parsing through the above categories of eligible offsets, none of the examples include local funds, such as local bond proceeds. Rather, the categories include:

- federal, state, and block grants;
- total science classrooms and labs teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California School Accounting Manual ["CSAM"];
- funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructional Materials Program and used for supplying the second science classrooms and labs course mandated by Education Code section 51223.5 with instructional materials ["Schiff-Bustamante Program"];
- funds appropriated from the State Instructional Materials Fund (Ed. Code, §§ 60240 et seq.) and used for supplying the second science

classrooms and labs course mandated by Education Code section 51223.5 with instructional materials and supplies ["SIMF"];

- other state funds;

- *state bond funds,* if any, received by the school district or county office to construct the new science classrooms and labs facility. (emphasis added)

The above language clearly and unambiguously directs that offsets must come from federal or state sources. When the language is clear and unambiguous, there is no need for construction and courts should not indulge in it. (*People v. Benson* (1998) 18Cal. 4th 24, 30; *Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal. 3d. 26, 38 ("When the language of a statute is clear, its plain meaning should be followed"); *Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 547 ("When the statutory language is clear and unambiguous, there is no need for interpretation and the court must apply the statute as written.").) None of the above categories expressly or by implication touch upon local bond revenues. To be precise, *local* bond revenues are not: (i) federal, state, and block grants, (ii) restricted resources as indicated by the CSAM, (iii) Schiff-Bustamante Program funds, (iv) SIMF funds, (v) other State funds, or (vi) State bond funds.

To the extent Controller is attempting to argue that local bond funds are "restricted resources as indicated by the [CSAM]" (i.e., a state restricted funding source for science classrooms and labs teacher salary costs) the District would argue, to the contrary, such restricted resources must be federal or State resources, as further described below. And, while, state-mandated budget and financial reporting standards require bond proceeds to be accounted for in restricted accounts (e.g., the "Building Fund" (Fund 21) and the "Bond Interest and Redemption Fund" (Fund 51), each held by the County), the account code, which is specified by the State, and used for the local bond proceeds is not determinative of mandate reimbursement at issue here. Any other interpretation flies in the fact of statutory construction.

Local bond revenues, in the case of the District, are proceeds received from purchasers of Claimant's general obligation bonds, Proposition H, issued under the authority of the State Constitution "for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the [school] district." (Cal. Const., art. XIII A, sec. 1, subd. (b)(3).), commonly known as "Proposition 39 Bonds." Proposition 39 was approved by California voters in 2000 as a vehicle to provide school districts with a financing source, the repayment of which was supported by an *ad valorem* tax on all taxable property within the jurisdiction of the school district, to pay for voter-approved projects. Prop 39 Bonds are approved upon a 55% positive vote of the electorate. (Id.) Prop 39 Bonds may only be issued by a school district in exchange for certain accountability and transparency requirements mandated by the State Constitution, including that all projects must be on the voter-approved "bond project list" and that a community oversight committee reviews performance and financial audits of such expenditures. (*Id.* at subd. (b)(3)(B).) It is true that the improvement of school facilities for additional science classes may be within the permitted scope of projects under the Constitution, however, Prop 39 Bonds were never intended as a replacement for subvention from the State. Claimant's use of such Prop 39 Bond funds for the mandate was only intended as a financing vehicle in anticipation of eventual reimbursement, such

that it could fulfill the voter's local mandates for other improvements to its school facilities. To decide to the contrary robs the Claimant and the local community of its rights to local control and accountability required by Article XIII A of the Constitution.

The Controller asserts that the language contained in the Parameters and Guidelines allows for a different interpretation. That is to say, that an unlimited source of offsets (citing "reimbursement for this mandate from any source, including but not limited to…") may be found in *any other source of funds*. While this may be the hoped policy of the Controller, e.g. to backfill owed subvention with local funds, it is not a legally permitted practice. As a quasi-judiciary body, the Commission has no power, just like a court has no power, to rewrite a statute or set of rules, so as to make it conform to some underlying policy. As a rule, there can be no intent in a statute that is not expressed in its words; and the intent of the Legislature must be determined from the language of the statute. (*In re San Diego Commerce* (1995) 40 Cal.App.4th 1229, 1235.)

