

LAW OFFICES OF ARTHUR M. PALKOWITZ
12807 Calle de la Siena
San Diego, CA 92130
law@artpalk.onmicrosoft.com
Phone: 858.259.1055

RECEIVED
November 03, 2023
**Commission on
State Mandates**

LATE FILING

November 3, 2023

Heather Halsey
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Re: Incorrect Reduction Claim

California Assessment of Student Performance And Progress Program (CAASPP), 22-1401-I-01; Education Code Section 60640, as amended by Statutes 2013, Chapter 489 (AB 484) and Statutes 2014, Chapter 32 (SB 858); California Code of Regulations, Title 5, Sections 850, 852, 853, 853.5, 857, 861(b)(5), and 864, as added or amended by Register 2014, Nos. 6, 30, and 35.

Fiscal Years: 2015-2016 and 2016-2017
Fresno Unified School District, Claimant

Dear Ms. Halsey:

Fresno Unified School District (District) submitted rebuttal comments on October 4, 2023 in response to the California State Controller's Office (Controller) late filing dated October 2, 2023. District's supplemental rebuttal comments below are timely within the 30 days of receipt of Controller's comments on October 3, 2023.

The comments below are not to be considered a waiver of the District's comments included in their October 4, 2023 correspondence:

Commission is to deny in its entirety Controller's comments dated October 2, 2023 pursuant to Government Code section 17553(d) that provides: "The Controller *shall* have no more than 90 days after the date the claim is delivered or mailed to file any rebuttal to an incorrect reduction claim. The failure of the Controller to file a rebuttal to an incorrect reduction claim shall not serve to delay the consideration of the

claim by the commission,” the approval of this request is limited to 60 days. (emphasis added)

District is unaware when the Commission will render a decision on its request to reject the Controller’s late comments. Consequently, to avoid the possibility of not having an opportunity to respond to the Controller’s comments District submits the following rebuttal comments.

I. District Had Discretion Of the Duration of the Testing Period

District asserts they had the discretion of the duration of the time period to implement the mandated CAASPP testing, as long as the testing period was not beyond the maximum limit. Controller agrees that LEAs have the option to select a shorter window testing.

The approved mandate required the District “provide “a computing device, the use of an assessment technology platform, and the adaptive engine” to administer the CAASPP assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology requirements.” (Controller Comments: page 10).

Pursuant to the California Code of Regulations, Title 5 (5 CCR), sections 855(a)(1), 855(a)(2), 855 (a)(3), 855(b), and 855(c), the rules for the establishment of the testing windows for the Smarter Balanced assessments are as follows:

- FY 2015-16, for grades three through eight – The testing window *shall* begin on the day in which 66% of a school’s annual instructional days have been completed (Tab 6, page 5).
- FY 2015-16, for grade eleven – The testing window *shall* begin on the day in which 80% of the school’s annual instructional days have been completed (Tab 6, page 5).

The aforementioned required when testing shall begin. However, there is no requirement when the testing is to be completed as long as the testing is within a 12-week regulatory testing window for grades three through eight testing and a seven-week regulatory testing window for grade eleven testing. (Controller Comments: page 12). “*It is undisputed LEAs [Local Education Agencies] have the option to select a shorter testing window*”. (Tab 6, page 5.) Controller arbitrarily selected the broadest testing window when determining the mandated testing window for the entire District testing. (Controller Comments: page 10).

II. Controller Decision Was Arbitrary and Capricious In Rejecting District's Testing Period.

Regarding the Controller's audit decisions, the Commission must determine whether they were arbitrary, capricious, or entirely lacking in evidentiary support. This standard is similar to the standard used by the courts when reviewing an alleged abuse of discretion of a state agency. (*Johnston v. Sonoma County Agricultural Preservation and Open Space District* (2002) 100 Cal.App.4th 973, 983-984; *American Bd. of Cosmetic Surgery, Inc. v. Medical Bd. of California* (2008) 162 Cal.App.4th 534, 547.)

The District utilized an permissible 35-day testing period that was permissible and allowed students additional instructional time prior to taking the test. (District's IRC: Exhibits 1, 2) The month of March and the first part of April were dedicated for instruction.

A student was required to have access to a computational device to complete the CAASPP testing. (Exhibit 2) If the District were to administer the test over the entire 60-day period, there would be inequities across the district with students taking the test at the end of the testing window would have received additional instruction compared to the students taking the test at the beginning of the test period.

