



January 10, 2018

Ms. Jolene Tollenaar  
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Suite 134  
Sacramento, CA 95815

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

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

**Re: Proposed Decision**

*Cal Grant: Grade Point Average and Graduation Certification, 16-TC-02*  
Education Code Sections 69432.9(c)(2), 69432.9(c)(3), 69432.9(c)(5),  
69432.9(d)(1)(d)(2)(A); Statutes 2014, Chapter 679 (AB 2160); Education Code Sections  
69432.92(a) and 69432.92(b); Statutes 2015, Chapter 637 (AB 1091); and Education  
Code Sections 69432.9(c)(2) and (d)(1); Statutes 2016, Chapter 82 (AB 2908)  
Fairfield-Suisun Unified School District, Claimant

Dear Ms. Tollenaar and Mr. Hanson:

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

**Hearing**

This matter is set for hearing on **Friday, January 26, 2018**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. 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.

**Special Accommodations**

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Sincerely,

Heather Halsey  
Executive Director

**ITEM 4**  
**TEST CLAIM**  
**PROPOSED DECISION**

Education Code Sections 69432.9, 69432.92

Statutes 2014, Chapter 679 (AB 2160), Statutes 2015, Chapter 637 (AB 1091),  
Statutes 2016, Chapter 82 (AB 2908)

*Cal Grant: Grade Point Average and Graduation Certification*

16-TC-02

Fairfield-Suisun Unified School District, Claimant

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**EXECUTIVE SUMMARY**

**Overview**

This Test Claim addresses the activities required to be performed by K-12 school districts for pupils in grades 11 and 12 who may be eligible for a Cal Grant Entitlement award. The test claim statutes deem every grade 12 pupil a Cal Grant applicant; require school districts to provide written notification to pupils of the opportunity to opt out of being deemed a Cal Grant applicant; require school districts to certify and electronically submit to the California Student Aid Commission (CSAC) the grade point averages (GPAs) of all grade 12 pupils, except those who opt out of being a Cal Grant applicant; authorize CSAC to require the electronic submission of a verification of the high school graduation or its equivalent for all grade 12 pupils that graduated in the prior academic year, except those who opt out of being a Cal Grant applicant; and authorize school districts to obtain permission from the pupil or parent or guardian of the pupil, to submit the pupil's social security number (SSN) to CSAC if CSAC determines that an SSN is required to complete the application for financial aid.

Staff recommends that the Commission on State Mandates (Commission) partially approve this Test Claim.

**Procedural History**

The Fairfield-Suisun Unified School District (claimant) filed the Test Claim on June 26, 2017.<sup>1</sup> The Department of Finance (Finance) filed comments on the Test Claim on October 11, 2017.<sup>2</sup> The claimant filed rebuttal comments on November 9, 2017.<sup>3</sup> Commission staff issued the Draft Proposed Decision on November 22, 2017.<sup>4</sup> The claimant filed comments on the Draft Proposed

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<sup>1</sup> Exhibit A, Test Claim, page 11.

<sup>2</sup> Exhibit B, Department of Finance's Comments on the Test Claim.

<sup>3</sup> Exhibit C, Claimant's Rebuttal Comments.

<sup>4</sup> Exhibit D, Draft Proposed Decision.

Decision on December 13, 2017.<sup>5</sup> Neither, Finance, Department of Education, nor the California Student Aid Commission filed comments on the Draft Proposed Decision.

**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 must strictly construe XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>6</sup>

**Claims**

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

<b>Subject</b>	<b>Description</b>	<b>Staff Recommendation</b>
Was the Test Claim timely filed pursuant to Government Code section 17551(c)?	The Test Claim pleads Statutes 2014, chapter 679, which became effective on January 1, 2015, and Statutes 2015, chapter 637, which became effective on January 1, 2016. Both of these statutes became effective more than 12 months before the Test Claim was filed.  Government Code section 17551(c) states: “test claims shall be filed not later than 12 months following the	<i>Timely Filed</i> – The claimant stated that it first incurred costs under Statutes 2014, chapter 679 (AB 2160), on September 1, 2015, <sup>7</sup> which is within the 2015-2016 fiscal year. The Test Claim was filed on June 26, 2017, which is within the 2016-2017 fiscal year and is also “by June 30 of the fiscal year following the fiscal year in which increased costs

<sup>5</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision.

<sup>6</sup> *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1281, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>7</sup> Exhibit A, Test Claim, page 19. The claimant’s declaration references “AB 2160” which was the bill number of Statutes 2014, chapter 679.

	<p>effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.”</p> <p>Section 1183.1(c) of the Commission’s regulations states: “[f]or purposes of claiming based on the date of first incurring costs, ‘within 12 months’ means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.”</p>	<p>were first incurred by the test claimant.”<sup>8</sup></p> <p>The claimant stated that it first incurred costs under Statutes 2015, chapter 637 (AB 1091), on September 1, 2016.<sup>9</sup> The Test Claim was filed on June 26, 2017, within 12 months of when the claimant first incurred costs under Statutes 2015, chapter 637.</p> <p>Therefore, the Test Claim was timely filed within the deadline imposed by Government Code section 17551(c) and section 1183.1(c) of the Commission’s regulations.</p>
<p>Does Education Code section 69432.9(d) (Stats. 2014, ch. 679, Stats. 2016, ch. 82) impose a reimbursable state-mandated program to notify pupils of the opportunity to opt-out of being deemed a Cal Grant applicant, and provide the opportunity to opt out?</p>	<p>The test claim statute requires school districts to notify pupils in writing of the opportunity to opt out of being deemed a Cal Grant applicant, and requires school districts to provide an opportunity for the pupil to opt out.</p> <p>CSAC developed a sample Cal Grant Opt-Out Form, available on its website, for school districts to comply with the opt-out requirement.<sup>10</sup> By signing the CSAC sample form, the pupil is opting out and electing not to have his or her high school report the GPA</p>	<p><i>Approve</i> – The plain language of the test claim statute mandates school districts to provide a written notice to opt out of being deemed a Cal Grant applicant as follows:</p> <p>Effective January 1, 2015, provide written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which, (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send GPAs to CSAC; and (3)</p>

<sup>8</sup> California Code of Regulations, title 2, section 1183.1(c).

<sup>9</sup> Exhibit A, Test Claim, page 19. On page 3, the claimant alleges that costs were first incurred on November 1, 2016, but page 19 of the Test Claim was submitted as a declaration under penalty of perjury in accordance with section 1187.5(b) of the Commission’s regulations.

<sup>10</sup> Exhibit F, California Student Aid Commission, Cal Grant GPA Opt Out Form. [http://www.csac.ca.gov/pubs/forms/grnt\\_frm/gpa\\_opt\\_out.pdf](http://www.csac.ca.gov/pubs/forms/grnt_frm/gpa_opt_out.pdf) accessed October 16, 2017.

	<p>information and SSN (if applicable) to CSAC for use in the Cal Grant application process.</p>	<p>provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.<sup>11</sup></p> <p>Beginning January 1, 2017, provide written notice by January 1 to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send GPAs to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.<sup>12</sup></p> <p>Providing the notice is newly mandated by the state and imposes a new program or higher level of service. In addition, the statute results in increased costs mandated by the state, and the funding appropriated to school districts under the Local Control Funding Formula and the College Readiness Block Grant do not preclude reimbursement under Government Code section 17556(e) to deny this Test Claim.</p>
<p>Does Education Code section 69432.9(c) (Stats. 2014, ch. 679) impose a reimbursable state-mandated program to</p>	<p>Preexisting law (Stats. 2000, ch. 403) requires high school officials to certify GPA information submitted to CSAC, and expresses legislative intent that the</p>	<p><i>Deny</i> – Certifying GPAs for all grade 12 pupils, as required by Education Code section 69432.9(c), does not constitute a new program or higher level of service. School districts have</p>

<sup>11</sup> Education Code section 69432.9(d) (Stats. 2014, ch. 679).

<sup>12</sup> Education Code section 69432.9(d) (Stats. 2016, ch. 82).

<p>certify GPAs to CSAC by a statutory deadline?</p>	<p>certification be accomplished in order to meet financial aid deadlines.</p>	<p>long been required to certify GPAs under penalty of perjury for Cal Grant applicants.<sup>13</sup> Although school districts may now have to certify more GPAs than under prior law, and may or may not incur increased costs to do so, the California Supreme Court has found that increased costs alone do not establish a reimbursable state-mandated program.<sup>14</sup></p>
<p>Does Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679) impose a reimbursable state-mandated program to electronically submit GPAs to CSAC for all grade 12 pupils, on a standardized form, by October 1st each year, except for pupils who opt out?</p>	<p>The test claim statute states: “The commission shall require that a grade point average be submitted to it electronically for all grade 12 pupils at public schools, including charter schools, each academic year, except for pupils who have opted out as provided in subdivision (d).”<sup>15</sup></p>	<p><i>Approve</i> – The 2014 test claim statute requires electronic submission of GPAs for all grade 12 pupils, not just Cal Grant applicants. Both CSAC and the California Department of Education have interpreted the test claim statute to require school districts to electronically submit GPAs for all grade 12 pupils each academic year.<sup>16</sup> Their interpretations are consistent with the legislative</p>

<sup>13</sup> Former Education Code section 69432.9(c) (as last amended by Stats. 2011, ch. 7); see also, California Code of Regulations, title 5, section 30008, Register 2001, No. 20 (May 16, 2001).

<sup>14</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d at 55-56; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.

<sup>15</sup> This statute was amended by the 2015 and 2016 test claim statutes to require GPA submission on a standardized form, by October 1 each year.

<sup>16</sup> Exhibit F, California Department of Education, Official Letter to County and District Superintendents, Charter School Administrators, High School Principals, and High School Counselors, January 25, 2016. See also California Department of Education, Letter to County and District Superintendents, Charter School Administrators, High School Principals, and High School Counselors, September 19, 2017. CSAC, Memo to High School Principals, High School Counselors, and County and District Superintendents, October 10, 2016.

		<p>history of the test claim statute.<sup>17</sup></p> <p>Although some of the largest school districts in the state (San Francisco and Los Angeles Unified) were electronically submitting GPAs for all grade 12 pupils before the 2014 test claim statute, and the legislative history indicates that they experienced cost savings as a result,<sup>18</sup> doing so is still considered a new state-mandated activity under Government Code section 17565 because there was no legal requirement for them to do so under prior law. Any <i>increased</i> costs to any eligible school district that are mandated by the State as a result of this newly mandated activity are reimbursable.<sup>19</sup></p> <p>Therefore, electronically submitting pupil GPAs to CSAC is newly mandated by the State and imposes a new program or higher level of service. In addition, the test claim statute results in increased costs mandated by the state for the claimant, and possibly other school districts as well. The funding appropriated to school</p>
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<sup>17</sup> Exhibit F, Assembly Floor, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended August 18, 2014, page 3; Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, pages 3-4.

<sup>18</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, page 3.

<sup>19</sup> Government Code section 17565 states that “If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs after the operative date of the mandate.”

		districts under the Local Control Funding Formula and the College Readiness Block Grant does not preclude reimbursement under Government Code section 17556(e) to deny this Test Claim.
Does Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679) impose a reimbursable state-mandated program to submit SSNs to CSAC?	The test claim statute states: “Social security numbers shall not be included in the information submitted to the commission. However, if the commission determines that a SSN is required to complete the application for financial aid, the . . . school district . . . may obtain permission from the parent or guardian of the pupil, or the pupil, if he or she is 18 years of age, to submit the pupil’s SSN to . . .” CSAC.	<i>Deny</i> – The requirement to submit a SSN is conditional on CSAC requiring it: “if the commission determines that a social security number is required to complete the application for financial aid . . . .” The claimant did not file any document with the Test Claim that shows that CSAC has required submitting pupil SSNs. In addition, for schools that submitted paper GPA forms, CSAC required pupil SSNs to be submitted prior to the test claim statute.
Does Education Code section 69432.92 (Stats. 2015, ch. 637) impose a reimbursable state-mandated program to electronically submit verification of high school graduation to CSAC?	The test claim statute states: “The commission may require verification of high school graduation or its equivalent to be electronically submitted for all former grade 12 pupils who graduated from public schools, including charter schools, in the prior academic year, except for pupils who have opted out . . . .” It is the intent of the Legislature that high schools or high school districts verify the graduation of their pupils in time to meet the deadlines imposed by statute.	<i>Deny</i> – The plain language of the test claim statute does not impose a state-mandated program on school districts to submit electronic verification of high school graduation for grade 12 pupils. Education Code section 69432.92 states: “The commission may require verification of high school graduation . . . .” <sup>20</sup> In addition, the Education Code has long required that a pupil confirm his or her high school graduation before Cal Grant payments can be released, and either the pupil or the school district can verify

<sup>20</sup> Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”



		<p>graduation.<sup>21</sup> Ultimately, the applicant is responsible for verifying his or her high school graduation.<sup>22</sup> That law has not changed with the test claim statute, and CSAC allows pupils to self-certify high school graduation.</p>
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**Staff Analysis**

**A. The Test Claim Was Timely Filed Pursuant to Government Code Section 17551(c) and Section 1183.1(c) of the Commission Regulations.**

Government Code section 17551(c) states in pertinent part: “test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations states: “For purposes of claiming based on the date of first incurring costs, “within 12 months” means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.”<sup>23</sup>

Statutes 2014, chapter 679 (AB 2160), became effective on January 1, 2015, and Statutes 2015, chapter 637, became effective on January 1, 2016. Both of these statutes became effective more than 12 months before the Test Claim was filed. However, the claimant stated that it first incurred costs under Statutes 2014, chapter 679 (AB 2160), on September 1, 2015,<sup>24</sup> which is within the 2015-2016 fiscal year. The Test Claim was filed in the following fiscal year on June 26, 2017, which is “by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.”<sup>25</sup>

Similarly, the claimant stated that it first incurred costs under Statutes 2015, chapter 637 (AB 1091), on either September 1, 2016 or November 1, 2016.<sup>26</sup> The Test Claim was filed on

<sup>21</sup> Education Code section 69433.9 (as last amended by Stats. 2006, ch. 652.); Exhibit F, California Student Aid Commission, “High School Graduation Confirmation for High Schools, WebGrants User Guide” May 23, 2008, page 5.

<sup>22</sup> Education Code section 69432.9(a) (as last amended by Stats. 2011, ch. 7), and still in place today, states the following: “A Cal Grant applicant shall submit a complete official financial aid application pursuant to Section 69433 and application regulations adopted by the commission.” Exhibit F, California Student Aid Commission, “High School Graduation Confirmation for High Schools, WebGrants User Guide” May 23, 2008, page 5.

<sup>23</sup> California Code of Regulations, title 2, section 1183.1(c).

<sup>24</sup> Exhibit A, Test Claim, page 19.

<sup>25</sup> California Code of Regulations, title 2, section 1183.1(c).

<sup>26</sup> Exhibit A, Test Claim, page 19. On page 3, the claimant alleges that costs were first incurred on November 1, 2016, but page 19 of the Test Claim, a declaration signed under penalty of

June 26, 2017, within 12 months of when the claimant first incurred costs under Statutes 2015, chapter 637 (AB 1091).

The claim was filed within 12 calendar months from the effective date of Statutes 2016, chapter 82.

Therefore, the Test Claim was timely filed within the deadline imposed by Government Code section 17551(c) and section 1183.1(c) of the Commission regulations.

**B. Do the Test Claim Statutes Impose a State-Mandated New Program or Higher Level of Service on School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution?**

1. The requirement to provide written notification to pupils of the opportunity to opt out of being deemed a Cal Grant applicant constitutes a state-mandated new program or higher level of service (Ed. Code, §69432.9(d), Stats 2014, ch. 679, Stats. 2016, ch. 82).

Statutes 2014, chapter 679 added subdivision (d) to Education Code section 69432.9, to require school districts, for the first time, to provide written notification, by October 15, to each grade 12 pupil (or pupil's parent or guardian for pupils under age 18) that the pupil will be automatically deemed a Cal Grant applicant unless the pupil opts out. Under the statute, the first written opt-out notice to grade 12 pupils was required to be sent by October 15, 2015, to pupils in the 2016 graduating class.<sup>27</sup>

The statute also requires the school district to “provide an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.” CSAC developed a sample Cal Grant Opt-Out Form in English and Spanish, which is available on its website, for school districts to comply with the requirement.<sup>28</sup> By signing the CSAC sample form or school district's form, the pupil is opting out and electing not to have his or her GPA and SSN (if applicable) reported to CSAC as part of a Cal Grant application.

Preexisting law did not require a notice or opportunity to opt-out of the Cal Grant application process because, prior to the test claim statutes, it was the responsibility of a pupil seeking a Cal Grant to file an application.<sup>29</sup>

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perjury in accordance with section 1187.5(b) of the Commission's regulations, indicates that the date is actually September 1, 2016.