The interpretation proffered by the Controller, and apparently supported by Commission staff, does not follow the rules of statutory interpretation. Rather, the Commission must adhere to the doctrine of well-established doctrine of *ejusdem generis*, which states that where general words follow the enumeration of particular classes of persons, things, or activities, the general words will be construed as applicable only to persons, things or activities of the same general nature or class as those enumerated. (*Scally v. Pacific Gas & Electric Co.* (1972) 23 Cal.App.3d 806, 819; *Sears Roebuck & Co. v San Diego County Dist. Council of Carpenters* (1979) 25 Cal.3d. 317, 330-331.) Here, we have general words relating to permitted funding sources for offsetting of revenues followed by a (non-exhaustive) list of exemplar available funds. The types of funds fall into two distinct camps: federal sources and state sources. Applying the rule of *ejusdem generis*, it follows that, while the list is not exhaustive, any other funding source must be from either the State or from the federal government. The Controller cannot claim that local bonds revenues, such as that received by Claimant from its issue of Prop 39 Bonds, would be an offsetting revenue. Accordingly, Claimant does not need to offset its claim for subvention with its Prop 39 Bonds.

b. Adopting the Controller's Position Leads to Absurd Results, and Swallows the Rule of Subvention.

Further, to adopt the Controller's position as to use of local bond funds would lead to an absurd result. Namely, use of local bond proceeds, such as the Prop 39 Bonds or any other financing vehicle the Claimant might use, to offset subvention obligations, would allow the State to essentially clear out any obligation once the Claimant proceeds to comply with the mandate. After all, subvention is reimbursement, not money up front from the State. Claimant therefore would always be in the position of using its available resources, whether general fund, local bonds, or other available financing solutions, to comply with the mandate, in anticipation of receiving the subvention funds later. As stated above, the language contained in the parameters and guidelines for this mandate is clear. However, if we are to assume, arguendo, that the language is subject to two or more interpretations, we must follow the one that leads to a "reasonable and commonsense construction consistent with the apparent purpose and intention of lawmakers" as opposed to one that is absurd, and makes meaningless the purpose of mandates. (*People v. Turner* (1993) 15Cal.App.4th 1690, 1696.)

2. Local Bonds are "Proceeds of Taxes" Restricted to Capital Projects Approved By the Electorate

The Controller and Commission staff appear to take the position that local bond proceeds are not proceeds of taxes. Once they have denied claimant of this conclusion, they then proceed to assert that they are therefore not entitled to reimbursement from the State because local bond funding is available. In telling the Commission to read Article XIII B, section 6 together with Article XIII A and B together, the Controller and Commission staff conflate two distinct concepts. On the one hand, local governments are given the power to raise local revenues through taxation but are also limited in the amount of tax revenues that can be generated. On the other hand, mindful of the limited sources of local tax revenues, Article XIII B, section 6, prevents the State from redirecting the limited pot of local tax revenues to fulfill State mandates. This is precisely why, in 2008, the Commission amended the parameters and guidelines for the Graduation Requirements mandate: to make sure that proceeds of taxes were not pulled into the calculus of offsetting revenues. (*Cal. School Boards Assn. v. State of California* (2018) ("CSBA III") 19 Cal.App.5th 566, 582, review granted.) In its findings, the Commission stated that " 'such an interpretation [i.e., use of proceeds of taxes to offset] would require the local school districts to use proceeds of taxes on a state-mandated program. This violates the purpose of article XIII B, section 6 [which] was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues and restrict local spending in other areas.' " (*CSBA III*, supra, 19 Cal.App.5th at 582, quoting Commission, Revised Final Staff Analysis [relating to 2008 Amendments to the Parameters and Guidelines], pp. 53-54.)[8] While the *CSBA III* court disagreed with claimant's position vis-à-vis use of State funds as offsetting revenue, it did not consider the use of local bond funds for such purpose.

Case law makes clear that the only locally-derived amounts permitted to be included in the calculus of offsetting revenues are where a local agency can levy assessments or fees. (*County of Fresno v. State of California*, 53 Cal.3d 482, 487). Of course, local bonds are neither fees nor assessments.

Rather, local bonds are a financing vehicle, permitted by the State Constitution, whereby the local agency raises funds for capital expenditures approved by the voters, the repayment of which is secured by proceeds of taxes – the *ad valorem* tax to be exact. The *ad valorem* tax, much like local property taxes, are locally-derived sources of revenue and are therefore considered proceeds of taxes that are not derived from the State.

Finally, the Education Code states that "[w]hen collected, all taxes levied shall be paid into the county treasury of the county whose superintendent of schools has jurisdiction over the

[8] Although the appellate court in *CSBA III* disagreed with claimant's position that identification of other State funding to satisfy subvention requirements, by operation of Government Code section 17557, subdivision (d)(2)(B), as applied in Education Code section 42238.24, requires school districts to "divert spending away from their own programs and priorities in order to pay for the State's mandates." That decision is no longer valid precedent. (*CSBA III*, supra, 19 Cal.App.5th at 583.) Moreover, the facts here are distinguishable, as Claimant is seeking mandate reimbursement from its expenditure of local bond funds and not State sources. As noted above, the Commission may consider the need for additional briefing on this issue once the California Supreme Court has rendered its decision in the appeal of *CSBA III*.

school district ... and shall be used for the payment of the principal and interest of the bonds and for no other purpose." (Ed. Code, § section 15251, subd. (a).) Even if the *ad valorem* tax was deemed to be something other than proceeds of taxes, the statute does not permit it to be used for any purpose other than retirement of local bonds; and, as established above, the State Constitution does not permit the bonds to be ultimately spent on anything other than the capital projects approved by the voters within the local tax base. Contrary to the Commission's proposed position, while local bonds are not subject to Constitutional spending limitations, they are in fact otherwise limited by the Constitution and statute. The Constitution provides that Prop 39 bonds, such as those issued by Claimant, may only be spent on the scope of projects approved by the voters, and statute provides that such bonds may only be issued up to the statutory bonding capacity for a school district and are subject to tax rate limitations. (Cal. Const., art. XIII A, sec. 1(b)(3), art. XVI, sec. 18(b); Ed. Code, § 15268.) For Claimant, as a high school district, these limits dictate a 1.25% "bonding capacity limit" measured as a percentage of the assessed valuation of taxable property within the school district and a projected "tax rate limit" of not more than $30 per $100,000 of assessed valuation of property. (Id.) Indeed, the State would effectively be allowed to abscond with local bond proceeds in lieu of paying its mandate reimbursement obligations if the Draft Proposed Decision is adopted by the Commission.

Local bond revenue is simply not "reimbursement for this mandate from any source" as the Controller posits because, unlike state bond revenue, it must be repaid by the District tax base, a local source. A "reimbursement" that has to be repaid is not a reimbursement. The audit report does not state a legal basis which would allow local property tax proceeds to be considered an offset to reimburse Claimant for construction costs to accommodate and implement the State-mandated increased instructional programs such as the Graduation Requirement mandate.

IV. CONCLUSION

Any adjustment proposed by the Controller in this matter should be denied as the period of time to commence the audit was barred by Government Code Section 17558.5. In the alternative, the District asserts the Controller's audit decision(s) must be overturned, based upon the analysis of law and facts above.

V. CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

DANNIS WOLIVER KELLEY

Christian M. Keiner

CMK:fh

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

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

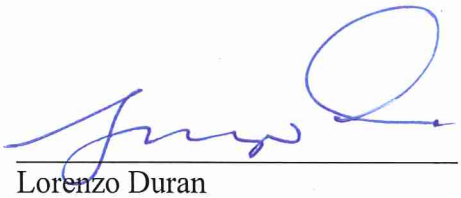
On October 21, 2019, I served the:

- **Claimant's Comments on the Draft Proposed Decision filed October 18, 2019**

  Graduation Requirements, 16-4435-I-56
  Education Code Section 51225.3; Statutes 1983, Chapter 498
  Fiscal Years: 2008-2009 and 2009-2010
  Grossmont Union High School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 21, 2019 at Sacramento, California.



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Mailing List

Last Updated: 8/28/19

Claim Number: 16-4435-I-56

Matter: Graduation Requirements

Claimant: Grossmont Union High School District

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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