In addition, the logistics to transport devices from school site to school site throughout the district during the 35-day testing period requires additional devices. Due to the District's large geographical reach in Fresno County, (six thousand square miles) with ninety-five sites tested in both 2015/16 and 2016/17, the District faced logistical challenges moving devices from school to school.

Controller arbitrarily concluded the District's purchase of testing equipment was unallowable contrary to the test claim decision stating:

SBAC (Smarter Balance Calculator") also acknowledges, however, that some school districts may be required to make new purchases: There will also be a need in certain scenarios for various districts to consider the purchase of additional computers or computational devices...most new hardware will naturally fall well into the specifications released so far... (CAASPP: Statement of Decision p.10.)

III. Mandated Testing Window May Be Less Than Twelve Weeks.

California Code of Regulations, Title 5 (5 CCR), sections 855(a)(1), 855(a)(2), 855 (a)(3), 855(b), and 855(c) anticipated LEAs would have the discretion when to

complete the testing as long as it did not go beyond the maximum twelve-week period for grades three through eight and a seven-week period for grade eleven.

Controller fails to rely on any authority, as there is none, prohibiting the testing period to be 35 days. Controller set the testing window at 60 days (12 weeks x 5 days a week), which was the maximum number of days allowed per the testing window. (“Sixty-six percent of a school year occurs on the 118th instructional day in a 180-day school year, leaving a 12-week regulatory testing window for grades three through eight testing...”) (Tab 6, page 5). (Controller Comments: page 14).

Controller contends, “The key takeaway here is the mandated testing window. Testing can begin on the 118th day of instruction for students in grades three through eight, and on the 144th day for students in grade eleven. LEAs have the option of selecting a shorter testing window, but it is not mandated. (Controller Comments: page 12). Controller selected the maximum testing period window when determining the mandated testing window.” Controller’s selection for the duration of the test period is neither supported by the test claim decision or parameters and guidelines.

Controller agreed that “To encourage adoption of the CAASPP program on a statewide level, SBAC purposefully designed the assessments to be compatible with existing technology available at many districts but acknowledged some school districts may need to consider purchasing additional computers.” (Controller Comments: page 18).

The Commission’s test claim decision acknowledged the purchase of computing devices, and the upgrade of testing devices is inevitable, if somewhat uneven from year to year and from one district to the next. (CAASPP: Statement of Decision p.51.)

IV. District’s Exhibit 3, 4 Lists the New Devices Purchased.

District’s Exhibit 3 Lists the FY 2015-2016 New Devices purchased in the total amount of \$1,504,004 as follows:

ASUS TI 00HA-C4-GR TRANSORMER BOOK	809	\$605,600
ASUS TI00TA-CI-GR TRANSORMERBOOK	1,650	\$309,245
ASUS TP500 LAPTOP	704	\$383,611
ASUS TP501 LAPTOP	<u>346</u>	<u>\$205,547</u>
Total	3,509	\$1,504,004 (Finding 1)

District’s Exhibit 4 Lists the FY 2016-2017 New Devices purchased in the total amount of \$791,918.00 as follows:

	<u>Unit Price</u>	<u>Units Received</u>	<u>Total Cost</u>
TP 200	\$342.25	1171	\$400,774.75
TP 501	\$539.75	<u>475</u>	<u>\$256,381.25</u>
		1646	\$657,156.00
Absolute Tracking Software:		\$26,336.00	
CA\ E-Waste Recycling Fee		\$5,094.00	
Sales Tax		\$62,749.46	
Total Hardware (SBAC)		\$751,335.46 (IRC000026)	
Broadband (SBAC)		<u>\$40,583.29</u> (IRC000027)	
Total material and supplies		\$791,918.00 (Finding I)	

Claimant contends Controller’s Finding I for the FY 2015-2016 disallowing \$1,504,004 and Controller’s Finding I for the FY 2016-2017 disallowing \$791,918.00 was arbitrary and capricious or is entirely lacking in evidentiary support.

The one-time purchase of the equipment was reasonable and necessary to perform the CAASSP testing as was anticipated by SBAC (Smarter Balance Calculator”) that some school districts may be required to make new purchases of additional computers or computational devices. (CAASPP: Statement of Decision p.10.) With a shorter testing period more students are simultaneously performing the tests requiring more devices.

