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RECEIVED
August 07, 2024
**Commission on
State Mandates**

August 7, 2024

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

Re: Incorrect Reduction Claim-Draft Proposed Decision
Claimant's Comments

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" or "Claimant") submits the following comments in response to the Draft Proposed Decision.

I. Controller Decision Was Arbitrary Capricious and entirely lacking in evidentiary support.

The Commission on State Mandates ("Commission") must determine whether the State Controller's Office ("Controller") audit decisions, 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.)

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"We review decisions regarding consistency with a general plan under the arbitrary and capricious standard" asking "whether the decision is arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." (*Endangered Habitats League, Inc. v. County of Orange*, 131 Cal. App. 4th 777, 782 Cal. App. 4th Dist. (2005).)

II. District Had Discretion to Determine Duration of the Testing Period

District has provided ample evidence supporting their decision of the length of the testing period and the requirement to purchase additional computers or computational devices. Controller's decision in denying the claim was "procedurally unfair."

District has met their burden supporting a finding of increased costs required to administer the mandated CAASPP testing by complying with the requirement when to start the testing.¹ District had discretion to shorten 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 District (LEAs) have the option to select a shorter window testing. "*It is undisputed LEAs [Local Education Agencies] have the option to select a shorter testing window.*" (Tab 6, page 5.)

There was 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 and a seven-week regulatory testing window for grade eleven testing. (Controller Comments: page 12). Controller arbitrarily, unlawfully and procedurally unfairly selected the broadest testing window when determining the mandated testing window for the entire District testing. (Controller Comments: page 10).

¹ 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).

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.

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The District utilized a 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.

There is no authority 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).

To achieve the permissible 35-day testing period the District purchased computing devices. 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).

III. Purchase of additional computers was approved by the Commission decision and inevitable.

The approved mandate required the District to purchase additional "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).

SBAC (Smarter Balance Calculator) also recognizes 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.)

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.)

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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.

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 T1 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		<u>\$62,749.46</u>	
Total Hardware (SBAC)		\$751,335.46 (IRC000026)	

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Broadband (SBAC) \$40,583.29 (IRC000027)

Total material and supplies \$791,918.00 (Finding I)

District opposes 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, permissible and necessary to perform the CAASSP testing as was anticipated by SBAC that 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.

V. Conclusion

The Commission's decision approved the purchase of additional computers or computational devices. (CAASPP: Statement of Decision p.10.) Controller's audit findings failed to comply with the Parameters & Guidelines ("P & G"). Controller determined the number of computing devices the District needed to administer the CAASPP tests are to be solely "based on calculations on the Smarter Balanced Technology Readiness Calculator's formula." (District's Audit Response dated October 29, 2020.) This application is not required in the P & G and is arbitrarily and capricious.

The District provided supporting documentary evidence they supplemented their existing computing devices and the expansion of the existing technology infrastructure due to the testing requirements of CAASPP. It was well-defined during the approval of the test claim and the subsequent parameters and guidelines process and anticipated by SBAC, that it was reasonable, permissible and necessary that a District may be required to supplement their existing inventory of computers with one-time purchase of the equipment that was to perform the CAASSP testing.

The District's increase of devices by 15% for the testing of 40,000 students is reasonable and appropriate based on the District's documentation provided to SCO during the audit. Controller failed to rely on the test claim and P & G that the upgrade of testing devices is inevitable, if somewhat uneven from year to year and from one district to the next. In addition, the technology requirements to implement the assessment were deliberately established as a low entry point to help ensure that

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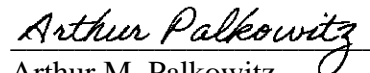
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technology-purchasing decisions are made based on instructional plans and to increase the likelihood that schools will successfully engage in online testing.

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.

August 7, 2024


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 August 7, 2024, I served the:

- **Current Mailing List dated July 22, 2024**
- **Claimant's Comments on the Draft Proposed Decision filed August 7, 2024**

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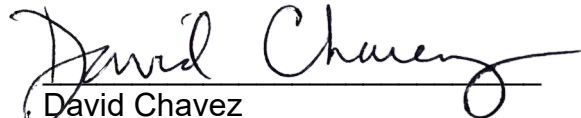
Education Code Section 60640, as amended by Statutes 2013, Chapter 489 (AB 484) and Statutes 2014, Chapter 32 (SB 858); California Code of Regulations, Title 5, Sections 850, 852, 853, 853.5, 857, 861(b)(5), 864 (Register 2014, Nos. 6, 30, and 35)

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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 August 7, 2024 at Sacramento, California.



David Chavez
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 7/22/24

**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.)

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