<sup>27</sup> Exhibit F, California Student Aid Commission, Letter to High School Administrators “The Ting Bill Requirements Letter.” The letter states “The law became effective in the 2015-2016 academic year; thus, GPAs for 2015-2016 seniors must be submitted before March 2, 2016. GPAs must be subsequently submitted each year thereafter by the March 2 deadline.” See [http://www.csac.ca.gov/ting\\_bill.asp](http://www.csac.ca.gov/ting_bill.asp), accessed October 26, 2017.

<sup>28</sup> Exhibit F, California Student Aid Commission, Cal Grant GPA Opt Out Form. [http://www.csac.ca.gov/pubs/forms/grnt\\_frm/gpa\\_opt\\_out.pdf](http://www.csac.ca.gov/pubs/forms/grnt_frm/gpa_opt_out.pdf), accessed October 16, 2017.

<sup>29</sup> California Code of Regulations, title 5, sections 30008(c) and 30023(a)(2). See also section 30002, which defines an “eligible applicant.”

Based on the mandatory language of the statute,<sup>30</sup> staff finds that it is a new state-mandated activity, beginning January 1, 2015, to provide written notice by October 15 to all grade 12 pupils, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send GPAs to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.

Effective January 1, 2017, section 69432.9(d) was amended to require sending the opt-out notice to pupils by January 1 of the pupil’s grade 11 academic year, instead of by October 15 of the pupil’s grade 12 academic year. On March 27, 2017, CSAC issued a “Special Alert” explaining the change and stating that “the opt-out notification should be sent to the class of 2018 before the end of their junior year.”<sup>31</sup>

Under Statutes 2014, chapter 679, school districts were required to provide grade 12 pupils in the classes of 2016 and 2017 the opt-out notice by October 15, 2015 and 2016. School districts were also required to provide the opt-out notice to the class of 2018 when those pupils were in grade 11 pursuant to Education Code section 69432.9(d), as amended by the 2016 statute, by January 1, 2017. CSAC’s “Special Alert” recommended that the notices be sent to the class of 2018 before the end of their junior year”; i.e., before summer break in 2017, to comply with the statute.<sup>32</sup> Future classes are required to receive the notice by January 1 of their junior year.

These new activities provide a service to the public by increasing access to college financial aid to California pupils, and thus, mandate a new program or higher level of service.<sup>33</sup>

Therefore, staff finds that subdivision (d) of Education Code section 69432.9, as added by the 2014 and amended 2016 test claim statutes, imposes a state-mandated new program or higher level of service on school districts to provide a written Cal Grant opt-out notice and provide an opportunity to opt out as follows:

- Beginning January 1, 2015, providing written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send GPAs to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant; and

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<sup>30</sup> Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

<sup>31</sup> Exhibit F, California Student Aid Commission, Special Alert to High School Principals, High School Counselors, and County and District Superintendents, March 27, 2017. <http://www.csac.ca.gov/secured/specialalerts/2017/GSA%202017-13.pdf>, accessed October 27, 2017.

<sup>32</sup> Exhibit F, California Student Aid Commission, Special Alert to High School Principals, High School Counselors, and County and District Superintendents, March 27, 2017. <http://www.csac.ca.gov/secured/specialalerts/2017/GSA%202017-13.pdf>, accessed October 27, 2017.

<sup>33</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, pages 3-4.

- Beginning January 1, 2017, providing written notice by January 1 to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send GPAs to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant, is a new state-mandated activity.
2. The requirement to electronically submit GPAs for grade 12 pupils to CSAC constitutes a state-mandated new program or higher level of service. Certifying GPAs to CSAC is not a state-mandated new program or higher level of service, and submitting SSNs to CSAC is not a state mandate. (Ed. Code, §69432.9(c)(2), Stats 2014, ch. 679, Stats. 2016, ch. 82)

Statutes 2014, chapter 679 amended Education Code section 69432.9(a) to automatically deem each pupil enrolled in grade 12 a Cal Grant applicant, unless the pupil opts out. It also amended section 69432.9(c) to require a GPA be submitted electronically for *all* grade 12 pupils, not just those who apply for a Cal Grant. Statutes 2015, chapter 637 amended subdivision (c)(2) to clarify that GPAs be electronically submitted on a *standardized form*. Statutes 2016, chapter 82 amended subdivision (c)(2), to specify that GPAs for grade 12 pupils are to be submitted to CSAC “no later than October 1 of each academic year.” Under prior law, GPAs for Cal Grant applicants had to be submitted before the March 2 deadline.

Staff finds that the activity to *certify* GPAs for all grade 12 pupils, as required by Education Code section 69432.9(c), does not constitute a new program or higher level of service. School districts have long been required to certify GPAs under penalty of perjury for Cal Grant applicants.<sup>34</sup> Although school districts may now have to certify more GPAs than under prior law, and may or may not incur increased costs to do so,<sup>35</sup> the California Supreme Court has found that increased costs alone do not establish a reimbursable state-mandated program.<sup>36</sup>

In addition, staff finds that providing SSNs, if requested by CSAC, is not mandated by the plain language of Education Code section 69432.9(c)(2). The statute states that SSNs shall not be included in the information, and that “if” CSAC requests the SSN, the school district “may” obtain permission from the pupil or the parent to submit the information. Moreover, a school district submitting SSNs upon CSAC’s request is not new.

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<sup>34</sup> Former Education Code section 69432.9(c) (as last amended by Stats. 2011, ch. 7); see also, California Code of Regulations, title 5, section 30008.

<sup>35</sup> See Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, page 3 (stating that Los Angeles Unified and San Francisco Unified both experienced cost savings).

<sup>36</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d at 55-56; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877. See also Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014.

Staff finds that the requirement to electronically submit the GPAs of all grade 12 pupils each academic year to CSAC, except for pupils who opt out pursuant to Education Code section 69432.9(c)(2), mandates a new program or higher level of service. Under prior law, the GPA could be submitted by either the pupil or the school, by paper or electronically.<sup>37</sup> As stated in the legislative history of the 2014 test claim statute (Stats. 2014, ch. 679):

Currently, there is no standard practice for submitting GPA verification to the CSAC. Some schools submit hard copy verification forms, others submit GPAs electronically, and still others rely on their students to submit the verification forms themselves (once signed by a school official).<sup>38</sup>

CSAC regulations, however, expressly placed the responsibility for GPA submission on the Cal Grant applicant.<sup>39</sup>

Therefore, staff finds that Education Code section 69432.9(c)(2) as added and amended by Statutes 2014, chapter 679 and Statutes 2016, chapter 82 imposes a state-mandated new program or higher level of service to electronically submit GPAs for grade 12 pupils to CSAC, and this activity does not include the certification of the GPA or providing SSNs to CSAC.

3. Education Code section 69432.92 does not impose a state-mandated program on school districts to electronically submit verification of high school graduation to CSAC (Stats 2015, ch. 637).

Statutes 2015, chapter 637 added section 69432.92 to the Education Code to authorize CSAC to require the electronic verification of high school graduation or its equivalent for all grade 12 pupils that graduated in the prior academic year, except pupils who opted out.

Staff finds that electronically verifying, upon request from CSAC, the high school graduation of all grade 12 pupils who have not opted out of the Cal Grant program pursuant to Education Code section 69432.92, does not impose a state-mandated program on school districts. The plain language of the statute authorizes, but does not require, CSAC to request school districts to submit electronic verification of the high school graduation for grade 12 applicants.<sup>40</sup> The claimant has not filed an executive order or any other document with the Test Claim to indicate that CSAC requires schools to verify graduation information. In addition, the Education Code has long required that a pupil confirm his or her high school graduation before Cal Grant payments can be released, and either the pupil or the school district can verify graduation.<sup>41</sup>

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<sup>37</sup> Exhibit F, California Student Aid Commission, “Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year,” dated October 11, 2012. ([http://www.csac.ca.gov/pubs/forms/grnt\\_frm/non\\_ssn\\_gpa\\_qa.pdf](http://www.csac.ca.gov/pubs/forms/grnt_frm/non_ssn_gpa_qa.pdf)); See also, Cal Grant Manual, chapter 4.1, “The Cal Grant Application Process,” December 2005.

<sup>38</sup> Exhibit F, Senate Appropriations Committee, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, pages 1-2.

<sup>39</sup> California Code of Regulations, title 5, sections 30008(c) and 30023(a).

<sup>40</sup> Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

<sup>41</sup> Education Code section 69433.9 (as last amended by Stats. 2006, ch. 652.).

Ultimately, the applicant is responsible for verifying his or her high school graduation.<sup>42</sup> This process has not changed with the test claim statute. CSAC continues to allow the pupil to self-certify high school graduation.<sup>43</sup>

**C. The Mandated Requirements for K-12 School Districts to Notify Pupils and Parents of the Opportunity to Opt Out of the Cal Grant Application Process and Electronically Submit GPAs to CSAC Each Academic Year For All Pupils in Grade 12 Impose Costs Mandated by the State.**

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.

Finance argues there are no increased costs mandated by the state because funds from the Local Control Funding Formula (LCFF) and the College Readiness Block Grant are available to pay for the cost of the new state-mandated activities. According to Finance, “The total of all of these funds exceeds the actual or estimated costs alleged by the claimant and the statewide cost estimate alleged in the claim.”<sup>44</sup>

Under the pertinent part of Government Code section 17556(e), the Commission shall not find costs mandated by the state if:

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.

Staff finds that school districts incur increased costs mandated by the state within the meaning of Government Code section 17514, and that funding appropriated to school districts under the LCFF and the College Readiness Block Grant do not trigger the application of Government Code section 17556(e) to deny this test claim.

The LCFF<sup>45</sup> was enacted in fiscal year 2013-2014 to replace the previous K-12 general purpose revenue funding through Proposition 98. Previously, the state distributed school funding through

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<sup>42</sup> Education Code section 69432.9(a) (as last amended by Stats. 2011, ch. 7), and still in place today, states: “A Cal Grant applicant shall submit a complete official financial aid application pursuant to Section 69433 and application regulations adopted by the commission.” See also, Exhibit F, California Student Aid Commission, “High School Graduation Confirmation for High Schools, WebGrants User Guide” May 23, 2008, page 5.

<sup>43</sup> Exhibit F, California Student Aid Commission, “High School Graduation Certification Form For the Entitlement Cal Grant Program,” (G-8, dated 08/16) [http://csac.ca.gov/pubs/forms/grnt\\_frm/2016\\_2017\\_g-8\\_hs\\_graduation\\_verification.pdf](http://csac.ca.gov/pubs/forms/grnt_frm/2016_2017_g-8_hs_graduation_verification.pdf), accessed October 16, 2017.

<sup>44</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, pages 2 and 3.

<sup>45</sup> The Local Control Funding Formula is in Article 2 (commencing with section 42238) of Chapter 7 of Part 24 of Division 3 of Title 2 of the Education Code. Also, the County Local

a combination of general purpose grants (revenue limit entitlements) and more than 40 state categorical programs. Districts could use general purpose grants for any educational purpose, but they had to spend categorical funding on state-prescribed activities. In fiscal year 2013-2014, the state eliminated most categorical programs, replacing all the program-specific funding formulas with one new formula. The new formula increased the size of general purpose grants and directed more funding to districts with disadvantaged pupils.<sup>46</sup> Like the prior revenue limit apportionments, the LCFF is funded through a combination of local property taxes and state aid.<sup>47</sup>

The issue whether a school district's general revenue calculated under the LCFF and used to pay for a state-mandated program is required to be identified as offsetting revenue is pending in *California School Boards Assoc., et al. v. State of California, Commission on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance* (First District Court of Appeal, Case No. A148606). The Commission has approved many school district test claims, and has never identified a district's general purpose revenue as offsetting revenue. Moreover, the Legislature has not enacted a statute that "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," pursuant to Government Code section 17556(e) with respect to the Cal Grant activities mandated by the state. All LCFF funds are technically "unrestricted," which means school districts have discretion over how the funds are used. The Legislature has not directed the use of LCFF funds to pay for the costs of this program.<sup>48</sup> Therefore, the funding appropriated under the LCFF does not trigger the application of Government Code section 17556(e) to deny this Test Claim.

Similarly, the College Readiness Block Grant does not result in a finding of no costs mandated by the state pursuant Government Code section 17556(e). Enacted in 2016, the College Readiness Block Grant authorizes the appropriation of \$200 million to provide California's high school pupils, particularly unduplicated pupils (defined as low income pupils, pupils in foster care, and English learners), additional support to increase enrollment at institutions of higher education and complete an undergraduate degree within four years.<sup>49</sup> The "block grant funds apportioned to eligible school districts shall be used for activities that directly support pupil

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Control Funding Formula is in chapter 12.5 (commencing with section 2574) of Part 2 of Division 1 of Title 1 of the Education Code.

<sup>46</sup> Exhibit F, Legislative Analyst's Office, "The 2017-18 Budget: Proposition 98 Education Analysis," February 9, 2017, page 29, <http://www.lao.ca.gov/reports/2017/3549/prop98-analysis-020917.pdf>, accessed October 16, 2017.

<sup>47</sup> Exhibit F, California Department of Education, "LCFF Frequently Asked Questions," <https://www.cde.ca.gov/fg/aa/lc/lcffffaq.asp#FC>, accessed October 16, 2017; Education Code sections 42238.02, 42238.03.

<sup>48</sup> Exhibit F, California Department of Education, "LCFF Frequently Asked Questions," <https://www.cde.ca.gov/fg/aa/lc/lcffffaq.asp#FC>, accessed October 16, 2017.

<sup>49</sup> Education Code section 41580(b), as added by Statutes 2016, chapter 29.

access and successful matriculation to institutions of higher education.”<sup>50</sup> However, there is no requirement that school districts use the block grant funding to pay for the state-mandated program here. Accordingly, the block grant funds are not specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate in accordance with Government Code section 17556(e). However, the College Readiness Block Grant funds are potential offsetting revenues *if* the district uses the funds for this program.

Based on the statutes and evidence in the record, staff finds that the test claim statutes impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

### **Conclusion**

Staff finds that the test claim statutes impose a partially reimbursable state-mandated program on K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities only:

1. Provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d), (Stats 2014, ch. 679, Stats. 2016, ch. 82) as follows:
  - Beginning January 1, 2015, providing written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
  - Beginning January 1, 2017, providing written notice by January 1 to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
2. Electronically submit the GPAs of all grade 12 pupils each academic year to CSAC, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679). This activity does not include the certification of GPAs or providing SSNs to CSAC.

All other statutes and provisions pled in the Test Claim are denied.

### **Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision to partially approve the Test Claim. Staff further recommends that the Commission authorize staff to make any technical, non-substantive changes following the hearing.

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<sup>50</sup> Education Code section 41580(d).



BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 69432.9, 69432.92

Statutes 2014, Chapter 679 (AB 2160),  
Statutes 2015, Chapter 637 (AB 1091),  
Statutes 2016, Chapter 82 (AB 2908)

Filed on June 26, 2017

By Fairfield-Suisun Unified School District,  
Claimant

Case No.: 16-TC-02

*Cal Grant: Grade Point Average and  
Graduation Certification*

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

*(Adopted January 26, 2018)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on January 26, 2018. [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/rejected] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote count will be in the adopted Decision], as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
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	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the Director of the Department of Finance, Chairperson	

## Summary of the Findings

This Test Claim pleads Education Code sections 69432.9 and 69432.92, as added or amended by Statutes 2014, chapter 679, Statutes 2015, chapter 637, and Statutes 2016, chapter 82, with respect to the Cal Grant A and Cal Grant B Entitlement programs, through which the state provides financial assistance to college students who meet the eligibility criteria. The test claim statutes address the activities performed by K-12 school districts for pupils in grades 11 and 12 who may be eligible for a Cal Grant Entitlement award. Generally, sections 69432.9 and 69432.92:

- Deem every grade 12 pupil a Cal Grant applicant;
- Require school districts to provide written notification to pupils of the opportunity to opt out of being deemed a Cal Grant applicant;
- Require school districts to certify and electronically submit to the California Student Aid Commission (CSAC) the grade point averages (GPAs) of all grade 12 pupils, except those who opt out of being a Cal Grant applicant;
- Authorize CSAC to require an electronic submission of verification of high school graduation or its equivalent for all grade 12 pupils who graduated in the prior academic year, except those who opt of being a Cal Grant applicant;
- Authorize school districts to obtain permission from the pupil or parent or guardian of the pupil, to submit the pupil's social security number (SSN) to CSAC if CSAC determines that an SSN is required to complete the application for financial aid.

As a preliminary matter, the Commission finds that the Test Claim was timely filed pursuant to Government Code section 17551(c) and section 1183.1(c) of the Commission's regulations.

On the merits, the Commission finds that the activity to *certify* GPAs for all grade 12 pupils, as required by Education Code section 69432.9(c), does not constitute a new program or higher level of service. School districts have long been required to certify GPAs under penalty of perjury for Cal Grant applicants.<sup>51</sup> Although school districts may now have to certify more GPAs than under prior law, and may incur increased costs to do so, increased costs alone do not establish a reimbursable state-mandated program.<sup>52</sup>

The Commission further finds that the activity to electronically verify, upon request from CSAC, the high school graduation of all former grade 12 pupils who have not opted out of the Cal Grant program pursuant to Education Code section 69432.92, does not impose a state-mandated program on school districts. The plain language of the statute authorizes, but does not require, CSAC to request school districts to submit electronic verification of the high school graduation

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<sup>51</sup> Former Education Code section 69432.9(c) (as last amended by Stats. 2011, ch. 7); see also, California Code of Regulations, title 5, section 30008.

<sup>52</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 55-56; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.

for grade 12 pupils.<sup>53</sup> In addition, the Education Code has long required a pupil to confirm his or her high school graduation before Cal Grant payments can be released, and either the pupil or the school district can verify graduation.<sup>54</sup> Ultimately, the applicant is responsible for verifying his or her high school graduation.<sup>55</sup> This process has not changed with the test claim statutes.

In addition, the Commission finds that providing SSNs, if requested by CSAC, is not mandated by the plain language of Education Code section 69432.9(c)(2). The statute clearly states that SSNs shall not be included in the information, and that “if” CSAC requests the SSN, the school district “may” obtain permission from the pupil or the parent to submit the information. Moreover, a school district submitting SSNs upon CSAC’s request is not a new activity.

However, the Commission finds that the requirement to provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d), (Stats 2014, ch. 679, Stats. 2016, ch. 82) mandates a new program or higher level of service on K-12 school districts to:

- Beginning January 1, 2015, provide written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
- Beginning January 1, 2017, provide written notice by January 1 to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.

This activity is newly mandated by the state and provides a service to the public by increasing access to college financial aid for California students and thus, imposes a new program or higher level of service.

The Commission also finds that the requirement to electronically submit the GPAs of all grade 12 pupils each academic year to CSAC pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679), except for pupils who opt out, mandates a new program or higher level of service. Under prior law, the GPA could be submitted by either the pupil or the school,<sup>56</sup> by

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<sup>53</sup> Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

<sup>54</sup> Education Code section 69433.9 (as last amended by Stats. 2006, ch. 652.).

<sup>55</sup> Education Code section 69432.9(a) (as last amended by Stats. 2011, ch. 7), and still in place today, states: “A Cal Grant applicant shall submit a complete official financial aid application pursuant to Section 69433 and application regulations adopted by the commission.” See also, Exhibit F, California Student Aid Commission, “High School Graduation Confirmation for High Schools, WebGrants User Guide” May 23, 2008, page 5.

<sup>56</sup> Exhibit F, Senate Appropriations Committee, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, pages 1-2.

paper or electronically,<sup>57</sup> and responsibility for GPA submission was expressly on the Cal Grant applicant.<sup>58</sup> The 2014 test claim statute added Education Code section 69432.9(c)(2) to require electronic submission of GPAs for all grade 12 pupils except those who opt out by specified deadlines. Although the test claim statute did not specify who is required to submit the GPA to CSAC, both CSAC and the California Department of Education have interpreted section 69432.9(c)(2) to require the school district to electronically submit the GPAs for all grade 12 pupils each academic year.<sup>59</sup> Thus, the Commission finds that the activity is newly mandated on school districts and provides a higher service to the public.

Moreover, the Commission finds that these activities result in increased costs mandated by the state, and that funding appropriated to school districts under the Local Control Funding Formula and the College Readiness Block Grant do not trigger the application of Government Code section 17556(e) to deny this Test Claim.

Accordingly, the Commission partially approves this Test Claim.

## COMMISSION FINDINGS

### I. Chronology

- 06/26/2017 The Fairfield Suisun Unified School District (claimant) filed the Test Claim with the Commission.<sup>60</sup>
- 10/11/2017 The Department of Finance (Finance) filed comments on the Test Claim.<sup>61</sup>
- 11/09/2017 The claimant filed rebuttal comments.<sup>62</sup>
- 11/22/2017 Commission staff issued the Draft Proposed Decision.<sup>63</sup>

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<sup>57</sup> Exhibit F, California Student Aid Commission, “Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year,” dated October 11, 2012. ([http://www.csac.ca.gov/pubs/forms/grnt\\_frm/non\\_ssn\\_gpa\\_qa.pdf](http://www.csac.ca.gov/pubs/forms/grnt_frm/non_ssn_gpa_qa.pdf)); See also, Cal Grant Manual, chapter 4.1, “The Cal Grant Application Process,” December 2005.

<sup>58</sup> California Code of Regulations, title 5, sections 30008(c) and 30023(a).

<sup>59</sup> Exhibit F, California Department of Education, Official Letter to County and District Superintendents, Charter School Administrators, High School Principals, and High School Counselors, January 25, 2016. See also California Department of Education, Letter to County and District Superintendents, Charter School Administrators, High School Principals, and High School Counselors, September 19, 2017; Exhibit F, California Student Aid Commission, Operations Memo to High School Principals, High School Counselors, and County and District Superintendents, October 10, 2016.

<sup>60</sup> Exhibit A, Test Claim, page 11.

<sup>61</sup> Exhibit B, Department of Finance’s Comments on the Test Claim.

<sup>62</sup> Exhibit C, Claimant’s Rebuttal Comments.

<sup>63</sup> Exhibit D, Draft Proposed Decision.

12/13/2017 The claimant filed comments on the Draft Proposed Decision.<sup>64</sup>

## II. Background

### A. History and Overview of the Cal Grant Program

In 1955, the Legislature enacted the Hegland-Shell-Donahoe and Donald D. Doyle Act, which provided for a series of competitive undergraduate scholarships for college tuition and fees. The awards were granted on the basis of a competitive examination, demonstrated financial need, and additional requirements pertaining to residency and citizenship. The State Scholarship later became the Cal Grant A program, and were administered by a newly-created State Scholarship Commission, with members appointed by the Governor. This commission was later expanded and renamed the California Student Aid Commission.<sup>65</sup>

In 1968, the College Opportunity Grant was created as a competitive grant program and later changed to the Cal Grant B program.<sup>66</sup> In 1973, the Occupational Education and Training Grant was created and later changed to the Cal Grant C program, which is for community college students.<sup>67</sup>

Statutes 2000, chapter 403<sup>68</sup> enacted the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program, which replaced the former Cal Grant program, and applies to Cal Grant recipients beginning in the 2001-2002 academic year. The intent of the program is to guarantee a Cal Grant to every California high school pupil graduating in 2001 and after, who meets the minimum GPA and eligibility requirements, has financial need, and applies for the Cal Grant by March 2 of the academic year of high school graduation, or by March 2 of the year following graduation.<sup>69</sup> The guarantee also extends to California community college students transferring to a four-year college, who graduated from a California high school after June 2000, were California residents when they graduated, and who meet the Cal Grant requirements when they transfer to a four-year college. These grants consist of the following:

- Cal Grant A Entitlement awards pay tuition and fees at “qualifying” four-year colleges. Every high school senior graduating in 2001 or after who has at least a 3.0 high school

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<sup>64</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision.

<sup>65</sup> Exhibit F, California Student Aid Commission, “Cal Grant Handbook,” February 11, 2016, page 3. See [http://www.csac.ca.gov/CGM/calgrant\\_handbook.pdf](http://www.csac.ca.gov/CGM/calgrant_handbook.pdf), accessed on October 26, 2017.

<sup>66</sup> Exhibit F, California Student Aid Commission, “Cal Grant Handbook,” February 11, 2016, page 3. See [http://www.csac.ca.gov/CGM/calgrant\\_handbook.pdf](http://www.csac.ca.gov/CGM/calgrant_handbook.pdf), accessed on October 26, 2017.

<sup>67</sup> Exhibit F, California Student Aid Commission, “Cal Grant Handbook,” February 11, 2016, page 3. See [http://www.csac.ca.gov/CGM/calgrant\\_handbook.pdf](http://www.csac.ca.gov/CGM/calgrant_handbook.pdf), accessed on October 26, 2017.

<sup>68</sup> Urgency legislation, operative September 12, 2000. This added chapter 1.7 to Part 42 of the Education Code, beginning with Education Code section 69430, replacing the former program at former section 69530 et seq.

<sup>69</sup> Statutes 2000, chapter 403 (SB 1644), section 2.

GPA, meets all the Cal Grant requirements, is a California resident at the time of graduation, and applies by March 2 of either the year of graduation or the following year is guaranteed a Cal Grant award.<sup>70</sup> A Cal Grant A recipient attending a California community college will not receive any payment, however, because community colleges do not charge tuition. Cal Grant eligible students attending a community college qualify for a Board of Governors fee waiver instead. The Cal Grant A award is held in reserve by CSAC for two years (or three years upon request) for use when the student transfers to a tuition charging four-year qualifying institution.<sup>71</sup>

- Cal Grant B Entitlement awards are for students from disadvantaged or low-income families and generally cover “access costs” such as living expenses, books, supplies, and transportation expenses in the first academic year. In subsequent years, the award includes an additional amount to pay for tuition and fees. Every graduating high school senior who has at least a 2.0 high school GPA, meets all the Cal Grant requirements, is a California resident at the time of graduation, and applies by March 2 of either the year of graduation or the following year is guaranteed a Cal Grant B entitlement award. A limited number of first-year students who have exceptional financial need and a high grade point average may receive both the living allowance and the tuition and fee award.<sup>72</sup>
- Cal Grant Transfer Entitlement awards are for community college students transferring to a four-year college and did not receive a Cal Grant within one year of graduating from high school. To qualify, students must have graduated from a California high school after June 30, 2000, and be a California resident when they graduated. Students must also have a 2.4 community college GPA (of at least 24 semester units or the equivalent), meet the Cal Grant eligibility requirements, be under 24 years old, and apply by the March 2 deadline before the fall term when they plan to transfer.<sup>73</sup>

Other students who are eligible for a Cal Grant, but are not high school seniors or recent graduates may compete for Cal Grant A or B Competitive awards. These awards are the same as the Cal Grant Entitlement awards except that they are not guaranteed. A limited number of Competitive awards are available each academic year. Half of the Competitive awards are set aside for pupils who apply by the March 2 deadline and meet the requirements, and half are for California community college students who meet the requirements and apply by September 2. The eligibility requirements for the competitive awards are focused on nontraditional students and take into account GPA, time out of high school, family income, parent’s educational levels, high school performance standards, whether the student comes from a single-parent household or was a foster youth. A student selected for a Cal Grant A Competitive award who enrolls in a

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<sup>70</sup> Education Code section 69434 (as last amended by Stats. 2009, ch. 644).

<sup>71</sup> Education Code section 69434.5 (as last amended by Stats. 2001, ch. 159).

<sup>72</sup> Education Code sections 69435 (as last amended by Stats. 2009, ch. 644), 69435.3 (as last amended by Stats. 2001, ch. 8); California Code of Regulations, title 5, section 30024.

<sup>73</sup> Education Code sections 69436 (as last amended by Stats. 2012, ch. 38), 69436.5 (as added by Stats. 2000, ch. 403).

California community college has the award for tuition held in reserve until the student transfers to a four-year institution.<sup>74</sup>

Except for certain five-year educational programs, Cal Grant A and B awards may be renewed for a total of the equivalent of four years of full-time attendance in an undergraduate program provided that financial need continues to exist. The total number of years of eligibility is based on the student's educational level, which is designated by the institution of attendance when the student initially receives payment for a grant.<sup>75</sup>

The Cal Grant C for vocational training and Cal Grant T awards for teacher credential training (after the student earned a baccalaureate or higher degree) were also included in the Ortiz-Pacheco-Poochigian-Vasconcellos Cal Grant Program.<sup>76</sup>

#### 1. The Cal Grant application process under prior law

The Cal Grant applicant is required to submit a complete official financial aid application to CSAC to apply for a Cal Grant.<sup>77</sup> Under both prior and current law, the application process required pupils to complete and submit a Free Application for Federal Student Aid (FAFSA) form.<sup>78</sup> The FAFSA is mailed or electronically submitted to the U.S. Department of Education's central processor, which sends FAFSA information for California pupils to CSAC. For Cal Grant eligibility, the pupil must show on the FAFSA that he or she:

- Is a California resident
- Is a U.S. citizen or eligible noncitizen
- Meets Selective Service requirements
- Will attend an eligible California School
- Does not owe state or federal grant repayment
- Is not in default on a student loan
- Has not earned a BA/BS degree
- Maintains satisfactory academic progress
- Is not incarcerated
- Is enrolled at least half-time

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<sup>74</sup> Education Code sections 69437 - 69437.7 (as added by Stats. 2000, ch. 403); California Code of Regulations, title 5, section 30025.

<sup>75</sup> Education Code section 69433.6 (as last amended by Stats. 2011, ch. 7).

<sup>76</sup> Education Code sections 69439 (as last amended by Stats. 2011, ch. 7), 69440 (as last amended by Stats. 2003, chs. 91 and 253).

<sup>77</sup> Education Code section 69432.9(a) (as last amended by Stats. 2011, ch. 7); Education Code section 69433(c) (as added by Stats. 2000, ch. 403).

<sup>78</sup> Education Code section 69432.9 (as last amended by Stats. 2011, ch. 7); Education Code section 69433(c) (as added by Stats. 2000, ch. 403); Education Code section 69433.9 (as last amended by Stats. 2006, ch. 43).

- Has a Social Security number.<sup>79</sup>

Pupils who are not citizens but who meet other eligibility criteria may file the California Dream Act application in lieu of the FAFSA.<sup>80</sup>

Except for applicants competing for Competitive Cal Grant A or B awards and permitted to provide test scores in lieu of a GPA, a certified GPA is required to be submitted by the statutory deadline for all Cal Grant A and B applicants, which for high school pupils, is March 2.<sup>81</sup> Each reported GPA is required to include a certification, executed under penalty of perjury, by a school official, that the GPA is accurately reported.<sup>82</sup> Under both prior and current law, a high school pupil's GPA is calculated by a school official as follows:

“High school grade point average” means a grade point average calculated on a 4.0 scale, using all academic coursework, for the sophomore year, the summer following the sophomore year, the junior year, and the summer following the junior year, excluding physical education, reserve officer training corps (ROTC), and remedial courses, and computed pursuant to regulations of the commission. However, for high school graduates who apply after their senior year, “high school grade point average” includes senior year coursework.<sup>83</sup>

The GPA must be submitted by either the pupil or the school.<sup>84</sup> CSAC regulations, however, expressly place the responsibility for GPA submission on the Cal Grant applicant: “All Cal

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<sup>79</sup> Education Code section 69433.9 (as last amended by Stats. 2006, ch. 43); Exhibit F, California Student Aid Commission, Cal Grant 101, Presentation at 2013 CASFAA Conference, pages 4-7.

<sup>80</sup> The California Dream Act application is for pupils who are noncitizens, but who attended a California high school for at least three years or graduated early from a California high school with the equivalent of at least three years of credits and attended three years of elementary and secondary school, graduated from a California high school or the equivalent, and are or will be attending an accredited California college or university. Education Code section 68130.5(a) (as last amended by Stats. 2016, ch. 69).

<sup>81</sup> Education Code sections 69432.9 (as last amended by Stats. 2011, ch. 7), 69433 (as added by Stats. 2000, ch. 403); Education Code section 69434(b)(1) (as last amended by Stats. 2009, ch. 644.); Education Code section 69435.3(a)(1) (as last amended by Stats. 2001, ch. 8); California Code of Regulations, title 5, sections 30007, 30008, 30023(a)(b).

<sup>82</sup> Education Code section 69432.9(c) (as last amended by Stats. 2011, ch. 7).

<sup>83</sup> Education Code section 69432.7(h) (as last amended by Stats. 2012, chs. 38 and 575); California Code of Regulations, title 5, section 30008(a).

<sup>84</sup> Exhibit F, California Student Aid Commission, “Cal Grant Manual,” chapter 4.1, ‘The Cal Grant Application Process’, December 2005; See also, California Student Aid Commission, “Cal Grant Handbook,” February 11, 2016, pages 21-22, [http://www.csac.ca.gov/CGM/calgrant\\_handbook.pdf](http://www.csac.ca.gov/CGM/calgrant_handbook.pdf), accessed on October 26, 2017.



Grant A and B applicants shall submit a grade point average”<sup>85</sup> and, “It is the responsibility of the applicant to have his or her high school grade point average reported.”<sup>86</sup>

CSAC may accept a GPA from an applicant or reporting school after the statutory deadline if, in the opinion of the Executive Director, circumstances beyond the control of the applicant delayed or prevented the timely submission of the grade point average. The circumstances must be shown by a certification from the reporting school and the applicant. Applicants or officials who submit a timely but incomplete or incorrect GPA shall have a grace period of ten days after CSAC’s mailing of notice to file a corrected or completed grade point average.<sup>87</sup>

In addition, CSAC may use an applicant’s SSN as a key identifier in CSAC’s Grant Delivery System to match the FAFSA information with the pupil’s GPA.<sup>88</sup>

In addition, Education Code section 69433.9(e), as last amended in 2006, requires that a student meet the requirements for a high school diploma to be eligible for a Cal Grant Entitlement award.<sup>89</sup>

In response to state audit findings in 2006, CSAC voted to require confirmation of the graduation status for new Cal Grant A and B Entitlement awardees as follows.

For 2007-08, Cal Grant Entitlement participants were to submit proof of high school graduation to the college they were attending or complete a self-certification of their high school graduation on the California High School Graduation Certification Form (G-8) confirmed prior to receiving payment in the fall. The system placed the responsibility to restrict payment on the colleges.

For the 2008-09 school year, the Commissioners directed staff to put into place an electronic certification system with the Commission as the central repository of high school graduation confirmations. The WebGrants system will store the required confirmation data and restrict Cal Grant payment to those student’s [sic] whose status has not yet been confirmed. Confirmation to this system must be post-high school graduation. No certifications of graduation status will be allowed until after the student has actually graduated. For this reason, the great majority of new Cal Grant Entitlement high school graduation confirmations cannot be made until May or June each year.<sup>90</sup>

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<sup>85</sup> California Code of Regulations, title 5, section 30023(a).

<sup>86</sup> California Code of Regulations, title 5, sections 30008(c) and 30023(a)(2). See also section 30002, which defines an “eligible applicant.”

<sup>87</sup> California Code of Regulations, title 5, section 30023.

<sup>88</sup> Exhibit F, California Student Aid Commission, “California Student Aid Commission, Cal Grant GPA Questions and Answers for High Schools,” October 2009, page 1.

<sup>89</sup> Education Code section 69433.9(e), as last amended by Statutes 2006, chapter 652.

<sup>90</sup> Exhibit F, California Student Aid Commission, “High School Graduation Confirmation for High Schools, WebGrants User Guide” May 23, 2008, page 5.

Before the test claim statutes, school districts could certify an applicant's high school graduation on the High School Graduation Verification screen, accessible in WebGrants. Pupils could also confirm their graduation status on WebGrants for Students, and had the option of submitting a paper confirmation using the 2008-09 California High School Graduation Confirmation Certification Form (G-8).<sup>91</sup>

2. Prior Test Claim filed by community college districts (*Cal Grants*, 02-TC-28), on the Cal Grant program added by Statutes 2000, chapter 403, and the implementing regulations

On March 27, 2009, the Commission adopted a Statement of Decision on the Test Claim *Cal Grants*, 02-TC-28, filed by Long Beach Community College District, finding that Education Code section 69432.9 (as added by Stats. 2000, ch. 403), and sections 30007, 30023(a) and (d), and 30026 of CSAC regulations constitute a reimbursable state-mandated program on community college districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for:

- Calculating a college or community college grade point average pursuant to the instructions in California Code of Regulations, title 5, section 30007. (Ed. Code, § 69432.9(b)(3)(C), as added by Stats. 2000, ch. 403; Cal. Code Regs, tit. 5, §§ 30007, 30023(a), and 30026.)
- Certifying under penalty of perjury to the best of his or her knowledge from the school official filing the report that the grade point average is accurately reported and that it is subject to review by the Student Aid Commission or its designee. (Ed. Code, § 69432.9(b)(3)(C), as added by Stats. 2000, ch. 403; Cal. Code Regs, tit. 5, §§ 30007 and 30026.)
- Completing or correcting a grade point average upon notice that the original submitted grade point average was not complete or correct. (Cal. Code Regs., tit. 5, § 30023(d).)

The Commission determined that these activities apply to community colleges only when: (1) a community college student applies for a Cal Grant Transfer Entitlement award for use at a four year college; (2) a community college student competes for a Competitive Cal Grant A to be held in reserve until the student attends a four year college; or (3) a community college student competes for a Competitive Cal Grant B award, which can be used at the community college.<sup>92</sup>

No prior test claim has been filed by K-12 school districts on the Cal Grant program.

### **B. The Test Claim Statutes**

This Test Claim pleads Education Code section 69432.9, as amended by Statutes 2014, chapter 679, Statutes 2015, chapter 637, and, Statutes 2016, chapter 82, and section 69432.92, as added and amended by Statutes 2015, chapter 637, and, Statutes 2016, chapter 82. The test claim statutes affect the activities performed by K-12 school districts in relation to the Cal Grant A and

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<sup>91</sup> Exhibit F, California Student Aid Commission, "High School Graduation Confirmation for High Schools, WebGrants User Guide" May 23, 2008, page 5.

<sup>92</sup> Commission on State Mandates, Statement of Decision, *Cal Grants*, 02-TC-08, pages 30-31.

Cal Grant B Entitlement programs for pupils in grades 11 and 12 who may attend college and be eligible for a Cal Grant.<sup>93</sup>

1. Education Code section 69432.9 (Statutes 2014, chapter 679; Statutes 2015, chapter 634; and Statutes 2016, chapter 82)

Effective January 1, 2015, Statutes 2014, chapter 679, amended Education Code section 69432.9(a) to provide that each “pupil enrolled in grade 12 in a California public school, including a charter school, other than pupils who opt out as provided in subdivision (d), shall be deemed to be a Cal Grant applicant.”

The 2014 statute also added subdivision (c)(2) to provide that CSAC “shall require that a grade point average be submitted to it electronically for all grade 12 pupils at public schools, including charter schools, each academic year, except for pupils who have opted out as provided in subdivision (d).” The statute also provides that pupil SSNs shall not be included in the information submitted to CSAC unless CSAC determines that a SSN is required to complete the application for financial aid. In such cases, school districts may obtain permission from the parent or guardian of the pupil, or from the pupil if he or she is 18 years of age, to submit the pupil’s SSN to CSAC.

The 2014 statute also added subdivision (d) to section 69432.9 to require the school district to provide written notification by October 15 to each grade 12 pupil who is 18 years of age, or to the parent or guardian of each grade 12 pupil under the age of 18, that the pupil will automatically be deemed a Cal Grant applicant unless the pupil opts out, and requires the school district or charter school to provide an opportunity for the pupil to opt out.

CSAC provided an opt-out form that school districts may use to comply with the notification requirement.<sup>94</sup>

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<sup>93</sup> Government Code section 17519 states that “‘School district’ means any school district, community college district, or county superintendent of schools.” The county superintendent of schools is the executive officer of the county office of education. (Ed. Code, § 1010.) The county office of education administers county community schools, which are public schools that educate pupils in kindergarten through grade 12 who are expelled from school or who are referred because of attendance or behavior problems. County community schools also serve pupils who are homeless, on probation or parole, or who are not attending any school. Parents or guardians may request that their child attend a county community school. (Ed. Code, § 1980, et seq.). County community schools are also affected by the test claim statutes and counties are eligible local agency claimants, as defined. In addition, the test claim statutes expressly refer to charter schools. However, only school districts, as defined in Government Code section 17519, are eligible claimants. Thus, only mandated costs for charter schools which are costs of a school district may be claimed by an eligible school district. Individual schools (including charter schools) that are not school districts and subject to the tax and spend limitations of the California Constitution, are not eligible claimants and may not file mandate reimbursement claims.

<sup>94</sup> Exhibit F, California Student Aid Commission, Operations Memo to High School Counselors, October 9, 2015.

Statutes 2014, chapter 679, was sponsored by the Education Trust-West (ETW) with the goal of increasing Cal Grant applications and awards. According to the Senate Committee on Education analysis:

In 2013 the Education Trust-West issued its report *The Cost of Opportunity* which found that only 54% of California's 12th graders completed a FAFSA in 2012, and only 50% completed the both the FAFSA and submitted a GPA verification, both steps necessary to apply for a Cal Grant by the March 2nd deadline. In 2014, a follow up Equity Alert entitled *Doorways to College Aid: Boosting Access to Financial Aid in California* found that in 2013 the rates of completion of the FAFSA and Cal Grant applications increased statewide by 7% and 8% respectively for a total of 25,000 additional FAFSA completions and more than 30,000 additional Cal Grant applications. However, 42% (170,000) of 12th graders from the class of 2013 still did not complete a Cal Grant application.

The report notes the higher completion rates were the results of efforts at the local level which include an early focus on FAFSA completion and the electronic submission of GPAs for all students. An analysis of districts using electronic GPA found a 10 percent boost in Cal Grant Completion for those districts. The average Cal Grant completion rate for these districts was 71 percent, compared to 56 percent for other districts. The report also noted that some districts are hesitant to adopt this practice due to privacy concerns.

Among other things, the report recommended that all high schools and districts should electronically submit GPA and graduation verification for all high school seniors. This bill implements this recommendation.<sup>95</sup>

The need for the bill was stated as follows:

According to the author, while some districts already provide GPAs to CSAC for all or some students, many do not. The author notes that Los Angeles and San Francisco unified school districts are already providing GPAs for all high school seniors to CSAC and, according to the author, report that costs for computer programming are minor and absorbable and districts experienced an overall cost savings associated with high school counselors no longer being required to complete paper forms for students. The author also notes that CSAC reported processing over 70,000 paper GPA forms in 2013, taking significant staff time. The author believes that overall cost savings associated with this bill could result in more time for high school counselors and CSAC to outreach to students encouraging Free Application for Federal Student Aid (FAFSA) completion. Without legislation, the author argues "it would take several years for all school districts to implement the best practice in this bill."<sup>96</sup>

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<sup>95</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, page 4.

<sup>96</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, page 3. Emphasis in original.

Statutes 2015, chapter 634, amended Education Code section 69432.9 to: (1) clarify that pupil GPAs are to be electronically submitted to CSAC on a *standardized form*, and (2) state the intent of the Legislature for CSAC to “make available to each high school and school district a report identifying all grade 12 pupils within the high school or school district, respectively, who have and have not completed the Free Application for Federal Student Aid or the California Dream Act Application.”

Effective January 1, 2017, Statutes 2016, chapter 82, amended Education Code section 69432.9(c)(2) to specify that GPAs for grade 12 pupils who do not opt out are to be submitted to CSAC *no later than October 1 of each academic year*.

Statutes 2016, chapter 82, also amended the opt-out notification process in section 69432(d), to require school districts to notify pupils that they can opt out of the Cal Grant application process *by January 1 of their grade 11 academic year*. The 2016 statute requires that the opt-out notification indicate when the school will first send GPAs to CSAC and the October 1st deadline for GPAs to be submitted to CSAC. The purpose of Statutes 2016, chapter 82, is to conform the GPA submission deadline to federal financial aid deadlines. According to the Senate Floor Analysis:

Conforming to new Free Application for Federal Student Aid (FAFSA) timeline. On September 14, 2015, President Obama announced significant changes to the FAFSA. Starting this year, the FAFSA will be available to students on October 1, 2016, rather than on January 1, 2017. The earlier submission date will be a permanent change, enabling students to complete and submit a FAFSA on October 1 every year. This bill authorizes CSAC to adjust the GPA submission date thereby conforming to the new FAFSA release date.<sup>97</sup>

2. Education Code section 69432.92 (Statutes 2015, chapter 634)<sup>98</sup>

Statutes 2015, chapter 637, added Education Code section 69432.92 to: (1) authorize CSAC to require verification of high school graduation or its equivalent to be electronically submitted for all former grade 12 pupils who graduated from public schools in the prior academic year, except pupils who have opted out of the Cal Grant application process; and (2) state legislative intent

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<sup>97</sup> Exhibit F, Senate Floor Analysis of AB 2908 (2015-2016 Reg. Sess.) as amended April 11, 2016, page 3.

<sup>98</sup> Statutes 2016, chapter 351 replaced the statement of legislative intent in section 69432.92(b) with the following:

If the commission requires verification of high school graduation or its equivalent pursuant to subdivision (a), the commission shall provide guidance to high schools or high school districts to ensure that high schools and high school districts verify the graduation of their pupils as soon as possible upon a pupil's graduation and no later than August 31 of the academic year following the pupil's graduation. This subdivision also applies to pupils who graduate during the summer following the grade 12 academic year.

Statutes 2016, chapter 351 was not pled in this Test Claim so the Commission makes no finding on it.

that “high schools or high school districts verify the graduation of their pupils in time to meet the deadlines imposed by subdivision (e) of section 69433.9.”

The legislative history states that the purpose of this bill was to streamline the financial aid process and increase Cal Grant and FAFSA completion rates:

According to author, many students often times become overwhelmed with the Cal Grant application process and fail to submit verification of high school graduation to CSAC. The author further asserts that missing this step could make the difference between a student attending college or not. This bill aims to streamline the financial aid process and increase Cal Grant and FAFSA completion rates by requiring the electronic submission of high school graduation information.

Existing process for verification. According to the CSAC the method for providing verification varies depending on the school district. For the most part, it is the responsibility of the school district to submit the information to CSAC; however, if the district fails to provide the information, the responsibility falls on the student. Generally, most submissions are electronic, but thousands of paper forms are submitted that have to be keyed in manually. This bill seeks to give the CSAC the authority to create a standardized process for collecting information directly from school districts when determining Cal Grant eligibility.<sup>99</sup>

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

#### **A. Fairfield-Suisun Unified School District**

The claimant maintains that the test claim statutes impose a reimbursable state-mandated program on school districts under article XIII B, section 6 of the California Constitution and Government Code section 17514. As stated in the Test Claim, the claimant requests reimbursement for the following activities to comply with the test claim statutes:

1. Time and costs incurred by school districts, county offices of education, and charter schools to prepare for, provide and attend training in order to instruct the employees on the requirements imposed by Statutes 2014, Chapter 679, A.B. 2160, Education Code Sections 69432.9(c)(2), 69432.9(c)(3), 69432.9(c)(5), 69432.9(d)(1), 69432.9 (d)(2). Statutes 2015, Chapter 637, A.B. 1091 Education Code Sections 69432.92(a) and 69432.92(b). Statutes 2016, Chapter 82, AB2908, Education Code Sections 69432.9(c)(2) & (d)(1).
2. Time and costs incurred by school districts, county offices of education, and charter schools to review records, correct, update and submit grade point averages to the CSAC for all grade 12 pupils prior to October 15 of each year. AB 2160 - Statutes 2014, Education Code Section 69432.9(c)(2).
3. Time and costs incurred by school districts, county offices of education, and charter schools to submit each student’s grade point averages electronically, on a standardized form, for all grade 12 pupils at public schools, including

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<sup>99</sup> Exhibit F, Senate Floor Analysis, AB 1091 (2015-2016 Reg. Sess.) as amended June 1, 2015, page 3.

charter schools. AB 2160 - Statutes 2014, Education Code Sections 69432.9(c)(2).

4. Time and costs incurred by school districts, county offices of education, and charter schools to comply with CSAC requests for social security numbers including time and costs to obtain permission from the parent or guardian, or pupil, if he or she is 18, and to submit the pupil's social security number to the CSAC. AB 2160 - Statutes 2014, Education Code Sections 69432.9(c)(2).
5. Time and costs incurred by school districts, county offices of education, and charter schools for including a certification to the CSAC, executed under penalty of perjury by a school official, that the grade point average is accurately reported. The certification shall include a statement that it is subject to review by the CSAC or its designee. AB 2160 - Statutes 2014, Education Code Sections 69432.9(c)(3).
6. Time and costs incurred by school districts, county offices of education, and charter schools to ensure the grade point average certification is submitted to CSAC in time to meet the application deadline imposed by this chapter. AB 2160 - Statutes 2014, Education Code Sections 69432.9(c)(5).
7. Time and costs incurred by school districts, county offices of education, and charter schools, no later than October 15 of a pupil's grade 12 academic year, to notify, in writing, each grade 12 pupil and, for a pupil under 18 years of age, his or her parent or guardian that, pursuant to subdivision (a), the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days. The required notice shall indicate when the school will first send grade point averages to the commission. The school district, county office of education or charter school shall provide an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant. Until a pupil turns 18 years of age, only a parent or guardian may opt the pupil out. Once a pupil turns 18 years of age, only the pupil may opt himself or herself out and, if prior to the conclusion of the notice period, the pupil may opt in over the prior decision of a parent or guardian to opt out. Statutes 2014, Chapter 679, A.B. 2160, Education Code Section 69432.9(6)(d) (1) [sic] and Education Code Section 69432.9(d)(1) & (d)(2).
8. Time and costs incurred by school districts, county offices of education, and charter schools to submit the required grade point averages for grade 12 pupils to be submitted by October 1 of each academic year. Statutes 2016, Chapter 82, AB 2908, Education Code Sections 69432.9(c)(2) & (d)(1).
9. Time and costs incurred by school districts, county offices of education, and charter schools to notify pupils by January 1 of their grade 11 academic year so the pupil can opt out of the program. Additionally, school districts, county offices of education, and charter schools are now required to send an "Opt Out" notice to each pupil in grade 12. Statutes 2016, Chapter 82, AB2908,

Education Code Sections 69432.9(d)(1) & (2). (Amended by Stats. 2016, Ch. 82, Sec. 3. Effective January 1, 2017.)

10. Time and costs incurred by school districts, county offices of education, and charter schools to provide verification of high school graduation or its equivalent. Education Code Section 69432.92(a).
11. Time and costs to electronically submit the graduation data for all former grade 12 pupils, in the prior academic year, including charter schools, in the prior academic year, except for pupils who have opted out as provided in subdivision (d) of Section 69433.9, when required by the CSAC. Education Code Section 69432.92(a).
12. Time and costs incurred by school districts, county offices of education, and charter schools to verify the graduation of their pupils, when requested by CSAC in time to meet the deadlines imposed by subdivision (e) of Section 69433.9. This subdivision also applies to pupils who graduate during the summer following the grade 12 academic year. Education Code Sections 69432.92(b).<sup>100</sup>

The claimant alleges costs to implement the test claim statutes, stating: “actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the mandate: Actual: \$13,099 FY 2015-16 and \$14,888 for FY 2016-17.” The claimant further alleges: “The actual or estimated annual costs that will be incurred by the claimant to implement the mandate during the fiscal year immediately following the fiscal year for which the claim was filed: Estimated: \$15,186 FY 2017-18.”

Specifically, the claimant alleges the following costs to comply with the test claim statutes for 2015-2016.<sup>101</sup>

DISTRICT				FAIRFIELD SUISUN UNIFIED SCHOOL							
Fiscal Year	Actual Costs first Incurred		Position	Average Salary & Benefits - Registrar 2015-16	Activity	Time per registrar /HRS	Number of individuals	Total time spent/HRS	total direct costs 15-16	Indirect costs 15-16 6.05%	cost per student
2015-16	Sept. 1, 2015	AB 2160	Registrar	\$32.86	Training on Cal Grant Reporting Requirements	4	5	20	\$657	\$40	\$0.44
2015-16	Sept. 1, 2015	AB 2160	Registrar	\$32.86	Calculate and key grades into Cal Grant form - 14min each student		1594	371.93	\$12,223	\$740	\$7.67

<sup>100</sup> Exhibit A, Test Claim, pages 13-15.

<sup>101</sup> Exhibit A, Test Claim, page 16.



DISTRICT			FAIRFIELD SUISUN UNIFIED SCHOOL								
2015-16	Sept. 1, 2015	AB 2160	Registrar	\$32.86	Mailing opt out forms to all seniors	1	5	5	\$164	\$10	\$0.10
2015-16	Sept. 1, 2015	AB 2160	Registrar	\$32.86	Comply with CSAC requests for social security numbers	0.25	5	1.25	\$41	\$2	\$0.03
2015-16	Sept 1, 2015	AB 2160	Registrar	\$32.86	Execute certification	0.08	5	0.4	\$13	\$1	\$0.01
2015-16	Districtwide Total								\$13,099.25		\$8.24

The claimant alleges the following costs to comply with the test claim statutes for 2016-2017:<sup>102</sup>

DISTRICT ACTUAL COSTS 2016-17				FAIRFIELD SUISUN UNIFIED SCHOOL DISTRICT							
Fiscal Year	Costs first Incurred		Position	Average Salary & Benefits Registrar 2016-17	Activity	Time per registrar / HRS	Number of individuals	Total time spent/ HRS	Total direct costs 16-17	Indirect costs 16-17 5.97%	cost per student
2016-17	Sept. 1, 2015	AB 2160	Registrar	\$33.56	Training on reporting requirements GPA & graduation verification	4	5	20.00	\$671.29	\$40.08	\$0.45
2016-17	Sept. 1, 2015	AB 2160	Registrar	\$33.56	Calculate and key grades into Cal Grant form - 14 min each student		1594	571.93	\$12,483.77	\$745.28	\$8.30
2016-17	Sept. 1, 2015	AB 2160	Registrar	\$33.56	Mailing opt out forms to all seniors	1	5	5.00	\$167.82	\$10.02	\$0.11
2016-17	Sept. 1, 2015	AB 2160	Registrar	\$33.56	Comply with CSAC requests for social security numbers	0.25	5	1.25	\$41.96	\$2.50	\$0.03
2016-17	Sept. 1, 2015	AB 2160	Registrar	\$33.56	Execute certification	0.08	5	0.40	\$13.43	\$0.80	\$0.01
2016-17	Sept. 1, 2016	AB 1091	Registrar	\$33.56	Electronically submit graduation verification	9	5	45.00	\$1,510.40	\$90.17	\$1.00
2016-17	District wide Total								\$14,888.66		\$9.90

<sup>102</sup> Exhibit A, Test Claim, pages 8, 16.

The claimant also alleges the following estimated costs for 2017-2018:<sup>103</sup>

District Estimated Costs 2017-18				FAIRFIELD SUISUN UNIFIED SCHOOL DISTRICT							
Fiscal Year	Costs first Incurred		Position	Average Salary & Benefits Registrar 2017-18	Activity	Time per registrar/HRS	Number of individuals	Total time spent/HRS	Total direct costs 17-18	In-direct costs 17-18 6.57%	cost per student
2017-18	Sept. 1, 2015	AB2160	Registrar	\$34.24	Training on reporting requirements GPA & graduation verification	4	5	20	\$684.72	\$44.99	\$0.46
2017-18	Sept. 1, 2015	AB2160	Registrar	\$34.24	Calculate and key grades into Cal Grant form - 14 min each student	0	1594	371.93	\$12,733.44	\$836.59	\$8.51
2017-18	Sept. 1, 2017	AB2908	Registrar	\$34.24	Mailing opt out forms to all juniors	1	5	5	\$171.18	\$11.25	\$0.11
2017-18	Sept. 1, 2015	AB2160	Registrar	\$34.24	Comply with CSAC requests for social security numbers	.25	5	1.25	\$42.79	\$2.81	\$0.03
2017-18	Sept. 1, 2015	AB2160	Registrar	\$34.24	Execute certification	0.08	5	0.4	\$13.69	\$0.90	\$0.01
2017-18	Sept. 1, 2016	AB1091	Registrar	\$34.24	Electronically submit graduation verification	9	5	45	\$1,540.61	\$101.22	\$1.03
		District wide Total							\$15,186.44		\$10.15

The claimant alleges the statewide cost estimate is \$4,792,337 for 2016-2017 and \$4,915,860 for 2017-2018 and is based on an estimated unit cost for each of the alleged state-mandated activities multiplied by 484,169 pupils.<sup>104</sup>

In its rebuttal comments, the claimant argues that before the passage of AB 2160 in 2014, school districts were not required to submit GPAs for all grade 12 pupils to CSAC, but only for pupils who submitted Cal Grant applications. The claimant also explains that the time and costs to certify GPAs are included in item 5 of the narrative, and the claimant did not include additional costs for “ensuring” that certification is submitted on time because this activity is inseparable

<sup>103</sup> Exhibit A, Test Claim, pages 8, 16.

<sup>104</sup> Exhibit A, Test Claim, pages 15-17.

from the certification activity in item 5. Further, the claimant asserts that time and costs to meet the October 1st deadline for GPA submission is included in the costs to calculate and key grades into the Cal Grant system. Finally, the claimant asserts that CSAC started requiring verification of high school graduation “immediately following the passage of Education Code section 69432.92.” The claimant also submitted two CSAC memos regarding school district verification of high school graduation.<sup>105</sup>

In comments on the Draft Proposed Decision, the claimant agrees with the Draft Proposed Decision, except for the recommendation to deny reimbursement for the activity to certify GPAs to CSAC by a statutory deadline. The claimant argues that the authorities cited for the rule that “increased costs alone do not establish a reimbursable state-mandated program” are not applicable to this case. Specifically, the claimant states that the authorities cited all refer to *County of Los Angeles v. State of California* (1987) 43 Cal.3d 55-56, which does not define “higher level of service.” Rather the case discusses a definition of “programs” as providing a service to the public and not providing worker’s compensation benefits. The claimant also cites an entry from the 1973 Assembly Journal that gives a definition of “increased level of service” to include “performing more acts . . . which result in additional costs” to local governments or school districts. Thus, the claimant argues that certifying GPAs for all seniors, not only those who “apply for student loans,” is a higher level of service that should be reimbursable.<sup>106</sup>

#### **B. The Department of Finance**

In its comments on the Test Claim, Finance argues that the requirement to submit GPA information is not new, but was previously required under Education Code section 69432.9(c). According to Finance, “the test claim statutes merely implement some changes that may increase the cost of providing services that were already required to be performed . . . .”<sup>107</sup>

Finance observes that the Test Claim does not indicate what time and costs are incurred by school districts to ensure the GPA is submitted to CSAC in time to meet the application deadline. Finance also states that the claimant provides no evidence that submitting GPAs by October 1st increases the cost of the alleged mandate.<sup>108</sup>

Finance argues that the statute imposes no requirements related to the verification of high school graduation or its equivalent. The language of Education Code section 69432.92(a) only provides specific authorization to CSAC, but does not impose a mandate on school district. Finance also states that charter schools are not eligible claimants.<sup>109</sup>

Finally, Finance points to funds made available to school districts that could fully pay for the program, such as the Local Control Funding Formula<sup>110</sup> and the College Readiness Block

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<sup>105</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 1-9.

<sup>106</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, pages 1-2.

<sup>107</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, pages 1-2.

<sup>108</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, page 2.

<sup>109</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, page 2.

<sup>110</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, page 2.

Grant.<sup>111</sup> According to Finance, these available funds should offset any claims, and would “exceed the actual or estimated costs alleged by the claimant and the statewide cost estimate alleged in the claim.”<sup>112</sup>

Finance did not file comments on the Draft Proposed Decision.

### **C. The California Student Aid Commission**

CSAC has not filed comments on the Test Claim or the Draft Proposed Decision.

## **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.”<sup>113</sup> Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”<sup>114</sup>

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

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.<sup>115</sup>
2. The mandated activity constitutes a “program” that 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.<sup>116</sup>

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<sup>111</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, page 3.

<sup>112</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, page 3.

<sup>113</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>114</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

<sup>115</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th. 859, 874.

<sup>116</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th. 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56).

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.<sup>117</sup>
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.<sup>118</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.<sup>119</sup> The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.<sup>120</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>121</sup>

**A. The Test Claim Was Timely Filed Pursuant to Government Code Section 17551(c) and Section 1183.1(c) of the Commission’s Regulations.**

Government Code section 17551(c) states: “Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.” Section 1183.1(c) of the Commission’s regulations states:

Except as provided in Government Code sections 17573 and 17574, any test claim or amendment filed with the Commission must be filed not later than 12 months following the effective date of the statute or executive order, or within 12 months of first incurring costs as a result of a statute or executive order, whichever is later. For purposes of claiming based on the date of first incurring costs, “within 12 months” means by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.

The Test Claim was filed on June 26, 2017, and pleads Statutes 2016, chapter 82, which became effective on January 1, 2017. Because the statute became effective within 12 months of when the Test Claim was filed, the Test Claim is timely with respect to the 2016 statute.

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<sup>117</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th. 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>118</sup> *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.

<sup>119</sup> *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

<sup>120</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>121</sup> *County of Sonoma v. Commission on State Mandates* 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

The Test Claim also pleads Statutes 2014, chapter 679, which became effective on January 1, 2015, and Statutes 2015, chapter 637, which became effective on January 1, 2016. Both of these statutes became effective more than 12 months before the Test Claim was filed. However, the claimant states that it first incurred costs under Statutes 2014, chapter 679, (AB 2160) on September 1, 2015,<sup>122</sup> which is within the 2015-2016 fiscal year. The Test Claim was filed on June 26, 2017, which is “by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred by the test claimant.”<sup>123</sup>

The claimant stated that it first incurred costs under Statutes 2015, chapter 637, (AB 1091) on either September 1, 2016 or November 1, 2016.<sup>124</sup> Because the Test Claim was filed on June 26, 2017, it complies with the deadline imposed by Government Code section 17551(c) and section 1183.1(c) of the regulations because it was filed “within 12 months of incurring increased costs as a result of a statute or executive order.”

In sum, the Commission finds that the Test Claim was filed within the deadlines imposed by Government Code section 17551(c) and section 1183.1(c) of the Commission’s regulations. Therefore, the Commission has jurisdiction over the Test Claim.

**B. Do the Test Claim Statutes Impose a State-Mandated New Program or Higher Level of Service on School Districts Within the Meaning of Article XIII B, Section 6 of the California Constitution?**

1. The requirement to provide written notification to pupils of the opportunity to opt out of being deemed a Cal Grant applicant constitutes a state-mandated new program or higher level of service (Ed. Code, §69432.9(d), Stats 2014, ch. 679, Stats. 2016, ch. 82).

Effective January 1, 2015, Statutes 2014, chapter 679 added subdivision (d) to Education Code section 69432.9, to require school districts, for the first time, to provide written notification, by October 15, to each grade 12 pupil (or pupil’s parent or guardian for pupils under age 18) that the pupil will be automatically deemed a Cal Grant applicant unless the pupil opts out. The opt-out provision states:

(d) (1) The school district or charter school shall, no later than October 15 of a pupil's grade 12 academic year, notify, in writing, each grade 12 pupil and, for a pupil under 18 years of age, his or her parent or guardian that, pursuant to subdivision (a), the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days. The required notice shall indicate when the school will first send grade point averages to the commission. The school district or charter school shall

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<sup>122</sup> Exhibit A, Test Claim, page 19.

<sup>123</sup> California Code of Regulations, title 2, section 1183.1(c).

<sup>124</sup> Exhibit A, Test Claim, page 19. On page 3, the claimant alleges that costs were first incurred on November 1, 2016, but page 19 of the Test Claim, a declaration under penalty of perjury in accordance with section 1187.5(b) of the Commission’s regulations, states the date was September 1, 2016.

provide an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.

(2) Until a pupil turns 18 years of age, only a parent or guardian may opt the pupil out. Once a pupil turns 18 years of age, only the pupil may opt himself or herself out and, if prior to the conclusion of the notice period, the pupil may opt in over the prior decision of a parent or guardian to opt out.

Under Education Code section 69432.9(d), the first written opt-out notice to grade 12 pupils was required to be sent by October 15, 2015, for pupils in the 2016 graduating class.<sup>125</sup> The notice was required to state that “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days,” and to indicate when the school will first send GPAs to CSAC.

In addition, the school district is required to “provide an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant. CSAC developed a sample Cal Grant Opt-Out Form in English and Spanish, which is available on its website, for school districts to comply with the opt-out requirement.<sup>126</sup> Thus, school districts are not required by the state to develop their own opt-out notice. The sample form explains that

With the implementation of Assembly Bill 2160, California public high schools are required to submit a high school Grade Point Average (GPA) for all graduating seniors, unless the student or parent has opted out of the submission process. California Education Code section 69432.9 requires the school district, high school or charter school, no later than October 15 of a pupil’s grade 12 academic year, to notify, in writing, each grade 12 pupil and his or her parent or guardian that the pupil will be deemed a Cal Grant applicant unless the pupil is opted out prior to the high school’s submission of GPAs to the California Student Aid Commission (Commission). Students who do not opt out will have their high school GPA submitted to the California Student Aid Commission to be considered for a Cal Grant award. If you do not want your school to report your GPA, please complete this form and return it to your high school counselor.

By signing and submitting the CSAC sample form, the pupil is electing not to have his or her school report the high school Cal Grant GPA information and SSN (if applicable) to CSAC for use in the Cal Grant application process.

The claimant alleges the following activities are required to comply with section 69432.9(d), and are eligible for reimbursement under article XIII B, section 6 of the California Constitution:

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<sup>125</sup> Exhibit F, California Student Aid Commission, Letter to High School Administrators “The Ting Bill Requirements Letter.” The letter states “The law became effective in the 2015-2016 academic year; thus, GPAs for 2015-2016 seniors must be submitted before March 2, 2016. GPAs must be subsequently submitted each year thereafter by the March 2 deadline.” See [http://www.csac.ca.gov/ting\\_bill.asp](http://www.csac.ca.gov/ting_bill.asp), accessed on October 26, 2017.

<sup>126</sup> Exhibit F, California Student Aid Commission, Cal Grant GPA Opt Out Form. [http://www.csac.ca.gov/pubs/forms/grnt\\_frm/gpa\\_opt\\_out.pdf](http://www.csac.ca.gov/pubs/forms/grnt_frm/gpa_opt_out.pdf), accessed October 16, 2017.

- Time and costs incurred by school districts, county offices of education, and charter schools, no later than October 15 of a pupil's grade 12 academic year, to notify, in writing, each grade 12 pupil and, for a pupil under 18 years of age, his or her parent or guardian that, pursuant to subdivision (a), the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days. The required notice shall indicate when the school will first send grade point averages to the commission. The school district, county office of education or charter school shall provide an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
- Time and costs incurred by school districts, county offices of education, and charter schools to notify pupils by January 1 of their grade 11 academic year so the pupil can opt out of the program. Additionally, school districts, county offices of education, and charter schools are now required to send an “Opt Out” notice to each pupil in grade 12.<sup>127</sup>

Based on the mandatory language of the test claim statute,<sup>128</sup> the Commission finds that providing written notice by October 15 to all grade 12 students, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant, is a state-mandated activity. Preexisting law did not require a notice or opportunity to opt-out of the Cal Grant application process because, prior to the test claim statutes, it was the responsibility of a pupil seeking a Cal Grant to file an application.<sup>129</sup> Thus, the activity is newly mandated beginning January 1, 2015.

Effective January 1, 2017, Statutes 2016, chapter 82, amended section 69432.9(d) to require sending the opt-out notification to pupils by January 1 of the pupil’s grade 11 academic year, instead of by October 15 of the pupil’s grade 12 academic year. On March 27, 2017, CSAC issued a “Special Alert” to high school district superintendents, principals, and counselors, explaining the changes made by the 2016 statute, and stating that “the opt-out notification should be sent to the class of 2018 before the end of their junior year.”<sup>130</sup>

Thus, under these test claim statutes, school districts were required to provide grade 12 pupils in the classes of 2016 and 2017 the opt-out notice by October 15, 2015 and 2016, under Statutes 2014, chapter 679. School districts were also required to provide the opt-out notice to the class

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<sup>127</sup> Exhibit A, Test Claim, pages 14-15.

<sup>128</sup> Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

<sup>129</sup> California Code of Regulations, title 5, sections 30008(c) and 30023(a)(2). See also section 30002, which defines an “eligible applicant.”

<sup>130</sup> Exhibit F, California Student Aid Commission, Special Alert to High School Principals, High School Counselors, and County and District Superintendents, March 27, 2017.

<http://www.csac.ca.gov/secured/specialalerts/2017/GSA%202017-13.pdf>, as of October 27, 2017.



of 2018 when those pupils were in grade 11 pursuant to Education Code section 69432.9(d), as amended by the 2016 statute, by January 1, 2017. CSAC’s “Special Alert” recommended that the notices be sent to the class of 2018 before the end of their junior year; i.e., before summer break in 2017, to comply with the statute.<sup>131</sup> Future classes are required to receive the opt-out notice by January 1 of their junior year.

Therefore, the Commission finds that Education Code section 69432.9(d), as amended by the 2014 and 2016 test claim statutes, imposes a new state-mandated activity to provide a written Cal Grant opt-out notice as follows:

- Beginning January 1, 2015, providing written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant; and
- Beginning January 1, 2017, providing written notice by January 1st to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant, is a new state-mandated activity.

In addition, these newly mandated activities provide a service to the public by increasing access to college financial aid to California students and thus, impose a new program or higher level of service.<sup>132</sup>

Accordingly, the Commission finds that Education Code section 69432.9(d), as amended by the 2014 and 2016 test claim statutes, mandates a new program or higher level of service for the activities bulleted above.

2. The requirement to electronically submit GPAs for grade 12 pupils to CSAC constitutes a state-mandated new program or higher level of service. Certifying GPAs to CSAC is not a state-mandated new program or higher level of service, and submitting SSNs to CSAC is not a state mandate. (Ed. Code, §69432.9(c)(2), Stats 2014, ch. 679, Stats. 2016, ch. 82.)

Under prior law, a Cal Grant applicant was responsible for submitting a complete official financial aid application to CSAC by the statutory deadlines pursuant to Education Code section 69432.9(a), which included the applicant’s GPA, certified under penalty of perjury by a school official, submitted upon the applicant’s request pursuant to Education Code section 69432.9(c).

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<sup>131</sup> Exhibit F, California Student Aid Commission, Special Alert to High School Principals, High School Counselors, and County and District Superintendents, March 27, 2017. <http://www.csac.ca.gov/secured/specialalerts/2017/GSA%202017-13.pdf>, as of October 27, 2017.

<sup>132</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, pages 3-4.

The Legislature stated its intent in former section 69432.9(c) that high schools certify their pupil's GPAs in time to meet the Cal Grant application deadlines imposed by this chapter, which for high school pupils was March 2.<sup>133</sup> Education Code section 69432.9(c), as last amended by Statutes 2011, chapter 7, stated:

The commission shall require that a grade point average be submitted for all Cal Grant A and B applicants, except for those permitted to provide test scores in lieu of a grade point average. The commission shall require that each report of a grade point average include a certification, executed under penalty of perjury, by a school official, that the grade point average reported is accurately reported. The certification shall include a statement that it is subject to review by the commission or its designee. The commission shall adopt regulations that establish a grace period for receipt of the grade point average and any appropriate corrections, and that set forth the circumstances under which a student may submit a specified test score designated by the commission, by regulation, in lieu of submitting a qualifying grade point average. It is the intent of the Legislature that high schools and institutions of higher education certify the grade point averages of their students in time to meet the application deadlines imposed by this chapter.<sup>134</sup>

Statutes 2014, chapter 679 amended Education Code section 69432.9(a) to automatically deem each pupil enrolled in grade 12 a Cal Grant applicant, unless the pupil opts out following written notice from the school district. It also added subdivision (c)(2) to require a GPA be submitted electronically for *all* grade 12 pupils, and not just for pupils who apply for a Cal Grant:

The commission shall require that a grade point average be submitted to it electronically for all grade 12 pupils at public schools, including charter schools, each academic year, except for pupils who have opted out as provided in subdivision (d). Social security numbers shall not be included in the information submitted to the commission. However, if the commission determines that a social security number is required to complete the application for financial aid, the school, school district, or charter school may obtain permission from the parent or guardian of the pupil, or the pupil, if he or she is 18 years of age, to submit the pupil's social security number to the commission.

The 2014 test claim statute then renumbered, without changes to the language, the existing provisions in former section 69432.9(c), to section 69432.9(c)(1), (3), (4), (5) as follows:

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<sup>133</sup> Education Code sections 69434(b)(1) and 69435.3(a)(1).

<sup>134</sup> See also California Code of Regulations, title 5, section 30008(c) that states: "Every high school grade point average reported to the Commission shall include a certification under penalty of perjury from the school official filing the report that the grade point average is accurately reported to the best of his or her knowledge. The certification shall include a statement that it is subject to review by the Commission or its designee. It is the responsibility of the applicant to have his or her high school grade point average reported." This regulation was enacted in 2001.

(1) The commission shall require that a grade point average be submitted for all Cal Grant A and B applicants, except for those permitted to provide test scores in lieu of a grade point average.

[¶]...[¶]

(3) The commission shall require that each report of a grade point average include a certification, executed under penalty of perjury, by a school official, that the grade point average reported is accurately reported. The certification shall include a statement that it is subject to review by the commission or its designee.

(4) The commission shall adopt regulations that establish a grace period for receipt of the grade point average and any appropriate corrections, and that set forth the circumstances under which a student may submit a specified test score designated by the commission, by regulation, in lieu of submitting a qualifying grade point average.

(5) It is the intent of the Legislature that high schools and institutions of higher education certify the grade point averages of their students in time to meet the application deadlines imposed by this chapter.

Clarifying changes to subdivision (c)(2) were later made by the 2015 and 2016 test claim statutes. Statutes 2015, chapter 637 amended subdivision (c)(2) to clarify that GPAs be electronically submitted on a “standardized form.” Statutes 2016, chapter 82 amended subdivision (c)(2), to specify a date that GPAs for grade 12 pupils are to be submitted to CSAC; “no later than October 1 of each academic year.” Under prior law, GPAs for Cal Grant applicants had to be submitted before the March 2 deadline.

The claimant alleges that the following activities are required to comply with these statutes, and are eligible for reimbursement under article XIII B, section 6 of the California Constitution:

- Time and costs incurred by school districts, county offices of education, and charter schools to review records, correct, update and submit grade point averages to the CSAC for all grade 12 pupils prior to October 15 of each year.<sup>135</sup>
- Time and costs incurred by school districts, county offices of education, and charter schools to submit each student’s grade point averages electronically, on a standardized form, for all grade 12 pupils at public schools, including charter schools.<sup>136</sup>
- Time and costs incurred by school districts, county offices of education, and charter schools for including a certification to CSAC, executed under penalty of perjury by a school official, that the grade point average is accurately

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<sup>135</sup> Exhibit A, Test Claim, page 13.

<sup>136</sup> Exhibit A, Test Claim, page 13.

reported. The certification shall include a statement that it is subject to review by CSAC or its designee.<sup>137</sup>

- Time and costs incurred by school districts, county offices of education, and charter schools to ensure the grade point average certification is submitted to CSAC in time to meet the application deadline imposed by this chapter.<sup>138</sup>
- Time and costs incurred by school districts, county offices of education, and charter schools to comply with CSAC requests for social security numbers including time and costs to obtain permission from the parent or guardian, or pupil, if he or she is 18, and to submit the pupil's social security number to CSAC.<sup>139</sup>

Finance contends that "reporting" GPAs is not newly required. "Specifically, if asked by any student, the existing law would have required a school district or county office of education" to certify GPAs to CSAC.<sup>140</sup>

*a) Education Code section 69432.9(c) does not impose a new program or higher level of service to certify GPAs for grade 12 pupils.*

Education Code section 69432.9(c)(2), as amended by the 2014 test claim statute, states that "the commission shall require that a grade point average be submitted to it electronically for all grade 12 pupils at public schools, including charter schools, each academic year, except for pupils who have opted out as provided in subdivision (d)." Section 69432.9(c)(3), a provision that was simply renumbered from former section 69432.9(c) without substantive change, requires that "each report of grade point average include a certification, executed under penalty of perjury, by a school official, that the grade point average reported is accurately reported. The certification shall include a statement that it is subject to review by the commission or its designee."<sup>141</sup> Thus subdivision (c), as amended, requires school districts to now certify GPAs for all grade 12 pupils, and not just for those grade 12 pupils who apply for a Cal Grant.

The Commission finds that the activity to certify GPAs for all grade 12 pupils, as required by Education Code section 69432.9(c), does not constitute a new program or higher level of service. School districts have long been required to certify GPAs under penalty of perjury for Cal Grant applicants.<sup>142</sup> Although school districts may now have to certify more GPAs than under prior law, and may or may not incur increased costs to do so,<sup>143</sup> increased costs alone do not establish

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<sup>137</sup> Exhibit A, Test Claim, page 14.

<sup>138</sup> Exhibit A, Test Claim, page 14.

<sup>139</sup> Exhibit A, Test Claim, pages 13-14.

<sup>140</sup> Exhibit B, Department of Finance's Comments on Test Claim, pages 1 and 2.

<sup>141</sup> Former Education Code section 69432.9(c) (as last amended by Stats. 2011, ch. 7).

<sup>142</sup> Former Education Code section 69432.9(c) (as last amended by Stats. 2011, ch. 7); see also, California Code of Regulations, title 5, section 30008.

<sup>143</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, page 3 (stating that both San Francisco Unified and Los Angeles

a reimbursable state-mandated program.<sup>144</sup> As explained by the California Supreme Court, “a reimbursable ‘higher level of service’ concerning an existing ‘program’ [exists] when a state law or executive order mandates not merely some change that increases the cost of providing services, but an increase in the actual level or quality of governmental services provided.”<sup>145</sup>

In comments on the Draft Proposed Decision, the claimant argues that the authorities cited for the rule that “increased costs alone do not establish a reimbursable state-mandated program” are not applicable to this case. Specifically, the claimant states that those authorities all cite to *County of Los Angeles v. State of California* (1987) 43 Cal.3d 55-56, which does not define “higher level of service,” but discusses the definition of “programs” as providing a service to the public and not providing worker’s compensation benefits. The claimant also cites an entry from the 1973 Assembly Journal that defines “increased level of service” as “performing more acts ... which result in additional costs” to local governments or school districts. Thus, the claimant argues that certifying GPAs for all pupils, not only those who “apply for student loans,” is a higher level of service that should be reimbursable.<sup>146</sup>

The Commission disagrees with the claimant’s interpretation of the law. First, the 1973 Assembly Journal is not relevant. The 1973 Assembly Journal summarized former Revenue and Taxation Code sections 2201, et seq. (Property Tax Relief Act of 1972, otherwise known as the SB 90 program), which defined “increased level of service” anytime that costs were increased under former Revenue and Taxation Code section 2207. That section defined “costs mandated by the state” broadly to include situations where the same program or service was previously required, but costs were later increased by a change made by statute or executive order. For example, reimbursement under former Revenue and Taxation Code section 2207 was required for statutes or executive orders that “prohibit[ed] a specific activity which results in the local agencies using a more costly alternative to provide a mandated program or service;” for statutes or executive orders that required “an existing program or service be provided in a shorter period and thereby increases the costs of the program or service;” and for statutes or executive orders that “add[ed] new requirements to an existing optional program or service and thereby increases the cost of such program or service.”<sup>147</sup>

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Unified experienced costs savings since counselors no longer had to complete individual paper forms).

<sup>144</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 55-56; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.

<sup>145</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877.

<sup>146</sup> Exhibit E, Claimant’s Comments on the Draft Proposed Decision, pages 1-2.

<sup>147</sup> See *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 69-70, quoting former Revenue and Taxation Code section 2207.

California mandates jurisprudence is no longer governed by the Revenue and Taxation Code.<sup>148</sup> Rather, the current law governing mandate reimbursement is article XIII B, section 6 of the California Constitution (as added by Proposition 4 in 1979), Government Code section 17500 et seq. (as added by Stats. 1984, ch. 1459), and the case law interpreting those provisions. In 1987, the California Supreme Court in the *County of Los Angeles* case explained that under the repealed Revenue and Taxation Code sections of SB 90, “‘additional costs’ may have been deemed tantamount to an ‘increased level of service,’ but not under the post-1975 statutory scheme.”<sup>149</sup> The court made it clear that construing the meaning of article XIII B, section 6 of the California Constitution “is *not* focused on what the Legislature intended in adopting the former statutory reimbursement scheme, but rather on what the voters meant when they adopted article XIII B in 1979.”<sup>150</sup> Moreover, as recently as 2004, the California Supreme Court interpreted article XIII B, section 6 and Government Code section 17500 et seq. to find that “‘simply because a state law or order may *increase the costs* borne by local government *in providing services*, this does not necessarily establish that the law or order constitutes an *increased or higher level* of the resulting ‘service to the public.’”<sup>151</sup> A “higher level of service” exists when the requirements are new in comparison with the preexisting scheme *and* enhance the service to the public.<sup>152</sup> In this case, the requirement for school districts to certify GPAs for Cal Grant eligibility is not new.

Accordingly, although school districts may now have to certify more GPAs than under prior law, and may incur increased costs to do so, the activity of certifying GPAs for grade 12 pupils does not impose a new program or higher level of service.

b) *The requirement to electronically submit GPAs for grade 12 pupils to CSAC mandates a new program or higher level of service (Ed. Code, §69432.9(c)(2), Stats 2014, ch. 679, Stats. 2016, ch. 82.)*

Former Education Code section 69432.9(c) required that a GPA be submitted and certified for all Cal Grant A and B Entitlement applicants by the March 2 statutory deadline.<sup>153</sup> Prior to the 2014 test claim statute, a pupil’s GPA could be submitted by either the pupil or the school, by paper or electronically.<sup>154</sup> As stated in the Senate Appropriations Committee analysis of AB 2160 (Stats. 2014, ch. 679):

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<sup>148</sup> In fact, former Revenue and Taxation Code sections 2207 and 2231, were repealed by Statutes 1989, chapter 589. For an historical perspective and summary of the former statutory scheme, see *County of Contra Costa v. State of California* (1986) 177 Cal.App.3d 62, 66-71.

<sup>149</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 55.

<sup>150</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (emphasis added).

<sup>151</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 877. Emphasis in original.

<sup>152</sup> *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878.

<sup>153</sup> Education Code section 69432.9(c), as last amended by Statutes 2011, chapter 7

<sup>154</sup> Exhibit F, California Student Aid Commission, “Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year,” dated October 11, 2012.

Currently, there is no standard practice for submitting GPA verification to the CSAC. Some schools submit hard copy verification forms, others submit GPAs electronically, and still others rely on their students to submit the verification forms themselves (once signed by a school official).<sup>155</sup>

CSAC regulations, however, expressly placed the responsibility for GPA submission on the Cal Grant applicant: “All Cal Grant A and B applicants shall submit a grade point average”<sup>156</sup> and, “It is the responsibility of the applicant to have his or her high school grade point average reported.”<sup>157</sup>

The 2014 test claim statute amended Education Code section 69432.9(c)(2) to require electronic submission of GPAs for all grade 12 pupils as follows: “The commission shall require that a grade point average be submitted to it electronically for all grade 12 pupils at public schools, including charter schools, each academic year, except for pupils who have opted out as provided in subdivision (d).” As stated in preexisting law, the grade point average had to be submitted by the statutory deadline.<sup>158</sup> As amended by the 2016 test claim statute, the GPAs are now required to be submitted “no later than October 1 of each academic year.”

Finance argues that the requirement for school districts to submit GPAs to CSAC is not new. Rather, it merely increases the costs of services that were already required.<sup>159</sup> The claimant responds that prior to AB 2160, school districts were not required to submit GPAs for all pupils in grade 12. They were only required for pupils who submitted a Cal Grant application.<sup>160</sup>

The plain language of section 69432.9(c)(2) does not specify who is required to submit the GPA to CSAC, and existing CSAC regulations continue to place the ultimate responsibility on the applicant to make sure his or her high school GPA has been reported.<sup>161</sup> However, both CSAC and the California Department of Education have interpreted section 69432.9(c)(2) as requiring

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[http://www.csac.ca.gov/pubs/forms/grnt\\_frm/non\\_ssn\\_gpa\\_qa.pdf](http://www.csac.ca.gov/pubs/forms/grnt_frm/non_ssn_gpa_qa.pdf)); See also, Cal Grant Manual, chapter 4.1, “The Cal Grant Application Process,” December 2005.

<sup>155</sup> Exhibit F, Senate Appropriations Committee, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, pages 1-2.

<sup>156</sup> California Code of Regulations, title 5, section 30023(a).

<sup>157</sup> California Code of Regulations, title 5, sections 30008(c) and 30023(a)(2). See also section 30002, which defines an “eligible applicant.”

<sup>158</sup> Education Code sections 69432.9 (as amended by Stats. 2011, ch. 7), 69433 (as added by Stats. 2000, ch. 403); Education Code section 69434(b)(1) (as last amended by Stats. 2009, ch. 644.); Education Code section 69435.3(a)(1) (as last amended by Stats. 2001, ch. 8); Former Education Code section 69432.9(c) (renumbered to (c)(5) by the 2014 test claim statute) [which states that “It is the intent of the Legislature that high schools . . . certify the grade point averages of their students in time to meet the application deadlines imposed by this chapter]; California Code of Regulations, title 5, sections 30007, 30008, 30023(a)(b).

<sup>159</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, page 1.

<sup>160</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 2-3.

<sup>161</sup> California Code of Regulations, title 5, sections 30008(c) and 30023(a)(2).

the school district to electronically submit the GPAs for all grade 12 pupils each academic year. On January 25, 2016, the Department of Education issued an official letter to “County and District Superintendents, Charter School Administrators, and High School Principals” that states in relevant part:

I am writing to remind you of a new law that affects your high school campus. Assembly Bill 2160 (Chapter 679, Statutes of 2014), commonly referred to as the “Ting Bill,” was signed into law in September 2014, amending Section 69432.9 of the California Education Code. This law mandates that all public schools electronically submit grade point averages (GPAs) for grade twelve students to the California Student Aid Commission (CSAC). ...

Electronic submission is required each academic year for all grade twelve pupils except for individual students who opt out. GPAs for seniors in the 2015-16 school year must be submitted **before March 2, 2016**.

[¶]...[¶]

Schools and districts that have not previously uploaded GPAs to the CSAC electronically should plan to do so immediately upon receiving WebGrants access; staff involved with GPA uploads must have list-serv subscription to receive notification when the system opens. To subscribe, to the CSAC List-serv Subscription submission and other topics available on the CSAC Webinar Trainings Web page ....<sup>162</sup>

CSAC’s October 10, 2016 memo to High School Counselors, High School Principals, and County and District Superintendents, states in pertinent part:

This Operations Memo from the California Student Aid Commission (Commission) reminds public high schools and charter high schools of Education Code section 69432.9, *which requires schools to electronically submit GPA data for their grade 12 pupils for the 2017-18 grant programs*.<sup>163</sup>

As the agencies required to provide oversight to K-12 school districts and to implement the Cal Grant program for grade 12 pupils, these interpretations are entitled to great respect by the courts.<sup>164</sup> In addition, these interpretations are consistent with the legislative history of the test claim statute. As discussed above in the background, the legislative intent of Statutes 2014, chapter 679 was to implement a report by Education Trust-West that recommended school districts electronically submit GPAs for all pupils because “it has proven effective in getting

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<sup>162</sup> Exhibit F, California Department of Education, Official Letter to County and District Superintendents, Charter School Administrators, High School Principals, and High School Counselors, January 25, 2016. (Emphasis in original.) See also California Department of Education, Letter to County and District Superintendents, Charter School Administrators, High School Principals, and High School Counselors, September 19, 2017.

<sup>163</sup> Exhibit F, California Student Aid Commission, Memo to High School Principals, High School Counselors, and County and District Superintendents, October 10, 2016. Emphasis added.

<sup>164</sup> *Yamaha Corp. of America v. State Board of Equalization* (1988) 19 Cal.4th 1, 4, 7.



more students into the pipeline for college aid. A number of districts that have shifted to this practice have seen dramatic gains in the number of Cal Grant awards offered to their students."<sup>165</sup>

In addition, although some school districts in the state (e.g., San Francisco Unified and Los Angeles Unified) were electronically submitting GPAs for all grade 12 pupils before the 2014 test claim statute on a voluntary basis, and the legislative history indicates that they experienced cost savings as a result,<sup>166</sup> electronically submitting GPAs to CSAC is still a new state-mandated activity because there was no legal requirement for school districts to do so under prior law. Government Code section 17565 states that “If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs after the operative date of the mandate.” Therefore, any *increased* costs that any eligible school district incurs, and that are mandated by the State as a result of this newly mandated activity, are reimbursable.

Therefore, the Commission finds that Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679) imposes a new state-mandated activity to:

- Electronically submit to CSAC the GPAs for all grade 12 pupils each academic year, except for pupils who opt out in accordance with section 69432.9(d).

This mandated activity provides a service to the public by boosting access to college financial aid to California students and thus, imposes a new program or higher level of service.<sup>167</sup>

*c) Education Code section 69432.9(c)(2) does not mandate a new program or higher level of service to submit pupil SSNs to CSAC.*

Education Code section 69432.9(c)(2), as amended by the 2014 test claim statute, states that a pupil’s SSN shall not be included in the information submitted to CSAC. If CSAC determines that a SSN is necessary to complete the Cal Grant application, the school district “may obtain permission” to submit the SSN to CSAC. The relevant language in section 69432.9(c)(2) states:

Social security numbers shall not be included in the information submitted to the commission. However, if the commission determines that a social security number is required to complete the application for financial aid, the school, school district, or charter school may obtain permission from the parent or guardian of the pupil, or the pupil, if he or she is 18 years of age, to submit the pupil’s social security number to the commission.

The claimant argues that submitting SSNs is a new required activity:

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<sup>165</sup> Assembly Floor, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended August 18, 2014, page 3.

<sup>166</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, page 3 (stating that both San Francisco Unified and Los Angeles Unified experienced costs savings since counselors no longer had to complete individual paper forms).

<sup>167</sup> Exhibit F, Senate Committee on Education, Analysis of AB 2160 (2013-2014 Reg. Sess.) as amended June 18, 2014, pages 3-4.

Per the CSAC website <http://www.csac.ca.gov/doc.asp?id=983>, Non-SSN GPA's are only allowed for high schools without WebGrants website access, which means almost all, if not all the high schools in California must provide the CSAC with the students SSN when submitting a student's GPA. Thus requiring the school district, county office of education or charter school to obtain permission and submit the SSN electronically as well as the GPA for each student in 12th grade.<sup>168</sup>

The Commission finds that providing SSNs, if requested by CSAC, is not mandated by the plain language of Education Code section 69432.9(c)(2). The statute clearly states that SSNs shall not be included in the information, and that "if" CSAC requests the SSN, the school district "may" obtain permission from the pupil or the parent to submit the information. The claimant has not pled any letter or executive order from CSAC mandating the submission of pupil SSNs.<sup>169</sup>

Moreover, submitting SSNs upon CSAC's request is not new. On October 11, 2012, before the enactment of the test claim statutes, CSAC issued a "Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year."<sup>170</sup> That document indicates that SSNs are used to match the pupil applicant's FAFSA or Dream Act application with the GPA received in order to process the financial aid application. The document further states that "The CSAC non-SSN GPA submission process allows high schools, high school districts or private school central offices to submit Entitlement Cal Grant GPAs for students *without* including a Social Security Number (SSN)" as long as the high school has WebGrants access (CSAC's on-line school user interface to the Cal Grant program). With the WebGrants system, CSAC can use other demographic information submitted with the GPA to match the pupil's FAFSA or Dream Act application.<sup>171</sup> If, however, a high school submits paper GPAs, the pupil's SSN "must be included."<sup>172</sup>

Because pupil SSN submission was required prior to the test claim statute, the Commission finds that Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679) does not mandate a new program or higher level of service to submit pupil SSNs to CSAC.

3. Education Code section 69432.92 does not impose a state-mandated program on school districts to electronically submit verification of high school graduation to CSAC (Stats 2015, ch. 637).

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<sup>168</sup> Exhibit A, Test Claim, pages 12-13.

<sup>169</sup> Government Code section 17553(b)(1) requires that a Test Claim include: "A written narrative that identifies the specific sections of statutes or executive orders and the effective date and register number of regulations alleged to contain a mandate ..." And section 17553(b)(3)(A) states: "The written narrative shall be supported with copies of . . . The test claim statute that includes the bill number or executive order, alleged to impose or impact a mandate."

<sup>170</sup> Exhibit F, California Student Aid Commission, "Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year," dated October 11, 2012.

<sup>171</sup> Exhibit F, California Student Aid Commission, "Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year," dated October 11, 2012, page 1.

<sup>172</sup> Exhibit F, California Student Aid Commission, "Non-SSN GPA Q & A For the 2013-14 Cal Grant Application Year," dated October 11, 2012, page 3.

As indicated in the Background, the Education Code has long required that a pupil confirm his or her high school graduation before Cal Grant payments can be released, and either the pupil or the school district can verify graduation.<sup>173</sup> Under CSAC regulations, the applicant is ultimately responsible for verifying his or her high school graduation.<sup>174</sup>

Statutes 2015, chapter 637, effective January 1, 2016, added section 69432.92 to the Education Code to *authorize* CSAC to require verification of high school graduation or its equivalent except for pupils who opt out, as follows:

- (a) The commission may require verification of high school graduation or its equivalent to be electronically submitted for all former grade 12 pupils who graduated from public schools, including charter schools, in the prior academic year, except for pupils who have opted out as provided in subdivision (d) of Section 69432.9.
- (b) It is the intent of the Legislature that high schools or high school districts verify the graduation of their pupils in time to meet the deadlines imposed by subdivision (e) of Section 69433.9.

The legislative history explains the purpose of the bill and the existing verification process as follows:

According to author, many students often times become overwhelmed with the Cal Grant application process and fail to submit verification of high school graduation to CSAC. The author further asserts that missing this step could make the difference between a student attending college or not. This bill aims to streamline the financial aid process and increase Cal Grant and FAFSA completion rates by requiring the electronic submission of high school graduation information.

Existing process for verification. According to the CSAC the method for providing verification varies depending on the school district. For the most part, it is the responsibility of the school district to submit the information to CSAC; however, if the district fails to provide the information, the responsibility falls on the student. Generally, most submissions are electronic, but thousands of paper forms are submitted that have to be keyed in manually. This bill seeks to give the

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<sup>173</sup> Education Code section 69433.9 (as last amended by Stats. 2006, ch. 652.); Exhibit F, California Student Aid Commission, “High School Graduation Confirmation for High Schools, WebGrants User Guide” May 23, 2008, page 5.

<sup>174</sup> Education Code section 69432.9(a) (as last amended by Stats. 2011, ch. 7), and still in place today, states the following: “A Cal Grant applicant shall submit a complete official financial aid application pursuant to Section 69433 and application regulations adopted by the commission.” Exhibit F, California Student Aid Commission, “High School Graduation Confirmation for High Schools, WebGrants User Guide” May 23, 2008, page 5.

CSAC the authority to create a standardized process for collecting information directly from school districts when determining Cal Grant eligibility.<sup>175</sup>

The claimant alleges that the following activities are required to comply with this statute, and are eligible for reimbursement:

Time and costs incurred by school districts, county offices of education, and charter schools to provide verification of high school graduation or its equivalent. Education Code Section 69432.92(a).

Time and costs to electronically submit the graduation data for all former grade 12 pupils, in the prior academic year, including charter schools, in the prior academic year, except for pupils who have opted out as provided in subdivision (d) of Section 69433.9, when required by the CSAC. Education Code Section 69432.92(a).

Time and costs incurred by school districts, county offices of education, and charter schools to verify the graduation of their pupils, when requested by CSAC in time to meet the deadlines imposed by subdivision (e) of Section 69433.9. This subdivision also applies to pupils who graduate during the summer following the grade 12 academic year. Education Code Sections 69432.92(b).<sup>176</sup>

In rebuttal comments on the Test Claim, the claimant states that CSAC first started requiring electronic verification of high school graduation immediately following the passage of section 69432.92.<sup>177</sup> The claimant includes with the comments two CSAC memos issued in 2017. The first is a “Special Alert” dated March 27, 2017, to High School District Superintendents, Principals, and Counselors, and the second is an “Operations Memo” dated May 24, 2017, to the same categories of school district employees. Both memos refer to Education Code section 69432.92(b), and both state “that high schools and high school districts are to verify the graduation of their pupils as soon as possible upon their graduation and no later than August 31.”<sup>178</sup>

The Commission finds that Education Code section 69432.92, as added by the 2015 test claim statute, does not impose a state-mandated program on school districts to electronically verify the high school graduation of all grade 12 pupils who have not opted out of the Cal Grant program. The plain language of the statute (“the Commission *may* require verification of high school graduation or its equivalent to be electronically submitted. . .”) authorizes, but does not require, CSAC to request school districts to submit electronic verification of the high school graduation for grade 12 applicants.<sup>179</sup> Although subdivision (b) contains a statement that the Legislature intends that high schools or high school districts verify the graduation of their pupils in time to

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<sup>175</sup> Exhibit F, Senate Floor Analyses of AB 1091 (2015-2016 Reg. Sess.) as amended June 1, 2015, page 3.

<sup>176</sup> Exhibit A, Test Claim, pages 13-15.

<sup>177</sup> Exhibit C, Claimant’s Rebuttal Comments, page 4.

<sup>178</sup> Exhibit C, Claimant’s Rebuttal Comments, pages 6-7 (emphasis in original).

<sup>179</sup> Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

meet the Cal Grant deadlines, the courts have consistently held that a statement of legislative intent alone may not give rise to a mandatory duty.<sup>180</sup> Thus, the plain language of section 69432.92 does not impose any state-mandated duties.

Moreover, as indicated above, the Cal Grant process has always required that an applicant's high school graduation be verified before funds can be released. The legislative history of the test claim statute makes that clear by stating that under the existing process, "it is the responsibility of the school district to submit the information to CSAC; however, if the district fails to provide the information, the responsibility falls on the student."<sup>181</sup> The legislative history further states:

It is important to note that CSAC does authorize students to self-certify high school graduation. This bill is not intended to change the student self-certification process.<sup>182</sup>

The pupil self-certification process verifying high school graduation still remains today. CSAC created a "High School Graduation Certification Form for the Entitlement Cal Grant Program," which allows pupils to self-certify their high school graduation.<sup>183</sup> And, the May 24, 2017, CSAC "Operations Memo" provided by the claimant states that that "Students can self-certify their high school graduation at WebGrants for Students."<sup>184</sup>

Most importantly however, the CSAC "Special Alert" and "Operations Memo" provided by the claimant clearly pertains to section 69432.92 as amended by Statutes 2016, chapter 351, which replaced the statement of legislative intent quoted above with the following:

If the commission requires verification of high school graduation or its equivalent pursuant to subdivision (a), the commission shall provide guidance to high schools or high school districts to ensure that high schools and high school districts verify the graduation of their pupils as soon as possible upon a pupil's graduation and no later than August 31 of the academic year following the pupil's graduation. This subdivision also applies to pupils who graduate during the summer following the grade 12 academic year.

However, Statutes 2016, chapter 351 has not been pled in this Test Claim. The only 2016 statute pled is Statutes 2016, chapter 82, and thus the Commission does not have jurisdiction to make findings on Statutes 2016, chapter 351 or any unpled executive orders to implement that statute.

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<sup>180</sup> *Shamsian v. Department of Conservation* (2006) 136 Cal.App.4th 621, 633; *City of Arcadia v. State Water Resources Control Board* (2010) 191 Cal.App.4th 156, 176.

<sup>181</sup> Exhibit F, Senate Floor Analysis of AB 1091 (2015-2016 Reg. Sess.) as amended June 1, 2015, page 3.

<sup>182</sup> Exhibit F, Assembly Third Reading, Analysis of AB 1091 (2015-2016 Reg. Sess.) as amended June 1, 2015, page 5.

<sup>183</sup> Exhibit F, California Student Aid Commission, "2017 High School Graduation Certification Form for the Entitlement Cal Grant Program," (G-8, dated 08/16) [http://csac.ca.gov/pubs/forms/grnt\\_frm/2016\\_2017\\_g-8\\_hs\\_graduation\\_verification.pdf](http://csac.ca.gov/pubs/forms/grnt_frm/2016_2017_g-8_hs_graduation_verification.pdf), accessed October 16, 2017.

<sup>184</sup> Exhibit C, Claimant's Rebuttal Comments, page 7.

Accordingly, the Commission finds that Education Code section 69432.92, as added by Statutes 2015, chapter 637, does not impose a state-mandated program on school districts to electronically verify high school graduation.

**C. Education Code Section 69432.9(c)(2) and (d) (Stats 2014, ch. 679, Stats. 2016, ch. 82) Imposes Costs Mandated by the State for K-12 School Districts to Notify Pupils of the Opportunity to Opt Out of the Cal Grant Application Process and to Electronically Submit GPAs to CSAC Each Academic Year For All Pupils in Grade 12.**

As discussed above, the Commission finds that the following activities mandate a new program or higher level of service:

1. Provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d), (Stats 2014, ch. 679, Stats. 2016, ch. 82) as follows:
  - Beginning January 1, 2015, providing written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
  - Beginning January 1, 2017, providing written notice by January 1st to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
2. Electronically submit to CSAC the GPAs of all grade 12 pupils by October 1 of each academic year, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679).

For these activities to constitute reimbursable state-mandated activities under article XIII B, section 6 of the California Constitution, they must result in school districts incurring increased costs mandated by the state. 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. Government Code section 17564(a) requires that no claim shall be made unless the claim exceeds \$1,000.

The claimant alleges total increased costs as a result of the test claim statutes as follows: “actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the mandate: Actual: \$13,099 FY 2015-16 and \$14,888 for FY 2016-17.” The claimant further alleges: “The actual or estimated annual costs that will be incurred by the

claimant to implement the mandate during the fiscal year immediately following the fiscal year for which the claim was filed: Estimated: \$15,186 FY 2017-18.”<sup>185</sup>

Finance argues there are no increased costs mandated by the state because funds from the Local Control Funding Formula (LCFF) and the College Readiness Block Grant are available to pay for the cost of the new state-mandated activities. According to Finance, “The total of all of these funds exceeds the actual or estimated costs alleged by the claimant and the statewide cost estimate alleged in the claim.”<sup>186</sup>

The claimant responded to Finance, citing the State Controller’s “All School District Mandated Cost’s Claiming Instructions” that have specific line items for identifying offsetting savings or other funding sources available for the mandate being claimed, and that require offsetting savings to be deducted from claims. According to the claimant:

It is the responsibility of each District to determine (as the DOF [Finance] puts it) “The total of all these funds exceeds the actual or estimated costs alleged by the claimant”, and not an amount outside sources or other government agencies can determine. To determine if these new laws create a new program or higher level of service is COSM’s [the Commission’s] responsibility. It is up to each claimant and the SCO [State Controller] to determine if the costs are 100% funded through other avenues.<sup>187</sup>

For the reasons below, the Commission finds that school districts incur increased costs mandated by the state within the meaning of Government Code section 17514 for the activities listed above, and that funding appropriated to school districts under the LCFF and the College Readiness Block Grant do not trigger the application of Government Code section 17556(e) to deny this Test Claim.

Government Code section 17556(e) states that the Commission shall not find costs mandated by the state if:

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. This subdivision applies regardless of whether a statute, executive order, or appropriation in the Budget Act or other bill that either provides for offsetting savings that result in no net costs or provides for additional revenue specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate was enacted or adopted prior to or after the date on which the statute or executive order was enacted or issued. [Emphasis added.]

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<sup>185</sup> Exhibit A, Test Claim, page 16.

<sup>186</sup> Exhibit B, Department of Finance’s Comments on the Test Claim, pages 2 and 3.

<sup>187</sup> Exhibit C, Claimant’s Rebuttal Comments, page 8.

The LCFF<sup>188</sup> was enacted in fiscal year 2013-2014 to replace the previous K-12 general purpose revenue funding through Proposition 98, which had been in existence for roughly 40 years. Previously, the state distributed school funding through a combination of general purpose grants (revenue limit entitlements) and more than 40 state categorical programs. Districts could use general purpose grants for any educational purpose, but they had to spend categorical funding on state-prescribed activities. In fiscal year 2013-2014, the state eliminated most categorical programs, replacing all the program-specific funding formulas with one new formula. The new formula increased the size of general purpose grants and directed more funding to districts with disadvantaged pupils.<sup>189</sup> The LCFF combines each district’s 2012-2013 revenue limit entitlement and some categorical funding to create a new base, and then provides additional funding for districts with large numbers of “unduplicated pupils,” defined as low income pupils, pupils in foster care, and English learners. Like the prior revenue limit apportionments, the LCFF is funded through a combination of local property taxes and state aid.<sup>190</sup>

Whether a school district’s general purpose revenue, appropriated through revenue limit apportionments or the LCFF, when used by a school district to pay for a state-mandated program is required to be identified as offsetting revenue to reduce or eliminate the reimbursement requirement for K-12 school districts, is an issue with a long history. In 2008, the Commission amended the Parameters and Guidelines for the *Graduation Requirements* program at the request of the State Controller’s Office and several school districts to adopt a formula for the reimbursement of costs incurred for the higher level of service required to staff the new state-mandated high school science course.<sup>191</sup> The request was opposed by Finance on several grounds, including that the formula did not include increases in unrestricted revenue limits, or general purpose funding appropriated to school districts under Proposition 98, as offsetting revenue. The Commission rejected Finance’s argument, finding that the proceeds of taxes for school districts are different than those of other local government entities, such as counties and cities, because the general purpose revenue of school districts has always been partially provided by the state’s general fund. Thus, the amount spent by school districts from their proceeds of taxes on teacher salaries to staff the mandated science course could not be considered offsetting revenue without violating the purpose of article XIII B, section 6, which was specifically designed to protect local tax revenues, and “provide[s] local entities with the assurance that state

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<sup>188</sup> The Local Control Funding Formula is in Article 2 (commencing with section 42238) of Chapter 7 of Part 24 of Division 3 of Title 2 of the Education Code. Also, the County Local Control Funding Formula is in chapter 12.5 (commencing with section 2574) of Part 2 of Division 1 of Title 1 of the Education Code.

<sup>189</sup> Exhibit F, Legislative Analyst’s Office, “The 2017-18 Budget: Proposition 98 Education Analysis,” February 9, 2017, page 29, <http://www.lao.ca.gov/reports/2017/3549/prop98-analysis-020917.pdf>, accessed October 16, 2017.

<sup>190</sup> Exhibit F, California Department of Education, “LCFF Frequently Asked Questions,” <https://www.cde.ca.gov/fg/aa/lc/lcfffqa.asp#FC>, accessed October 16, 2017; Education Code sections 42238.02, 42238.03.

<sup>191</sup> Commission on State Mandates, Revised Final Staff Analysis Adopted by the Commission, *Graduation Requirements* Parameters and Guidelines Amendment, Item 3, November 6, 2008 Hearing, <https://csm.ca.gov/agendas/110608/item3.pdf>.



mandates would not place additional burdens on their increasingly limited revenue resources.”<sup>192</sup> The Commission also held that there was no evidence that the state appropriated funds *specifically intended* to fund the costs of providing the second science course mandated by *Graduation Requirements* program, as required by Government Code section 17556(e). Thus, the Commission did not identify the school district’s general purpose revenue as offsetting revenues.<sup>193</sup> Finance filed a petition for writ of mandate in the Sacramento County Superior Court to challenge the Commission’s Decision on the Parameters and Guidelines Amendment, but abandoned the offsetting revenue challenge. On March 20, 2013, the Sacramento County Superior Court denied the petition for writ of mandate and upheld the Commission’s Decision and Parameters and Guidelines.<sup>194</sup>

In 2010, the Legislature added section 42238.24 to the Education Code, which states that “costs related to the salaries and benefits of teachers incurred by a school district or county office of education to provide the courses specified in paragraph (1) of subdivision (a) of Section 51225.3 [the *Graduation Requirements* statute] shall be offset by the amount of state funding apportioned to the district” through the revenue limit apportionments. On January 6, 2011, the California School Boards’ Association (CSBA) filed a lawsuit against the State and the Commission, in part to prevent the Commission or the State from applying Education Code section 42238.24 as an offset to reduce or eliminate state reimbursement for the *Graduation Requirements* program.<sup>195</sup> CSBA argues that revenue limit apportionments (which were later replaced with the LCFF) constitute the proceeds of taxes of school districts, which cannot be used as offsetting revenue under article XIII B, section 6 of the California Constitution.<sup>196</sup> The State takes the position that

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<sup>192</sup> Commission on State Mandates, Revised Final Staff Analysis Adopted by the Commission, *Graduation Requirements Parameters and Guidelines Amendment*, Item 3, November 6, 2008 Hearing, <https://csm.ca.gov/agendas/110608/item3.pdf>, pages 52-53 (citing *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 836, fn. 6; and *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284.)

<sup>193</sup> Commission on State Mandates, Revised Final Staff Analysis Adopted by the Commission, *Graduation Requirements Parameters and Guidelines Amendment*, Item 3, November 6, 2008 Hearing, <https://csm.ca.gov/agendas/110608/item3.pdf>, pages 51-54.

<sup>194</sup> *Department of Finance v. Commission on State Mandates*, Sacramento County Superior Court, Case No. 34-2010-80000529.

<sup>195</sup> *California School Boards Assoc., et al. v. State of California, Commission on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance*, Alameda County Superior Court, Case No. RG11554698, First District Court of Appeal, Case No. A148606.

<sup>196</sup> CSBA cites article XIII B, section 8(c), which defines “appropriations subject to limitation” to include state subventions other than mandate subventions, and Government Code section 7906, which defines “proceeds of taxes” for school districts to include basic aid subventions and state apportionments up to the district’s “foundation program level” minus “local revenues as defined in Section 42238 of the Education Code.” Thus, CSBA asserts that existing law defines all unrestricted state funding, up to the district’s XIII B spending limit, as proceeds of taxes. CSBA Opening Brief, *California School Boards Assoc., et al. v. State of California, Commission*

the revenue limit apportionments and the LCFF are funded with a mix of local property tax revenue and state funds; that school districts “are not being required [by section 42238.24] to use their own property taxes to pay for the cost of the mandate;” and that “only the moneys provided by the state are potentially offsetting.”<sup>197</sup> The *CSBA* matter is currently pending in the First District Court of Appeal. On July 25, 2011, Finance filed a request to amend the Parameters and Guidelines for the *Graduation Requirements* program to identify Education Code section 42238.24 (Stats. 2010, ch. 724, §16) as a required offset. (CSM 11-PGA-03.) That matter is stayed pending the outcome of the *CSBA* litigation.

Thus, the issue whether a school district’s general revenue calculated under the LCFF and used to pay for a state-mandated program is required to be identified as offsetting revenue is unsettled. The Commission has approved many school district test claims, and has never identified a school district’s general purpose revenue as offsetting revenue. Moreover, the Legislature has not enacted a statute that “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,” pursuant to Government Code section 17556(e), with respect to the Cal Grant activities mandated by the state. All LCFF funds are technically “unrestricted,” which means school districts have discretion over how the funds are used. The Legislature has not directed the use of LCFF funds to pay for the costs of this program.<sup>198</sup> Therefore, the funding appropriated under the LCFF does not trigger the application of Government Code section 17556(e) to deny this Test Claim.

Additionally, although it provides potentially offsetting revenue, the College Readiness Block Grant also does not trigger Government Code section 17556(e). Enacted in 2016, the College Readiness Block Grant authorizes the appropriation of \$200 million to provide California’s high school pupils, particularly unduplicated pupils, additional support to increase enrollment at institutions of higher education and complete an undergraduate degree within four years.<sup>199</sup> Appropriations to school districts under this block grant are deemed “General Fund revenues” for school districts, appropriated pursuant to Proposition 98.<sup>200</sup> In addition, the “block grant funds apportioned to eligible school districts shall be used for activities that directly support pupil access and successful matriculation to institutions of higher education.”<sup>201</sup> In this respect, the Legislature has determined that the following “eligible activities,” focused primarily on

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*on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance*, filed October 7, 2016, First District Court of Appeal, Case No. A148606.

<sup>197</sup> State’s Opposition to Petition for Writ of Mandate (Second Cause of Action), *California School Boards Assoc., et al. v. State of California, Commission on State Mandates, John Chiang, as State Controller, and Ana Matosantos, as Director of the Department of Finance*, filed April 3, 2015, Alameda County Superior Court, Case No. RG11554698, page 17.

<sup>198</sup> Exhibit F, California Department of Education, “LCFF Frequently Asked Questions,” <https://www.cde.ca.gov/fg/aa/lc/lcfffaq.asp#FC> accessed October 16, 2017.

<sup>199</sup> Education Code section 41580(b), as added by Statutes 2016, chapter 29.

<sup>200</sup> Education Code section 41580(h).

<sup>201</sup> Education Code section 41580(d).

unduplicated pupils, fits within the purpose of the grant: (1) professional development for teachers, administrators, and counselors to improve pupil college readiness and attendance; (2) beginning or increasing pupil and family counseling regarding college admission requirements and financial aid programs; (3) developing or purchasing materials that support college readiness; (4) developing comprehensive advising plans to support pupil completion of A-G course requirements for college admission; (5) implementing partnerships between high schools and postsecondary educational institutions that support pupil transition to postsecondary education; (6) providing subsidies to unduplicated pupils to pay fees for taking advanced placement exams; and (7) expanding access to coursework or other opportunities to satisfy A-G course requirements to all pupils.<sup>202</sup> School districts are required to develop a plan as a condition of receiving funds, to be discussed at a regularly scheduled meeting of the governing board to ensure community involvement. The plan shall describe how the funds will increase or improve services for unduplicated pupils to ensure college readiness.<sup>203</sup> As a condition of receiving funds, school districts are required to report to the Superintendent how they will measure the impact of the funds received.<sup>204</sup>

However, there is no requirement that school districts use the block grant funding to pay for this state-mandated program. Accordingly, the block grant funds are not “specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate” in accordance with Government Code section 17556(e). Nevertheless, as indicated in the Background, the purpose of the new state-mandated activities to provide the Cal Grant opt-out notice to pupils and electronically submit GPAs to CSAC is to boost access to college financial aid for high school graduating pupils. Although these activities are not specifically focused on unduplicated pupils, they do “support pupil access and successful matriculation to institutions of higher education.” Thus, the grant funds received by school districts under the College Readiness Block Grant program are potential offsetting revenues that must be identified by a school district on a reimbursement claim *if* the district uses the funds for this program.

Therefore, the Commission finds, as a matter of law, that Education Code section 69432.9(c)(2) and (d) (Stats 2014, ch. 679, Stats. 2016, ch. 82) impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the activities listed below.

## **V. Conclusion**

Based on the foregoing, the Commission finds that the test claim statutes impose a partially reimbursable state-mandated program on K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for the following activities only:

1. Provide a written Cal Grant opt-out notice pursuant to Education Code section 69432.9(d), (Stats 2014, ch. 679, Stats. 2016, ch. 82) as follows:

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<sup>202</sup> Education Code section 41580(d)(1) – (d)(7).

<sup>203</sup> Education Code section 41580(e).

<sup>204</sup> Education Code section 41580(f).

- Beginning January 1, 2015, providing written notice by October 15, 2015 and 2016, to all grade 12 pupils in the class of 2016 and class of 2017, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
  - Beginning January 1, 2017, providing written notice by January 1 to all grade 11 pupils, beginning with the class of 2018, which (1) states “the pupil will be deemed a Cal Grant applicant unless the pupil opts out within a period of time specified in the notice, which shall not be less than 30 days;” (2) identifies when the school will first send grade point averages to CSAC; and (3) provides an opportunity for the pupil to opt out of being automatically deemed a Cal Grant applicant.
2. Electronically submit the GPAs of all grade 12 pupils each academic year to CSAC, except for pupils who opt out in accordance with section 69432.9(d), pursuant to Education Code section 69432.9(c)(2) (Stats. 2014, ch. 679). This activity does not include the certification of GPAs or providing SSNs to CSAC.

All other statutes and provisions pled in the Test Claim 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.

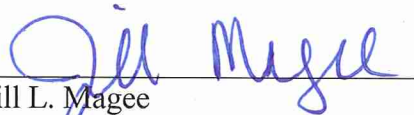
On January 10, 2018, I served the:

- **Proposed Decision issued January 10, 2018**

*Cal Grant: Grade Point Average and Graduation Certification, 16-TC-02*  
Education Code Sections 69432.9(c)(2), 69432.9(c)(3), 69432.9(c)(5),  
69432.9(d)(1)(d)(2)(A); Statutes 2014, Chapter 679 (AB 2160); Education Code Sections  
69432.92(a) and 69432.92(b); Statutes 2015, Chapter 637 (AB 1091); and Education  
Code Sections 69432.9(c)(2) and (d)(1); Statutes 2016, Chapter 82 (AB 2908)  
Fairfield-Suisun Unified School District, Claimant

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 10, 2018 at Sacramento, California.



Jill L. Magee  
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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 12/21/17

**Claim Number:** 16-TC-02

**Matter:** Cal Grant: Grade Point Average and Graduation Certification

**Claimant:** Fairfield-Suisun 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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