



September 3, 2024

Mr. Chris Hill
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

Mr. Arthur M. Palkowitz
Law Offices of Arthur M. Palkowitz
12807 Calle de la Siena
San Diego, CA 92130

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

Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing
Heating, Ventilation, and Air Conditioning (HVAC) Program, 23-TC-01
Statutes 2022, Chapter 777, Sections 1, 2 (AB 2232);
Education Code Sections 17660, 17661, Effective January 1, 2023
Hesperia Unified School District, Claimant

Dear Mr. Hill and Mr. Palkowitz:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

Written Comments

Written comments may be filed on the Draft Proposed Decision no later than **5:00 pm on September 24, 2024**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission are required to be electronically filed (e-filed) in an unlocked legible and searchable PDF file, using the Commission's Dropbox. (Cal. Code Regs., tit. 2, § 1181.3(c)(1).) Refer to <https://www.csm.ca.gov/dropbox.shtml> on the Commission's website for electronic filing instructions. If e-filing would cause the filer undue hardship or significant prejudice, filing may occur by first class mail, overnight delivery or personal service only upon approval of a written request to the executive director. (Cal. Code Regs., tit. 2, § 1181.3(c)(2).)

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

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

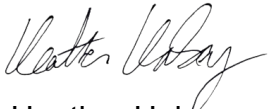
Hearing

This matter is set for hearing on **Friday, November 22, 2024**, at 10:00 a.m. The Proposed Decision will be issued on or about November 8, 2024.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list. When calling or emailing, please identify the item you want to testify on and the entity you represent. The Commission Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey", written in a cursive style.

Heather Halsey
Executive Director

ITEM ____
TEST CLAIM

DRAFT PROPOSED DECISION

Education Code Sections 17660, 17661

Statutes 2022, Chapter 777, Sections 1 and 2 (AB 2232), Effective January 1, 2023

Heating, Ventilation, and Air Conditioning (HVAC) Program

23-TC-01

Hesperia Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

This Test Claim alleges new state-mandated activities and costs resulting from Education Code sections 17660 and 17661 as added by Statutes 2022, chapter 777 (the test claim statute), effective January 1, 2023. The test claim statute generally requires school districts to ensure school facilities have HVAC systems meeting the minimum ventilation rate requirements in the Energy Code and to install the highest efficiency MERV filters feasible for their systems to “provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improve student productivity and performance.”¹

For reasons stated in the analysis, staff finds the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 and recommends the Commission deny this Test Claim.

Procedural History

The claimant filed the Test Claim on November 17, 2023.² The Department of Finance (Finance) filed comments on the Test Claim on February 15, 2024.³ The claimant filed rebuttal comments on March 14, 2024.⁴

¹ Education Code section 17660 (Stats. 2022, ch. 777). Statutory references are to the Education Code unless otherwise indicated.

² Exhibit A, Test Claim, filed November 17, 2023, page 1.

³ Exhibit B, Finance’s Comments on the Test Claim, filed February 15, 2024, page 1.

⁴ Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024, page 1.

Commission staff issued the Draft Proposed Decision on September 3, 2024.⁵

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. 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 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 of the California Constitution and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁶

Claims

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

Issue	Description	Staff Recommendation
Was the Test Claim timely filed?	Government Code section 17551(c) requires test claims “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 defines “12 months” as 365 days.	<i>Timely filed</i> - The test claim statute became effective on January 1, 2023. ⁷ The Test Claim was filed on November 17, 2023, ⁸ within 12 months of the effective date so the test claim was timely filed. The November 17, 2023 filing date establishes reimbursement eligibility for the 2022-2023 fiscal year, but because the test claim statute became effective on January 1, 2023, the potential period of

⁵ Exhibit D, Draft Proposed Decision, issued September 3, 2024.

⁶ *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.

⁷ Statutes 2022, chapter 777.

⁸ Exhibit A, Test Claim, filed November 17, 2023, page 1.

Issue	Description	Staff Recommendation
		reimbursement begins January 1, 2023.
Does Education Code section 17660 and uncodified section 1, as added by the test claim statute, impose a reimbursable state mandate?	Section 17660, as added by the test claim statute, declares “the policy of the state that school facilities provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improve student productivity and performance.” ⁹ Similarly, uncodified section 1 of the test claim statute consists of legislative declarations regarding studies on poor classroom air quality and cites the labor code and building code regarding schools’ responsibilities to ensure air quality measures.	<i>Deny</i> - Reimbursement under article XIII B, section 6 is only required if a state statute or executive order requires or “mandates” local agencies or school districts to perform an activity. ¹⁰ Section 17660 and section 1 of the test claim statute do not require school districts to perform any activities, so state reimbursement is not required.
Does Education Code section 17661 (a), (d), and (e), as added by the test claim statute, impose a reimbursable state mandate?	Section 17661(a) defines “covered school,” “HVAC,” and “MERV,” as used in the test claim statute. Section 17661(d) requires the California Building Standards Commission and the Division of the State Architect to research, develop, and propose for adoption mandatory standards for carbon dioxide	<i>Deny</i> - Reimbursement under article XIII B, section 6 is only required if a state statute or executive order requires or “mandates” local agencies or school districts to perform an activity. ¹¹ Education Code section 17661(a), (d), and (e), does not require school districts to perform any activities, so no

⁹ Education Code section 17660 (Stats 2022, ch. 777).

¹⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹¹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

Issue	Description	Staff Recommendation
	<p>monitors in classrooms on the next triennial update of the California Building Standards Code.</p> <p>Section 17661(e) states: "This section shall apply to the University of California only to the extent that the Regents of the University of California, by resolution, make it applicable."</p>	<p>state reimbursement is required.</p>
<p>Does Education Code section 17661(b) impose a reimbursable state-mandated program?</p>	<p>Section 17661(b)(1) requires school districts and county offices of education to ensure facilities, including but not limited to classrooms, have HVAC systems that meet the minimum ventilation rate requirements in Table 120.1-A of part 6 of title 24 of the California Code of Regulations, unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate.</p> <p>Section 17661(b)(2) requires a school incapable of meeting the minimum ventilation rates in Table 120.1-A to ensure its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued; and document the HVAC system's inability to meet the current ventilation standards in the annual HVAC inspection report required by section 5142 of</p>	<p><i>Deny</i> - The requirement in Education Code section 17661(b)(2), to inspect the HVAC systems to ensure they meet the minimum ventilation rates <i>in effect when the building permit for HVAC installation was issued</i> is not new and does not impose a new program or higher level of service.</p> <p>Although the requirements in sections 17661(b)(1) and (b)(2) to inspect HVAC systems to ensure compliance with the <i>current</i> minimum ventilation rates in Table 120.1-A of part 6 of the title 24 regulations and document in the annual inspection report the system's inability to meet <i>current</i> ventilation standards in Table 120.1-A is new for school districts with HVAC systems approved for installation <i>before</i> January 1, 2020 (under the 2016 or earlier Energy Code), there is no evidence in the record of increased costs mandated by the state. The</p>

Issue	Description	Staff Recommendation
	title 8 of the California Code of Regulations, which shall be available to the public upon request.	claimant identifies no costs in the Test Claim or the attached declaration to comply with the section 17661(b) requirements to inspect the HVAC systems for compliance with current standards and document the system's inability to meet current standards. ¹²
Does Education Code section 17661(c) impose a reimbursable state-mandated program?	Under section 17661(c), school districts are required to install MERV 13 air filtration or the highest filtration feasible and appropriate for the existing HVAC system, as determined by the school. Or if it is determined the existing HVAC system is not designed to achieve MERV levels of 13 or higher, the school district shall install filtration that achieves the highest MERV level the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.	<i>Deny</i> – The MERV 13 requirement in Education Code section 17661(c) is <i>not</i> new to the extent a school received a permit or equivalent approval to install a new HVAC system under the 2019 or 2022 Energy Code (i.e., on or after Jan. 1, 2020) because those Codes already required the HVAC system to have filters with a designated efficiency equal to or greater than MERV 13. ¹³ Prior law also required these filters be replaced or cleaned regularly. ¹⁴ In addition, the MERV 13 requirement is <i>not</i> new if there was a COVID-19 outbreak in the school. When the test claim statute became effective on January 1, 2023, MERV 13 filters were required for schools that had a COVID-19 outbreak (meaning three

¹² Exhibit A, Test Claim, filed November 17, 2023, page 13, 18-19 (Landon Declaration).

¹³ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

¹⁴ California Code of Regulations, title 8, section 5143(d)(3). (Register 2003, No. 24.)

Issue	Description	Staff Recommendation
		<p>or more <i>employee</i> COVID-19 cases within an exposed group, as defined, who visited the worksite during their infectious period any time during a 14-day period).¹⁵ Under these circumstances, existing regulations required the school to comply with the same filtration requirements as the test claim statute.¹⁶</p> <p>Therefore, the requirement in Education Code section 17661(c) is new only for schools with HVAC systems approved for installation <i>before</i> January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did <i>not</i> have a COVID-19 outbreak as defined in the title 8 regulations.¹⁷</p> <p>However, there is no evidence of increased costs mandated by the state in accordance with Government Code section 17514 and section 1183.1(e) of the Commission’s regulations to comply with the new requirement.</p>

¹⁵ California Code of Regulations, title 8, section 3205.1(a)(1) (Register 2022, No. 18, eff. May 5, 2022).

¹⁶ California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

¹⁷ California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

Staff Analysis

The test claim statute, effective January 1, 2023, seeks to further the declared “policy of the state that school facilities provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improved student productivity and performance.”¹⁸ To do this, the test claim statute adds section 17661(b) to the Education Code to require ‘covered schools’ (defined as “a school district, a county office of education, a charter school, a private school, the California Community Colleges, or the California State University”)¹⁹ to:

[E]nsure that facilities, including but not limited to, classrooms for students, have HVAC systems that meet the minimum ventilation rate requirements set forth in Table 120.1-A of Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations, unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate.²⁰

If a school’s existing HVAC system is incapable of meeting the minimum ventilation rate standard in Table 120.1-A of Part 6 (commencing with Section 100.0) of title 24, then the school district is required to:

[E]nsure that its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued [and;]

¹⁸ Education Code section 17660 (Stats 2022, ch. 777).

¹⁹ Under Government Code section 17514, “school districts” are eligible to seek reimbursement for state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution. Government Code section 17519 defines “school district,” as “any school district. . . , or county superintendent of schools.” The county superintendent of schools is the executive officer of the county office of education. (Ed. Code, § 1010.) County offices of education provide alternative educational programs for pupils attending county community schools who have been expelled from school, referred as a condition of probation, or who are homeless. (Ed. Code, § 1981, 1984, 48852.7, 48859.) Thus, this Decision applies to K-12 school districts and county offices of education, referred to as “school districts.”

The definition of “covered schools” in section 17661(a)(1) also includes the California Community Colleges. A test claim has not been filed by a community college district. Therefore, the Commission makes no findings with respect to community college districts.

²⁰ Education Code section 17661(b)(1) (Stats 2022, ch. 777). The incorporation by reference of a table in “Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations” refers to California’s Building Standards Code. Part 2 of title 24 is known as the “Building Code.”

[D]ocument the HVAC system’s inability to meet the current ventilation standards set forth in paragraph (1) (i.e., in the current version of Table 120.1-A of Part 6 of Title 24) in the annual HVAC inspection report required by Section 5142 of Title 8 of the California Code of Regulations, which shall be available to the public upon request.²¹

A covered school is also required to:

[I]nstall filtration that achieves MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system, as determined by the school.

If . . . it is determined that the existing HVAC system is not designed to achieve MERV levels of 13 or higher, a covered school shall install filtration that achieves the highest MERV level that the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.²²

The Test Claim was timely filed on November 17, 2023.²³ This filing date establishes reimbursement eligibility for the 2022-2023 fiscal year,²⁴ but because the test claim statute became effective on January 1, 2023, the potential period of reimbursement begins January 1, 2023.

Staff finds Education Code sections 17660 (which states the Legislature’s findings and declarations) and 17661(a), (d), and (e), as well as uncodified section 1 of the test claim statute, impose no requirements on school districts so they do not constitute a state-mandated program.

Staff finds Education Code section 17661(b) does not impose a reimbursable state-mandated program for the following reasons:

- The requirement in Education Code section 17661(b)(2), requiring schools to inspect to “[e]nsure that its HVAC system meets the minimum ventilation rates *in effect at the time the building permit for installation of that HVAC system was issued*” is *not* new and does not impose a new program or higher level of service. Since 1987, section 5142(b) of the title 8 regulations has required employers, including school districts, to conduct annual workplace inspections to ensure compliance with the minimum ventilation rate requirements in effect at the time

²¹ Education Code section 17661(b)(2) (Stats 2022, ch. 777).

²² Education Code section 17661(c) (Stats 2022, ch. 777). MERV is the minimum efficiency reporting value as determined by ASHRAE [American Society of Heating, Refrigerating, and Air Conditioning Engineers] Standard 52.2 Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size. (Cal.Code Regs., tit. 23, pt. 6, § 100.1(b)).

²³ Exhibit A, Test Claim, filed November 17, 2023, page 1.

²⁴ Government Code section 17557(e) requires a test claim be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year.

the building permit was issued, with inspections and maintenance to be documented in writing.²⁵

- The requirements in Education Code section 17661(b)(1) and (b)(2), to inspect HVAC systems to ensure compliance with the *current* minimum ventilation rates in Table 120.1-A of part 6 of title 24 of the California Code of Regulations, as adopted in 2022, and to document the system’s inability to meet the *current* ventilation standards in the annual inspection report required by section 5142 of Title 8 of the California Code of Regulations, are **not new** and do not impose a new program or higher level of service for school districts that received a permit or equivalent approval for HVAC installation under the 2019 or 2022 Energy Codes (**for HVAC systems approved on or after January 1, 2020**).

Under existing law, schools were already required to conduct annual inspections to ensure the HVAC system provides “at least the quantity of outdoor air required by . . . Title 24, . . . in effect at the time the building permit was issued” and to document that inspection in writing.²⁶ Since Table 120.1-A in the 2019 and 2022 Energy Codes are the same, the requirements in the test claim statute to perform the same activities are not new.²⁷

- Regarding the requirements in Education Code section 17661(b)(1) and (b)(2), for school districts that received a permit or equivalent approval for an HVAC installation under the 2016 or earlier Energy Code (approved *before* January 1, 2020), to inspect HVAC systems to ensure compliance with the *current* minimum ventilation rates in Table 120.1-A of part 6 of title 24 of the California Code of Regulations, as adopted in 2022, and to document the system’s inability to meet the *current* ventilation standards in the annual inspection report required by section 5142 of title 8 of the California Code of Regulations, there is no evidence of increased costs mandated by the state to comply with these requirements in accordance with Government Code section 17514 and section 1183.1(e) of the Commission’s regulations. The claimant

²⁵ California Code of Regulations, title 8, section 5142 (Register 87, No. 2). Section 5142 is a general industrial safety order (see Cal. Code Regs., tit. 8, § 3200 et. seq.). GISOs apply to “. . . all employments and places of employment in California as defined by Labor Code Section 6303. . . .” See also, the Leroy F. Greene School Facilities Act of 1998 and the State School Building Lease Purchase Law of 1976, which require school construction project plans for “major maintenance, repair and replacement,” to keep school facilities in “good repair,” including heating and cooling systems. (Ed. Code §§ 17002(d)(1)(B), 17014(c), 17075(a), 17070.77(a)-(b); Exhibit X (9), Office of Public School Construction, Facility Inspection Tool, revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on May 1, 2024).)

²⁶ California Code of Regulations, title 8, section 5142. Emphasis added.

²⁷ California Code of Regulations, title 24, part 6, section 120.1(h), Table 120.1-A. In the 2019 code, Table 120.1-A is at section 120.1(g).

identifies no costs in the Test Claim or the attached declaration to comply with the section 17661(b) requirements to inspect the HVAC systems for compliance with current standards and document the system's inability to meet current standards.²⁸

The Commission further finds reimbursement is not required to comply with Education Code section 17661(c), which requires school districts to install MERV 13 or the highest filtration the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system. Under prior law, the 2016 Energy Code did not require filters rated at MERV 13 or higher.²⁹ The 2019 amendment to the Energy Code (eff. Jan. 1, 2020) set the minimum requirement to MERV 13.³⁰ However, reimbursement under article XIII B, section 6 is not required because:

- The MERV 13 requirement in Education Code section 17661(c) is *not* new to the extent a school received a permit or equivalent approval to install a new HVAC system under the 2019 or 2022 Energy Code (i.e., on or after Jan. 1, 2020) because those Codes already required the HVAC system to have filters with a designated efficiency equal to or greater than MERV 13.³¹ Prior law also required air filters be replaced or cleaned regularly.³²
- In addition, the MERV 13 requirement is *not* new if there was a COVID-19 outbreak in the school. At the time the test claim statute became effective on January 1, 2023, MERV 13 filters were required for schools that had a COVID-19 outbreak (meaning three or more *employee* COVID-19 cases within an exposed group, as defined, who visited the worksite during their infectious period any time during a 14-day period).³³ Under these circumstances, existing regulations required the school to comply with the same filtration requirements as the test claim statute.³⁴
- Therefore, the requirement in Education Code section 17661(c) is new only for schools with HVAC systems approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did

²⁸ Exhibit A, Test Claim, filed November 17, 2023, page 13, 18-19 (Landon Declaration).

²⁹ Exhibit X (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 241.

³⁰ Exhibit X (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, pages 91-92.

³¹ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

³² California Code of Regulations, title 8, section 5143(d)(3) (Register 2003, No. 24).

³³ California Code of Regulations, title 8, section 3205.1(a)(1) (Register 2022, No. 18, eff. May 5, 2022).

³⁴ California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

not have a COVID-19 outbreak as defined in the title 8 regulations.³⁵ Although the claimant alleges the test claim statute requires school districts to replace the MERV 13 filters more often than every three months,³⁶ the requirement imposed by Education Code section 17661(c) is a one-time requirement to purchase and install the required filters since prior law already required employers, including school districts, to regularly replace or clean air filters, regardless of the filter efficiency level.³⁷ On-going filter purchase and installation is not new.³⁸

However, there is no evidence of increased costs mandated by the state in accordance with Government Code section 17514 and section 1183.1(e) of the Commission's regulations. The claimant's Test Claim does not acknowledge any prior law requirements to install MERV 13 filters when a new HVAC system is approved for installation under the 2019 or 2022 Energy Code or when a COVID outbreak occurs, or the existing requirement to regularly replace or clean these filters. Instead, the Test Claim alleges increased costs, supported by a declaration from the claimant's Deputy Superintendent of Business Services, for the costs to install MERV 13 filters in *all* of its schools' HVAC systems since January 1, 2023.³⁹

The Declaration submitted by the claimant also identifies revenues received under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that provides funding to Local Education Agencies through the Elementary and Secondary School Emergency Relief (ESSER) Fund to address the impact of COVID-19 on elementary and secondary schools. The claimant used these funds to *replace* HVAC systems, beginning in June 2021, and to purchase MERV 13 filters.⁴⁰ What this evidence shows is the claimant has schools *not* subject to the newly mandated requirement since any new HVAC installation approved beginning in June 2021 would have been approved under the 2019 and 2022 Energy Codes. As indicated above, the MERV 13 requirement in Education Code section 17661(c) is *not* new and does not mandate a new program or

³⁵ California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

³⁶ Exhibit A, Test Claim, filed November 17, 2023, page 13.

³⁷ California Code of Regulations, title 8, section 5143 (as last amended by Register 2003, No. 24.)

³⁸ Even if purchasing and installing MERV 13 filters is more costly, as asserted by the claimant, increased costs alone do not establish the right to reimbursement under article XIII B, section 6 of the California Constitution. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.)

³⁹ Exhibit A, Test Claim, filed November 17, 2023, pages 13, 14, 18-19 (Landon Declaration); Exhibit C, Claimant's Rebuttal Comments, filed March 14, 2024, pages 2, 5 (Landon Declaration).

⁴⁰ Exhibit A, Test Claim, filed November 17, 2023, page 20 (Landon Declaration).

higher level of service to the extent a school received a permit or equivalent approval to install a new HVAC system after January 1, 2020 (under the 2019 or 2022 Energy Code) because those Codes already required the HVAC system to have filters with a designated efficiency equal to or greater than MERV 13.⁴¹

However, there is *no* evidence in the record the claimant has incurred any increased costs mandated by the state to perform the one-time activity to install filtration that achieves MERV levels of 13 or higher or install filtration that achieves the highest MERV level the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system, in schools that have HVAC systems approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did *not* have a COVID-19 outbreak as defined in section 3205.1 of the title 8 regulations. The Commission cannot make a finding of increased costs mandated by the state without evidence in the record.⁴²

Conclusion

Staff finds the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Staff Recommendation

Staff recommends the Commission adopt the Proposed Decision to deny the Test Claim and authorize staff to make any technical, non-substantive changes to the Proposed Decision following the hearing.

⁴¹ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

⁴² Government Code section 17514; California Code of Regulations, title 2, section 1183.1(e).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

<p>IN RE TEST CLAIM</p> <p>Education Code Sections 17660, 17661 Statutes 2022, Chapter 777, Sections 1 and 2 (AB 2232), Effective January 1, 2023</p> <p>Filed on November 17, 2023</p> <p>Hesperia Unified School District, Claimant</p>	<p>Case No.: 23-TC-01</p> <p><i>Heating, Ventilation, and Air Conditioning (HVAC) Program</i></p> <p>DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.</p> <p><i>(Adopted November 22, 2024)</i></p>
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DECISION

The Commission on State Mandates (Commission) heard and decided this Test Claim during a regularly scheduled hearing on November 22, 2024. [Witness list will be included in the adopted Decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code sections 17500 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision to [approve/partially approve/deny] the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Shannon Clark, Representative of the Director of the Office of Planning and Research	
Deborah Gallegos, Representative of the State Controller	
Renee Nash, School District Board Member	
William Pahland, Representative of the State Treasurer, Vice Chairperson	
Michelle Perrault, Representative of the Director of the Department of Finance, Chairperson	

Summary of the Findings

The test claim statute, effective January 1, 2023, seeks to further the declared “policy of the state that school facilities provide healthy indoor air quality, including adequate

ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improved student productivity and performance.”⁴³ To do this, the test claim statute adds section 17661(b) to the Education Code to require ‘covered schools’ (defined to include school districts and county offices of education) to:

[E]nsure that facilities, including but not limited to, classrooms for students, have HVAC [defined as heating, ventilation, and air conditioning] systems that meet the minimum ventilation rate requirements set forth in Table 120.1-A of Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations, unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate.⁴⁴

If a school’s existing HVAC system is incapable of meeting the minimum ventilation rate standard in Table 120.1-A of part 6 (commencing with section 100.0) of title 24, then the school district is required to:

[E]nsure that its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued . . . [and;];

[D]ocument the HVAC system’s inability to meet the current ventilation standards set forth in paragraph (1) [i.e., in the current version of Table 120.1-A of Part 6 of Title 24] in the annual HVAC inspection report required by Section 5142 of Title 8 of the California Code of Regulations, which shall be available to the public upon request.⁴⁵

A covered school is also required by Education Code section 17661(c) to:

[I]nstall filtration that achieves MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system, as determined by the school.

If . . . it is determined that the existing HVAC system is not designed to achieve MERV levels of 13 or higher, a covered school shall install filtration that achieves the highest MERV level that the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.⁴⁶

⁴³ Education Code section 17660 (Stats 2022, ch. 777).

⁴⁴ Education Code section 17661(b)(1) (Stats 2022, ch. 777). The incorporation by reference of a table in “Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations” refers to California’s Building Standards Code. Part 2 of title 24 is known as the “Building Code.”

⁴⁵ Education Code section 17661(b)(2) (Stats 2022, ch. 777).

⁴⁶ Education Code section 17661(c) (Stats 2022, ch. 777). MERV is the minimum efficiency reporting value as determined by ASHRAE [American Society of Heating, Refrigerating, and Air Conditioning Engineers] Standard 52.2 Method of Testing

The test claim was timely filed on November 17, 2023.⁴⁷ This filing date establishes reimbursement eligibility for the 2022-2023 fiscal year,⁴⁸ but because the test claim statute became effective on January 1, 2023, the potential period of reimbursement begins January 1, 2023.

The Commission finds Education Code sections 17660 (which states the Legislature’s findings and declarations) and 17661(a), (d), and (e), as well as uncodified section 1 of the test claim statute, impose no requirements on school districts so they do not constitute a state-mandated program.

The Commission further finds Education Code section 17661(b) does not impose a reimbursable state-mandated program because:

- The requirement in Education Code section 17661(b)(2), requiring schools to inspect to “[e]nsure that its HVAC system meets the minimum ventilation rates *in effect at the time the building permit for installation of that HVAC system was issued*” is *not* new and does not impose a new program or higher level of service. Since 1987, section 5142(b) of the title 8 regulations has required employers, including school districts, to conduct annual workplace inspections to ensure compliance with the minimum ventilation rate requirements in effect at the time the building permit was issued, with inspections and maintenance to be documented in writing.⁴⁹
- The requirements in Education Code section 17661(b)(1) and (b)(2), to inspect HVAC systems to ensure compliance with the *current* minimum ventilation rates set forth in Table 120.1-A of part 6 of Title 24 of the California Code of Regulations, as adopted in 2022, and to document the system’s inability to meet the *current* ventilation standards in the annual inspection report required by section 5142 of Title 8 of the California Code of Regulations, are *not* new and do

General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size. (Cal. Code Regs., tit. 23, pt. 6, § 100.1(b).)

⁴⁷ Exhibit A, Test Claim, filed November 17, 2023, page 1.

⁴⁸ Government Code section 17557(e) requires a test claim be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year.

⁴⁹ California Code of Regulations, title 8, section 5142 (Register 87, No. 2). Section 5142 is a general industrial safety order (see Cal. Code Regs., tit. 8, § 3200 et. seq.). GISOs apply to “. . . all employments and places of employment in California as defined by Labor Code Section 6303. . . .” See also, the Leroy F. Greene School Facilities Act of 1998 and the State School Building Lease Purchase Law of 1976, which require school construction project plans for “major maintenance, repair and replacement,” to keep school facilities in “good repair,” including heating and cooling systems. (Ed. Code §§ 17002(d)(1)(B), 17014(c), 17075(a), 17070.77(a)-(b); Exhibit X (9), Office of Public School Construction, Facility Inspection Tool, revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on May 1, 2024).)

not impose a new program or higher level of service for school districts that received a permit or equivalent approval for HVAC installation under the 2019 or 2022 Energy Codes (for HVAC systems approved *on or after* January 1, 2020).

Under existing law, schools were already required to conduct annual inspections to ensure the HVAC system provides “at least the quantity of outdoor air required by . . . Title 24, . . . in effect at the time the building permit was issued” and to document that inspection in writing.⁵⁰ Since Table 120.1-A in the 2019 and 2022 Energy Codes are the same, the requirements in the test claim statute to perform the same activities are not new.⁵¹

- Regarding the requirements in Education Code section 17661(b)(1) and (b)(2), for school districts that received a permit or equivalent approval for an HVAC installation under the 2016 or earlier Energy Code (approved *before* January 1, 2020), to inspect HVAC systems to ensure compliance with the *current* minimum ventilation rates set forth in Table 120.1-A of part 6 of Title 24 of the California Code of Regulations, as adopted in 2022, and to document the system’s inability to meet the *current* ventilation standards in the annual inspection report required by section 5142 of Title 8 of the California Code of Regulations, there is no evidence of increased costs mandated by the state to comply with these activities in accordance with Government Code section 17514 and section 1183.1(e) of the Commission’s regulations. The claimant identifies no costs in the Test Claim or the attached declaration to comply with the section 17661(b) requirements to inspect the HVAC systems for compliance with current standards and document the system’s inability to meet current standards.⁵²

The Commission further finds reimbursement is not required to comply with Education Code section 17661(c), which requires school districts to install MERV 13 or the highest filtration the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system. Under prior law, the 2016 Energy Code did not require filters rated at MERV 13 or higher.⁵³ The 2019 amendment to the Energy Code (eff. Jan. 1, 2020) set the minimum requirement to MERV 13.⁵⁴ However, reimbursement under article XIII B, section 6 is not required because:

- The MERV 13 requirement in Education Code section 17661(c) is *not* new to the extent a school received a permit or equivalent approval to install a new HVAC system under the 2019 or 2022 Energy Code (i.e., on or after Jan. 1, 2020)

⁵⁰ California Code of Regulations, title 8, section 5142. Emphasis added.

⁵¹ California Code of Regulations, title 24, part 6, section 120.1(h), Table 120.1-A. In the 2019 code, Table 120.1-A is at section 120.1(g).

⁵² Exhibit A, Test Claim, filed November 17, 2023, page 13, 18-19 (Landon Declaration).

⁵³ Exhibit X (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 241.

⁵⁴ Exhibit X (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, pages 91-92.

because those Codes already required the HVAC system to have filters with a designated efficiency equal to or greater than MERV 13.⁵⁵ Prior law also required these filters be replaced or cleaned regularly.⁵⁶

- In addition, the MERV 13 requirement is *not* new if there was a COVID-19 outbreak in the school. At the time the test claim statute became effective on January 1, 2023, MERV 13 filters were required for schools that had a COVID-19 outbreak (meaning three or more *employee* COVID-19 cases within an exposed group, as defined, who visited the worksite during their infectious period any time during a 14-day period).⁵⁷ Under these circumstances, existing regulations required the school to comply with the same filtration requirements as the test claim statute.⁵⁸
- Therefore, the requirement in Education Code section 17661(c) is new only for schools with HVAC systems approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did *not* have a COVID-19 outbreak as defined in the title 8 regulations.⁵⁹ Although the claimant alleges the test claim statute requires school districts to replace the MERV 13 filters more often and every three months,⁶⁰ the requirement imposed by Education Code section 17661(c) is a one-time requirement to purchase and install the required filters since prior law already required employers, including school districts, to regularly replace or clean filters, regardless of the filter efficiency level.⁶¹ On-going filter purchase and installation is not new.⁶²

⁵⁵ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

⁵⁶ California Code of Regulations, title 8, section 5143(d)(3) (Register 2003, No. 24).

⁵⁷ California Code of Regulations, title 8, section 3205.1(a)(1) (Register 2022, No. 18, eff. May 5, 2022).

⁵⁸ California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

⁵⁹ California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022).

⁶⁰ Exhibit A, Test Claim, filed November 17, 2023, page 13.

⁶¹ California Code of Regulations, title 8, section 5143 (as last amended by Register 2003, No. 24.)

⁶² Even if purchasing and installing MERV 13 filters is more costly, as asserted by the claimant, increased costs alone do not establish the right to reimbursement under article XIII B, section 6 of the California Constitution. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.)

However, there is no evidence of increased costs mandated by the state in accordance with Government Code section 17514 and section 1183.1(e) of the Commission's regulations. The Test Claim does not acknowledge any prior law requirements to install MERV 13 filters when a new HVAC system is approved for installation under the 2019 or 2022 Energy Code or when a COVID outbreak occurs, or the existing requirement to regularly replace or clean these filters. Instead, the Test Claim alleges increased costs, supported by a declaration from the claimant's Deputy Superintendent of Business Services, for the costs to install MERV 13 filters in *all* of its schools' HVAC systems since January 1, 2023.⁶³

The Declaration submitted by the claimant also identifies revenues received under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that provides funding to Local Education Agencies through the Elementary and Secondary School Emergency Relief (ESSER) Fund to address the impact of COVID-19 on elementary and secondary schools. The claimant used these funds to *replace* HVAC systems, beginning in June 2021, and to purchase MERV 13 filters.⁶⁴ What this evidence shows is the claimant has schools *not* subject to the new mandated requirement since any new HVAC installation approved beginning in June 2021 would have been approved under the 2019 and 2022 Energy Codes. As indicated above, the MERV 13 requirement in Education Code section 17661(c) is *not* new and does not mandate a new program or higher level of service to the extent a school received a permit or equivalent approval to install a new HVAC system after January 1, 2020 (under the 2019 or 2022 Energy Code) because those Codes already required the HVAC system to have filters with a designated efficiency equal to or greater than MERV 13.⁶⁵

However, there is *no* evidence in the record the claimant has incurred any increased costs mandated by the state to perform the one-time activity to install filtration that achieves MERV levels of 13 or higher or install filtration that achieves the highest MERV level that the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system, in schools with HVAC systems approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did *not* have a COVID-19 outbreak as defined in section 3205.1 of the title 8 regulations. The Commission cannot make a finding of increased costs mandated by the state without evidence in the record.⁶⁶

⁶³ Exhibit A, Test Claim, filed November 17, 2023, pages 13, 14, 18-19 (Landon Declaration); Exhibit C, Claimant's Rebuttal Comments, filed March 14, 2024, pages 2, 5 (Landon Declaration).

⁶⁴ Exhibit A, Test Claim, filed November 17, 2023, page 20 (Landon Declaration).

⁶⁵ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

⁶⁶ Government Code section 17514; California Code of Regulations, title 2, section 1183.1(e).

Accordingly, the Commission finds the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 and denies this Test Claim.

COMMISSION FINDINGS

I. Chronology

- 09/29/2022 Statutes 2022, chapter 777 was enacted.
- 11/17/2023 The claimant filed the Test Claim.⁶⁷
- 02/15/2024 The Department of Finance (Finance) filed comments on the Test Claim.⁶⁸
- 03/14/2024 The claimant filed rebuttal comments.⁶⁹
- 09/03/2024 Commission staff issued the Draft Proposed Decision.⁷⁰

II. Background

A. The Test Claim Statute (Stats. 2022, ch. 777)

The test claim statute, effective January 1, 2023, seeks to further the declared “policy of the state that school facilities provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improved student productivity and performance.”⁷¹

In doing so, the test claim statute adds section 17661(b) to the Education Code to require ‘covered schools’ (defined as “a school district, a county office of education, a charter school, a private school, the California Community Colleges, or the California State University”)⁷² to:

⁶⁷ Exhibit A, Test Claim, filed November 17, 2023.

⁶⁸ Exhibit B, Finance Comments, filed February 15, 2024.

⁶⁹ Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024.

⁷⁰ Exhibit D, Draft Proposed Decision, issued September 3, 2024.

⁷¹ Education Code section 17660 (Stats 2022, ch. 777).

⁷² Under Government Code section 17514, “school districts” are eligible to seek reimbursement for state-mandated new programs or higher levels of service within the meaning of article XIII B, section 6 of the California Constitution. Government Code section 17519 defines “school district,” as “any school district. . . , or county superintendent of schools.” The county superintendent of schools is the executive officer of the county office of education. (Ed. Code, § 1010.) County offices of education provide alternative educational programs for pupils attending county community schools who have been expelled from school, referred as a condition of probation, or who are homeless. (Ed. Code, § 1981, 1984, 48852.7, 48859.) Thus, this

[E]nsure that facilities, including but not limited to, classrooms for students, have HVAC systems that meet the minimum ventilation rate requirements set forth in Table 120.1-A of Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations, unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate.⁷³

If a school's existing HVAC system is incapable of meeting the minimum ventilation rate standard in Table 120.1-A of part 6 (commencing with section 100.0) of title 24 of the California Code of Regulations, then the school district is required to:

[E]nsure its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued . . . [and;]

[D]ocument the HVAC system's inability to meet the current ventilation standards set forth in paragraph (1) (i.e., in the current version of Table 120.1-A of Part 6 of Title 24) in the annual HVAC inspection report required by Section 5142 of Title 8 of the California Code of Regulations, which shall be available to the public upon request.⁷⁴

A covered school is also required by Education Code section 17661(c) to:

- [I]nstall filtration that achieves MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system, as determined by the school
- If . . . it is determined that the existing HVAC system is not designed to achieve MERV levels of 13 or higher, a covered school shall install filtration that achieves the highest MERV level that the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.⁷⁵

Decision applies to K-12 school districts and county offices of education, referred to as "school districts."

The definition of "covered schools" in section 17661(a)(1) also includes the California Community Colleges. A test claim has not been filed by a community college district. Therefore, the Commission makes no findings with respect to community college districts.

⁷³ Education Code section 17661(b)(1) (Stats 2022, ch. 777). The incorporation by reference of a table in "Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations" refers to California's Building Standards Code. Part 2 of title 24 is known as the "Building Code."

⁷⁴ Education Code section 17661(b)(2) (Stats 2022, ch. 777).

⁷⁵ Education Code section 17661(c) (Stats 2022, ch. 777). MERV is the minimum efficiency reporting value as determined by ASHRAE [American Society of Heating, Refrigerating, and Air Conditioning Engineers] Standard 52.2 Method of Testing

Finally, the test claim statute requires the California Building Standards Commission and the Division of the State Architect to research, develop, and propose for adoption mandatory standards for carbon dioxide monitors in classrooms of a covered school and the University of California on the next triennial update of the California Building Standards Code (title 24 of the California Code of Regulations).⁷⁶

The test claim statute was enacted because “despite “laws requiring schools to maintain functional HVAC systems to supply adequate ventilation and safe indoor air quality, poor indoor air quality remains an extensive problem.”⁷⁷ As described in the statute’s legislative findings and declarations below, studies and reports indicate the minimum ventilation rates in classrooms were not being met:

- (b) In November 2003, the State Air Resources Board and the State Department of Health Care Services issued a report to the Legislature detailing the adverse impact that poor indoor air quality is having on California schools. The report found significant indoor air quality problems, including problems with ventilation, temperature, humidity, air pollutants, floor dust contaminants, moisture, mold, noise, and lighting. The report found that ventilation with outdoor air was inadequate during 40 percent of classroom hours and seriously deficient during 10 percent of classroom hours in both portable classrooms and traditional classrooms.
- (c) In February 2005, the State Air Resources Board approved an indoor air quality report that cites proven health and economic benefits to reducing indoor air pollution, which is estimated to cost California \$45 billion per year. The report noted that children are particularly vulnerable to poor indoor air quality. According to the report, children under 12 years of age spend about 86 percent of their time indoors with 21 percent of the time being spent in schools.
- (d) A 2019 report by the University of California, Davis, Western Cooling Efficiency Center and the Indoor Environment Group of the Lawrence Berkeley National Laboratory identifies numerous studies finding that underventilation of classrooms is common and negatively impacts student health and learning. Improved heating, ventilation, and air conditioning (HVAC) system performance improves student and teacher health and attendance, student productivity, and the performance of mental tasks, such as better concentration and recall. The report found that students in classrooms with higher ventilation rates have a significantly higher percentage of students—13 to 14

General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size. (Cal. Code Regs., tit. 23, pt. 6, § 100.1(b)).

⁷⁶ Education Code section 17661(d) (Stats 2022, ch. 777).

⁷⁷ Exhibit X (11), Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 2232, as amended June 28, 2022, page 3.

- percent—scoring satisfactorily on mathematics and reading tests than students in classrooms with lower outdoor air ventilation rates.
- (e) A 2018 report in the *Environment International Journal* found that short-term carbon dioxide exposure beginning at 1,000 parts per million (ppm) negatively affects cognitive performances, including decisionmaking and problem resolution. The Wisconsin Department of Health Services states that carbon dioxide levels between 1,000 and 2,000 ppm are associated with drowsiness and attention issues. Carbon dioxide levels above 2,000 ppm affect concentration and cause headaches, increased heart rate, and nausea.
 - (f) The California Building Energy Efficiency Standards set minimum ventilation rates for classrooms. Sections 17002 and 17070.75 of the Education Code require school districts to ensure schools are maintained in good repair, including HVAC systems that are functional, supply adequate ventilation to classrooms, and maintain interior temperatures within acceptable ranges. Regulations adopted pursuant to Section 142.3 of the Labor Code require that HVAC systems be maintained and operated to provide at least the quantity of outdoor air required by the California Building Standards Code (Title 24 of the California Code of Regulations) in effect at the time the building permit was issued. Despite these requirements, poorly performing HVAC systems and underventilation of classrooms continue to be a significant problem in California.
 - (g) The 2019 report by the University of California, Davis, Western Cooling Efficiency Center and the Indoor Environment Group of the Lawrence Berkeley National Laboratory found that over one-half of new HVAC systems in schools had significant problems within three years of installation and that the vast majority of classrooms in California, including 95 percent of the classrooms studied in the central valley, continue to fail to meet minimum ventilation rates. Some classrooms were found to have carbon dioxide concentrations above 2,000 ppm for substantial periods of the day. The study recommended periodic testing of HVAC systems and continuous real-time carbon dioxide monitoring to detect and correct these problems.
 - (h) Monitoring levels of carbon dioxide in classrooms will help ensure that California students' school environment is healthy and conducive to learning and performing well on tests.
 - (i) A March 2021 study found that proper ventilation in classrooms could reduce COVID-19 infection risk by over 80 percent compared to classrooms without ventilation.
 - (j) The Centers for Disease Control and Prevention and the American Society of Heating, Refrigerating and Air-Conditioning Engineers recommend that schools, buildings, and homes combine filters and air

cleaners to achieve minimum efficiency reporting values (MERV) levels of performance for air cleaning of 13 or higher.⁷⁸

The legislative history indicates that to comply with the test claim statute, there would be “unknown potentially significant costs for school districts . . . to inspect and ensure that their HVAC systems meet the minimum ventilation rate requirements” and “it is unclear how many school . . . districts statewide need to install new filtration as a result of the inspections.”⁷⁹

B. Existing Law Requires School District HVAC Systems to be Maintained and Operated to Provide at Least the Quantity of Outdoor Air Required by Title 24 in Effect When the Building Permit was Issued.

Existing law provides “On or after January 1, 1979, no governmental agency shall commence construction on any new structure unless the new structure complies with Title 24 Standards.”⁸⁰ The standards encompass those adopted by the Energy Commission for nonresidential buildings, including schools.⁸¹

The test claim statute incorporates by reference a table in “Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations.”⁸² Part 6 of title 24 of the California Code of Regulations refers to the Energy Code adopted by the California Energy Commission which, like all parts of the building regulations in title 24, is revised and published every three years.⁸³ All of the indoor air quality regulations in part 6 apply to new construction, alterations, and repairs of existing buildings.⁸⁴ The Code also contains an enforcement provision requiring a building inspection agency “shall not issue a building permit for any construction unless the enforcement agency determines in writing that the construction is designed to comply with the requirements of Part 6 that are in effect on the date the building permit was applied for.”⁸⁵ Table 120.1-A of part 6, (commencing with section 100.0) of the title 24 regulations establishes minimum ventilation rates for HVAC systems for non-residential buildings, including schools. For public schools, the State’s Division of State Architect in the Department of General

⁷⁸ Statutes 2022, chapter 777, section 1 (AB 2232). Exhibit A, Test Claim, filed November 17, 2023, pages 99-100.

⁷⁹ Exhibit X (10), Senate Appropriations Committee, Analysis of AB 2232, as amended June 28, 2022, page 1.

⁸⁰ Public Resources Code section 25493; Education Code section 17280(a).

⁸¹ Public Resources Code section 25488.

⁸² Education Code section 17661(b)(1) (Stats 2022, ch. 777). The reference is to table 120.1-A of part 6, commencing with section 100.0) of the title 24 regulations, which establishes minimum outside air ventilation rates for HVAC systems and filtering requirements for non-residential buildings, including schools.

⁸³ Health and Safety Code section 18942(a).

⁸⁴ California Code of Regulations, title 24, Part 6, sections 120, 141.

⁸⁵ California Code of Regulations, title 24, Part 1, section 10-103(d)(1).

Services is the “enforcement agency” supervising the design and construction of school buildings to ensure compliance with title 24, including inspections during installation.⁸⁶

The test claim statute also references “regulations adopted pursuant to Section 142.3 of the Labor Code.”⁸⁷ These CalOSHA regulations in title 8 of the California Code of Regulations impose General Industry Safety Orders (GISOs) on employers, including school districts.⁸⁸ Since 1987, section 5142 of title 8 has required workplace HVAC systems to be maintained and operated to provide at least the quantity of outdoor air required by title 24 in effect when the building permit was issued.⁸⁹ Section 5142 also requires the HVAC system to be inspected at least annually and any problems found during the inspections to be corrected within a reasonable time.⁹⁰ The employer is required to document in writing the name of the individual inspecting or maintaining the system, the date of the inspection or maintenance or both, and the specific findings and actions taken. The records shall be retained for at least five years and made available for examination and copying within 48 hours of a request to the Division of Occupational Safety and Health, any employee of the employer, and to any designated representative of employees.⁹¹

In addition, and as more fully explained below, as a condition of receiving funds for new construction or modernization projects under the Leroy F. Greene School Facilities Act of 1998 and the State School Building Lease Purchase Law of 1976, schools are required to keep facilities in good repair, including HVAC systems that are functional and unobstructed, supply adequate ventilation to classrooms, and maintain interior temperatures within acceptable ranges.⁹²

Finally, during the COVID-19 pandemic, the Legislature enacted the School Energy Efficiency Stimulus Program,⁹³ which includes the School Reopening Ventilation and Energy Efficiency Verification and Repair Program (SRVEVR).⁹⁴ This Energy

⁸⁶ Education Code section 172809(a) references the Department of General Services that is over the Division of State Architect. *Hall v. City of Taft* (1956) 47 Cal.2d, 177. Regarding inspections, see Education Code sections 17311(a), 17280; See also California Code of Regulations, title 21, section 2.

⁸⁷ Statutes 2022, chapter 777, section 1(f).

⁸⁸ Public schools are “employers” for purposes of the Labor Code (Lab. Code, §§ 6304, 3300). Labor Code section 142.3 authorizes adoption of “safety and health standards” published in title 8 (see Labor Code, § 142.3(a)(1), (a)(4)(D)).

⁸⁹ California Code of Regulations, title 8, section 5142(a)(1).

⁹⁰ California Code of Regulations, title 8, section 5142(b).

⁹¹ California Code of Regulations, title 8, section 5142(b).

⁹² Education Code sections 17002, 17070.75.

⁹³ Public Utilities Code section 1600 et seq. (AB 841, Stats. 2020, ch. 372).

⁹⁴ Public Utilities Code section 1620 et seq. SRVEVR is the acronym defined in the bill. See Public Utilities Code section 1601(b) (Stats. 2020, ch. 372).

Commission grant program uses ratepayer-funded energy efficiency incentives to fund HVAC upgrades for school districts.⁹⁵ School districts that receive grants must, among other requirements, install filtration with a minimum MERV 13 or better where feasible, and have qualified testing personnel review system capacity and airflow to determine the highest MERV filtration that can be installed without adversely impacting the equipment, replace or upgrade filters where needed, and verify that those filters are installed correctly.⁹⁶ Also, qualified testing personnel must verify the ventilation rates in the classrooms, auditoriums, gymnasiums, nurses offices, restrooms, and other occupied areas to assess whether they meet the minimum ventilation rate requirements in Table 120.1-A of part 6 (commencing with Section 100.0) of title 24 California Code of Regulations in accordance with specific assessment criteria.⁹⁷ If the HVAC system does not meet the minimum ventilation rate requirements in Table 120.1-A, a licensed professional or qualified adjusting personnel shall review the system airflow and capacity to determine if additional ventilation can be provided without adversely impacting equipment performance and building indoor environmental quality. If additional ventilation can be provided, a qualified adjusting personnel shall adjust ventilation rates to meet the minimum ventilation rate requirements in Table 120.1-A to the extent feasible. If the minimum ventilation rate requirements in Table 120.1-A cannot be met, the deficiency shall be reported in the assessment report addressed by a licensed professional as required.⁹⁸ Upon completion of grant-funded work under the SRVEVR, the district must prepare an HVAC verification report.⁹⁹ The School Energy Efficiency Stimulus Program and SRVEVR Program are repealed as of January 1, 2027.¹⁰⁰

In addition, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) provided funding to Local Education Agencies through the Elementary and Secondary School Emergency Relief (ESSER) Fund to address the impact of COVID-19 on elementary and secondary schools, which can be used for HVAC improvements.¹⁰¹

⁹⁵ The statute uses “local educational agency” but defines it as school districts, charter schools granted charters pursuant to Part 26.8 of the Education Code, and regional occupation centers established under section 52301 of the Education Code. Public Utilities Code section 1601(a) (Stats. 2020, ch. 372).

⁹⁶ Public Utilities Code section 1623(a)(1) (Stats. 2020, ch. 372).

⁹⁷ Public Utilities Code section 1623(b)(1) (Stats. 2020, ch. 372).

⁹⁸ Public Utilities Code section 1623(b)(2) (Stats. 2020, ch. 372). The assessment report requirements are in section 1626.

⁹⁹ Public Utilities Code section 1627 (Stats. 2020, ch. 372).

¹⁰⁰ Public Utilities Code section 1640 (Stats. 2020, ch. 372).

¹⁰¹ Public Law No. 116-136 (Mar. 27, 2020) 134 Stat. 281.

III. Positions of the Parties

A. Hesperia Unified School District

The claimant maintains the test claim statute imposes a reimbursable state mandate. According to the Test Claim:

Claimant incurred new activities and costs to ensure that facilities have heating, ventilation, and air conditioning (HVAC) systems that meet specified minimum ventilation rate requirements, unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate, in which to ensure that its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued. Additionally, schools are required to install filtration that achieves specified minimum efficiency reporting values (MERV) levels, determined by the school to be feasible with the existing HVAC system, as provided. The new activities and costs incurred by the Claimant includes the purchasing and installation of new filters . . .¹⁰²

The claimant alleges the test claim statute requires schools to provide a healthy indoor environment by requiring their HVAC systems meet “the minimum ventilation rate requirements” unless the system is incapable of safely and efficiently providing the minimum ventilation rate.¹⁰³ According to the claimant, “To achieve this requirement Claimant is required to perform the new activity to install filtration that achieves MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system, as determined by the school.”¹⁰⁴ The claimant describes the process to replace its MERV 9 air filters with new MERV 13 air filters, which the claimant alleges are more difficult to store, have a shorter life span, require the indoor coil to be cleaned more frequently, and require more maintenance and higher labor costs than its former filters.¹⁰⁵

The claimant argues the required activities are new and “the good repair, working order, and condition[al] requirements of the Leroy F. Greene School Facilities Act of 1998 and its predecessor program” do not include the test claim statute’s requirement for public schools to install MERV 13 filtration or filtration the school determines to be feasible with the existing HVAC system.¹⁰⁶

The claimant alleges its increased costs exceed the \$1,000 minimum amount specified in Government Code section 17564(a). The claimant also states there is “no evidence

¹⁰² Exhibit A, Test Claim, filed November 17, 2023, pages 7, 18 (Landon Declaration).

¹⁰³ Exhibit A, Test Claim, filed November 17, 2023, pages 11-13.

¹⁰⁴ Exhibit A, Test Claim, filed November 17, 2023, page 13.

¹⁰⁵ Exhibit A, Test Claim, filed November 17, 2023, page 13, 18-19 (Landon Declaration).

¹⁰⁶ Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024, page 3.

that additional on-going revenue has been appropriated” to fund the costs of the mandated activities, so Government Code section 17556(e) does not apply.¹⁰⁷ The claimant also asserts its claim was timely filed.¹⁰⁸

In addition to listing the following labor and filter costs, the claimant alleges it hired two employees to replace and install the MERV 13 air filters every three months:¹⁰⁹

Year	Costs
January 1, 2023, to June 30, 2023	\$27,443.12 labor to install filters \$66,236.22, for MERV 13 filters. ¹¹⁰
July 1, 2023, to June 30, 2024	\$81,669.06 estimated labor to install filters \$100,119.04 estimated for MERV 13 filters ¹¹¹
July 1, 2024, to June 30, 2025	\$120,624.56 estimated labor to install filters \$151,920.32 estimated for MERV 13 filters. ¹¹²

The claimant also estimates statewide costs of \$10 million.¹¹³

In rebuttal comments, the claimant notes it provided documented evidence with the test claim supporting the labor hours needed to replace the MERV 13 filters.¹¹⁴ Further, the claimant asserts it provided documentation showing it has 22 school sites with 830 rooftop HVAC units and 614 wall (portable) HVAC units and it submitted work orders (duty statements) for the employee positions to install and replace the MERV filters, and its Ventilation Maintenance Policy and Procedure and checklist for Indoor Air Quality.¹¹⁵

Regarding available funds, the claimant cites the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that provides funding to Local Education Agencies through the Elementary and Secondary School Emergency Relief (ESSER) Fund to address the impact of COVID-19 on elementary and secondary schools. The claimant admits receiving ESSER II funds of \$26,295,815 distributed from June 2021 to August 2023, to use towards the districtwide HVAC project to remove and replace HVAC systems at

¹⁰⁷ Exhibit A, Test Claim, filed November 17, 2023, page 9.

¹⁰⁸ Exhibit A, Test Claim, filed November 17, 2023, page 10.

¹⁰⁹ Exhibit A, Test Claim, filed November 17, 2023, page 14, 19 (Landon Declaration). In rebuttal comments, the claimant states it replaces its HVAC rooftop units every six months and portable wall units every three months. Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024, pages 2, 5 (Landon Declaration).

¹¹⁰ Exhibit A, Test Claim, filed November 17, 2023, pages 14, 19 (Landon Declaration).

¹¹¹ Exhibit A, Test Claim, filed November 17, 2023, pages 14, 19 (Landon Declaration).

¹¹² Exhibit A, Test Claim, filed November 17, 2023, pages 15, 20 (Landon Declaration).

¹¹³ Exhibit A, Test Claim, filed November 17, 2023, pages 15, 21 (Landon Declaration).

¹¹⁴ Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024, page 2.

¹¹⁵ Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024, page 3.

elementary, middle, and high schools.¹¹⁶ Prior to January 1, 2023, ESSER funds were used to purchase MERV 13 filters for new HVAC systems.¹¹⁷ The claimant states it also received ESSER III funds of \$58,852,535, of which it allocated \$13 million to the districtwide HVAC project to remove and replace HVAC systems at elementary, middle, and high schools, with the difference due to having other spending priorities for the remaining ESSER III funds.¹¹⁸ The claimant says it has until September 30, 2024, to spend this allocation, and there will be no additional ESSER funds.¹¹⁹ The claimant identifies no other state or federal funds, or offsetting fee authority, available for this program.¹²⁰

Finally, the claimant points out Finance submitted no evidence supporting its concerns with the costs identified in the test claim, and Finance failed to submit its representations of fact under oath or affirmation and signed under penalty of perjury, as required by the Commission's regulations.¹²¹

B. Department of Finance

Finance states "to the extent that AB 2232 establishes new responsibilities, it appears that activities and claimed costs are overstated in the test claim."¹²² Finance notes the test claim statute does not require schools to hire additional staff and the claimant must provide sufficient justification for those costs. And it is unclear if the additional staff would be responsible for duties unrelated to the test claim statute, especially when four established positions already cover HVAC maintenance.¹²³ Further, schools that opt to receive school construction funds under the Leroy F. Greene School Facilities Act or its predecessor are already required to keep facilities at all times in good repair. Finance states the claimant should provide the following information to justify the claimed costs:

¹¹⁶ Exhibit A, Test Claim, filed November 17, 2023, page 15, 20 (Landon Declaration).

¹¹⁷ Exhibit A, Test Claim, filed November 17, 2023, page 15, 20 (Landon Declaration).

¹¹⁸ Exhibit A, Test Claim, filed November 17, 2023, page 15, 20 (Landon Declaration).

¹¹⁹ Exhibit A, Test Claim, filed November 17, 2023, pages 15-16, 20 (Landon Declaration).

¹²⁰ Exhibit A, Test Claim, filed November 17, 2023, page 16, 20 (Landon Declaration).

¹²¹ Exhibit C, Claimant's Rebuttal Comments, filed March 14, 2024, pages 3-4. Section 1183.1(e) of the Commission's regulations requires "[a]ll representations of fact shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of the Commission's regulations." However, the determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law. *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹²² Exhibit B, Finance's Comments on the Test Claim, filed February 15, 2024, page 1.

¹²³ Exhibit B, Finance's Comments on the Test Claim, filed February 15, 2024, page 2.

- Documented evidence of the labor hours needed to replace the MERV 13 filter, which would be part of the annual HVAC inspection report required by Section 5142 of Title 8 of the California Code of Regulations.
- The total number of HVAC systems within its district.
- Duty Statements for the existing positions and the two additional positions that highlight any extra duties these positions are expected to perform, in addition to maintaining the MERV 13 filters.
- Documentation that the identified facilities are not already subject to the good repair, working order, and condition requirements of the Leroy F. Greene School Facilities Act of 1998 or its predecessor program, the State School Building Lease-Purchase Law of 1976.¹²⁴

Additionally, Finance points out the claimant provided a receipt for multiple Ply Panels, which is not aligned with the requirements of AB 2232 and is not required by the plain language of the test claim statute nor is reasonably necessary to implement it, so reimbursement for these costs should be denied.¹²⁵

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.”¹²⁶ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”¹²⁷

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

¹²⁴ Exhibit B, Finance’s Comments on the Test Claim, filed February 15, 2024, page 2.

¹²⁵ Exhibit B, Finance’s Comments on the Test Claim, filed February 15, 2024, pages 2-3.

¹²⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

¹²⁷ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹²⁸
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.¹²⁹
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.¹³⁰
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.¹³¹

The Commission is vested with the 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.¹³² The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.¹³³ 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.”¹³⁴

¹²⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹²⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

¹³⁰ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

¹³¹ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

¹³² *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

¹³³ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

¹³⁴ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

A. The Test Claim Was Timely Filed and the Potential Period of Reimbursement Begins January 1, 2023.

Government Code section 17551(c) requires test claims “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 defines “12 months” as 365 days.¹³⁵

The test claim statute became effective on January 1, 2023.¹³⁶ The Test Claim was filed on November 17, 2023,¹³⁷ within 12 months of the effective date of the test claim statute, so the Test Claim was timely filed.

Government Code section 17557(e) requires a test claim be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The November 17, 2023 filing date establishes reimbursement eligibility for the 2022-2023 fiscal year, but because the test claim statute became effective on January 1, 2023, the potential period of reimbursement begins January 1, 2023.

B. The Uncodified Language in Section 1 of the Test Claim Statute and Education Code Section 17660 as Added by the Test Claim Statute Describe the Legislature’s Findings, But Do Not Impose any Requirements on School Districts and Therefore Do Not Constitute a State-Mandated Program.

Reimbursement under article XIII B, section 6 is required if a state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.¹³⁸

Education Code section 17660, added by the test claim statute, does not impose any requirements on school districts, but provides “The Legislature finds and declares that it is the policy of the state that school facilities provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improve student productivity and performance.”¹³⁹

¹³⁵ California Code of Regulations, title 2, section 1183.1(c), Register 2018, No. 18 (eff. April 1, 2018).

¹³⁶ Statutes 2022, chapter 777. Exhibit A, Test Claim, filed November 17, 2023, page 98.

¹³⁷ Exhibit A, Test Claim, filed November 17, 2023, page 1.

¹³⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

¹³⁹ Education Code section 17660 (Stats 2022, ch. 777).

Similarly, uncodified section 1 of the test claim statute contains legislative findings and declarations and cites four studies or reports on the adverse effects of poor indoor quality on school-age children but imposes no requirements on school districts.¹⁴⁰

Accordingly, the uncodified language in section 1 of the test claim statute and Education Code section 17660, as added by the test claim statute, do not impose a state-mandated program.

C. Education Code Section 17661, as Added by the Test Claim Statute, Does Not Impose a Reimbursable State-Mandated Program.

1. Education Code Section 17661(a), (d), and (e) Do Not Impose Any Requirements on School Districts.

Education Code section 17661(a) defines “covered school,” “HVAC,” and “MERV” as used in the test claim statute, but does not impose any requirements on school districts.

Education Code section 17661(d) requires the California Building Standards Commission and the Division of the State Architect to research, develop, and propose for adoption mandatory standards for carbon dioxide monitors in classrooms of a covered school and the University of California on the next triennial update of the California Building Standards Code (title 24 of the California Code of Regulations).¹⁴¹

Education Code section 17661(e) states: “This section shall apply to the University of California only to the extent that the Regents of the University of California, by resolution, make it applicable.”

Education Code section 17661(a), (d) and (e) as added by the test claim statute, do not impose any requirements on school districts and, therefore, there is no state-mandated program imposed by these subdivisions.

2. The Requirement in Education Code Section 17661(b)(2), to Inspect the HVAC Systems to Ensure They Meet the Minimum Ventilation Rates *in Effect When the Building Permit for HVAC Installation Was Issued Is Not New and Does Not Impose a New Program or Higher Level of Service. Although the Requirements in Sections 17661(b)(1) and (b)(2) to Inspect HVAC Systems to Ensure Compliance with the *Current* Minimum Ventilation Rates in Table 120.1-A of Part 6 of the Title 24 Regulations and Document in the Annual Inspection Report the System’s Inability to Meet *Current* Ventilation Standards in Table 120.1-A Is New for School Districts with HVAC Systems Approved for Installation *Before* January 1, 2020, There Is No Evidence of Increased Costs Mandate by the State to Comply with the Requirements.*

Education Code section 17661(b) requires school districts to:

[E]nsure that facilities, including but not limited to, classrooms for students, have HVAC [defined as heating, ventilation, and air conditioning]

¹⁴⁰ Statutes 2022, chapter 777, section 1.

¹⁴¹ Education Code section 17661(d) (Stats 2022, ch. 777).

*systems that meet the minimum ventilation rate requirements set forth in Table 120.1-A of Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations, unless the existing HVAC system is not capable of safely and efficiently providing the minimum ventilation rate.*¹⁴²

Section 17661(b)(2) requires a school incapable of meeting the minimum ventilation rates in Table 120.1-A of title 24 to:

- [E]nsure that its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued. . . [and;]
- [D]ocument the HVAC system’s inability to meet the current ventilation standards set forth in paragraph (1) in the annual HVAC inspection report required by Section 5142 of Title 8 of the California Code of Regulations, which shall be available to the public upon request.¹⁴³

As indicated in the Background, title 24, including the Energy Code in part 6, is revised and published every three years.¹⁴⁴ The test claim statute and the 2022 Energy Code (published July 1, 2022 and eff. Jan. 1, 2023) both became effective on January 1, 2023.¹⁴⁵ Thus, the requirement in section 17661(b)(1) to “[e]nsure that facilities . . . have HVAC systems that meet the minimum ventilation rate requirements set forth in Table 120.1-A of Part 6 (commencing with Section 100.0) of Title 24 of the California Code of Regulations” refers to the *current* Energy Code. If a school HVAC system is incapable of meeting the minimum ventilation rates in the current Energy Code, Education Code section 17661(b)(2) requires the school to “[e]nsure that its HVAC system meets the minimum ventilation rates in effect at the time the building permit for installation of that HVAC system was issued.”¹⁴⁶

Table 120.1-A of part 6 of the title 24 regulations identifies the “Minimum Ventilation Rates” for HVAC systems, including the total outdoor air rate, the minimum ventilation rates for systems with DCV (demand control ventilation) devices, and the air class applicable to “educational facilities,” including classrooms. To understand these terms, a summary of the requirements in part 6 is necessary. Part 6 of the title 24 regulations currently requires occupiable spaces in nonresidential buildings, including school facilities, to meet specified air filtration requirements (which are discussed in the next section) and the requirements for naturally ventilated spaces or mechanically ventilated

¹⁴² Education Code section 17661(b)(1) (Stats 2022, ch. 777). Emphasis added.

¹⁴³ Education Code section 17661(b)(2) (Stats 2022, ch. 777). Emphasis added.

¹⁴⁴ Health and Safety Code section 18942(a).

¹⁴⁵ Exhibit X (1), Building Standards Commission, California Building Standards Code, [https://www.dgs.ca.gov/BSC/Codes#:~:text=Code%20Regs.%2C%20Title%2024\),date%20of%20January%201%2C%202023](https://www.dgs.ca.gov/BSC/Codes#:~:text=Code%20Regs.%2C%20Title%2024),date%20of%20January%201%2C%202023) (accessed on Aug. 12, 2024).

¹⁴⁶ Emphasis added.

spaces, depending on the HVAC system the school uses.¹⁴⁷ Some mechanically ventilated systems have demand control ventilation (DCV) devices, which vary the rate at which outdoor air is delivered based on carbon dioxide (CO₂) and occupancy levels in the room.¹⁴⁸ DCV devices are required for spaces with a design occupant density of greater than or equal to 25 people per 1,000 square feet and the system has an air economizer, a modulating outside air control, or a design outdoor air rate of greater than 3000 cfm.¹⁴⁹ All systems are required to meet the minimum outside air ventilation rates for each occupied area based on the anticipated occupancy and the minimum required ventilation rate per occupant in Table 120.1-A.¹⁵⁰

The regulations also provide “[a]ir classification and recirculation limitations of air shall be based on the air classification as listed in Table 120.1-A,”¹⁵¹ which are also identified ASHRAE 62.1 (the standards of the American Society of Heating, Refrigerating and Air-Conditioning Engineers). Two air classifications are relevant to school facilities.¹⁵² Class 1 air can be recirculated to any space type and is typical of the air in a classroom. Class 2 air is moderately contaminated or odorous with mild sensory irritation intensity, is restricted in its recirculation, and is typical of a science laboratory or art classroom.¹⁵³

Thus, Table 120.1-A identifies the following “Minimum Ventilation Rates” for schools:¹⁵⁴

¹⁴⁷ California Code of Regulations, title 24, part 6, section 120.1(c). Section 120.1(c)(2) also requires naturally ventilated spaces include a mechanical ventilation system designed in accordance with certain specifications.

¹⁴⁸ California Code of Regulations, title 24, part 6, section 120.1(d); Exhibit X (5), California Energy Commission, Installer and Inspector Quick-Reference: 2022 NRCA-MCH-06-A Demand Control Ventilation (DCV) Systems, 2022, <https://www.energy.ca.gov/filebrowser/download/4953> (accessed on Aug. 15, 2024), page 1; Exhibit X (2), California Department of Public Health, Ventilation and Filtration to Reduce Long-Range Airborne Transmission of COVID-19 and Other Respiratory Infections: Considerations for Reopened Schools, California Department of Public Health, July 2021, https://www.cdph.ca.gov/Programs/CCDCPHP/DEODC/EHLB/IAQ/CDPH%20Document%20Library/School_ventilation_and_filtration_ADA.pdf (accessed on Aug. 23, 2024), page 18.

¹⁴⁹ California Code of Regulations, title 24, part 6, section 120.1(d)(3);

¹⁵⁰ California Code of Regulations, title 24, part 6, sections 120.1(c), 120.1(c)(3), 120.1(d), and 120.1(f).

¹⁵¹ California Code of Regulations, title 24, part 6, sections 120.1(g).

¹⁵² California Code of Regulations, title 24, part 6, section 120.1(g).

¹⁵³ California Code of Regulations, title 24, part 6, section 120.1(g)(1)-(g)(2).

¹⁵⁴ California Code of Regulations, title 24, part 6, section 120.1.

Occupancy Category	Total Outdoor Air Rate R_t (cfm/ft ²)	Min. Ventilation Air Rate for DCV R_a (cfm/ft ²)	Air Class	Notes
Classrooms (ages 5-8)	0.38	0.15	1	
Classrooms (age 9-18)	0.38	0.15	1	
Art Classrooms	0.15	-	2	
Science Laboratories	0.15	-	2	

The table indicates the total outdoor air rate for classrooms is 38 cubic feet per unit area, and the minimum ventilation air rate for systems with demand control ventilation devices is 15 cubic feet per minute of outdoor air flow per person.¹⁵⁵ Table 120.1-A also identifies the minimum ventilation rates for other school facilities such as lecture halls; multi-use assembly rooms; wood and metal shops; computer labs; media centers; and music, theater, and dance rooms.

The test claim statute itself does not define what it means to “ensure” compliance with the minimum ventilation rate requirements. According to the author of the bill, “AB 2232 will require comprehensive HVAC *inspections* . . . in classrooms *to ensure* the wellbeing and learning of California students are protected from the harmful effects of poor air quality.”¹⁵⁶ Thus, Education Code section 17661(b)(1) requires school districts *to inspect* their HVAC systems to ensure they meet the current minimum ventilation rate requirements in Table 120.1-A above, and if their systems do not, section 17661(b)(2) requires the schools to ensure the systems meet the minimum ventilation rates in the Energy Code at the time their permit was issued for installation of the HVAC system and document the HVAC system’s inability to meet the current ventilation standards in the annual HVAC inspection report required by section 5142 of title 8 of the California Code of Regulations.

However, existing law already requires school districts to inspect, maintain, and ensure their installed HVAC systems are running and in good repair, and provide at least the quantity of outdoor air required by title 24 *at the time their building or installation permit (or equivalent approval) was obtained*. Since 1987, section 5142(b) of the title 8 regulations has required annual inspections of HVAC systems in workplaces, with inspections and maintenance to be documented in writing.¹⁵⁷ Title 8 includes the General Industry Safety Orders (GISOs) for employers,¹⁵⁸ which apply to school

¹⁵⁵ California Code of Regulations, title 24, part 6, section 120.1(c)(3).

¹⁵⁶ Exhibit X (11), Senate Rules Committee, Office of Senate Floor Analyses, Third Reading Analysis of AB 2232, as amended June 28, 2022, page 3. Emphasis added.

¹⁵⁷ California Code of Regulations, title 8, section 5142 (Register 87, No. 2). Section 5142 is a general industrial safety order (see Cal. Code Regs., tit. 8, § 3200 et. seq.). GISOs apply to “. . . all employments and places of employment in California as defined by Labor Code Section 6303. . . .”

¹⁵⁸ California Code of Regulations, title 8, section 3200 et seq.. The General Industrial Safety Orders are “to make full provision for securing safety in places of employment, . . .

districts.¹⁵⁹ The GISO in section 5142 of title 8, entitled “Mechanically Driven Heating, Ventilating and Air Conditioning (HVAC) Systems to Provide Minimum Building Ventilation,” expressly requires annual workplace inspections to ensure compliance with the minimum ventilation rate requirements in effect at the time the building permit was issued so the HVAC system operates properly each year after installation, as it states:

(a) Operation:

(1) The HVAC system shall be maintained and operated to provide at least the quantity of outdoor air required by the State Building Standards Code, Title 24, Part 2, California Administrative Code, in effect at the time the building permit was issued.^{160]}

[¶] . . . [¶]

(b) Inspection and Maintenance:

(1) The HVAC system shall be inspected at least annually, and problems found during these inspections shall be corrected within a reasonable time.

(2) Inspections and maintenance of the HVAC system shall be documented in writing. The employer shall record the name of the individual(s) inspecting and/or maintaining the system, the date of the inspection and/or maintenance, and the specific findings and actions taken. The employer shall ensure that such records are retained for at least five years.

(3) The employer shall make all records required by this section available for examination and copying, within 48 hours of a request, to any authorized representative of the Division (as defined in Section 3207), to any employee of the employer affected by this section, and to any designated representative of said employee of the employer affected by this section.

Similarly, Education Code sections 17002 and 17070.75, in the Leroy F. Greene School Facilities Act of 1998 and the State School Building Lease Purchase Law of 1976, require school construction project plans for “major maintenance, repair and replacement,” to keep school facilities in “good repair,” including heating and cooling

. [and] are promulgated for the guidance of employers and employees alike.” (Cal. Code Regs., tit. 8, § 3200).

¹⁵⁹ Public schools are “employers” for purposes of the Labor Code (Lab. Code, §§ 6304, 3300), which the title 8 regulations implement.

¹⁶⁰ It is inconsequential that section 5142 references “part 2” of title 24 rather than part 6. At the time the title 8 regulation was adopted in 1987, the energy regulations were in part 2. Energy regulations were not codified into part 6 until 1992. Exhibit X (6), California Energy Commission, *The 1992 Efficiency Standards for New Residential and Non-Residential Buildings*, July 1, 1992, footnote 1.

systems.¹⁶¹ As a condition of receiving funds for new construction or modernization projects, schools are required to provide for ongoing and major maintenance of school buildings.¹⁶² Education Code section 17002(d),¹⁶³ states “good repair” means:

[T]he facility is maintained in a manner that assures that it is clean, safe, and functional as determined pursuant to a *school facility inspection and evaluation instrument* developed by the Office of Public School Construction and approved by the board or a local evaluation instrument that meets the same criteria.¹⁶⁴

The “evaluation instrument” used to determine good repair is the Facility Inspection Tool (FIT), developed by the Office of Public School Construction.¹⁶⁵ Section 17002(d) requires the FIT to include the following minimum criteria for mechanical and HVAC systems: “(i) functional and unobstructed; (ii) appear to supply adequate amount of air to all classrooms, work spaces, and facilities; and (iii) maintain interior temperatures within normally acceptable ranges.”¹⁶⁶ Consistent with these criteria in section 17002(d), the FIT as revised in April 2022 states:

Heating, ventilation, and air conditioning systems (HVAC) as applicable are functional and unobstructed. Examples include but are not limited to the following:

- a. The HVAC system is operable.
- b. The facilities are ventilated (via mechanical or natural ventilation)
- c. The ventilation units are unobstructed and vents and grills are without evidence of excessive dirt or dust.
- d. There appears to be an adequate air supply to all classrooms, work spaces, and facilities (i.e. no strong odor is present, air is not stuffy)
- e. Interior temperatures appear to be maintained within normally accepted ranges.
- f. The ventilation units are not generating any excessive noise or vibrations.

[¶] . . . [¶]

¹⁶¹ Education Code sections 17014(c), 17070.77(a) – (b).

¹⁶² Education Code section 17075(a).

¹⁶³ See also Education Code, section 17070.75, which addresses facilities maintenance and incorporates by reference the definition of ‘good repair’ in section 17002(d).

¹⁶⁴ Education Code section 17002(d)(1). Emphasis added.

¹⁶⁵ Exhibit X (9), Office of Public School Construction, Facility Inspection Tool, revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on May 1, 2024).

¹⁶⁶ Education Code section 17002(d)(1)(B).

[and] Surfaces (including floors, ceilings, walls, window casings, HVAC grills) appear to be free of mildew, mold odor and visible mold.¹⁶⁷

The FIT is intended to assist county superintendents of schools in their statutory duty to annually visit their schools and to assess or inspect for:

The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials, as defined by Section 60119, *and the safety, cleanliness, and adequacy of school facilities, including good repair*, as required by Sections 17014, 17032.5, 17070.75, and 17089.¹⁶⁸

Thus, the requirement in section 17661(b)(2), for a school to “[e]nsure that its HVAC system meets the minimum ventilation rates *in effect at the time the building permit for installation of that HVAC system was issued*” is not new and does not impose a new program or higher level of service on school districts.¹⁶⁹

However, the requirements imposed by Education Code section 17661(b)(1) and (2) to inspect the HVAC systems to ensure compliance with the *current* minimum ventilation rates in Table 120.1-A of part 6, and if the existing HVAC system is “not capable of safely and efficiently providing the minimum ventilation rate” to document the system’s inability to meet the *current* standards, goes beyond the scope of the existing requirements and is new for some school districts.

Table 120.1-A in the 2019 Energy Code is the same as Table 120.1-A in the 2022 Energy Code, so the requirements to inspect the system to ensure compliance with *current* minimum ventilation rates and document the inspection in writing is *not* new to the extent a school district received a permit or equivalent approval for an HVAC installation beginning with the 2019 Energy Code, effective January 1, 2020.¹⁷⁰ Under existing law, schools were already required to conduct annual inspections to ensure the HVAC system provides “at least the quantity of outdoor air required by . . . Title 24, . . . *in effect at the time the building permit was issued*” and to document that inspection in writing.¹⁷¹ Since Table 120.1-A in the 2019 and 2022 Energy Codes are the same, the requirements in the test claim statute to perform the same activities are not new and do

¹⁶⁷ Exhibit X (9), Office of Public School Construction, Facility Inspection Tool, revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on May 1, 2024), pages 3, 4.

¹⁶⁸ Education Code section 1240(c)(2)(E)(iii). Emphasis added. Also see Exhibit X (9), Office of Public School Construction, Facility Inspection Tool, revised April 2022, <https://www.dgs.ca.gov/-/media/Divisions/OPSC/Forms/Facility-Inspection-Tool---SAB-Approved-04-27-2022.pdf> (accessed on May 1, 2024), page 1.

¹⁶⁹ Emphasis added.

¹⁷⁰ California Code of Regulations, title 24, part 6, section 120.1(h), Table 120.1-A. In the 2019 code, Table 120.1-A is at section 120.1(g).

¹⁷¹ California Code of Regulations, title 8, section 5142. Emphasis added.

not increase the level of service for HVAC systems approved for installation on or after January 1, 2020.

Unlike the 2019 and 2022 versions, Table 120.1-A in the 2016 Energy Code only identifies the minimum ventilation rates per square foot of conditioned floor area and does not identify the minimum ventilation air rate for systems with demand control ventilation devices or the air class.¹⁷² Discussing the difference between Table 120.1-A in the 2019 Energy Code and earlier (2016 and before) Energy Codes, one publication explained:

New minimum ventilation rate calculations have been added to Table 120.1-A. The table includes significantly more information, reducing the need to cross reference between the Building or and [sic] Energy Code to determine the minimum ventilation rates. It includes many additional space types (occupancy categories) and identifies the “air classifications” referenced by §120.1(g).¹⁷³

[¶] . . . [¶]

This change [to section 120.1(g)] adds air classifications and recirculation limits for ventilation air. Previously, the Energy Code did not give direction on these two concepts, although they may have a significant impact on indoor air quality. They are present in ASHRAE standards that were incorporated by reference but not directly stated in the Energy Code.¹⁷⁴

In addition, the 2016 and earlier versions of Table 120.1-A do not contain DCV standards because, as stated in the 2016 Energy Code: “Classrooms . . . with occupant density greater than 2.5 people per 1000 ft². . . are not required to have demand control ventilation.”¹⁷⁵ According to the 2016 Nonresidential Compliance Manual, classrooms and other spaces “are exempted either due to concerns about equipment maintenance practices (schools and public buildings) or concerns about high levels of pathogens (social service buildings, medical buildings, healthcare facilities and to some extent

¹⁷² The 2016 version of California Code of Regulations, title 24, part 6, section 120.1(e), Table 120.1-A lists a minimum ventilation rate of “CFM per square foot of conditioned floor area” for “all other” types of use at .15. There is nothing in the 2016 version of Table 120.1-A specifically applicable to school occupancy.

¹⁷³ Exhibit X (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, page 97.

¹⁷⁴ Exhibit X (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, page 105.

¹⁷⁵ California Code of Regulations, title 24, part 6, section 120.1(c)(3), effective January 1, 2016.

classrooms).¹⁷⁶ However, the 2016 exception for classrooms was removed in the 2019 Energy Code.¹⁷⁷

Thus, Table 120.1-A changed since the 2016 Energy Code and the requirements in Education Code section 17661(b)(1) and (2) to ensure compliance with *current* minimum ventilation rates and to “document the HVAC system’s inability to meet the *current* ventilation standards set forth in paragraph (1) in the annual HVAC inspection report required by section 5142 of title 8 of the California Code of Regulations” goes beyond the scope of prior law for schools that received a permit or equivalent approval for an HVAC installation under the 2016 or earlier Energy Code (i.e., *before* January 1, 2020).

However, the claimant has not requested reimbursement for these activities and there is no evidence in the record school districts incurred any costs mandated by the state to comply with these requirements. Government Code section 17514 defines “costs mandated by the state” as any increased cost 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) further requires no claim nor any payment shall be made unless the claim exceeds \$1,000. Section 1183.1(e) of the Commission’s regulations requires “[a]ll representations of fact shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of the Commission’s regulations.” The Test Claim and the only declaration in the record describe the process to replace MERV 9 air filters with new MERV 13 air filters, which the claimant alleges is required to comply with the test claim statute.¹⁷⁸ Although installing MERV 13 filters is addressed in Education Code section 17661(c), which is discussed below, it is not a requirement imposed by section 17661(b). The claimant identifies no costs in the Test Claim or the attached declaration to comply with the section 17661(b) requirements to inspect the HVAC systems for compliance with current standards and document the system’s inability to meet current standards.

Therefore, the Commission finds Education Code section 17661(b) does not impose a reimbursable state-mandated program because:

- The requirement in Education Code section 17661(b)(2), for a school inspection to “[e]nsure that its HVAC system meets the minimum ventilation rates *in effect at the time the building permit for installation of that HVAC system was issued*” is *not* new and does not impose a new program or higher level of service.
- The requirements in Education Code section 17661(b)(1) and (b)(2), to inspect HVAC systems to ensure compliance with the *current* minimum ventilation rates

¹⁷⁶ Exhibit X (4), California Energy Commission, 2016 Nonresidential Compliance Manual, page 4-45.

¹⁷⁷ Exhibit X (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, page 101.

¹⁷⁸ Exhibit A, Test Claim, filed November 17, 2023, page 13, 18-19 (Landon Declaration).

in Table 120.1-A of part 6 of title 24 of the California Code of Regulations, as adopted in 2022, and to document the system's inability to meet the *current* ventilation standards in the annual inspection report required by section 5142 of title 8 of the California Code of Regulations, are *not* new and do not impose a new program or higher level of service for school districts that received a permit or equivalent approval for an HVAC installation under the 2019 or 2022 Energy Codes (for HVAC systems approved *on or after* January 1, 2020).

- Regarding the requirements in Education Code section 17661(b)(1) and (b)(2), for school districts that received a permit or equivalent approval for an HVAC installation under the 2016 or earlier Energy Code (approved *before* January 1, 2020), to inspect HVAC systems to ensure compliance with the *current* minimum ventilation rates in Table 120.1-A of part 6 of title 24 of the California Code of Regulations, as adopted in 2022, and to document the system's inability to meet the *current* ventilation standards in the annual inspection report required by section 5142 of title 8 of the California Code of Regulations, there is no evidence of increased costs mandated by the state to comply with these requirements in accordance with Government Code section 17514 and section 1183.1(e) of the Commission's regulations.

3. Reimbursement Is Not Required to Comply with Education Code Section 17661(c) Because There Is No Evidence in the Record of Increased Costs Mandated by the State to Comply with the One-Time New Requirement to Install MERV 13 Filtration, or the Highest MERV Filtration Feasible, *Only* at Schools with HVAC Systems Approved for Installation *Before* January 1, 2020 and Only to the Extent the District's Schools Did *Not* Have a COVID-19 Outbreak.

Education Code section 17661(c), as added by the test claim statute, requires school districts to install MERV 13 air filtration or the highest filtration feasible in their HVAC systems:

- [I]ninstall filtration that achieves "MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system, as determined by the school.
- If . . . it is determined that the existing HVAC system is not designed to achieve MERV levels of 13 or higher, a covered school shall . . . install filtration that achieves the highest MERV level that the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.¹⁷⁹

¹⁷⁹ Education Code section 17661(c) (Stats 2022, ch. 777).

As indicated above, MERV is an acronym for minimum efficiency reporting value.¹⁸⁰ MERV air filtration was explained as follows in an Energy Commission publication:

Air filtration is used in forced air systems to protect the equipment from dust accumulation that could reduce the capacity or efficiency of the system. Preventing dust buildup may also prevent the system from becoming a host to biological contaminants such as mold, especially if dust is deposited on cooling coils that become wet from water condensation during comfort cooling operation. Air filter efficiencies of Minimum Efficiency Reporting Value (MERV) 6 to MERV 8 are sufficient for protection from these large airborne dust particles. Air filter efficiencies of at least MERV 13 are needed to protect occupants from exposure to the smaller airborne particles that are known to adversely affect respiratory health. These smaller particles are often referred to as PM 2.5 which refers to particulate matter of 2.5 microns. PM2.5 is produced from combustion such as that resulting from cooking in the kitchen and from exhaust from motor vehicles that enters a dwelling through ventilation openings and infiltration.¹⁸¹

As described below, the Commission finds reimbursement is not required to comply with Education Code section 17661(c) because there is no evidence in the record of increased costs mandated by the state to comply with the one-time new requirement mandated by the state to install MERV 13 or the highest filtration feasible *only* at schools with HVAC systems approved for installation *before* January 1, 2020, and only to the extent the district's schools did *not* have a COVID-19 outbreak.

- a. Education Code section 17661(c) imposes a *one-time* new requirement to install filtration that achieves MERV levels of 13 or higher, or install filtration that achieves the highest MERV level feasible without reducing the lifespan of the existing HVAC system, *only* for schools with HVAC systems approved for installation before January 1, 2020 (under the 2016 or earlier Energy Code) and only to the extent the district's schools did not have a COVID-19 outbreak as defined.

The current Energy Code requires filters shall have a designated efficiency equal to or greater than MERV 13.¹⁸² The same requirement is in the 2019 Energy Code (eff.

¹⁸⁰ Education Code section 17661(a)(3) (Stats 2022, ch. 777). MERV is the minimum efficiency reporting value as determined by ASHRAE [American Society of Heating, Refrigerating, and Air Conditioning Engineers] Standard 52.2 Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size. (Cal. Code Regs., tit. 23, pt. 6, § 100.1(b)).

¹⁸¹ Exhibit X (7), California Energy Commission, 2022 Residential Compliance Manual, <https://www.energy.ca.gov/filebrowser/download/5126> (accessed on May 2, 2024), pages 4-39 to 4-40.

¹⁸² California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B) (eff. Jan. 1, 2023).

Jan. 1, 2020).¹⁸³ But the 2016 Energy Code (eff. Jan. 1, 2017) did not require filters rated at MERV 13 or higher.¹⁸⁴ The 2019 amendment to title 24 increased the minimum requirement to MERV 13 as explained below:

The extensive changes to Section 120.1 address outdoor air ventilation and indoor air quality (IAQ) with new requirements for air filtration and system designs. Subsection (c) applies to the occupiable spaces in high-rise [and] nonresidential buildings, and hotels/motels. Subsection (c)1 addresses air filtration. It specifies the types of mechanical systems that must have air filters, air filter efficiency, and sizes. The 2019 Energy Code ensures that HVAC systems are designed to accommodate higher MERV filters so that occupants can improve filtration without inadvertently harming the energy efficiency, lifespan, or overall performance of their HVAC system.

¶¶ . . . ¶¶

To improve indoor air quality, the air filtration particle size efficiency requirement has increased from MERV 6 to MERV 13. A MERV 13 filter effectively filters out fine particulate matter (PM 2.5).¹⁸⁵

Therefore, the MERV 13 requirement in Education Code section 17661(c) is *not* new to the extent a school received a permit or equivalent approval to install a new HVAC system under the 2019 or 2022 Energy Code (i.e., on or after Jan. 1, 2020) because those Codes already required the HVAC system to have filters with a designated efficiency equal to or greater than MERV 13.¹⁸⁶ Prior law also required these filters be replaced or cleaned regularly. Section 5143(d)(3) of the title 8 regulations states:

Where the air supply is filtered, the filters shall be replaced or cleaned regularly to prevent significant reductions in airflow. A pressure gauge shall be installed to show the pressure drop across the filters. This gauge shall be marked to show the pressure drop at which filters require cleaning or replacement.

As indicated above, this title 8 regulation applies to employers, including school districts.¹⁸⁷

¹⁸³ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B) (eff. Jan. 1, 2020).

¹⁸⁴ Exhibit X (3), California Energy Commission, 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, page 241.

¹⁸⁵ Exhibit X (8), International Code Council, *Significant Changes to the California Energy Code*, 2019 Edition, May 2021, pages 91-92.

¹⁸⁶ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B).

¹⁸⁷ Public schools are “employers” for purposes of the Labor Code (Lab. Code, §§ 6304, 3300), which the title 8 regulations implement.

In addition, the MERV 13 requirement is *not* new if there was a COVID-19 outbreak in the school. At the time the test claim statute became effective on January 1, 2023, MERV 13 filters were required for schools that had a COVID-19 outbreak (meaning three or more *employee* COVID-19 cases within an exposed group, as defined, who visited the worksite during their infectious period any time during a 14-day period).¹⁸⁸ Under these circumstances, existing regulations in section 3205.1(f) of title 8 required the school to comply with the same filtration requirements as the test claim statute:

(f) In buildings or structures with mechanical ventilation, employers shall filter recirculated air with Minimum Efficiency Reporting Value (MERV) 13 or higher efficiency filters if compatible with the ventilation system. If MERV-13 or higher filters are not compatible with the ventilation system, employers shall use filters with the highest compatible filtering efficiency. .

¹⁸⁹

Although this title 8 regulation expires by its own terms on February 3, 2025, the ventilation requirements in subdivision (f) continue pursuant to section 3205(h)(4) in title 8 that states; “A place of employment subject to section 3205.1 after February 3, 2023 shall continue to comply with the ventilation requirements of subsection 3205.1(f) even after the outbreak has passed and section 3205.1 is no longer applicable.”¹⁹⁰ And, as

¹⁸⁸ See California Code of Regulations, title 8, section 3205.1(a)(1). (Register 2022, No. 18.) Section 3205(b)(7) of title 8 defines “exposed group” to mean “all employees at a work location, working area, or a common area at work, within employer-provided transportation covered by section 3205.3, or residing within housing covered by section 3205.2, where an employee COVID-19 case was present at any time during the infectious period. A common area at work includes bathrooms, walkways, hallways, aisles, break or eating areas, and waiting areas. The following exceptions apply:

(A) For the purpose of determining the exposed group, a place where persons momentarily pass through, without congregating, is not a work location, working area, or a common area at work.

(B) If the COVID-19 case was part of a distinct group of employees who are not present at the workplace at the same time as other employees, for instance a work crew or shift that does not overlap with another work crew or shift, only employees within that distinct group are part of the exposed group.

(C) If the COVID-19 case visited a work location, working area, or a common area at work for less than 15 minutes during the infectious period, and the COVID-19 case was wearing a face covering during the entire visit, other people at the work location, working area, or common area are not part of the exposed group.

¹⁸⁹ California Code of Regulations, title 8, section 3205.1(f) (Register 2022, No. 18, eff. May 5, 2022.)

¹⁹⁰ California Code of Regulations, title 8, sections 3205(h)(4) (Register 2023, No. 29, eff. Feb. 2, 2023), 3205.1(a) (Register 2023, No. 29, eff. Feb. 2, 2023.)

stated above, schools were required by prior law to regularly replace or clean these filters.¹⁹¹

Therefore, the requirement in Education Code section 17661(c) to install filtration that achieves MERV levels of 13 or higher, or install filtration that achieves the highest MERV level the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system, is new only for schools with HVAC systems approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these schools did *not* have a COVID-19 outbreak as defined in section 3205.1 of the title 8 regulations. Although the claimant alleges the test claim statute requires school districts to replace the MERV 13 filters more often and every three months,¹⁹² the requirement imposed by Education Code section 17661(c) is a one-time requirement to purchase and install the required filters since prior law already required employers, including school districts, to regularly replace or clean filters, regardless of the filter efficiency level.¹⁹³ On-going filter purchase and installation is not new.¹⁹⁴

b. The one-time new requirement imposed by Education Code section 17661(c) is mandated by the state.

The California Supreme Court has made it clear a state-mandated requirement exists when a statute or executive order uses mandatory language that ‘require[s]’ or ‘command[s]’ a local entity to participate in a program or service”; in other words, local government “has the legally enforceable duty to obey.”¹⁹⁵ Education Code section 17661(c) states: “a covered school *shall*, . . . install filtration that achieves MERV levels of 13 or higher to the extent determined to be feasible and appropriate for the existing HVAC system.” According to Education Code section 75: “‘Shall’ is mandatory and ‘may’ is permissive.”

Therefore, the new one-time requirement imposed by Education Code section 17661(c) is mandated by the state only on school districts with HVAC systems approved for installation in their schools before January 1, 2020 (under the 2016 or earlier Energy

¹⁹¹ California Code of Regulations, title 8, section 5143(d)(3) (as last amended by Register 2003, No. 24.)

¹⁹² Exhibit A, Test Claim, filed November 17, 2023, page 13.

¹⁹³ California Code of Regulations, title 8, section 5143 (as last amended by Register 2003, No. 24.)

¹⁹⁴ Even if installing MERV 13 filters is more costly, as asserted by the claimant, increased costs alone do not establish the right to reimbursement under article XIII B, section 6 of the California Constitution. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 54; *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735; *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 876-877.)

¹⁹⁵ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

Code) and only to the extent these district's schools did *not* have a COVID-19 outbreak as defined in section 3205.1 of the title 8 regulations, to install filtration that achieves MERV levels of 13 or higher or install filtration that achieves the highest MERV level the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system.

This finding also applies to school districts that applied for grant funding under the School Energy Efficiency Stimulus Program,¹⁹⁶ which includes the School Reopening Ventilation and Energy Efficiency Verification and Repair Program (SRVEVR).¹⁹⁷ As described in the Background, school districts, as a condition of receiving grant funds, are required to install filtration with a minimum MERV 13 or better where feasible, and have qualified testing personnel review system capacity and airflow to determine the highest MERV filtration that can be installed without adversely impacting the equipment, replace or upgrade filters where needed, and verify those filters are installed correctly.¹⁹⁸ Participating in that grant program is not mandated by state law, but is optional. Government Code section 17565 states "If a local agency or a 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 incurred after the operative date of the mandate."¹⁹⁹

Thus, the one-time new requirement imposed by Education Code section 17661(c) is mandated by the state as described above.

c. The one-time new requirement imposed by Education Code section 17661(c) constitutes a new program or higher level of service.

The one-time mandated activity imposed by section 17661(c) must also constitute a new program or higher level of service within the meaning of article XIII B, section 6. "New program or higher level of service" is defined as "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply

¹⁹⁶ Public Utilities Code section 1600 et seq. (AB 841, Stats. 2020, ch. 372).

¹⁹⁷ Public Utilities Code section 1620 et seq. SRVEVR is the acronym defined in the bill. See Public Utilities Code section 1601(b) (Stats. 2020, ch. 372).

¹⁹⁸ Public Utilities Code section 1623(a)(1) (Stats. 2020, ch. 372).

¹⁹⁹ However, any grant funding received under the program would have to be identified as offsetting revenues and the claimant would be required to show, with evidence in the record, it incurred increased costs mandated by the state of its proceeds of taxes above and beyond the use of the grant funds. (*County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487.) Reimbursement under article XIII B, section 6 is only required when a mandated new program or higher level of service forces local government to incur "increased actual expenditures of limited tax proceeds that are counted against the local government's spending limit." (*County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1283; *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1185.)

generally to all residents and entities in the state.”²⁰⁰ Only one of these alternatives is required to establish a new program or higher level of service.²⁰¹ Courts have found a reimbursable “higher level of service” concerning an existing “program” 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.²⁰²

Here, school districts have purchased and installed MERV filters before the enactment of the test claim statute, based on the Energy Code requirements in effect at the time their permits were approved. However, as stated above, the test claim statute imposes a newly mandated requirement to increase the MERV efficiency level, by installing a higher rated filter if feasible without significantly reducing the lifespan or performance of the existing HVAC system, for schools with HVAC systems approved for installation before January 1, 2020, that did *not* have a COVID-19 outbreak. The intent of the test claim statute is for “school facilities [to] provide healthy indoor air quality, including adequate ventilation, to students, teachers, and other occupants in order to protect occupant health, reduce sick days, and improve student productivity and performance.”²⁰³ Filters with higher MERV ratings are generally better, as they can capture smaller particles.²⁰⁴ Protecting the health and improving the productivity and performance of pupils are governmental services to the public, and the increase in the MERV efficiency increases the level or quality of service provided. That the test claim statute also applies to private schools does not change this conclusion. As the courts have said, “although numerous private schools exist, education in our society is considered to be a peculiarly governmental function.”²⁰⁵

Thus, the one-time new requirement imposed by Education Code section 17661(c) constitutes a new program or higher level of service within the meaning of article XIII B, section 6.

²⁰⁰ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

²⁰¹ *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *Department of Finance v. Commission on State Mandates* (2021) 59 Cal.App.5th 546, 557.

²⁰² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.App.4th 859, 877.

²⁰³ Education Code section 17660 (Stats. 2022, ch. 777).

²⁰⁴ Exhibit X (7), California Energy Commission, 2022 Residential Compliance Manual, <https://www.energy.ca.gov/filebrowser/download/5126> (accessed on May 2, 2024), pages 4-39 to 4-40.

²⁰⁵ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d. 155, 172.

- d. There is no evidence in the record the claimant has incurred any increased costs mandated by the state to comply with the new state-mandated activity.

The last issue is whether the new activity mandated by Education Code section 17661(c) results in increased costs mandated by the state. Government Code section 17514 defines “costs mandated by the state” as any increased cost 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) further requires no claim nor any payment shall be made unless the claim exceeds \$1,000. All representations of fact shall be supported by documentary or testimonial evidence in accordance with section 1187.5 of the Commission’s regulations.²⁰⁶ In addition, a finding of costs mandated by the state means none of the exceptions in Government Code section 17556 apply to deny the claim.

The Test Claim does not acknowledge any prior law requirements to install MERV 13 filters when a new HVAC system is approved for installation under the 2019 or 2022 Energy Code or when a COVID outbreak occurs, or the existing requirement to regularly replace or clean these filters. Instead the Test Claim alleges increased costs, supported by a declaration from the claimant’s Deputy Superintendent of Business Services, for the following costs to install MERV 13 filters in *all* of its schools’ HVAC systems.²⁰⁷ The claimant also alleges it hired two employees to replace and install the MERV 13 air filters every three months.²⁰⁸

Year	Costs
January 1, 2023, to June 30, 2023	\$27,443.12 labor to install filters \$66,236.22, for MERV 13 filters. ²⁰⁹
July 1, 2023, to June 30, 2024	\$81,669.06 estimated labor to install filters \$100,119.04 estimated for MERV 13 filters ²¹⁰
July 1, 2024, to June 30, 2025	\$120,624.56 estimated labor to install filters \$151,920.32 estimated for MERV 13 filters. ²¹¹

The Declaration submitted by the claimant also identifies revenues received under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that provides funding

²⁰⁶ California Code of Regulations, title 2, section 1183.1(e).

²⁰⁷ Exhibit A, Test Claim, filed November 17, 2023, pages 13, 18-19 (Landon Declaration).

²⁰⁸ Exhibit A, Test Claim, filed November 17, 2023, pages 14, 19 (Landon Declaration). In rebuttal comments, the claimant states it replaces its HVAC rooftop units every six months and portable wall units every three months. Exhibit C, Claimant’s Rebuttal Comments, filed March 14, 2024, pages 2, 5 (Landon Declaration).

²⁰⁹ Exhibit A, Test Claim, filed November 17, 2023, pages 14, 19 (Landon Declaration).

²¹⁰ Exhibit A, Test Claim, filed November 17, 2023, pages 14, 19 (Landon Declaration).

²¹¹ Exhibit A, Test Claim, filed November 17, 2023, pages 15, 20 (Landon Declaration).

to Local Education Agencies through the Elementary and Secondary School Emergency Relief (ESSER) Fund to address the impact of COVID-19 on elementary and secondary schools. The claimant used these funds to *replace* HVAC systems, beginning in June 2021, and to purchase MERV 13 filters as follows:

14. The Claimant received Elementary and Secondary School Emergency Relief (ESSER) II funds in the amount of \$26,295,815. These funds were distributed from June 2021 to August 2023 towards the Districtwide HVAC project to remove and replace HVAC systems at elementary, middle, and high schools. Prior to January 1, 2023, ESSER funds were used to purchase MERV 13 filters in the initial implementation of the new HVAC systems.

15. The Claimant received Elementary and Secondary School Emergency Relief (ESSER) III funds in the amount of \$58,852,535. The Claimant allocated \$13 million towards the Districtwide HVAC project to remove and replace HVAC systems at elementary, middle, and high schools. The difference is due to the Claimant having other priorities in spending the remainder of ESSER III funds. The Claimant has until September 30, 2024, to spend this allocation. There will be no additional allocations of ESSER funds. Attached are Department of General Services, Division of the State Architect approval plans for the replacement of the District's HVAC.²¹²

What this evidence shows is the claimant has schools *not* subject to the new mandated requirement since any new HVAC installation approved beginning in June 2021 would have been approved under the 2019 and 2022 Energy Codes. As indicated above, the MERV 13 requirement in Education Code section 17661(c) is *not* new and does not mandate a new program or higher level of service to the extent a school received a permit or equivalent approval to install a new HVAC system after January 1, 2020 (under the 2019 or 2022 Energy Code) because those Codes already required the HVAC system to have filters with a designated efficiency equal to or greater than MERV 13.²¹³

However, there is *no* evidence in the record the claimant has incurred any increased costs mandated by the state to perform the mandated new program or higher level of service. As stated above, the mandated activity is the one-time installation of MERV 13 or higher filters or installing filtration that achieves the highest MERV level the school determines is feasible without significantly reducing the lifespan or performance of the existing HVAC system, in schools with HVAC systems that were approved for installation *before* January 1, 2020 (under the 2016 or earlier Energy Code), and only to the extent these district's schools did *not* have a COVID-19 outbreak as defined in

²¹² Exhibit A, Test Claim, filed November 17, 2023, page 20 (Landon Declaration).

²¹³ California Code of Regulations, title 24, part 6, section 120.1(c)(1)(B). The citation is the same under both the 2019 and 2022 Energy Codes.

section 3205.1 of the title 8 regulations. The Commission cannot make a finding of increased costs mandated by the state without evidence in the record.²¹⁴

Therefore, the Commission finds there is no evidence of increased costs mandated by the state within the meaning of Government Code section 17514 to perform the mandated new activity imposed by Education Code section 17661(c).

V. Conclusion

Accordingly, the Commission finds the test claim statute does not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 and denies this Test Claim.

²¹⁴ Government Code section 17514; California Code of Regulations, title 2, section 1183.1(e).

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 September 3, 2024, I served the:

- **Current Mailing List dated September 3, 2024**
- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued September 3, 2024**

Heating, Ventilation, and Air Conditioning (HVAC) Program, 23-TC-01
Statutes 2022, Chapter 777, Sections 1, 2 (AB 2232);
Education Code Sections 17660, 17661, Effective January 1, 2023
Hesperia 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 September 3, 2024 at Sacramento, California.



Jill Magee
Commission on State Mandates
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 9/3/24

Claim Number: 23-TC-01

Matter: Heating, Ventilation, and Air Conditioning (HVAC) Program

Claimant: Hesperia 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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