A. Certification

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

November 3, 2023

Arthur Palkowitz

 Arthur M. Palkowitz
 Representative for the Claimant

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On November 3, 2023, I served the:

- **Current Mailing List dated October 23, 2023**
- **Claimant's Late Supplemental Rebuttal Comments filed November 3, 2023**

*California Assessment of Student Performance and Progress (CAASPP),
22-1401-I-01*

Education Code Section 60640, as amended by Statutes 2013, Chapter 489 (AB 484) and Statutes 2014, Chapter 32 (SB 858); California Code of Regulations, Title 5, Sections 850, 852, 853, 853.5, 857, 861(b)(5), and 864, as added or amended by Register 2014, Nos. 6, 30, and 35

Fiscal Years: 2015-2016 and 2016-2017
Fresno 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 November 3, 2023 at Sacramento, California.



David Chavez
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/23/23

**Claim
Number:** 22-1401-I-01

Matter: California Assessment of Student Performance and Progress

Claimant: Fresno 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.)

Amber Alexander, *Department of Finance*

Education Systems Unit, 915 L Street, 7th Floor, Sacramento, Ca

Phone: (916) 445-0328

Amber.Alexander@dof.ca.gov

Lili Apgar, Specialist, *State Controller's Office*

Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA

95816

Phone: (916) 324-0254

lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*

Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522

SAquino@sco.ca.gov

Guy Burdick, Consultant, *MGT Consulting*

2251 Harvard Street, Suite 134, Sacramento, CA 95815

Phone: (916) 833-7775
gburdick@mgtconsulting.com

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments,
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Martina Dickerson, Staff Finance Budget Analyst, *Department of Finance*
Education, Department of Finance, Sacramento, CA 95814
Phone: (916) 445-0328
Martina.Dickerson@dof.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Chris Ferguson, *Department of Finance*
Education Systems Unit, 915 L Street, 7th Floor, 915 L Street, 7th Floor,
Sacramento, CA 95814
Phone: (916) 445-3274
Chris.Ferguson@dof.ca.gov

Brianna Garcia, *Education Mandated Cost Network*
1121 L Street, Suite 1060, Sacramento, CA 95814
Phone: (916) 446-7517
briannag@sscal.com

Mike Gomez, Revenue Manager, *City of Newport Beach*
100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3240
mgomez@newportbeachca.gov

Heather Halsey, Executive Director, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
heather.halsey@csm.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments,
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-1127
THoang@sco.ca.gov

Angelo Joseph, Supervisor, *State Controller's Office*
Local Government Programs and Services Division, Bureau of Payments,
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
AJoseph@sco.ca.gov

Lisa Kurokawa, Bureau Chief for Audits, *State Controller's Office*
Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 327-3138
lkurokawa@sco.ca.gov

Audin Leung, Student Leader, *Free the Period California*
1 Shield Ave, Pierce Co-op TB14, Davis, CA 95616
Phone: (415) 318-9343
freetheperiod.ca@gmail.com

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Tina McKendell, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles,
CA 90012
Phone: (213) 974-0324
tmckendell@auditor.lacounty.gov

Lourdes Morales, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8320
Lourdes.Morales@LAO.CA.GOV

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814

Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Melissa Ng, Staff Finance Budget Analyst, *Department of Finance*
Education, 915 L Street, 7th Floor, Sacramento, CA 95814
Phone: (916) 445-0328
Melissa.Ng@dof.ca.gov

Michelle Nguyen, *Department of Finance*
Education Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-0328
Michelle.Nguyen@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
Claimant Representative
12807 Calle de la Siena, San Diego, CA 92130
Phone: (858) 259-1055
law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA
95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Sandra Reynolds, President, *Reynolds Consulting Group, Inc.*
P.O. Box 891359, Temecula, CA 92589-1359
Phone: (888) 202-9442
rcginc19@gmail.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Natalie Sidarous, Chief, *State Controller's Office*
Local Government Programs and Services Division, 3301 C Street, Suite 740,
Sacramento, CA 95816
Phone: 916-445-8717
NSidarous@sco.ca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative
Affairs, *California State Association of Counties (CSAC)*
1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Helmholt Zinser-Watkins, Associate Governmental Program Analyst, *State
Controller's Office*
Local Government Programs and Services Division, Bureau of Payments,
3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov