



March 27, 2025

Ms. Amber Alexander
Department of Finance
915 L Street, 7th 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
Transitional Kindergarten, 23-TC-02
Statutes 2021, Chapter 44, Section 60 (AB 130);
Education Code Section 48000, Effective July 9, 2021
Hope Elementary School District and Sunnyvale School District, Claimants

Dear Ms. Alexander 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 April 17, 2025**. 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.

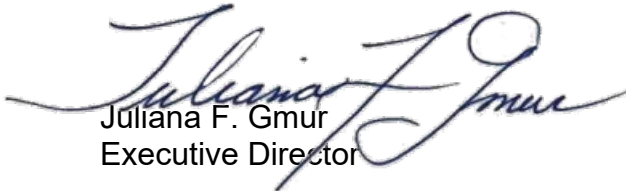
Hearing

This matter is set for hearing on **Friday, May 23, 2025** at 10:00 a.m. The Proposed Decision will be issued on or about May 9, 2025.

Please notify Commission staff not later than **May 22, 2025**, the Tuesday 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 and so that detailed instructions regarding how to participate as a witness in this meeting on Zoom can be provided to them. 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.

Very truly yours,



Juliana F. Gmur
Executive Director

ITEM ____
TEST CLAIM
DRAFT PROPOSED DECISION

Education Code Section 48000
Statutes 2021, Chapter 44, Section 60 (AB 130)
Effective Date July 9, 2021
Transitional Kindergarten
23-TC-02

Hope Elementary School District and Sunnyvale School District, Claimants

EXECUTIVE SUMMARY

Overview

This Test Claim addresses changes to the transitional kindergarten (TK) program arising out of Statutes 2021, chapter 44, section 60 (AB 130).¹ Existing law authorizes school districts and charter schools to provide transitional kindergarten programs, defined as “the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate.”² Under prior law, as a condition of receipt of apportionment for students in a TK program, school districts and charter schools were required to provide a TK program for pupils who would have their fifth birthday between September 2 and December 2. The test claim statute expands the range of eligible birthdates gradually over several years, until by the 2025-2026 school year onwards all pupils who will have their fourth birthday by September 1 are eligible for TK.³ The test claim statute also requires as a condition of receipt of apportionment, an average maximum TK class size of 24 pupils per schoolsite, and beginning in the 2022-2023 school year, an adult-to-pupil ratio of one adult per 12 pupils in a TK classroom.⁴

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

¹ Transitional kindergarten and TK are used interchangeably throughout this Decision.

² Education Code section 48000(d).

³ Education Code section 48000(c)(1)(G), as amended by Statutes 2021, Chapter 44 (AB 130), section 60.

⁴ Education Code section 48000(g), as amended by Statutes 2021, Chapter 44 (AB 130), section 60.

the California Constitution and Government Code section 17514 and recommends the Commission deny this Test Claim.

Procedural History

The Hope Elementary School District and Sunnyvale School District (claimants) filed the Test Claim on January 22, 2024.⁵ During the public comment period from April 12, 2024 to May 13, 2024, almost 200 interested parties and interested persons filed letters in support of the Test Claim.⁶ The Department of Finance (Finance) filed comments on the Test Claim on July 11, 2024.⁷ The claimants filed rebuttal comments on August 8, 2024, which included over 100 additional letters of support from interested parties and interested persons responding to Finance’s comments.⁸

Commission staff issued the Draft Proposed Decision on March 27, 2025.⁹

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. “Test claim” means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and not apply it as an “equitable remedy

⁵ Exhibit A, Test Claim.

⁶ Due to the high number of comments that are duplicative, most interested party and interested person comments have been excluded from the exhibits, save for a few representative examples. See Exhibit D, Anthony Ranii, President, Schools for Sound Finance, Comments on the Test Claim; Exhibit E, Dr. Robert Bauer, Trustee, Portola Valley School District, Comments on the Test Claim; and Exhibit F, Ellen Sheffer, Board President, San Luis Coastal Unified School District, Late Comments on the Test Claim. However, all comments are available on the Commission’s website on the matter page for this Test Claim at <https://csm.ca.gov/matters/23-TC-02.shtml> and each commenter is acknowledged by name in footnotes in the Interested Parties and Interested Persons section of the Draft Proposed Decision.

⁷ Exhibit B, Finance’s Comments on the Test Claim.

⁸ Exhibit C, Claimants’ Rebuttal Comments, filed August 8, 2024.

⁹ Exhibit G, Draft Proposed Decision.

to cure the perceived unfairness resulting from political decisions on funding priorities.”¹⁰

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?	A test claim shall be filed no later than 12 months following the effective date of an executive order or statute, or within 12 months of incurring increased costs as a result of the executive order or statute, whichever is later. ¹¹ The Commission’s regulations clarify that “within 12 months of incurring increased costs” means “within 12 months (365 days) of <i>first</i> incurring increased costs as a result of a statute or executive order, whichever is later.” ¹²	<i>Yes, timely filed.</i> The test claim statute has an effective date of July 9, 2021, while the test claim was jointly filed on January 22, 2024. ¹³ However, the claimants filed declarations under penalty of perjury that they first incurred increased costs to implement the test claim statute on July 1, 2023, when they hired additional teachers and non-teacher employees to staff the TK program. ¹⁴ Finance asserts that because some of the test claim statute’s requirements went into effect during the 2021-2022 and 2022-2023 school years, it is uncertain whether the claimants first incurred increased costs prior to July 1, 2023, and therefore

¹⁰ *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.

¹¹ Government Code section 17551(c).

¹² California Code of Regulations, title 2, section 1183.1(c), emphasis added.

¹³ Exhibit A, Test Claim, page 1. The test claim statute, Statutes 2021, chapter 44, was a budget bill and took effect immediately when filed with the Secretary of State (Stats. 2021, ch. 44, section 165.)

¹⁴ Exhibit A, Test Claim, pages 24-25 (Declaration of Lori van Gogh, Chief Business Officer, Sunnyvale School District); pages 30-31 (Declaration of Mike Thomson, Chief Business Official, Business Office, Hope Elementary School District).

Issue	Description	Staff Recommendation
		<p>this Test Claim may not be timely.¹⁵ Finance provides no evidence that supports this position besides some inconsistencies in the claimants' documentary evidence it believes may be evidence of earlier increased costs. However, the inconsistencies do not rise to the level of substantial evidence of earlier increased costs, and the claimants declare under penalty of perjury that they first experienced increased costs on July 1, 2023. Absent evidence the claimants did or should have first incurred increased costs to implement the test claim statute prior to July 1, 2023, the Commission must accept the claimants' signed declarations of when they first incurred increased costs. The January 22, 2024 filing date is therefore timely.</p>
<p>Does the test claim statute impose a state-mandated program on school districts?</p>	<p>When determining whether new requirements imposed by the test claim statute compel compliance and, thus, create a state-mandated program for purposes of reimbursement under article XIII B, section 6, the courts have identified two distinct theories: legal compulsion and practical</p>	<p><i>No, not a state mandate.</i> The test claim statute requires, as a condition of receipt of apportionment, that school districts and charter schools admit into a TK program pupils whose fifth birthday falls within a specified range adjusted incrementally over several years, so that by the 2025-2026 school year school districts must ensure that</p>

¹⁵ Exhibit B, Finance's Comments on the Test Claim, page 3.

Issue	Description	Staff Recommendation
	<p>compulsion.¹⁶ Activities undertaken at the option or discretion of local government, without legal or practical compulsion, do not trigger a state-mandated program within the meaning of article XIII B, section 6.¹⁷</p> <p>When determining if a local agency is legally compelled by a funding entitlement, “the proper inquiry is whether the language of the funding entitlement provisions legally obligates the districts to comply with the conditions described therein.”¹⁸</p> <p>Practical compulsion exists when “noncompliance is likely to result in withholding of a significant amount of state aid, or that the risk of such withholding leaves them with no true alternative but to comply.”¹⁹ When there is “no true alternative,” any alternative options that</p>	<p>children who will have their fourth birthday by September 1 shall be admitted into a TK program along with other requirements.²²</p> <p>By law, school districts are authorized, but not required to offer TK programs, and if a school district does not offer TK, the only consequence is it does not receive an apportionment of funding for the students that would have been in the TK program. The claimants are not legally compelled to provide TK, and this interpretation is supported by the statute’s plain language, by the TK program’s legislative history, and by the fact that a few school districts have chosen not to offer TK.</p> <p>Nor is there substantial evidence that claimants are practically compelled to</p>

¹⁶ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

¹⁷ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 73-76; *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727; *Department of Finance v. Commission on State Mandates (POBRA)* (2009) 170 Cal.App.4th 1355, 1365-1366.

¹⁸ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 819.

¹⁹ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 822.

²² Education Code section 48000(g)(1)-(3) (as amended by Statutes 2021, chapter 44 (AB 130), section 60). (Emphasis added.)

Issue	Description	Staff Recommendation
	<p>may exist must be “so far beyond the realm of practical reality” that it leaves the local government “without discretion” not to comply with the state’s conditions, such that the alternative amounts to “no alternative at all”.²⁰</p> <p>However, the benefits of a program being “too good to refuse” are not sufficient to be considered practical compulsion, and if the state coerces participation by imposing penalties for non-compliance, the penalty must be something harsher than simply withholding the funding a claimant would have received for the program.²¹</p> <p>Government Code section 17556(e) provides that the Commission shall not find costs mandated by the state if a bill includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.</p>	<p>provide TK. The available alternative is to not have a TK program, which is a demonstrably viable alternative as there are school districts that do not offer TK.²³ Withholding the funding they would have received for the TK program is not a severe penalty that rises to the level of practical compulsion. Rather, it is up to the claimants to determine if <i>on balance</i>, the benefits of the TK program under the state’s conditions for funding outweigh its costs.</p> <p>Furthermore, even if there were legal or practical compulsion, there are no costs mandated by the state pursuant to Government Code section 17556(e), as the state has provided funding specifically intended to fund the TK program and the requirements imposed by the test claim statute. The Local Control Funding Formula (LCFF) is used to calculate school districts’ funding entitlements, and</p>

²⁰ *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 558 (finding that urbanized cities and counties were practically compelled to obtain a permit for their stormwater drainage systems).

²¹ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 731.

²³ Exhibit X (2), D’Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsources.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025), pages 4, 6.

Issue	Description	Staff Recommendation
		<p>this formula provides funding for TK students based on their ADA, including adjustments and add-ons that provide additional funding to maintain an average class size and to maintain an average of one adult for every 12 pupils in a TK classroom.²⁴ School districts are required to use the funding they receive exclusively for the support of the schools within the district, with at least 60 percent going towards classroom teacher salaries.²⁵ Thus the state has provided funding intended to support the TK program and its requirements in an amount sufficient to fund the cost of the state mandate. Although the claimants argue that as basic aid districts, their LCFF entitlement is completely offset by their local property tax revenue, meaning they do not receive any additional state funding for the program and have less excess tax revenue available to spend on local funding priorities, they are not entitled to a specific amount of excess property tax revenue. Property tax revenue used to offset the</p>

²⁴ Education Code section 42238.02.

²⁵ Education Code sections 41370(a) and 41372.

Issue	Description	Staff Recommendation
		LCFF entitlement is considered part of the state apportionment, not local proceeds of taxes, and the Legislature has broad discretion with how it satisfies its reimbursement obligations, so long as the chosen method is consistent with Proposition 98 and other constitutional guarantees. ²⁶ Accordingly, there are no costs mandated by the state pursuant to Government Code section 17556(e).

Staff Analysis

This Test Claim alleges new state-mandated activities and costs arising from amendments to Education Code section 48000 found in Statutes 2021, chapter 44, section 60 (AB 130), relating to the transitional kindergarten (TK) program.²⁷ Existing law authorizes school districts to maintain a transitional kindergarten program, defined as “the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate.”²⁸ Prior law provided, “[a]s a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Education Code section 46300,” school districts and charter schools shall ensure that a child, who will have their fifth birthday between September 2 and December 2 from the 2014-2015 school year onwards, be admitted into a TK program maintained by the school district or charter school.²⁹ The apportionment promised comes from the increase in the school district’s average daily attendance (ADA) caused by TK pupils attending the program.³⁰ ADA is the total number of days of pupil attendance divided by the total number of days in the regular school year.³¹ ADA is used in calculating how much funding the state shall set aside for education each year

²⁶ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 726; Education Code section 41202(g).

²⁷ TK and transitional kindergarten are used interchangeably throughout this Decision.

²⁸ Education Code section 48000(d).

²⁹ See Education Code section 48000(c)(1)(C), as amended by Statutes 2010, chapter 705 (SB 1381), section 3.

³⁰ Education Code section 46300(g). See also, Statutes 2010, chapter 705, section 5.

³¹ Education Code section 46301.

under Proposition 98, and how much of that funding each school district is entitled to under the Local Control Funding Formula (LCFF) and from constitutionally guaranteed minimums.³²

The test claim statute expands the birthdate range used to determine who shall be admitted into TK programs incrementally over several years, so that by the 2025-2026 school year, as a condition of receipt of apportionment for pupils in a TK program, school districts shall ensure that children who will have their fourth birthday by September 1 shall be admitted into a TK program maintained by the school district or charter school.³³ The test claim statute also imposes additional new conditions on school districts and charter schools for receipt of apportionment for pupils in a TK program, requiring the school districts and charter schools to maintain an average TK class enrollment of not more than 24 pupils for each schoolsite; and, beginning with the 2022-2023 school year, to maintain an average of at least one adult for every 12 pupils in a TK classroom.³⁴

Staff finds the new requirements imposed by the test claim statute are not mandated by the state. Based on the plain language of the statute, there is no legal compulsion to provide TK. When determining if a local agency is legally compelled by a funding entitlement, “the proper inquiry is whether the language of the funding entitlement provisions legally obligates the districts to comply with the conditions described therein.”³⁵ The requirements imposed by the test claim statute do not stand on their own but, read in full context, they are conditions on a voluntary program in exchange for receiving state funding for the program. There is no standalone requirement for school districts to provide TK programs. This is in contrast to the requirement within the same code section that school districts admit children who will turn five by September 1 into their kindergarten program each school year, which is not prefaced as a condition for receiving an apportionment and is therefore mandatory.³⁶ This interpretation is supported by the legislative history of the bill that created the TK program, which shows the draft bill’s phrasing was purposefully changed over concerns about the effects of

³² California Constitution, article IX, section 6; article XIII, section 36; article XVI, section 8; Education Code section 42238.02.

³³ Education Code section 48000(c)(1)(G), as amended by Statutes 2021, Chapter 44 (AB 130), section 60.

³⁴ Education Code section 48000(g), as amended by Statutes 2021, Chapter 44 (AB 130), section 60.

³⁵ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 819.

³⁶ See *People v. Trevino* (2001) 26 Cal.4th 237, 242 (“When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning.”).

making TK programs mandatory for school districts.³⁷ Furthermore, there is evidence that some school districts do not offer TK programs, which demonstrates these districts understood this is not a state-mandated program.³⁸ If a school district chooses not to provide a TK program, there is no legal penalty. Thus, the claimants are not legally compelled by the test claim statute.

Staff also finds that school districts are not practically compelled to provide TK programs. Practical compulsion exists when “noncompliance is likely to result in withholding of a significant amount of state aid, or that the risk of such withholding leaves them with no true alternative but to comply.”³⁹ For there to be “no true alternative,” any alternatives that may exist must be “so far beyond the realm of practical reality” that it amounts to no alternative at all.⁴⁰ However, the benefits of a program being “too good to refuse” are not sufficient to be considered practical compulsion, and if the state coerces participation by imposing penalties for non-compliance, the penalty must be something harsher than simply withholding the funding a claimant would have received for the program.⁴¹ Here, claimants have a viable alternative in choosing not to provide TK, as demonstrated by the school districts who do not provide TK programs. Some school districts even chose to end their TK programs.⁴² The claimants are basic aid districts, which receive a constitutionally guaranteed minimum amount of state funding based on ADA; as such they have little financial incentive to provide TK and would have justifiable grounds to find that the benefits of a TK program do not outweigh the costs of complying with the state’s conditions for receiving funding for the program. It is up to the school districts to determine whether it is in the school district’s and their students’ best interests to participate in a program — in other words, if, *on balance*, the program is deemed

³⁷ Exhibit X (1), Assembly Committee on Appropriations, Analysis of SB 1381, as amended August 2, 2010, page 3.

³⁸ Exhibit X (2), D’Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsources.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025).

³⁹ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 822.

⁴⁰ *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 558.

⁴¹ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 731.

⁴² Exhibit X (2), D’Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsources.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025), pages 4, 6.

beneficial, even with strings attached.⁴³ As the courts have made clear, actions undertaken at the option or discretion of a local government entity do not trigger a state mandate and hence do not require reimbursement of funds — even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.⁴⁴

Staff finds that even if school districts are legally or practically compelled to provide TK programs, there are no costs mandated by the state pursuant to Government Code section 17556(e) because the state has provided additional revenue intended to fund the costs of the state mandate. As mentioned, the state provides funding for TK programs based on the increase in a school district's ADA from these additional students.⁴⁵ This funding would not exist without the TK program, as children who are eligible for TK are too young to otherwise enroll in school.⁴⁶ The state also provides additional funding for the class size restriction and adult-to-pupil ratio added with the test claim statute.⁴⁷ The claimants argue that as basic aid districts, this funding is completely offset for them by their property tax revenue, forcing them to spend their local proceeds of taxes on the TK program.⁴⁸ However, local revenue used to offset funding entitlement calculations under the LCFF are not considered proceeds of taxes, but instead part of the state's apportionment.⁴⁹ Just like in *California School Board Association v. State of California (CSBA)*, where the Legislature decreased school districts' proceeds of taxes by designating a portion of previously unrestricted state funding to be first used to offset the cost of certain state mandated programs, the Legislature has broad discretion in how it satisfies reimbursement obligations "so long as its chosen method is consistent with Proposition 98 and other constitutional guarantees."⁵⁰ Although increasing school districts' funding entitlements under the LCFF decreases the amount of excess property tax revenue basic aid districts have available to spend on local funding priorities, basic aid districts are not entitled to a specific amount of excess property tax revenue.⁵¹ "The circumstance that the program funds claimants may have wished to use exclusively for substantive program activities

⁴³ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 753, emphasis in original.

⁴⁴ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 742.

⁴⁵ Education Code section 46300(g).

⁴⁶ Education Code section 48000(a).

⁴⁷ Education Code section 42238.02(d)(3), (g)(2), as amended by Statutes 2022, chapter 52 (AB 181), section 38.

⁴⁸ Exhibit A, Test Claim, page 13.

⁴⁹ Education Code section 41202(g).

⁵⁰ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 726.

⁵¹ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.

are thereby reduced, does not in itself transform the related costs into a reimbursable state mandate.”⁵²

Staff finds that 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.

Conclusion

Based on the forgoing analysis, staff finds that the test claim statute does not impose a state-mandated program on school districts, as they are not legally or practically compelled to offer transitional kindergarten programs.

Staff Recommendation

Staff recommends that 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.

⁵² *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 725.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

<p>IN RE TEST CLAIM</p> <p>Education Code Section 48000</p> <p>Statutes 2021, Chapter 44, Section 60 (AB 130)</p> <p>Effective July 9, 2021</p> <p>Filed on January 22, 2024</p> <p>Hope Elementary School District and Sunnyvale School District, Claimants</p>	<p>Case No.: 23-TC-02</p> <p><i>Transitional Kindergarten</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 May 23, 2025)</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 May 23, 2025. [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 deny the Test Claim by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Deborah Gallegos, Representative of the State Controller, Vice Chairperson	
Karen Greene Ross, Public Member	
Renee Nash, School District Board Member	
Michele Perrault, Representative of the Director of the Department of Finance, Chairperson	
William Pahland, Representative of the State Treasurer	
Matt Read, Representative of the Director of the Governor’s Office of Land Use and Climate Innovation	

Summary of the Findings

This Test Claim alleges new state-mandated activities and costs arising from amendments to Education Code section 48000 found in Statutes 2021, chapter 44,

section 60 (AB 130), relating to the transitional kindergarten (TK) program.⁵³ Existing law authorizes school districts to maintain a transitional kindergarten program, defined as “the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate.”⁵⁴ Prior law provided, “[a]s a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Education Code section 46300,” school districts and charter schools shall ensure that a child, who will have their fifth birthday between September 2 and December 2 from the 2014-2015 school year onwards, be admitted into a transitional kindergarten program maintained by the school district or charter school.⁵⁵ The apportionment promised comes from the increase in the school district’s average daily attendance (ADA) caused by TK pupils attending the program.⁵⁶ ADA is the total number of days of pupil attendance divided by the total number of days in the regular school year.⁵⁷ ADA is used in calculating how much funding the state shall set aside for education each year under Proposition 98, and how much of that funding each school district is entitled to under the Local Control Funding Formula (LCFF) and from constitutionally guaranteed minimums.⁵⁸

The test claim statute expands the birthdate range used to determine who shall be admitted into TK programs incrementally over several years, so that by the 2025-2026 school year, as a condition of receipt of apportionment for pupils in a TK program, school districts shall ensure that children who will have their fourth birthday by September 1 shall be admitted into a TK program maintained by the school district or charter school.⁵⁹ The test claim statute also imposes additional new conditions on school districts and charter schools for receipt of apportionment for pupils in a TK program, requiring the school districts and charter schools to maintain an average TK class enrollment of not more than 24 pupils for each schoolsite; and, beginning with the 2022-2023 school year, to maintain an average of at least one adult for every 12 pupils in a TK classroom.⁶⁰

The Commission finds the new requirements imposed by the test claim statute are not mandated by the state. Based on the plain language of the statute, there is no legal

⁵³ TK and transitional kindergarten are used interchangeably throughout this Decision.

⁵⁴ Education Code section 48000(d).

⁵⁵ See Education Code section 48000(c)(1)(C), as amended by Statutes 2010, chapter 705 (SB 1381), section 3.

⁵⁶ Education Code section 46300(g). See also, Statutes 2010, chapter 705, section 5.

⁵⁷ Education Code section 46301.

⁵⁸ California Constitution, article IX, section 6; article XIII, section 36; article XVI, section 8; Education Code section 42238.02.

⁵⁹ Education Code section 48000(c)(1)(G), as amended by Statutes 2021, Chapter 44 (AB 130), section 60.

⁶⁰ Education Code section 48000(g), as amended by Statutes 2021, Chapter 44 (AB 130), section 60.

compulsion to provide transitional kindergarten. When determining if a local agency is legally compelled by a funding entitlement, “the proper inquiry is whether the language of the funding entitlement provisions legally obligates the districts to comply with the conditions described therein.”⁶¹ The requirements imposed by the test claim statute do not stand on their own but, read in full context, they are conditions on a voluntary program in exchange for receiving state funding for the program. There is no standalone requirement for school districts to provide TK programs. This is in contrast to the requirement within the same code section that school districts admit children who will turn five by September 1 into their kindergarten program each school year, which is not prefaced as a condition for receiving an apportionment and is therefore mandatory.⁶² This interpretation is supported by the legislative history of the bill that created the TK program, which shows the draft bill’s phrasing was purposefully changed over concerns about the effects of making TK programs mandatory for school districts.⁶³ Furthermore, there is evidence that some school districts do not offer TK programs, which demonstrates these districts understood this is not a state-mandated program.⁶⁴ If a school district chooses not to provide a TK program, there is no legal penalty. Thus, the claimants are not legally compelled by the test claim statute.

The Commission also finds that school districts are not practically compelled to provide TK programs. Practical compulsion exists when “noncompliance is likely to result in withholding of a significant amount of state aid, or that the risk of such withholding leaves them with no true alternative but to comply.”⁶⁵ For there to be “no true alternative,” any alternatives that may exist must be “so far beyond the realm of practical reality” that it amounts to no alternative at all.⁶⁶ However, the benefits of a program being “too good to refuse” are not sufficient to be considered practical compulsion, and if the state coerces participation by imposing penalties for non-compliance, the penalty must be something harsher than simply withholding the funding

⁶¹ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 819.

⁶² See *People v. Trevino* (2001) 26 Cal.4th 237, 242 (“When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning.”).

⁶³ Exhibit X (1), Assembly Committee on Appropriations, Analysis of SB 1381, as amended August 2, 2010, page 3.

⁶⁴ Exhibit X (2), D’Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsources.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025).

⁶⁵ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 822.

⁶⁶ *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 558.

a claimant would have received for the program.⁶⁷ Here, claimants have a viable alternative in choosing not to provide TK, as demonstrated by the school districts who do not provide TK programs. Some school districts even chose to end their TK programs.⁶⁸ The claimants are basic aid districts, which receive a constitutionally guaranteed minimum amount of state funding based on ADA; as such they have little financial incentive to provide TK and would have justifiable grounds to find that the benefits of a TK program do not outweigh the costs of complying with the state's conditions for receiving funding for the program. It is up to the school districts to determine whether it is in the school district's and their students' best interests to participate in a program — in other words, if, *on balance*, the program is deemed beneficial, even with strings attached.⁶⁹ As the courts have made clear, actions undertaken at the option or discretion of a local government entity do not trigger a state mandate and hence do not require reimbursement of funds — even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.⁷⁰

The Commission finds that even if school districts are legally or practically compelled to provide TK programs, there are no costs mandated by the state pursuant to Government Code section 17556(e) because the state has provided additional revenue intended to fund the costs of the state mandate. As mentioned, the state provides funding for TK programs based on the increase in a school district's ADA from these additional students.⁷¹ This funding would not exist without the TK program, as children who are eligible for TK are too young to otherwise enroll in school.⁷² The state also provides additional funding for the class size restriction and adult-to-pupil ratio added with the test claim statute.⁷³ The claimants argue that as basic aid districts, this funding is completely offset for them by their property tax revenue, forcing them to spend their

⁶⁷ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 731.

⁶⁸ Exhibit X (2), D'Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsources.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025), pages 4, 6.

⁶⁹ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 753, emphasis in original.

⁷⁰ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 742.

⁷¹ Education Code section 46300(g).

⁷² Education Code section 48000(a).

⁷³ Education Code section 42238.02(d)(3), (g)(2), as amended by Statutes 2022, chapter 52 (AB 181), section 38.

local proceeds of taxes on the TK program.⁷⁴ However, local revenue used to offset funding entitlement calculations under the LCFF are not considered proceeds of taxes, but instead part of the state’s apportionment.⁷⁵ Just like in *California School Board Association v. State of California (CSBA)*, where the Legislature decreased school districts’ proceeds of taxes by designating a portion of previously unrestricted state funding to be first used to offset the cost of certain state mandated programs, the Legislature has broad discretion in how it satisfies reimbursement obligations “so long as its chosen method is consistent with Proposition 98 and other constitutional guarantees.”⁷⁶ Although increasing school districts’ funding entitlements under the LCFF decreases the amount of excess property tax revenue basic aid districts have available to spend on local funding priorities, basic aid districts are not entitled to a specific amount of excess property tax revenue.⁷⁷ “The circumstance that the program funds claimants may have wished to use exclusively for substantive program activities are thereby reduced, does not in itself transform the related costs into a reimbursable state mandate.”⁷⁸

The Commission finds that 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.

COMMISSION FINDINGS

I. Chronology

- | | |
|---------------------------|-----------------------------------------------------------------------------------------------------|
| 07/09/2021 | Statutes 2021, Chapter 44, section 60 was enacted. |
| 01/22/2024 | The claimants filed the Test Claim. ⁷⁹ |
| 04/12/2024-
05/13/2024 | Parties, interested parties, and interested persons filed comments on the Test Claim. ⁸⁰ |

⁷⁴ Exhibit A, Test Claim, page 13.

⁷⁵ Education Code section 41202(g).

⁷⁶ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 726.

⁷⁷ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.

⁷⁸ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 725.

⁷⁹ Exhibit A, Test Claim.

⁸⁰ The Commission received almost 200 comments from interested parties and interested persons. Due to the sheer number of comments, and a high number of comments being duplicative, only a few representative examples have been included in the exhibits. See Exhibit D, Anthony Ranii, President, Schools for Sound Finance, Comments on the Test Claim; Exhibit E, Dr. Robert Bauer, Trustee, Portola Valley School District, Comments on the Test Claim; and Exhibit F, Ellen Sheffer, Board President, San Luis Coastal Unified School District, Late Comments on the Test Claim. However, all comments are available on the Commission’s website on the matter page for this test claim <https://csm.ca.gov/matters/23-TC-02.shtml> and each commenter is

- 07/11/2024 The Department of Finance (Finance) filed comments on the Test Claim.⁸¹
- 08/08/2024 The claimants filed rebuttal comments.⁸²
- 03/27/2025 Commission staff issued the Draft Proposed Decision.⁸³

II. Background

A. History of California's Kindergarten Program

The California State Constitution says that the Legislature “shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year.”⁸⁴ The Constitution does not specify when a child is entitled to enter school, although it defines the Public School System to include “kindergarten schools, elementary schools, secondary schools, technical schools, and state colleges.”⁸⁵ Education Code section 48200 says that “each person between the ages of 6 and 18 years ...is subject to compulsory full time education.”⁸⁶ Although parents are not required to enroll their children in compulsory education until age six, they may enroll their child in kindergarten earlier, and the law states that “a child shall be admitted to a kindergarten maintained by the school district at the beginning of the school year, or at a later time in the same year, if the child will have their fifth birthday on or before...September 1,” thereby obligating school districts to provide kindergarten.⁸⁷ School districts also have authority to voluntarily admit into their kindergarten program children who will turn five at any time during the school year on a case-by-case basis, conditional on the school district’s governing body determining early admittance is in the child’s best interests and the parent or guardian is given information on the advantages and disadvantages and any other explanatory information about the effect of early admittance.⁸⁸

For a very long time, to be age-eligible for a kindergarten program in California, a child was required to have their fifth birthday on or before December 2 of that school year.⁸⁹

acknowledged by name in footnotes in the Interested Parties and Interested Persons section of the Draft Proposed Decision.

⁸¹ Exhibit B, Finance’s Comments on the Test Claim.

⁸² Exhibit C, Claimant’s Rebuttal Comments.

⁸³ Exhibit G, Draft Proposed Decision.

⁸⁴ California Constitution, article IX, section 5.

⁸⁵ California Constitution, article IX, section 6.

⁸⁶ Education Code section 48200.

⁸⁷ Education Code section 48000(a)(4) (As amended by Stats. 2010, ch. 705 (SB 1381), section 3). This is consistent with current law.

⁸⁸ Education Code section 48000(b).

⁸⁹ Education Code section 48000 (As amended by Stats. 1987, ch.1452, section 403).

This was one of the latest cutoff dates for kindergarten eligibility in the country, and only three other states (Connecticut, Michigan, and Vermont) also had cutoff dates between December 1 and January 1.⁹⁰ This presented a unique position for “young fives,” children with fall or late summer birthdays that could technically start kindergarten while still four years old, or could choose to wait until the next year when they could enter kindergarten as a five-year-old like the majority of their classmates. Because numerous studies showed long-term educational benefits to starting kindergarten later, particularly if the child had access to a preschool or prekindergarten program during that time to help prepare them for a classroom environment, the practice of “redshirting” was commonplace.⁹¹ However, low- and moderate-income families that could not afford private schooling options during that interim year found their children suffered academically.⁹²

B. The Kindergarten Readiness Act of 2010

In 2010, the Legislature passed SB 1381, the Kindergarten Readiness Act of 2010, which adjusted the cutoff dates for age-eligibility for kindergarten and first grade.⁹³ This would take place over several years, so that to be admitted into kindergarten, the child was required to have their fifth birthday on or before: December 2 for the 2011-2012 school year; November 1 for the 2012-2013 school year; October 1 for the 2013-2014 school year; and September 1 for the 2014-2015 school year and each year thereafter. The date by which a child must turn six to be age-eligible for first grade would also move back in a similar manner.⁹⁴ This was originally presented as a cost-cutting measure, as it would reduce kindergarten class sizes by making fewer pupils eligible to enroll each year. The first draft of SB 1381 included a statement of the state’s intention that half of the state’s savings would go towards state preschools to offset the burden this would place on low-income families.⁹⁵ However, feedback from the Assembly Committee on Education that most displaced students likely would not have access to a state preschool program and anecdotal accounts about the success of transitional kindergarten pilot programs convinced SB 1381’s author to instead add a transitional kindergarten program to serve displaced students.⁹⁶

⁹⁰ Exhibit X (4), Assembly Committee on Education, Analysis of SB 1381, as amended June 1, 2010, page 2.

⁹¹ Exhibit X (4), Assembly Committee on Education, Analysis of SB 1381, as amended June 1, 2010, page 3.

⁹² Exhibit X (4), Assembly Committee on Education, Analysis of SB 1381, as amended June 1, 2010, page 3.

⁹³ See Statutes 2010, chapter 705 (SB 1381).

⁹⁴ Education Code section 48010, as amended by Statutes 2010, chapter 705 (SB 1381), section 4.

⁹⁵ Exhibit X (14), Senate Amendment to SB 1381, March 23, 2010.

⁹⁶ Exhibit X (4), Assembly Committee on Education, Analysis of SB 1381, as amended June 1, 2010, page 5.

As initially proposed, SB 1381 added the transitional kindergarten program by amending Education Code section 46300(g). Section 46300(g) provided that, when calculating ADA, school districts can only include attendance for pupils in their second year of kindergarten if the school district had on file an agreement signed by the pupil's parent or guardian agreeing that the pupil may continue in kindergarten for not more than one additional year.⁹⁷ SB 1381, as proposed, allowed school districts to include in their ADA calculation a second year of kindergarten attendance if a pupil participated in a transitional kindergarten program.⁹⁸ The Act also amended section 48000 to define transitional kindergarten as "the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate," and to specify who would be admitted into the program:⁹⁹

(c)(1) In the 2012-13 school year, a child who will have his or her fifth birthday between November 2 and December 2 shall be admitted into a transitional kindergarten program maintained by the school district.

(2) In the 2013-14 school year, a child who will have his or her fifth birthday between October 2 and December 2 shall be admitted into a transitional kindergarten program maintained by the school district.

(3) In the 2014-15 school year and each school year thereafter, a child who will have his or her fifth birthday between September 2 and December 2 shall be admitted into a transitional kindergarten program maintained by the school district.¹⁰⁰

The Assembly Committee on Appropriations criticized this version of SB 1381 for requiring all school districts to provide transitional kindergarten as fiscally inefficient and not cost effective, noting, for example, a small school district that has only one or two eligible students would still be required to provide a transitional kindergarten program for those students, and would need to hire and train staff and obtain a facility for a class of two.¹⁰¹

Thus, SB 1381 was amended again to insert a line in paragraph (c) which tied the transitional kindergarten program to conditional funding by prefacing the requirements that students born within specified date ranges be admitted to a transitional kindergarten program maintained by the school district: "As a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to subdivision

⁹⁷ Pursuant to Section 48011, which says that a child who has completed one school year in a kindergarten program shall be admitted into first grade unless the child's parent or guardian and the school district agree the child shall continue in kindergarten not more than one additional year.

⁹⁸ Exhibit X (5), Assembly Amendment to SB 1381, August 4, 2010, section 2.

⁹⁹ Exhibit X (5), Assembly Amendment to SB 1381, August 4, 2010, section 2.

¹⁰⁰ Exhibit X (5), Assembly Amendment to SB 1381, August 4, 2010, section 2.

¹⁰¹ Exhibit X (1), Assembly Committee on Appropriations, Analysis of SB 1381, as amended August 2, 2010, page 3

(g) of section 46300, a school district or charter school shall ensure the following.”¹⁰² The Legislature also added a paragraph to Section 48000 stating that “a transitional kindergarten program shall not be construed as a new program or higher level of service.”¹⁰³

The language used to summarize SB 1381 in legislative analysis changed as well. Instead of stating the bill “requires, commencing with the 2012-2013 school year, a child who would otherwise be eligible for enrollment in kindergarten be admitted to a transitional kindergarten program maintained by a school district,” the analysis now described the bill by saying it would “*allow* districts to claim funding for two years of kindergarten for children born between September and December, assuming certain conditions are met.”¹⁰⁴ A final amendment added a section to SB 1381 stating legislative intent that “the Legislature finds and declares that pupils participating in transitional kindergarten are to be included in computing the average daily attendance of a school district for purposes of calculating school district apportionments and the funding requirements of Section 8 of Article XVI of the California Constitution.”¹⁰⁵ With these changes, the Legislature adopted SB 1381.

C. Implementation of Transitional Kindergarten as an Optional Program

In 2014, the American Institutes for Research published a study on the transitional kindergarten program’s first year of implementation.¹⁰⁶ The study noted that in the first year, 89 percent of school districts that served kindergarten students offered a TK program, serving approximately 96 percent of eligible students in the state.¹⁰⁷ Seven percent of school districts reported they did not have a TK program that year because they were small districts with no eligible students.¹⁰⁸ The remaining four percent of

¹⁰² Education Code section 48000(c), as amended by Statutes 2010, chapter 705 (SB 1381), section 3.

¹⁰³ Education Code section 48000(e), as amended by Statutes 2010, chapter 705 (SB 1381), section 3.

¹⁰⁴ Exhibit X (1), Assembly Committee on Appropriations, Analysis of SB 1381, as amended August 2, 2010, page 1; Exhibit X (15), Senate Appropriations Committee, Fiscal Summary of SB 1381, as amended August 30, 2010, page 1, emphasis added.

¹⁰⁵ Statutes 2010, chapter 705, section 5.

¹⁰⁶ Exhibit X (6), American Institutes for Research, *Study of California’s Transitional Kindergarten Program, Report on the First Year of Implementation*, April 2014, <https://www.air.org/sites/default/files/2025-01/Transitional-Kindergarten-Implementation-Study-Report-April-2014.pdf> (accessed on January 21, 2025).

¹⁰⁷ Exhibit X (6), American Institutes for Research, *Study of California’s Transitional Kindergarten Program, Report on the First Year of Implementation*, April 2014, <https://www.air.org/sites/default/files/2025-01/Transitional-Kindergarten-Implementation-Study-Report-April-2014.pdf> (accessed on January 21, 2025), page 10.

¹⁰⁸ Exhibit X (6), American Institutes for Research, *Study of California’s Transitional Kindergarten Program, Report on the First Year of Implementation*, April 2014,

school districts, including at least one basic aid district, elected not to offer TK despite having eligible students due to a combination of there being too few eligible students and not enough funding or resources from the state:

The remaining 4 percent of districts cited a variety of reasons for not implementing TK in 2012-2013. Some of these respondents indicated that their district was too small or had too few (e.g., one or two) TK-eligible students to warrant establishing a TK program; eligible students were enrolled in kindergarten instead. For example, one district offered this explanation: “We only have one student who qualifies for TK, and he was determined to be fully ready for kindergarten.” Another cited the small size of the district and said, “We will enroll students in the traditional [kindergarten] classroom and provide additional service when needed.”

Other non-implementing districts cited a lack of funding or resources or the uncertainty about funding for the program. For example, when asked why the district was not providing TK, one respondent cited “funding and lack of specific and appropriate instructional materials” as the chief concerns. A basic aid district (whose base funding comes entirely from local property taxes and which does not receive per-pupil funding from the state) indicated that the district had “no space, no additional funding coming to the district” to support implementation.

Finally, a few districts also expressed some confusion about the requirements for the program. One administrator from a small district not implementing TK commented, “We only have one student that is eligible, and at the time, our understanding was that we had to provide a TK class. We have come to understand that we can enroll TK students in an existing kindergarten class, which is our intention in the 2013–14 school year.”¹⁰⁹

The decision for some school districts not to provide TK is well documented, though controversial. A 2013 article by the Almanac highlighted the disappointment of parents in several basic aid districts that chose not to provide TK.¹¹⁰ The article noted that while the California Department of Education’s (CDE) website claimed TK is a mandatory program, attorneys for the districts that did not offer TK pointed out this conflicted with

<https://www.air.org/sites/default/files/2025-01/Transitional-Kindergarten-Implementation-Study-Report-April-2014.pdf> (accessed on January 21, 2025), page 39.

¹⁰⁹ Exhibit X (6), American Institutes for Research, *Study of California’s Transitional Kindergarten Program, Report on the First Year of Implementation*, April 2014, <https://www.air.org/sites/default/files/2025-01/Transitional-Kindergarten-Implementation-Study-Report-April-2014.pdf> (accessed on January 21, 2025), page 40.

¹¹⁰ Exhibit X (7), Wood, *Transitional Kindergarten Debate, Required or Not*, The Almanac (October 20, 2013), <https://www.almanacnews.com/news/2013/10/20/transitional-kindergarten-debate-required-or-not/> (accessed on March 20, 2025).

what the law actually said.¹¹¹ When asked to comment on the discrepancy, the author of SB 1381 asserted his belief that “the clear intent and expectation is that TK (transitional kindergarten) is required in every K-12 school setting,” and remarked that the bill likely would not have passed without the TK program providing for students that were affected by the change to kindergarten eligibility.¹¹² He also admitted there were few options for recourse available to parents in districts that chose not to provide TK.¹¹³ “They can either persuade their board to provide the program that every other district in the state is providing, . . . or they can litigate, or they can ask the state Legislature to reconfirm the fact that (transitional kindergarten) is a requirement.”¹¹⁴

No such litigation or reconfirmation from the Legislature took place. The Legislature made several amendments to Education Code section 48000 in the years between the adoption of the Kindergarten Readiness Act of 2010 and the test claim statute. In 2014, the Legislature stated its intention that transitional kindergarten curriculum be aligned to the California Preschool Learning Foundations developed by the CDE, and added an additional requirement that, as a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to section 46300(g), a school district or charter school shall ensure that by August 1, 2020, TK teachers that were first assigned to a TK classroom after July 1, 2015 have either: at least 24 units in early childhood education, childhood development, or both; professional experience in a classroom setting with preschool age children comparable to 24 units of education; or a child development permit issued by the Commission on Teacher Credentialing.¹¹⁵ In 2015, the Legislature authorized school districts and charter schools to voluntarily admit into their TK programs children who will have their fifth birthday after December 2 but during that school year, provided the school district’s governing board determined it was in the best interest of the child, the parent or guardian is given information about the

¹¹¹ Exhibit X (7), Wood, *Transitional Kindergarten Debate, Required or Not*, The Almanac (October 20, 2013), <https://www.almanacnews.com/news/2013/10/20/transitional-kindergarten-debate-required-or-not/> (accessed on March 20, 2025), page 2.

¹¹² Exhibit X (7), Wood, *Transitional Kindergarten Debate, Required or Not*, The Almanac (October 20, 2013), <https://www.almanacnews.com/news/2013/10/20/transitional-kindergarten-debate-required-or-not/> (accessed on March 20, 2025), page 2.

¹¹³ Exhibit X (7), Wood, *Transitional Kindergarten Debate, Required or Not*, The Almanac (October 20, 2013), <https://www.almanacnews.com/news/2013/10/20/transitional-kindergarten-debate-required-or-not/> (accessed on March 20, 2025), page 4.

¹¹⁴ Exhibit X (7), Wood, *Transitional Kindergarten Debate, Required or Not*, The Almanac (October 20, 2013), <https://www.almanacnews.com/news/2013/10/20/transitional-kindergarten-debate-required-or-not/> (accessed on March 20, 2025), page 4.

¹¹⁵ Statutes 2014, chapter 32, section 33 (SB 858).

advantages and disadvantages and any other explanatory information about the effect of early admittance, and with the caveat that these additional pupils shall not generate ADA or be included in unduplicated pupil counts until after their fifth birthday.¹¹⁶ In 2018, the Legislature authorized school districts that administer a state preschool program to place four-year-old children who are enrolled in state preschool into transitional kindergarten instead, and allowed comingling between classes for the transitional kindergarten and state preschool programs, provided the school district is compliant with all requirements for both programs and the comingled classroom does not also include children enrolled in their second year of a TK program or children enrolled in kindergarten.¹¹⁷ Finally in 2020, the Legislature extended the deadline for compliance with the previously imposed teacher credentialing requirements to August 1, 2021.¹¹⁸ In all of these, the Legislative Counsel's Digest described the existing law by saying it "authorizes a school district or charter school to maintain a transitional kindergarten program."¹¹⁹ The only case where a bill used different phrasing to describe existing law was an amendment to the teacher credentialing requirement to rephrase one of the credentials, where the Legislative Counsel's Digest described the existing law as it "requires a school district or charter school, as a condition of receipt of apportionment for pupils in a transitional kindergarten program, to ensure that teachers who are assigned to a transitional kindergarten classroom after July 1, 2015, be credentialed, and, by August 1, 2020, have a minimum number of units in early childhood education or childhood development, comparable experience in a preschool setting, or a child development permit issued by the Commission on Teacher Credentialing."¹²⁰ At no point did the Legislature make a statement of its intention that school districts are required to offer TK programs, or refer to the requirements for TK programs as anything but a condition of receiving an apportionment for pupils in a TK program.

Although there are clearly cases of some school districts not providing TK programs, the CDE has consistently told the public that TK is a required program for all school districts. Information published on the CDE's website asserts that "Education Code section 48000(c) requires any school district operating a kindergarten to also provide a transitional kindergarten (TK) program for all 4-year-old children by 2025-26."¹²¹

¹¹⁶ Statutes 2015, chapter 13, section 28 (AB 104).

¹¹⁷ Statutes 2018, chapter 32, section 46 (AB 1808).

¹¹⁸ Statutes 2020, chapter 24, section 55 (SB 98).

¹¹⁹ Statutes 2014, chapter 32, Summary Digest, paragraph 18; Statutes 2015, chapter 13, Summary Digest, paragraph 18; Statutes 2018, chapter 32, Summary Digest, paragraph 9; Statutes 2020, chapter 24, Summary Digest, paragraph 27; Statutes 2021, chapter 44, Summary Digest, paragraph 2.

¹²⁰ Statutes 2014, chapter 687, (SB 876), Summary Digest, paragraph 5.

¹²¹ Exhibit X (3), California Department of Education, *Universal Prekindergarten FAQs*, <https://www.cde.ca.gov/ci/gs/em/kinderfaq.asp#accordionfaq> (accessed on March 20, 2025), page 31.

Because each elementary or unified school district must offer kindergarten classes for all eligible children to attend, this means that “Each elementary or unified school district must offer TK classes for all children eligible to attend.”¹²² “A school district or county office of education operating a kindergarten program must offer TK for age-eligible children to attend.”¹²³ The CDE also states that “Regardless if a district receives state revenues through the Local Control Funding Formula or is a basic aid district, if it offers kindergarten, *then the expectation* is that it also offers TK as TK is the first year of a two-year kindergarten program.”¹²⁴ Despite this position, there is no record of the CDE imposing penalties or attempting to enforce this requirement on school districts that do not provide TK programs.

As of September 2021, just a few months after the test claim statute went into effect, at least a dozen basic aid districts reportedly still did not offer TK programs.¹²⁵ A parent advocacy group reported that in the 2019-2020 school year, about 700 eligible students were unable to attend TK because their home district did not offer a TK program.¹²⁶ This includes some school districts that initially offered transitional kindergarten when the program was introduced, before later choosing to end their TK programs over funding and equity concerns.¹²⁷ At the time of drafting this Decision, at least some school districts appear to still not offer TK, whether explicitly stating they do not offer a TK program or by only providing information about enrolling in kindergarten for pupils who will turn five by September 1.¹²⁸ In one case, a school district offers TK but with

¹²² Exhibit X (16), California Department of Education, *Kindergarten in California*, <https://www.cde.ca.gov/ci/gs/em/kinderinfo.asp> (accessed on March 20, 2025), page 3.

¹²³ Exhibit X (3), California Department of Education, *Universal Prekindergarten FAQs*, <https://www.cde.ca.gov/ci/gs/em/kinderfaq.asp#accordionfaq> (accessed on March 20, 2025), page 31.

¹²⁴ Exhibit X (3), California Department of Education, *Universal Prekindergarten FAQs*, <https://www.cde.ca.gov/ci/gs/em/kinderfaq.asp#accordionfaq> (accessed on March 20, 2025), page 31 (emphasis added).

¹²⁵ Exhibit X (2), D’Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsource.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025), page 4.

¹²⁶ Exhibit X (2), D’Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsource.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025), page 4.

¹²⁷ Exhibit X (2), D’Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsource.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025), pages 4, 6.

¹²⁸ Exhibit X (8), Alexander Valley School District, Intent to Enroll Form, <https://docs.google.com/forms/d/e/1FAIpQLSe8YE-->

modified eligibility that is only available to district residents who will turn four by September 1 and are low-income eligible, homeless, or foster youth.¹²⁹

D. The Test Claim Statute

The test claim statute (Statutes 2021, chapter 44, section 60) amended Education Code section 48000 to gradually expand the range of birthdates of children who are eligible for TK over several years, until by the 2025-2026 school year, as a condition of receiving an apportionment for pupils in a TK program, schools districts shall ensure that all children who have their fourth birthday before September 1 be admitted into a TK program maintained by the school district or charter school. As amended, the statute reads:

(1) As a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300, and Chapter 3 (commencing with Section 47610) of Part 26.8, a school district or charter school shall ensure the following:

[...]

(C) From the 2014-15 school year to the 2021-22 school year, inclusive, a child who will have their fifth birthday between September 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(D) In the 2022-23 school year, a child who will have their fifth birthday between September 2 and February 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(E) In the 2023-24 school year, a child who will have their fifth birthday between September 2 and April 2 shall be admitted to a

[tzU5tnK5JQUBNHfqbo76RBLiLPoaxon9Ok_G0pdP9g/viewform](https://www.cardiffschools.com/Page/5220) (accessed on February 3, 2025), page 3; Exhibit X (9) Cardiff School District, Enrollment & Registration Information Page, <https://www.cardiffschools.com/Page/5220> (accessed on March 20, 2025), page 2; Exhibit X (10) Encinitas Union School District, New Student Registration, <https://www.eusd.net/registration/new-student-registration> (accessed on March 20, 2025), page 1; Exhibit X (11), Rancho Santa Fe School District, Enrollment Information, <https://www.rsfschool.net/parent-portal/pre-reg-registration-information> (accessed on March 20, 2025), page 1; Exhibit X (12), Ross School District, Kindergarten Registration, https://drive.google.com/file/d/1WWT6SLyolUaJSHArwy679JBle9KVec_W/view (accessed on February 3, 2025), page 1; Exhibit X (13) Solana Beach School District, Registration, <https://www.sbsd.k12.ca.us/Page/443> (accessed on March 20, 2025), page 2.

¹²⁹ Exhibit X (17), Del Mar Union School District, Transitional Kindergarten Early Intervention, <https://www.dmusd.org/Departments/Enrollment/Transitional-Kindergarten-Early-Intervention/index.html> (accessed on February 3, 2025), page 2.

transitional kindergarten program maintained by the school district or charter school.

(F) In the 2024-25 school year, a child who will have their fifth birthday between September 2 and June 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(G) In the 2025-26 school year, and in each school year thereafter, a child who will have their fourth birthday by September 1 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.¹³⁰

Additionally, the test claim statute added a limitation on average class sizes for TK classes of 24 pupils and added an average adult-to-student ratio for TK classrooms of 1:12 starting in 2022-2023. As amended, these requirements now state:

(g) As a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300, a school district or charter school shall do all of the following:

(1) Maintain an average transitional kindergarten class enrollment of not more than 24 pupils for each schoolsite.

(2) Commencing with the 2022-23 school year, maintain an average of at least one adult for every 12 pupils for transitional kindergarten classrooms.¹³¹

Besides these changes to Education Code section 48000 pled by the claimants, the test claim statute made additional changes to section 48000: decreased the adult-to-pupil ratio to 1:10 pupils, commencing with the 2023-2024 school year and contingent on an appropriation of funds for this purpose; extended the deadline for compliance with the existing teaching credentials requirement to August 1, 2023; modified the phrasing used in the section authorizing school districts to voluntarily admit pupils into the TK program to make it consistent with the new date ranges for TK eligibility; specified that eligibility for TK does not impact a family's eligibility for various other state funded preschool or childcare programs such as Head Start or Early Head Start; gave the Superintendent authority to authorize state preschool contracting agencies to offer wraparound childcare services for eligible children in an education program serving transitional kindergarten, kindergarten, or grades one to 12; and made small grammatical and

¹³⁰ Education Code section 48000(c), as amended by Statutes 2021, chapter 44 (AB 130), section 60.

¹³¹ Education Code section 48000(g), as amended by Statutes 2021, chapter 44 (AB 130), section 60.

phrasing changes to existing language in section 48000 to keep those paragraphs consistent with the substantive changes to the section.¹³²

The test claim statute comes from an education trailer bill that amended dozens of code sections besides Education Code section 48000. The Legislative Counsel's Digest described the existing law regarding TK by saying it "authorizes school districts to maintain a transitional kindergarten program," and "requires, in the 2014-15 school year and each school year thereafter, and as a condition of receipt of apportionments for pupils in a transitional kindergarten program, a child who will have their 5th birthday between September 2 and December 2, to be admitted to a transitional kindergarten program maintained by a school district or charter school."¹³³ It further described the changes in law made by the test claim statute by saying it would "revise the timespans for those mandatory and optional admittance requirements to be phased in from the 2022-2023 school year to the 2025-2026 school year, at which time a school district or charter school, as a condition of receipt of apportionments for pupils in a transitional kindergarten program, would be required to admit to a transitional kindergarten program maintained by the school district or charter school a child who will have their 4th birthday by September 1."¹³⁴ Additionally, the test claim statute added or amended several other code sections not pled by the claimants that are worth noting because the changes are related to TK programs. The test claim statute:

- 1) Created the California Prekindergarten Planning and Implementation Grant Program, which offered \$300,000,000 to local education agencies for the costs associated with creating or expanding state preschool or TK programs, a condition of which is that the local education agencies shall develop a plan for how all children in the local education agency's attendance area will have access to full-day learning programs the year before kindergarten.¹³⁵
- 2) Allocated \$490,000,000 for the California Preschool, Transitional Kindergarten, and Full-Day Kindergarten Facilities Grant Program (formerly the Full-Day Kindergarten Facilities Grant Program) for the purpose of constructing new school facilities or retrofitting existing facilities to provide transitional kindergarten and full-day kindergarten classrooms, for which it specifies that as a condition for school districts seeking funds for a transitional kindergarten facilities project, the school district's governing body shall pass a resolution at a public meeting stating

¹³² Education Code section 48000(g), (k), (l), as amended by Statutes 2021, chapter 44 (AB 130), section 60.

¹³³ Statutes 2021, chapter 44 (AB 130), Summary Digest, paragraph 2.

¹³⁴ Statutes 2021, chapter 44 (AB 130), Summary Digest, paragraph 2.

¹³⁵ Education Code section 8281.5, as added by Statutes 2021, Chapter 44 (AB 130), section 4.

the district's intent to offer or expand enrollment in a transitional kindergarten program.¹³⁶

- 3) Allocated \$350,000,000 for a Teacher Residency Grant Program for applicants to establish or expand, strengthen or improve access to a teacher residency program that supports either designated shortage fields, including transitional kindergarten, or support a diverse teacher workforce that reflects the local education agency community's diversity.¹³⁷

E. Average Daily Attendance

Education Code section 48000 provides that the requirements for the TK program are "a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300, and Chapter 3 (commencing with Section 47610) of Part 26.8, as applicable." Chapter 3 of Part 26.8 specifies rules for determining average daily attendance for charter schools, while Section 46300(g) provides:

(1) In computing the average daily attendance of a school district or charter school, there shall be included the attendance of pupils in kindergarten after they have completed one school year in kindergarten or pupils in a transitional kindergarten program after they have completed one year in that program if one of the following conditions is met:

(A) The school district or charter school has on file for each of those pupils an agreement made pursuant to Section 48011, approved in form and content by the department and signed by the pupil's parent or guardian, that the pupil may continue in kindergarten for not more than one additional school year.

(B) The pupils participated in a transitional kindergarten program pursuant to subdivision (c) of Section 48000.

(2) A school district or charter school may not include for apportionment purposes the attendance of any pupil for more than two years in kindergarten or for more than two years in a combination of transitional kindergarten and kindergarten.¹³⁸

Thus, the apportionment promised in Section 48000 comes from the increase in a school district or charter school's ADA from being able to include two years of kindergarten for TK students in its attendance count. ADA is the total number of days of pupil attendance divided by the total number of days in the regular school year.¹³⁹ A single student with perfect attendance for one year would generate one unit of ADA for

¹³⁶ Education Code section 17375, as amended by Statutes 2021, chapter 44 (AB 130), section 15.

¹³⁷ Education Code section 44415.5, as amended by Statutes 2021, chapter 44 (AB 130), section 45.

¹³⁸ Education Code section 46300(g).

¹³⁹ Education Code section 46301.

the school district. Article XVI, section 8 of the California Constitution specifies that “changes in enrollment” are measured based on percentage change in ADA, and Education Code section 14022 specifies that for the purposes of section 8 and 8.5 of article XVI in the California Constitution, “enrollment” for school districts means ADA when students are counted as ADA, and as ADA equivalents for services not counted in ADA.¹⁴⁰ School districts can determine their ADA based on the current fiscal year, the previous fiscal year, or the average of the three most recent prior fiscal years, whichever is greatest.¹⁴¹

The state uses ADA when determining how much funding to provide for school districts: both the overall funding set aside for all school districts through Proposition 98 and when determining how much to provide each school district under the Local Control Funding Formula (LCFF).

F. Proposition 98

Proposition 98 amended article XVI, sections 8 and 8.5 of the California Constitution to require the state to set aside a minimum amount of General Fund and local property tax revenue each year to be used for funding public schools and community colleges.¹⁴² This amount is determined using one of three formulae, depending on the strength of the economy. In normal or strong economic years, the formula used is the larger of either:

- 1) the same percentage share of the General Fund that was provided to K-14 schools in the 1986-1987 fiscal year; or
- 2) the prior year’s funding adjusted for changes in ADA and growth in per capita personal income.

In years of weak economic growth, the formula used instead is:

- 3) the prior year’s funding adjusted for changes in ADA and the growth in per capita General Fund revenues plus one-half percent.¹⁴³

The Legislature may provide more funding than required, but this is uncommon, as it commits to a higher required minimum funding amount for subsequent years. The Legislature is also allowed to suspend Proposition 98 funding for a single year if voted for by a two-thirds majority of each house. However, if the Legislature suspends Proposition 98 for a year or uses the third formula when determining funding, the state is obligated to keep track of the difference between what would have been provided under the second formula and what was actually provided, and make up the difference later.¹⁴⁴ Proposition 98 does not determine how much funding the state provides to

¹⁴⁰ California Constitution, article XVI, section 8(f); Education Code section 14022(a)(2).

¹⁴¹ Education Code section 42238.05(a)(1).

¹⁴² California Constitution, article XVI, section 8; section 8.5.

¹⁴³ California Constitution, article XVI, section 8(b).

¹⁴⁴ California Constitution, article XVI, section 8(d), (e), (h).

each school district, it only determines how much of the state's budget each year goes towards funding schools. Outside of providing constitutionally guaranteed minimums to school districts, the Legislature has flexibility to determine how this funding is allocated, including designating portions of it to satisfy reimbursement obligations under article XIII B, section 6 for state mandated programs.¹⁴⁵

G. The Local Control Funding Formula (LCFF) and Basic Aid Districts

The Local Control Funding Formula (LCFF) determines how much funding each school district needs and how Proposition 98 funds should be apportioned to each school district to meet those needs.¹⁴⁶ Prior to 2013, each school district's apportionment was calculated individually using a revenue limits system based on historic spending levels.¹⁴⁷ This system was overly complex, antiquated, inequitable, inefficient, and highly centralized, prompting the Legislature to create a simpler system that considered the same factors more uniformly and allowed school districts to design programs based on local needs and priorities.¹⁴⁸

The way the LCFF works is the state sorts a school district's ADA into four grade spans: kindergarten through grade three; grades four through six; grades seven and eight; and grades nine through 12.¹⁴⁹ Students in a TK program are counted as kindergarten students for the purpose of this calculation.¹⁵⁰ Each grade span's ADA is multiplied by a specific base rate; for example in the 2022-2023 fiscal year this was \$10,119 for kindergarten through grade three; \$9,304 for grades four through six; \$9,580 for grades seven and eight; and \$11,391 for grades nine through 12.¹⁵¹ The base rates are adjusted annually to account for cost-of-living increases.¹⁵² These adjustments also include a 2.6 percent adjustment to the base rate for grades nine through 12 to account for providing career technical education and a 10.4 percent adjustment to the

¹⁴⁵ *California School Boards Association v. State of California* (2019) 8 Cal.5th 713, 726.

¹⁴⁶ Education Code sections 42238.02, 42238.03.

¹⁴⁷ Exhibit X (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, <https://lao.ca.gov/Publications/Report/4661> (accessed on January 24, 2025), page 1.

¹⁴⁸ Exhibit X (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, <https://lao.ca.gov/Publications/Report/4661> (accessed on January 24, 2025), pages 1-2.

¹⁴⁹ Education Code section 42238.02(d)(1).

¹⁵⁰ Exhibit X (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, <https://lao.ca.gov/Publications/Report/4661> (accessed on January 24, 2025), page 3.

¹⁵¹ Exhibit X (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, <https://lao.ca.gov/Publications/Report/4661> (accessed on January 24, 2025), page 3.

¹⁵² Education Code section 42238.01(d)(2).

kindergarten through grade three base rate that is conditional on the school district maintaining an average class size for kindergarten through grade three students of 24 pupils.¹⁵³ The total of the four grade spans is the school district's base grant.¹⁵⁴

The state also provides a supplemental grant based on the proportion of English learners, low-income students, and foster youth, commonly referred to as unduplicated students because students who qualify for more than one category are still only counted once. For each unduplicated student, school districts receive a supplemental grant equal to 20 percent of the base grant rate, including grade span adjustments.¹⁵⁵ Additionally, districts serving a student population with more than 55 percent unduplicated students receive an additional concentration grant equal to 65 percent of the adjusted base grant rate for each additional unduplicated pupil above the 55 percent threshold.¹⁵⁶

The state also provides additional add-ons for a school district's participation in specific programs, such as the Targeted Instructional Improvement Block Grant and the Home-to-School Transportation program.¹⁵⁷

In 2022, after the test claim statute went into effect but before this test claim was filed, the Legislature amended Education Code section 42238.02 so that commencing with the 2022-2023 fiscal year, the Superintendent calculates an add-on equal to \$2,813 multiplied by the ADA specifically generated from transitional kindergarten pupils. This add-on was adjusted for annual cost-of-living increases starting in fiscal year 2023-2024.¹⁵⁸ The Legislature specified: "It is the intent of the Legislature that the costs to meet the requirements of paragraph (2) of subdivision (g) of Section 48000, [the requirement to maintain an average of at least one adult per every twelve pupils in a transitional kindergarten classroom beginning in the 2022-2023 school year] be supported by the add-on computed pursuant to this paragraph."¹⁵⁹

¹⁵³ Education Code section 42238.02(d)(3), (4).

¹⁵⁴ Necessary small schools, which are districts with total ADA 2,500 or less that operate schools with less than 96 ADA for elementary schools and less than 286 ADA for high schools and cover either a large area with a small student population or deal with unique conditions that make busing students difficult, determine their base grant through a different method, with each school in the district receiving a grant based on its ADA or staffing level, whichever is lower. See Education Code section 42238.03(a)(1)(D).

¹⁵⁵ Education Code section 42238.02(e).

¹⁵⁶ Education Code section 42238.02(f).

¹⁵⁷ Education Code section 42238.02(g)(1), (h).

¹⁵⁸ Education Code section 42238.02(g)(2), as amended by Statutes 2022, chapter 52, (AB 181) section 38.

¹⁵⁹ Education Code section 42238.02(g)(2), as amended by Statutes 2022, chapter 52, (AB 181) section 38.

The total of a school district's base, supplemental, and concentration grants, and any add-ons, is the school district's LCFF entitlement.¹⁶⁰ And as stated above, the LCFF entitlement includes the ADA for TK pupils for those schools that provide a TK program, along with a 10.4 percent adjustment to the kindergarten through grade three base rate that is conditional on the school district maintaining an average class size for kindergarten through grade three students of 24 pupils, plus an add-on equal to \$2,813 per ADA generated from TK pupils intended to support the costs to maintain an average of at least one adult for every twelve pupils in a TK classroom.

Education Code section 41370 requires that "the governing board of a school district, the governing body of a charter school, and a county board of education shall, except as may otherwise be specifically provided by law, use all money apportioned to the school district, charter school, or county office of education from the State School Fund during any fiscal year exclusively for the support of the school or schools of the school district, charter school, or county office of education for that year."¹⁶¹ Education Code section 41372 further provides that elementary school districts spend 60 percent of this on the salaries for classroom teachers.¹⁶² Thus, school districts are required to spend the apportionment they receive from their LCFF entitlement on support of their schools, with 60 percent of that going towards teacher salaries.

The state meets each school district's LCFF entitlement by first crediting each school district with its share of local property tax revenue.¹⁶³ For the majority of school districts, local property tax revenue is not enough to meet its LCFF entitlement, and the state covers the difference using its remaining Proposition 98 funding. For a small number of school districts, however, their local property tax revenue meets or exceeds their LCFF entitlement. These districts are referred to as basic aid districts, because they do not receive additional state aid to meet the entitlement, but the state still provides them with the following minimum amount of additional state funding guaranteed by the state Constitution:¹⁶⁴

- Each fiscal year, school districts are apportioned not less than \$120 per pupil ADA and not less than \$2,400 total.¹⁶⁵

¹⁶⁰ Exhibit X (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, <https://lao.ca.gov/Publications/Report/4661> (accessed on January 24, 2025), page 7.

¹⁶¹ Education Code section 41370(a).

¹⁶² Education Code section 41372

¹⁶³ Education Code section 42238.03(c)(1)(A).

¹⁶⁴ Exhibit X (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, <https://lao.ca.gov/Publications/Report/4661> (accessed on January 24, 2025), page 7.

¹⁶⁵ California Constitution, article IX, section 6.

- The Education Protection Account provides additional funding at minimum \$200 per unit of ADA.¹⁶⁶

Additionally, when creating the LCFF, the Legislature included a provision that no district would receive less state aid than it received in fiscal year 2012-2013 for pre-existing programs that were replaced by the LCFF. For most districts these obligations are covered by the funding they receive through the LCFF to meet their entitlement, but since basic aid districts don't receive any state funding based on their LCFF entitlement, the state must provide basic aid districts with the additional funding cited in this paragraph that covers these pre-existing obligations, referred to as Minimum State Aid.¹⁶⁷

Basic aid districts are free to use whatever property tax revenue they have in excess of their LCFF entitlement on their local educational priorities.¹⁶⁸ For basic aid districts, changes in ADA or its LCFF entitlement typically have little effect on overall funding. Changes to a basic aid district's funding are more commonly driven by changes to its local property tax revenue.¹⁶⁹

III. Positions of the Parties, Interested Parties, and Interested Persons

A. Hope Elementary School District and Sunnyvale School District

The claimants, Hope Elementary School District and Sunnyvale School District, filed a joint test claim alleging that the test claim statute mandates a new program or higher level of service by requiring school districts to comply with Education Code section 48000(c) and (g) by maintaining a transitional kindergarten program that guarantees the following, as quoted from the Test Claim narrative:

(E) In the 2023–24 school year, a child who will have their fifth birthday between September 2 and April 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school. (A.B. No. 130, Statutes 2021, Chapter 44, Sec. 60, Education Code § 48000 (E), Effective Date: July 9, 2021.)

(F) In the 2024–25 school year, a child who will have their fifth birthday between September 2 and June 2 shall be admitted to a transitional

¹⁶⁶ California Constitution, article XIII, section 36(e)(3)(B). This funding is separate and in addition to the funding requirement in article IX, section 6.

¹⁶⁷ Exhibit X (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, <https://lao.ca.gov/Publications/Report/4661> (accessed on January 24, 2025), page 7.

¹⁶⁸ Exhibit X (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, <https://lao.ca.gov/Publications/Report/4661> (accessed on January 24, 2025), page 7.

¹⁶⁹ Exhibit X (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, <https://lao.ca.gov/Publications/Report/4661> (accessed on January 24, 2025), page 7.

kindergarten program maintained by the school district or charter school. (A.B. No. 130, Statutes 2021, Chapter 44, Sec. 60, Education Code § 48000 (F), Effective Date: July 9, 2021.)

(G) In the 2025–26 school year, and in each school year thereafter, a child who will have their fourth birthday by September 1 shall be admitted to a transitional kindergarten program maintained by the school district or charter school. (A.B. No. 130, Statutes 2021, Chapter 44, Sec. 60, Education Code § 48000 (G), Effective Date: July 9, 2021.)

g) As a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300, a school district or charter school shall ensure that credentialed teachers who are first assigned to a transitional kindergarten classroom after July 1, 2015, have, by August 1, 2021, one do all of the following:

(1) Maintain an average transitional kindergarten class enrollment of not more than 24 pupils for each schoolsite.

(2) Commencing with the 2022–23 school year, maintain an average of at least one adult for every 12 pupils for transitional kindergarten classrooms.¹⁷⁰

The claimants allege that the requirements to provide a TK program and maintain an average TK class enrollment of not more than 24 pupils for each schoolsite and an average of at least one adult for every twelve pupils for TK classrooms at each schoolsite are state mandates, “based on the statute using mandatory language ‘shall’ and that school districts require receipt of apportionment for pupil funding.”¹⁷¹ The claimants also point to statements from the CDE that school districts “operating a kindergarten program must offer TK for age-eligible children to attend” as evidence they are required to offer TK programs, and further statements regarding basic aid districts that claim:

Regardless if a district receives state revenues through the Local Control Funding Formula or is a basic aid district, if it offers kindergarten, then the expectation is that it also offers TK as TK is the first year of a two-year kindergarten program. Most districts are embracing TK because early learning is the most effective strategy to close the socioeconomic academic achievement gap and helps build a strong school community by connecting families to their local schools starting with 4-year-olds.¹⁷²

The claimants are both basic aid districts. They explain their issue with how the state provides funding for the TK program as:

¹⁷⁰ Exhibit A, Test Claim, page 12.

¹⁷¹ Exhibit A, Test Claim, pages 12-13.

¹⁷² Exhibit A, Test Claim, page 21.

Basic aid districts receive property tax revenue instead of funding under the LCFF formula. Basic aid districts did not receive funding from the state for pupils admitted to the Transitional Kindergarten program in fiscal year 2023-2024.

Transitional Kindergarten program is funded for school districts, excluding basic aid school districts, based on the same average daily attendance (ADA) calculation as all other students. If a school offers transitional kindergarten, it receives the same amount of funding from the State for each of those students as it does for its traditional kindergarteners.¹⁷³

The claimants argue the test claim statute imposes costs mandated by the state and the exception in Government Code section 17556(e) does not apply because “there is no evidence that additional on-going revenue has been appropriated, specifically to fund the costs of the mandated activities in the test claim.”¹⁷⁴

Regarding the timeliness of the claimants’ filing, the claimants allege they first incurred increased costs for the test claim statute’s requirement on July 1, 2023.¹⁷⁵ The claimants included allegations of actual and estimated mandated costs in the Test Claim, but updated these amounts in their rebuttal comments with supplemental declarations.¹⁷⁶ According to the updated declarations, the increased costs for Sunnyvale School District are:

- \$824,582 for salaries and benefits for five additional teachers hired in fiscal year 2023-24, to address the requirements to admit children who will have their fifth birthday between September 2 and April 2 and to limit TK class sizes to 24 pupils at each schoolsite.¹⁷⁷

¹⁷³ Exhibit A, Test Claim, page 13.

¹⁷⁴ Exhibit A, Test Claim, page 16.

¹⁷⁵ Exhibit A, Test Claim, page 25 (Declaration of Lori van Gogh, Chief Business Officer, Sunnyvale School District); 30 (Declaration of Mike Thomson, Chief Business Official, Business Office, Hope Elementary School District).

¹⁷⁶ Exhibit A, Test Claim, pages 24-26 (Declaration of Lori van Gogh, Chief Business Officer, Sunnyvale School District), 30-32 (Declaration of Mike Thomson, Chief Business Official, Business Office, Hope Elementary School District); Exhibit C, Claimants’ Rebuttal Comments, pages 6-8 (Declaration of Arthur Cuffy, Chief Business Officer, Sunnyvale School District), 9-12 (Declaration of Mike Thomson Chief Business Official, Hope Elementary School District).

¹⁷⁷ Exhibit C, Claimants’ Rebuttal Comments, pages 6-7 (Declaration of Arthur Cuffy, Chief Business Officer, Sunnyvale School District).

- \$410,479 for salaries and benefits for seven additional classified employees (paraeducators) hired in fiscal year 2023-24, to address the requirement to maintain an average of at least one adult for every 12 pupils in a TK class.¹⁷⁸
- Anticipated increased costs in fiscal year 2024-25 of \$849,320 for an additional five teachers and \$362,395 for six additional paraeducators.¹⁷⁹

Alleged increased costs for Hope Elementary School District are:

- \$433,671.46 for 2.5 (FTE) additional teachers in fiscal year 2023-24.¹⁸⁰
- \$83,963.03 for 1.65 (FTE) additional classified employees in fiscal year 2023-24.¹⁸¹
- Anticipated costs in fiscal year 2024-25 of \$352,970 for two (FTE) additional teachers, and \$64,990 for 1.25 (FTE) additional classified employees.¹⁸²

The claimants allege that Finance’s comment that it is not aware of any law or restriction that would preclude the use of LCFF funds for TK costs are in direct contradiction with mandates law, though they did not elaborate on this position.¹⁸³

The claimants also assert that Finance’s comments did not acknowledge that other school districts receive funding specifically for their TK programs in addition to their LCFF funding and fail to explain why basic aid districts were excluded.¹⁸⁴

In response to Finance’s speculation that the Test Claim may not be timely filed, the claimants reassert they first incurred increased costs on July 1, 2023, and that Finance has no legal support for its request to further examine the claimants’ estimated costs, as the State Controller will be authorized to review costs incurred when filing a claim for reimbursement after the Test Claim is approved.¹⁸⁵ Lastly, the claimants assert that Finance’s comments cannot be relied on because they are noncompliant with the Commission’s regulations, which require oaths or statements of fact be signed by a person authorized to do so and must be based on knowledge or personal belief, and

¹⁷⁸ Exhibit C, Claimants’ Rebuttal Comments, page 7 (Declaration of Arthur Cuffy, Chief Business Officer, Sunnyvale School District).

¹⁷⁹ Exhibit C, Claimants’ Rebuttal Comments, page 7 (Declaration of Arthur Cuffy, Chief Business Officer, Sunnyvale School District).

¹⁸⁰ Exhibit C, Claimants’ Rebuttal Comments, page 10 (Declaration of Mike Thomson, Chief Business Official, Hope Elementary School District).

¹⁸¹ Exhibit C, Claimants’ Rebuttal Comments, page 10 (Declaration of Mike Thomson, Chief Business Official, Hope Elementary School District).

¹⁸² Exhibit C, Claimants’ Rebuttal Comments, pages 10-11 (Declaration of Mike Thomson, Chief Business Official, Hope Elementary School District).

¹⁸³ Exhibit C, Claimants’ Rebuttal Comments, page 3.

¹⁸⁴ Exhibit C, Claimants’ Rebuttal Comments, page 3.

¹⁸⁵ Exhibit C, Claimants’ Rebuttal Comments, page 4.

statements of fact shall be supported with documentary evidence filed with the comments on the test claim, neither of which Finance provided.¹⁸⁶

B. Department of Finance

Finance opposes the Test Claim on three grounds: 1) the TK expansion does not constitute a new program or higher level of service; 2) the associated costs are fully funded through a combination of state funding and local property tax revenues, per school finance statutes; and 3) it is uncertain if the Test Claim was filed in a timely manner.¹⁸⁷

Finance asserts that basic aid districts do receive funding through the LCFF, as outlined in Education Code section 42238.02 for the activities required by the test claim statute. While the state calculates LCFF entitlements for each school district using this formula, including basic aid districts, “how the entitlement is funded varies between districts.”¹⁸⁸ A school district’s LCFF entitlement is funded through a variety of sources: local property tax revenue; the Education Protection Account; and state aid. For a basic aid district, its local property tax revenue exceeds its respective LCFF entitlement target, so the school district does not receive additional state aid to meet the entitlement and is able to keep any excess property tax collected for local education priorities. “This does not mean that basic aid districts do not receive any state aid,” as they still receive funding through the LCFF for Minimum State Aid pursuant to Education Code section 42238.03, from the guaranteed \$120 per student in Article IX section 6 of the California Constitution, and from the Education Protection Account pursuant to Article XIII section 36 of the California Constitution, and often receive additional miscellaneous funding through sources such as the Expanded Learning Opportunities Program, Proposition 28 funding for Arts and Music programs, and other programs enacted by the Legislature.¹⁸⁹ Finance asserts that this funding can be applied to costs relating to TK pupil instruction, among other allowable services.¹⁹⁰ Finance also explains that TK attendance costs are included in the apportionment calculations for all school districts, including basic aid districts as follows:

TK attendance costs are included in the 2022-23 and 2023-24 principal apportionment calculations, which means all apportionment-generating local education agencies, which includes basic aid districts, will receive

¹⁸⁶ Exhibit C, Claimants’ Rebuttal Comments, pages 4-5. 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.

¹⁸⁷ Exhibit B, Finance’s Comments on the Test Claim, page 1.

¹⁸⁸ Exhibit B, Finance’s Comments on the Test Claim, page 1.

¹⁸⁹ Exhibit B, Finance’s Comments on the Test Claim, page 2.

¹⁹⁰ Exhibit B, Finance’s Comments on the Test Claim, page 2.

ongoing LCFF funding for TK pupils. Nothing precludes these funds — whether generated through property taxes or through Proposition 98 General Fund as calculated through the LCFF to meet the target LCFF entitlement — from being used for TK costs. Finance is not aware of any law or restriction that would preclude the use of these funds for TK costs. Finance is also not aware of any law or restriction that entitles a basic aid district to a specific amount of excess property taxes. Rather, for purposes of computing the Proposition 98 minimum guarantee, implementing statute, Section 41202 (g), defines the term “Allocated local proceeds of taxes” to include local revenues used to offset LCFF state aid (references to Section 42238 have been defined to mean 42238.02 as implemented pursuant to Section 42238.03 pursuant to Section 42238.06). Additionally, per AB 130, the specified activities are required as a receipt of apportionment.¹⁹¹

For the 2023-2024 second principal apportionment, Sunnyvale School District had an entitlement of \$65.4 million with estimated local property tax revenue of \$105.6 million, while Hope Elementary School District’s entitlement was \$9.5 million with local property tax revenue estimated at \$12.5 million.¹⁹² Finance contends the claimants have not clearly demonstrated how these funds fall short of meeting their statutory obligations, and further contends that the claimants have sufficient funding to cover costs through their computed LCFF entitlement. If a basic aid district’s property tax revenue were to become insufficient to pay for the district’s LCFF apportionment, moving it out of basic aid status, the state would be required to provide additional funding to meet its obligations, which has not happened for the claimants, indicating their entitlement for meeting statutory obligations is fully funded by offsetting property tax revenues. Alternatively, if the Commission does not deny this test claim, Finance asserts that these funding sources should be considered offsetting revenue during the Statewide Costs Estimate process and when developing the reimbursement methodology.¹⁹³

Regarding the timeliness of the claimants’ filing, Finance points out that besides expanding enrollment eligibility in the 2023-2024 school year to pupils who will have their fifth birthday between September 2 and April 2, the test claim statute also limited class sizes to 24 pupils beginning in the 2021-2022 school year, and required school districts maintain an adult-to-pupil ratio of 1:12 and expanded enrollment eligibility to pupils who have their fifth birthday between September 2 and February 2 in the 2022-2023 school year, and, thus, these costs are not new “to the extent increased costs were incurred prior to July 1, 2023.”¹⁹⁴ Additionally, Finance asserts that the transitional kindergarten program has existed since the 2012-2013 school year, Finance is not aware of any previous mandate claims for the program, and “to the extent that

¹⁹¹ Exhibit B, Finance’s Comments on the Test Claim, page 2-3.

¹⁹² Exhibit B, Finance’s Comments on the Test Claim, page 2.

¹⁹³ Exhibit B, Finance’s Comments on the Test Claim, page 3.

¹⁹⁴ Exhibit B, Finance’s Comments on the Test Claim, page 3.

administration of the existing program was altered and resulted in increased costs at the discretion of the Claimants, these costs are not reimbursable.”¹⁹⁵ Examples of potential discretionary decisions include enrolling TK students earlier than the timeframe specified by the test claim statute or establishing classes at a lower enrollment level than required or at a location that necessitated more teachers or classified employees.¹⁹⁶

Finance also questions the details of the claimants’ evidence of increased costs, alleging that they may include costs outside of the scope of the alleged mandate, or may demonstrate increased costs incurred prior to July 1, 2023. Finance points out that Sunnyvale School District’s declared increased costs for additional teachers between July and December 2023, and between January and June 2024 respectively at approximately \$339,000 and \$430,000 per teacher inclusive of salary and benefits, but the estimated costs for three additional teachers in 2024-2025 only came to \$171,000 per teacher. Similarly, Sunnyvale alleged its costs for additional classified employees (paraeducators) were roughly \$129,000 per paraeducator between July and December 2023, and \$192,000 per paraeducator between January and December 2024, but the estimated increased costs for three additional paraeducators in 2024-2025 only came to \$54,000 per paraeducator. According to Finance, it is unclear why Sunnyvale’s increased costs in 2023-2024 were so much higher than the estimated costs for 2024-2025, and theorized the 2023-2024 costs actually included additional costs outside the scope of the alleged mandate.¹⁹⁷

In Hope Elementary School District’s case, the declaration alleged the district hired two additional teachers in 2023-2024, but the report submitted as documentation identifies three teachers, which may be evidence of increased costs prior to July 1, 2023. Finance also points out that Hope Elementary hired two additional teachers and two classified staff in fiscal year 2023-2024, but TK student enrollment based on reported ADA only increased over the previous year from 30 students to 43, and it is unclear why the school district needed that many additional teachers and staff for an additional 13 students. Assuming the increase in ADA/enrollment in 2024-2025 will be similar to 2023-2024, it was also unclear why Hope Elementary estimated it would need an additional three and a half teachers and three and a half additional certified staff for 2024-2025.¹⁹⁸

Finance also notes that both claimants allege increased costs in 2024-2025 for enrolling TK students who will have their fifth birthday between September 2 and April 2, which is the same requirement for 2023-2024 so there should be no additional costs incurred.¹⁹⁹

¹⁹⁵ Exhibit B, Finance’s Comments on the Test Claim, page 3.

¹⁹⁶ Exhibit B, Finance’s Comments on the Test Claim, page 3.

¹⁹⁷ Exhibit B, Finance’s Comments on the Test Claim, page 4.

¹⁹⁸ Exhibit B, Finance’s Comments on the Test Claim, page 4.

¹⁹⁹ Exhibit B, Finance’s Comments on the Test Claim, page 5. This discrepancy is most easily explained as an error on the claimants’ part, as the test claim statute actually

Finance asserts that if the Test Claim is not denied, these discrepancies warrant a closer examination of both claimants' estimated costs, which the Commission should pursue.²⁰⁰

C. Interested Parties and Interested Persons

This test claim attracted almost 200 comments during the comment period from other basic aid districts (interested parties) and members of the public (interested persons) expressing their support.²⁰¹ Most of these comments are identical, with only a few providing additional information on the financial impacts the test claim statute has on that school district specifically. These identical letters state as follows:

California is currently in the second year of phasing in universal transitional kindergarten (UTK). By 2025-26, the state expects all local educational agencies (LEAs) to make transitional kindergarten (TK) available to all children who will have their fourth birthday by September 1 of the school year. To assist with the implementation of UTK, the state funds TK average daily attendance by annually rebenching Proposition 98 with General Fund dollars to account for the newly eligible TK students. Over the past two fiscal years, the state has provided nearly \$1 billion in ongoing funding for the implementation of UTK. That annual cost is expected to grow to approximately \$2.7 billion when UTK is fully implemented in 2025-26.

While the state has highlighted its commitment to fund UTK, the funding distribution methodology that is being utilized leaves out community-funded school districts, which means that our districts do not receive funding for implementing TK. Although interpretations of current law vary, the state has clearly expressed that TK should be offered by all districts, making it an unfunded mandate for community-funded districts not receiving dollars to implement this new, full grade level.

The requirement for community-funded districts to implement UTK clearly meets the determination requirement of the state imposing a new program or higher level of service on LEAs. The state continues to maintain that implementation of UTK is an expectation of all school districts; however, the state is only providing funding for UTK to state-funded districts. The refusal of the state to provide funding for community-funded districts for

expands enrollment eligibility in 2024-2025 to children with fifth birthdays between September 2 and June 2.

²⁰⁰ Exhibit B, Finance's Comments on the Test Claim, page 5.

²⁰¹ Due to the high number of comments that are duplicative, most interested party and interested person comments have been excluded from the exhibits, save for a few representative examples. However, all comments are available on the Commission's website on the matter page for this test claim: <https://csm.ca.gov/matters/23-TC-02.shtml> and all commenters are identified in this Decision.

UTK implementation, while at the same time maintaining that it is still an obligation to implement, constitutes an unfunded mandate by the state.

For these reasons, we strongly support the test claim filed by the Hope Elementary School District and the Sunnyvale School District. Without support from the Commission on this test claim, community-funded districts will be forced to take funding from other programs that currently serve students in order to implement this new grade.

We implore that the Commission staff recommends the test claim to be approved and that Commission members approve the claim when it is heard this fall. Thank you.²⁰²

²⁰² Exhibit D, Anthony Ranii, President, Schools for Sound Finance, Comments on the Test Claim, page 1-2. The following people filed identical comments. From Alexander Valley Union School District, Yvonne Kreck, Board President. From Association of California School Administrators, Edgar Zazueta, Ed.D., Executive Director. From Bonny Doon Elementary School District, Mike Heffner, Superintendent/Principal. From Brisbane School District, Ronan Collver, Superintendent. From Campbell Union High School District: Meredyth Hudson, Assistant Superintendent of Business; and Robert Bravo, Superintendent. From Cardiff School District, Jill Vinson, Superintendent. From Carmel Unified School District, Sharon Ofek, Superintendent. From CFT- A Union of Educators and Classified Professionals, AFT, AFL-CIO, Tristan Brown, Legislative Director. From College Elementary School District, Maurene Donner, Superintendent. From Cucamonga School District, Michael Chaix, Ed.D., Superintendent. From Desert Center Unified School District, Dr. Gregory T. Sackos, Superintendent. From Encinitas Union School District, Andrée Grey, Ed.D., Superintendent. From Forestville Union School District, Matt Dunkle, Superintendent. From Fort Ross Elementary School District: Michael Smallen and Richard Gross, Trustees; and Jennifer Dudley, Superintendent/Principal. From Fremont Union High School District: Christine Mallery, CBO/Associate Superintendent; and Graham Clark, Superintendent. From Goleta Union School District, Dr. Diana Galindo-Roybal, superintendent. From Harmony Union School District, Matthew Morgan, Principal/Superintendent. From Healdsburg Unified School District, Chris Vanden Heuvel, Superintendent. From Hillsborough City School District: An Huang Chen, Don Geddis, Gilbert Wai, Gregory Dannis, and Kim Olif, Board Members; and Louann Carlomagno, Superintendent. From Hope School District: Claire Krock, Assistant Principal; Daniel Cunnison, Board Member; Kelly Keogh, Board of Directors; Kristin Lindquist, Director of Special Education; Yirong Lu, ESN Upper (Grade 4-6); Christy L. Kelso, former Board Member; Jon Magnani, IT Director; Allison Heiduk, Literacy TOSA; Anna Scharfeld and Jestin St. Peter, Principals; Katie O'Toole, Reading Intervention Teacher; Patrice Mueller, STEAM Specialist; Anne Hubbard, Ed.D., Superintendent; Tim Barker, teacher; Beth Scott, Gabrielle C. Herbst, Julie Walsmith, Kim Aragon, Laura Godinez, Theana Earls, and 12 anonymous employees, unspecified employees; Araceli Nahas, Autumn Rose McFarland, Barbara Nguyen-Willeford, Ben Faulman, Brandi Bryant, Dahianna Stengel, Dmitri Jarocki, Irina Ludkovski, James Willeford Jr., Julian Becher, Meaghan Faulman, Chris Hodges, Corey Josenhans, Jamie and Jason Poe, Larissa Graham, Lilly

Josenhans, Tim Reinauer, and two anonymous parents, parents; Katie Moses, Claudia Scott, Brian Hiefield, and two anonymous community members, citizens; and Adrian Talley, Amy Steets, Becca McNees, Christine Rissmeyer, Cindy Everman, Diane Satterthwaite, Holly Zepke-Price, Kelly Counsineau, Kim Marme, Natalie Wilkes, Noah Stites-Hallett, Ryan Blasena, Sarah Kemp-Mehl, Thomas Skaff, Tristin Tracy, Wyatt Talley, Luis Mori-Quiroz, Mercy Anyika, and four anonymous commentors, unspecified relationship. From Howell Mountain Elementary School District, Dr. Janet Tufts, Superintendent. From Huntington Beach City School District, Leisa Winston, Ed.D., Superintendent. From Laguna Beach Unified School District: Jason Vloria, Ed.D., Superintendent; Jan Vickers, Board President; and Kelly Osborne, Board Clerk. From Larkspur-Corte Madera School District, Brett Geithman, Ed.D., Superintendent. From Loma Prieta Joint Union School District, Kevin Grier, Ed.D., Superintendent. From Los Gatos Union School District, Sarah Tellez, Assistant Superintendent. From Mendocino Unified School District: Jason Morse, Superintendent; and Meg Kailikole, Business Manager. From Menlo Park City School District: Sharon Burns and Danielle O'Brien, Principals; Chana Stewart, Director of Early Learning Center; Jammie Behrendt, Associate Superintendent; Marites Fermin, Chief Business Officer; and Katherine Strach, unspecified relationship. From Monteceito Union School District: Abby Carrington, Kimberly Berman, Amelia Madden, Brooke Cloud, Christina Stokes, Daniel Berman, Heidi Craine, Holly Noble, Jamie Allison, Jeffery Linder, two John Does, Karen Luna, Katie Nimitarnun, Linda Trigueiro, Lindsay Alker, Lisa Monson, Melissa Erikson, Rania Mather, Ron Zecher, Stacy Allison, Vanessa Scarlett, Kim Berman, and Alyssa Gonzalez, teachers; Jacqueline Duran, Jessica Smith, and Mitchell Bragg, Board Members; Virginia Alvarez, Chief Business Official and Human Resources; Autumn Noe, Classified Employee/Parent; Samantha Simon, Nature Lab, STEAM, Special Projects; Nick Bruski, Principal; Susannah Osley, School Board President; Kim Crail, School Board Vice President; Selina Wimmel, School Office Assistant; Melissa Spink, Student Meals Program Coordinator; Anthony Ranii, Superintendent; and Rusty Ito, Vice Principal. From Mountain View Los Altos High School District, Dr. Nellie Meyer, Superintendent. From Mountain View Whisman School District, Dr. Rebecca Westover, Chief Business Officer. From Nevada City School District, Paige Moore, Business Manager. From Newport-Mesa Unified School District: Wesley Smith, Ed.D., Superintendent; Jeffery S. Trader, Assistant Superintendent, Chief Business Official; Ashley Anderson, Lisa Pearson, and Michelle Barto, Board Members. From Palo Alto Unified School District, Carolyn Chow, Chief Business Officer. From Portola Valley School District: Connie Ngo, Chief Business Official; Gary Hanning, President, Board of Trustees; Roberta Zarea, Superintendent; and Kimberly Morris Rosen and Amud Setlur, Trustees. From San Luis Coastal Unified School District, Eric Prater, Ed.D., Superintendent. From Santa Cruz City Schools District: Jimmy Monreal, Assistant Superintendent of Business Services; and Kris Munro, Superintendent. From Sequoia Union High School District, Vinita Singh, Director of Business Services. From Solana Beach School District: Debra Schade, Ph.D., Board President; and Jennifer Burks, Ed.D., Superintendent. From Sonoma Valley Unified School District: Reina Seifts, Associate Superintendent; and Dr. Jeanette Rodriguez-Chien, Superintendent. From St. Helena Unified School District, Kay Vang, Chief Business Official. From Sunnyvale

Dr. Robert Bauer, Trustee of Portola Valley School District, added comments to his support letter on the impact Proposition 13 had on his school district's finances, stating: "We had to cut programs and sell property that we otherwise would have maintained for the health and welfare of our learners. The unfunded mandate requiring UTK causes a big financial obligation that will at a minimum increase class sizes which we have been planning and struggling to reduce during the past 15 years."²⁰³

Six trustees and the board president for the San Luis Coastal Unified School District each individually filed comment letters that added, "In San Luis Coastal, the cost of this unfunded mandate is \$20 million in facility costs, and \$3.5 million in ongoing personnel costs. Due to class size limits that become more restrictive at full implementation, we expect the cost to be even higher. Like most districts in California, we are confronting deficits in the out years which means significant programmatic reductions in other areas due to this unfunded mandate."²⁰⁴

The claimants attached over 100 additional public comments to their rebuttal, specifically responding to Finance's comments.²⁰⁵ These comments primarily took offense at Finance's assertion that basic aid districts receive an entitlement under the LCFF. "While that statement is accurate, the DOF fails to recognize that community-funded elementary and unified school districts do not receive any additional dollars to support the implementation of UTK despite their LCFF entitlement growing. In other words, the state's mechanism for funding UTK leaves out community-funded districts and has effectively made those districts pay for the implementation of a new, full grade level with existing resources."²⁰⁶ The comments assert that when TK was a small program that only applied to a small cohort of students, basic aid districts were able to absorb the added cost by redirecting funds from some existing programs, but this expansion of the TK program would be costly for any district if adequate resources are not provided, which is why the Newsom administration and Legislature increased the Proposition 98 guarantee to allow for UTK implementation.²⁰⁷ However the state has

School District, Michael Gallagher, Ed.D., Superintendent. From Tahoe Truckee Unified School District, Kerstin Kramer, Superintendent Chief Learning Officer. From Vista Del Mar Union School District, Bree Valla, Superintendent/Principal.

²⁰³ Exhibit E, Dr. Robert Bauer, Trustee, Portola Valley School District, Comments on the Test Claim, page 1.

²⁰⁴ Exhibit F, Ellen Sheffer, Board President, San Luis Coastal Unified School District, Late Comments on the Test Claim, pages 1-2. San Luis Coastal Unified School District Trustees Brian Clausen, Eve Hinton, Chris Ungar, Marilyn Rodger, Mark Buchman, and Robert Banfield, each filed identical comments.

²⁰⁵ Exhibit C, Claimant's Rebuttal Comments, pages 13-277.

²⁰⁶ Exhibit C, Claimant's Rebuttal Comments, page 13 (Letter from Anthony Ranii, President of Schools for Sound Finance).

²⁰⁷ Exhibit C, Claimant's Rebuttal Comments, page 13 (Letter from Anthony Ranii, President of Schools for Sound Finance).

not provided additional resources for basic aid districts to implement this program “despite the state maintaining that implementation of UTK is an expectation of all school districts.”²⁰⁸

The comments also objected to Finance highlighting the funding basic aid districts receive through the minimum state aid provision of the LCFF and the Education Protection Account, with the implication these could be used to pay for TK programs. “What the DOF fails to recognize is that community-funded districts have been receiving MSA dollars and EPA dollars since 2013, which means these dollars have already been subsumed into other equally important district programs. This means that without additional funding to implement UTK, community-funded districts are required to encroach on other programs in order to support UTK students and staff. Additionally, MSA and EPA funds are marginal compared to the cost of implementing a full grade level.”²⁰⁹

Individual school districts included additional testimony to the same basic comment letter on their actual and estimated increased costs to implement the test claim statute, how they currently use their MSA and EPA funding, and how other programs will be impacted if the test claim is not approved.²¹⁰ Commentors reasserted their opinion that

²⁰⁸ Exhibit C, Claimant’s Rebuttal Comments, page 14 (Letter from Anthony Ranii, President of Schools for Sound Finance).

²⁰⁹ Exhibit C, Claimant’s Rebuttal Comments, page 14 (Letter from Anthony Ranii, President of Schools for Sound Finance).

²¹⁰ See Exhibit C, Claimant’s Rebuttal Comments, pages 27 (Letter from Matt Reno, Superintendent/Principal, Alexander Valley Union School District); 30 (Letter from Pam Rennick, Superintendent/Principal, Ballard School District); 33 (Letter from Mike Heffner, Superintendent/Principal, Bonny Doon Union Elementary School District); 37 (Letter from Audra Pittman, Ph.D., Superintendent, Calistoga Joint Unified School District); 39 (Letter from Dr. Shelly Viramontez, Superintendent, Campbell Union School District); 41-42 (Letter from Jill Vinson, Superintendent, Cardiff School District); 44-45 (Letter from Sharon Ofek, Superintendent, Carmel Unified School District); 47 (Letter from Amy Alzina, Ed.D., Superintendent/Principal, Cold Spring School District); 49 (Letter from Michael Chaix, Superintendent, Cucamonga School District); 51 (Letter from Holly McClurg, Ph.D., Superintendent, Del Mar Union School District); 53-54 (Letter from Greg Sackos, Superintendent/Principal, Desert Center Unified School District); 56 (Letter from Andrée Grey, Ed.D.; Superintendent, Encinitas Union School District); 66 (Letter from Ethan Bertrand, Board of Trustees Clerk, Goleta Union School District); 78 (Jointly Signed Letter from Ana de Arce, Superintendent; Kim Oliff, Board President; Don Geddis, Board Vice President; Gregory Dannis, Board Clerk; An Huang Chen, Board Member; Gilbert Wai, Board Member; Joyce Shen, Chief Business Official; Leilani Bell, Human Resources Director; Matthew Lindner, Educational Services Director; Bhavna Narula, Student Services Director; Maureen Sullivan, Education Technology Director; Tracy Dennis, Information Technology Manager; Alec MacKenzie, Hillsborough Teachers Association President; and Kim Hover, California School Employees Association President, Chapter 465; Hillsborough City School District); 81

the state maintaining they are obligated to implement TK, without providing additional funding for basic aid districts, constitutes an unfunded mandate by the state.²¹¹

(Letter from Dr. Brian Johnson, Board of Trustees Member, Hope School District); 90-91 (Letter from Leisa Winston, Ed.D., Superintendent, Huntington Beach School District); 93 (Letter from Nathan Myers, Superintendent, Kenwood School District); 95 (Letter from Brett Geithman, Superintendent, Larkspur-Corte Madera School District); 96-97 (Letter from Dave Scroggins, Superintendent/Principal, Latrobe School District); 99 (Letter from Kelly Osborne, School Board Clerk, Laguna Beach Unified School District); 108 (Letter from Paul Johnson, Superintendent, Los Gatos Union School District); 110 (Letter from Sandra McGonagle, Superintendent, Los Altos School District); 117 (Letter from Audra Romero, Director of Human Resources, Menlo Park City School District); 140-141 (Letter from Rusty Ito, Assistant Principal, Montecito Union School District); 221 (Letter from Dr. Ayinde Rudolphe, Superintendent, Mountain View Whisman School District); 226 (Letter from John Baggett, Superintendent, Nevada City School District); 229 (Letter from Jeffery S. Trader, Assistant Superintendent, Newport-Mesa Unified School District); 236 (Letter from Charen Yu, Chief Business Officer, Palo Alto Unified School District); 239 (Letter from Connie Ngo, Chief Business Official, Portola Valley School District); 243 (Jointly Signed Letter from Gary Waddell, Ed.D.C., Superintendent, and Mark A. Schiel, Deputy Superintendent, Santa Clara Unified School District); 245 (Letter from Dr. Kenneth Geisick, Superintendent, Saratoga Union School District); 251 (Letter from Kay Vang, Chief Business Official, St. Helena Unified School District); 255 (Letter from Eric Prater, Ed.D., Superintendent, San Luis Coastal Unified School District); 263 (Letter from Arthur Cuffy, Chief Business Officer, Sunnyvale School District); 273 (Letter from Tom Hoskins, Superintendent, Vallecito Union School District).

²¹¹ The claimants' rebuttal comments also included additional letters of support from the following interested parties or interested persons whose contents were duplicative to at least one of the letters cited in the previous footnote. From Association of California School Administrators, Edgar Zauzeta, Ed.D., Executive Director. From California Association of School Business Officials, Mishaal Gill, Director of Policy and Advocacy, California Association of School Business Officials. From CFT – A Union of Educators and Classified Professionals, AFT, AFL-CIO, Tristan Brown, Legislative Director. From California School Board Association, Kristen Lindgren-Bruzzzone, General Counsel. From Small School Districts Association, Yuri Calderon, Executive Director. From Acalanes Union High School, John Nickerson, Superintendent. From Calistoga Joint Unified School District, Matthew Reid, Board Member. From Fremont Union High School District: Christine Mallery, CBO/Associate Superintendent; and Graham Clark, Superintendent. From Goleta Union School District: Emily Zacharias, and Dr. Richard Mayer, Board of Trustees Members; Dr. Mary Kahn, Superintendent; Dr. Vikki Ben-Yaacov, Board of Trustees President; and Sholeh Jahangir, Board of Trustees Vice-President. From Hope School District: Daniel Cunnison, and Erik Vasquez, Board of Trustees Members; Dr. Frann Wageneck, Board of Trustees President; and Dr. Kelly Keogh, Board of Trustees Clerk. From Laguna Beach Unified School District: Jan Vickers, School Board President; and Jason Vilorio, Ed.D., Superintendent. From Los

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

Gatos-Saratoga Union High School District, Bill W. Sanderson, Superintendent. From Los Gatos Union School District, Teresa Fiscus, Chief Business Official. From Menlo Park City School District: Sandra Franco, Director MOT; Jammie Behrendt, Associate Superintendent Educational Services; Kristen Gracia, Superintendent; Parke Treadway, Public Information Officer; Stephanie Sheridan, Assistant Superintendent Student Services; Marites Fermin, Chief Business Officer; and Willy Haug, Director of Technology and Innovation. From Monteceito Union School District: Jesse Landeros, Facilities Manager; Anthony Ranii, Superintendent; Amanda Salgado, Fiscal Services Specialist; Sammy Simon, Nature Lab STEAM Special Projects; Austin Valiante, Lead Technology Support; Colin Valiante, Senior Network & Systems Technician; Lindsay Alker, Literacy TOSA; Jamie Allison, School Librarian; Stacy Allison, Kim Berman, Brooke Cloud, Judy Compton, Heidi Craine, Cheryl Hess, Karen Luna, Katie Nimitarnun, Megan Soderborg, Kathy Trent, Danielle Weill, and Ron Zecher, Teachers; Virginia Alvarez, Chief Business Official; Lisa Anderson, Purchasing and Admin Assistant; Judy Benton and Julie Terry, Instructional Assistants; Mitchell Bragg, Jacqueline Duran, and Jessica Smith, Board Members; Nick Bruski, Principal; Kim Crail, School Board Vice President; Melissa Erikson, Resource Specialist; Jeff Linder, Math TOSA; Cassandra Ornelas, Certificated School Nurse; Susan Osley, School Board President; Tony Paulsen and Rebekah Prato, Inclusion Specialists; Sadie Powers, Student Support and Activities Facilitator; Vanessa Scarlett, Science TOSA; and Autumn Noe, Executive Assistant/Parent. From Mountain View Los Altos High School District, Eric Volta, Superintendent. From Newport-Mesa Unified School District: Carol Crane, Board of Education President; Wesley Smith, Ed.D., Superintendent; and Martha Fluor, Former Board Member. From Portola Valley School District, Roberta Zarea, Superintendent. From San Deiguito Union High School District, Stephen Dickenson, Associate Superintendent of Business Services. From Sequoia Union High School District, Vinita Singh, Director of Business Services. From San Luis Coastal Unified School District, Ellen Scheffer, Board Trustee. From Sonoma Valley Unified School District, Dr. Jeanette Rodriguez-Chien, Superintendent. From Sunnyvale School District: Isabel Jubes-Flamerich, Board of Education President; Jeremy Nishihara, Assistant Superintendent of Human Resources & Informational Systems; Michael Gallagher, Ed.D., Superintendent; and Tasha L. Dean, Ed.D., Chief Teaching and Learning Officer. Lastly, Vista Del Mar Union School District, Bree Valla, Superintendent.

equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."²¹² Thus, the subvention requirement of section 6 is "directed to state-mandated increases in the services provided by [local government] ..."²¹³

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

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.²¹⁴
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.²¹⁵
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.²¹⁶
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.²¹⁷

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.²¹⁸ The determination whether a statute or executive order

²¹² *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²¹³ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

²¹⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

²¹⁵ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56.

²¹⁶ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

²¹⁷ *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.

²¹⁸ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 335.

imposes a reimbursable state-mandated program is a question of law.²¹⁹ 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.”²²⁰

A. The Test Claim Was Timely Filed.

A test claim shall be filed no later than 12 months following the effective date of an executive order or statute, or within 12 months of incurring increased costs as a result of the executive order or statute, whichever is later.²²¹ The Commission’s regulations clarify that “within 12 months of incurring increased costs” means “within 12 months (365 days) of *first* incurring increased costs as a result of a statute or executive order, whichever is later.”²²²

The test claim statute has an effective date of July 9, 2021.²²³ The test claim was jointly filed on January 22, 2024.²²⁴ If this filing were based on the statute’s effective date, it would not be timely. However, the claimants filed declarations signed under penalty of perjury that they “first incurred costs” to implement the test claim statute on July 1, 2023, when they were required to hire additional teachers and non-teacher employees because the test claim statute expanded eligibility for the transitional kindergarten program to children whose fifth birthday fell between September 2 and April 2 in the 2023-2024 school year and the districts were required to maintain an average transitional kindergarten class enrollment of not more than 24 pupils for each schoolsite.²²⁵

Finance asserts that because the limitation on average TK class sizes to 24 pupils went into effect in 2021-2022, and in 2022-2023 the test claim statute expanded program eligibility to students born between September 2 and February 2 and required adult-to-student staffing ratios not exceed 1:12, it is uncertain that there were no increased costs prior to July 1, 2023, in which case the test claim would be untimely.²²⁶ Finance does not provide any evidence to support its position that the claimants incurred increased

²¹⁹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

²²⁰ *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.

²²¹ Government Code section 17551(c).

²²² California Code of Regulations, title 2, section 1183.1(c), emphasis added.

²²³ The test claim statute, Statutes 2021, chapter 44, was a budget bill and took effect immediately when filed with the Secretary of State (Stats. 2021, ch. 44, section 165.)

²²⁴ Exhibit A, Test Claim, page 1.

²²⁵ Exhibit A, Test Claim, pages 24-25 (Declaration of Lori van Gogh, Chief Business Officer, Sunnyvale School District); pages 30-31 (Declaration of Mike Thomson, Chief Business Official, Business Office, Hope Elementary School District).

²²⁶ Exhibit B, Finance’s Comments on the Test Claim, page 3.

costs before July 1, 2023, but points to an inconsistency between Hope Elementary School District's testimony of two additional teachers hired in 2023-2024 while the documentary evidence supporting that claim listed three teachers, which it theorized may indicate costs incurred prior to July, 1, 2023.²²⁷

Finance's theory may be correct. However, the evidence Finance points to does not support their position that increased costs were first incurred by the claimants before July 1, 2023. Hope Elementary School District amended its testimony to say it actually hired 2.5 (FTE) additional teachers in 2023-2024, which corrects the inconsistency Finance theorized may be evidence of earlier increased costs.²²⁸ Even if the claimant did not correct its testimony, the existence of an additional teaching position is not necessarily evidence of a cost incurred to implement the test claim statute prior to July 1, 2023. The documentation does not indicate whether it lists all teachers and staff assigned to teach Transitional Kindergarten, or just those newly hired within a certain period.²²⁹ And Finance has not provided any evidence to support the argument that claimants first incurred costs to implement the changes in law created by the test claim statute before July 1, 2023.

The claimants' declarations of when they first incurred costs are signed under penalty of perjury and satisfy the evidentiary requirements in the Commission's regulations, which require written representations of fact offered by any person at an article 7 hearing shall be under oath or affirmation, and 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.²³⁰ In addition, the test claim statute requires school districts, as a condition of receipt of apportionment for pupils in a transitional kindergarten program, to admit a child into the TK program who will have their fifth birthday between September 2 and April 2 beginning in the 2023-2024 school year; where the requirement in the 2022-2023 school year was for children having their fifth birthday between September 2 and February 2. Extending the cut-off by two additional months could increase or expand the population of students eligible for a TK program, which has been confirmed by the claimants and Finance. Finance's comments state that Hope Elementary School District saw an increase in TK ADA from 30 students in the 2022-2023 school year to 43 students in the 2023-2024 school year, and Hope

²²⁷ Exhibit B, Finance's Comments on the Test Claim, page 4.

²²⁸ Exhibit C, Claimants' Rebuttal Comments, page 10 (Declaration of Mike Thomson, Chief Business Official, Hope Elementary School District).

²²⁹ Exhibit A, Test Claim, page 34 (Pay09a Report).

²³⁰ California Code of Regulations, title 2, sections 1183.1(e), 1187.5; Exhibit A, Test Claim, pages 27 (Declaration of Lori van Gogh, Chief Business Officer, Sunnyvale School District) and 33 (Declaration of Mike Thomson, Chief Business Official, Business Office, Hope Elementary School District).

confirmed in its rebuttal comments that in 2023-2024 it had 46 enrolled TK students with an ADA of 43.64.²³¹

Thus, without evidence the claimants did or should have first incurred increased costs before July 1, 2023 due to requirements in the test claim statute, the Commission must accept the claimants' declarations that the 2023-2024 school year was the first in which the changes in law in the test claim statute caused them to incur increased costs. The January 22, 2024 filing date is therefore timely.

B. The Test Claim Statute Does Not Impose a State-Mandated Program Because School Districts Are Not Required to Offer Transitional Kindergarten.

1. Transitional Kindergarten Was Authorized by Prior Statutes and the Test Claim Statute only Requires as a Condition of Receipt of Apportionment, that School Districts Admit Children Who Will Turn Five Within Newly Expanded Date Ranges and that Schools Maintain Average Maximum Transitional Kindergarten Class Sizes of 24 Pupils with One Adult for Every 12 Pupils in a Transitional Kindergarten Class.

The TK program was first enacted by the Legislature in 2010 for the 2012-2013 school year.²³² Under prior law, Education Code section 48000 provided that as a condition of receipt of apportionment for pupils in a TK program pursuant to section 46300 and Chapter 3 (commencing with Section 47610) of Part 26.8, school districts were required to ensure that:

(A) In the 2012-13 school year, children who will have their fifth birthday between November 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(B) In the 2013-14 school year, children who will have their fifth birthday between October 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(C) In the 2014-15 school year and each school year thereafter, children who will have their fifth birthday between September 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.²³³

Additionally, prior law required that as a condition of receipt of apportionment for pupils in a TK program, the school district was required to ensure that credentialed teachers who were first assigned to a TK classroom after July 1, 2015, have by August 1, 2021, one of the following education, experience, or certificate credentials:

²³¹ Exhibit B, Finance's Comments on the Test Claim, page 4; Exhibit C, Claimants' Rebuttal Comments, page 10 (Declaration of Mike Thomson).

²³² Education Code section 48000(c) (as amended by Stats. 2010, ch. 705, section 3).

²³³ Education Code section 48000(c)(1)(A)-(C) (as amended by Stats. 2020, ch. 24, section 55).

(1) At least 24 units in early childhood education, or childhood development, or both.

(2) As determined by the local education agency employing the teacher, professional experience in a classroom setting with preschool age children that is comparable to the 24 units of education described in paragraph (1).

(3) A child development teacher permit issued by the Commission on Teacher Credentialing.²³⁴

Thus, the requirements imposed on school districts as a condition of receipt of apportionment for pupils in a TK program, to offer a TK program for children who will have their fifth birthday between September 2 and December 2 and to ensure that teachers assigned to a TK classroom possess the specified education units, professional experience, or certification are not new.

The 2021 test claim statute amended Education Code section 48000 by expanding the range of dates used to determine which children are eligible for the TK program over several years as follows:

(C) From the 2014-15 school year to the 2021-22 school year, inclusive, a child who will have their fifth birthday between September 2 and December 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(D) In the 2022–23 school year, a child who will have their fifth birthday between September 2 and February 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(E) In the 2023–24 school year, a child who will have their fifth birthday between September 2 and April 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(F) In the 2024–25 school year, a child who will have their fifth birthday between September 2 and June 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.

(G) In the 2025–26 school year, and in each school year thereafter, a child who will have their fourth birthday by September 1 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.²³⁵

Additionally, the test claim statute requires school districts, as a condition of receipt of apportionment for pupils in a TK program, to comply with all of the following:

²³⁴ Education Code section 48000(g)(1)-(3) (as amended by Stats. 2020, ch. 24, section 55).

²³⁵ Education Code section 48000(c) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

- (1) Maintain an average transitional kindergarten class enrollment of not more than 24 pupils for each school site.
- (2) Commencing with the 2022-23 school year, maintain an average of at least one adult for every 12 pupils for transitional kindergarten classrooms.
- (3) Commencing with the 2023-24 school year, and for each year thereafter, maintain an average of at least one adult for every 10 pupils for transitional kindergarten classrooms, *contingent upon an appropriation of funds for this purpose.*²³⁶

The last requirement above, to maintain an average of one adult for every 10 pupils by the 2023-2024 school year, is only required if the Legislature appropriates funding for that purpose and, thus, this requirement would not be subject to mandate reimbursement.

And the test claim statute extends the date upon which school districts are required to ensure their teachers of TK programs have their credentials to August 1, 2023, but does not add any new requirements in this respect:

- (4) Ensure that credentialed teachers who are first assigned to a TK classroom after July 1, 2015, have, by August 1, 2023, one of the following:
 - (A) At least 24 units in early childhood education, or childhood development, or both.
 - (B) As determined by the local education agency employing the teacher, professional experience in a classroom setting with preschool age children that is comparable to the 24 units of education described in subparagraph (A).
 - (C) A child development teacher permit issued by the Commission on Teacher Credentialing²³⁷

Thus, the following new requirements are imposed on school districts as a condition of receipt of apportionment for TK pupils:

- Beginning in the 2021-22 school year, maintain an average transitional kindergarten class enrollment of not more than 24 pupils for each school site.²³⁸

²³⁶ Education Code section 48000(g)(1)-(3) (as amended by Statutes 2021, chapter 44 (AB 130), section 60). (Emphasis added.)

²³⁷ Education Code section 48000(g)(4) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

²³⁸ Education Code section 48000(g)(1) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

- Beginning in the 2022-23 school year, maintain an average of at least one adult for every 12 pupils in a transitional kindergarten classroom.²³⁹
- Beginning in the 2022-23 school year, ensure that children who will have their fifth birthday between December 3 and February 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.²⁴⁰
- Beginning in the 2023-24 school year, ensure that children who will have their fifth birthday between February 3 and April 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.²⁴¹
- Beginning in the 2024-25 school year, ensure that children who will have their fifth birthday between April 3 and June 2 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.²⁴²
- Beginning in the 2025-26 school year, ensure that children who will have their fifth birthday between June 3 and September 1 shall be admitted to a transitional kindergarten program maintained by the school district or charter school.²⁴³

2. The New Transitional Kindergarten Requirements Are Not Mandated by the State.

When determining whether new requirements imposed by the test claim statute compel compliance and, thus, create a state-mandated program for purposes of reimbursement under article XIII B, section 6, the courts have identified two distinct theories: legal compulsion and practical compulsion.²⁴⁴ Activities undertaken at the option or discretion of local government, without legal or practical compulsion, do not trigger a state-mandated program within the meaning of article XIII B, section 6.²⁴⁵ The California Supreme Court has described legal compulsion as follows:

²³⁹ Education Code section 48000(g)(2) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

²⁴⁰ Education Code section 48000(c)(1)(D) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

²⁴¹ Education Code section 48000(c)(1)(E) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

²⁴² Education Code section 48000(c)(1)(F) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

²⁴³ Education Code section 48000(c)(1)(G) (as amended by Statutes 2021, chapter 44 (AB 130), section 60).

²⁴⁴ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815.

²⁴⁵ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 73-76; *Department of Finance v. Commission on State Mandates (Kern)* (2003) 30 Cal.4th 727; *Department of*

Legal compulsion occurs when a statute or executive action uses mandatory language that require[s] or command[s] a local entity to participate in a program or service... Stated differently, legal compulsion is present when the local entity has a mandatory, legally enforceable duty to obey. This standard is similar to the showing necessary to obtain a traditional writ of mandate, which requires the petitioning party to establish the respondent has a clear, present, and usually ministerial duty to act. ... Mandate will not issue if the duty is ... mixed with discretionary power.

Thus, as a general matter, a local entity's voluntary or discretionary decision to undertake an activity cannot be said to be legally compelled, even if that decision results in certain mandatory actions.²⁴⁶

Even where a local government entity is not legally compelled to perform the new required activities, it may be practically compelled to do so. As the California Supreme Court recently stated in *Coast Community College Dist. v. Commission on State Mandates*, practical compulsion “arises when a statutory scheme does not command a local entity to engage in conduct, but rather induces compliance through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply.”²⁴⁷ Substantial evidence in the law or record is required for a finding of practical compulsion.²⁴⁸

- a. Based on the plain language of the test claim statute, the claimants are not legally compelled to comply with the new requirements. Compliance with the new requirements is triggered by a school district’s underlying decision to provide a transitional kindergarten program.

“If a local entity or school district has alternatives under the statute other than the mandated contribution, it does not constitute a state mandate.”²⁴⁹ Actions undertaken at the option or discretion of a local government entity do not trigger a state mandate

Finance v. Commission on State Mandates (POBRA) (2009) 170 Cal.App.4th 1355, 1365-1366.

²⁴⁶ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815, internal quotation marks and citations omitted.

²⁴⁷ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816; see also *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 754 (where no “legal” compulsion exists, “practical” compulsion may be found if the local agency faces “certain and severe...penalties” such as “double...taxation” or other “draconian” consequences if they fail to comply with the statute).

²⁴⁸ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 73-76; *Department of Finance v. Commission on State Mandates* (POBRA) (2009) 170 Cal.App.4th 1355, 1368; Government Code section 17559.

²⁴⁹ *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 818.

and hence do not require reimbursement of funds—even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice.²⁵⁰ When determining if a local agency is legally compelled by a funding entitlement, “the proper inquiry is whether the language of the funding entitlement provisions legally obligates the districts to comply with the conditions described therein.”²⁵¹

Contrary to the claimants’ assertions, Education Code section 48000 does not legally compel school districts to provide a TK program. The new requirements are imposed as a condition of receipt of apportionment funding for pupils in a TK program. Education Code section 48000(c) states: “As a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300, and Chapter 3 (commencing with Section 47610) of Part 26.8, as applicable, a school district or charter school shall ensure” the child meets the age ranges specified in the statute. Education Code section 48000(g) further states that school districts are required to comply with the remaining new requirements “[a]s a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300” Thus, by law, school districts are authorized, but not required, to offer TK programs. It is a school district’s discretionary decision to provide the TK program. If a district chooses not to provide a TK program, nothing by law happens. The district simply does not receive any apportionment funding for additional students that would be in the TK program.

This case is similar to *Coast Community College Dist. v. Commission on State Mandates*.²⁵² There, the California Supreme Court reviewed regulations issued by the Chancellor’s Office, which required the community college districts to comply with certain minimum conditions, satisfaction of which entitled a community college district to receive state aid that may or may not be withheld by the Chancellor if a college does not comply. The court found there was no legal compulsion based on the plain language of the regulations. “[T]he proper inquiry is whether the language of the funding entitlement provisions legally obligates the districts to comply with the conditions described therein, not whether those conditions relate to the core functions of the districts.”²⁵³ “If a community college district is willing to risk the possibility of losing some or all its state aid, there does not appear to be any mechanism (or at least none the parties have identified) that would allow the Chancellor or any other state entity to

²⁵⁰ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 815; *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 742.

²⁵¹ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 819.

²⁵² *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800.

²⁵³ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 819.

compel compliance as a matter of law.”²⁵⁴ It also found the argument that the community colleges had no reasonable alternative but to comply with the regulations because they were dependent on state aid was a practical compulsion theory, not legal compulsion.²⁵⁵ “That the financial situation of some (or most) districts may leave them with no reasonable alternative but to comply with the funding entitlement regulations does not transform this case into one involving legal compulsion.”²⁵⁶

Here, the claimants allege that they are legally compelled to provide transitional kindergarten programs because of the use of the word “shall,” and because the CDE says this is a requirement for all school districts, including basic aid districts.²⁵⁷ However, read in full context, the word “shall” is only used to impose conditions on whether a school district can receive state funding for transitional kindergarten students. There is no standalone obligation to provide transitional kindergarten outside of the conditions for receiving funding. Though the CDE may say that TK programs are mandatory, it does not appear to be doing anything to legally enforce this position, and evidence shows there are several school districts that do not offer transitional kindergarten.²⁵⁸ Moreover, as described below, the plain language of the test claim statute shows that the provision of a TK program is within the discretion of the school district and is only required if they wish to receive additional ADA apportionment funding based on the number of TK students attending school in the district.

²⁵⁴ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 818.

²⁵⁵ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 820-821.

²⁵⁶ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 821.

²⁵⁷ Exhibit A, Test Claim, pages 12-13, 21.

²⁵⁸ Exhibit X (8), Alexander Valley School District, Intent to Enroll Form, https://docs.google.com/forms/d/e/1FAIpQLSe8YE--tzU5tnK5JQUBNHfqbo76RBLiLPoaxon9Ok_G0pdP9g/viewform (accessed on February 3, 2025), page 3; Exhibit X (9) Cardiff School District, Enrollment & Registration Information Page, <https://www.cardiffschools.com/Page/5220> (accessed on March 20, 2025), page 2; Exhibit X (10) Encinitas Union School District, New Student Registration, <https://www.eusd.net/registration/new-student-registration> (accessed on March 20, 2025), page 1; Exhibit X (11) Rancho Santa Fe School District, Enrollment Information, <https://www.rfschool.net/parent-portal/pre-reg-registration-information> (accessed on March 20, 2025), page 1; Exhibit X (12), Ross School District, Kindergarten Registration, https://drive.google.com/file/d/1WWT6SLyolUaJSHArwy679JBle9KVec_W/view (accessed on February 3, 2025), page 1; Exhibit X (13) Solana Beach School District, Registration, <https://www.sbsd.k12.ca.us/Page/443> (accessed on March 20, 2025), page 2.

When interpreting a statute, the first thing to consider is the statute's plain language.²⁵⁹ "When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning."²⁶⁰ Education Code section 48000 outlines eligibility and program requirements for both kindergarten and transitional kindergarten. For kindergarten, it says that "a child shall be admitted to a kindergarten maintained by the school district at the beginning of a school year, or at a later time in the same year, if the child will have their fifth birthday on or before one of the following dates: (1) December 2 of the 2011-12 school year. (2) November 1 of the 2012-13 school year. (3) October 1 of the 2013-14 school year. (4) September 1 of the 2014-15 school year and each school year thereafter."²⁶¹ These requirements are not conditions to something else and impose a clear-cut obligation for the school districts to admit all age-eligible children into kindergarten, thereby obligating them to provide a kindergarten program. However, the phrasing used for the TK program is different; instead of just saying that a child who will have their fifth birthday between a specific date range in a given school year shall be admitted to a transitional kindergarten program maintained by the school district or charter school, these requirements are prefaced with the statement: "As a condition of receipt of apportionment for pupils in a transitional kindergarten program pursuant to Section 46300, and Chapter 3 (commencing with Section 47610) of Part 26.8, as applicable, a school district or charter school shall ensure the following."²⁶² The implication in phrasing school district's obligations towards providing these two programs so differently within the same code section is that while school districts have a mandatory obligation to provide kindergarten programs to children who will turn five by September 1 of each school year, they are only required to provide TK programs if they wish to receive additional funding based on the number of TK students attending school in the district.

Like in *Coast Community College Dist.*, if a school district is willing to forego the funding it would receive for its TK students, there is not any mechanism that would allow the CDE or another state entity to compel the district to offer a TK program as a matter of law. School districts are not legally compelled to offer transitional kindergarten programs, or to comply with the additional requirements in the test claim statute imposed on school districts that do offer transitional kindergarten.

- b. Legislative history and analysis of the program, and history of how the program has been implemented statewide support the conclusion that providing transitional kindergarten is not legally compelled by state law.

The legislative history confirms that it was not by accident that Education Code section 48000 uses different phrasing for the traditional kindergarten and TK programs. As

²⁵⁹ *Coalition of Concerned Communities, Inc., v. City of Los Angeles* (2004) 34 Cal.4th 733, 737.

²⁶⁰ *People v. Trevino* (2001) 26 Cal.4th 237, 242.

²⁶¹ Education Code section 48000(a).

²⁶² Education Code section 48000(c).

discussed above, when the TK program was originally proposed, the bill only said that children who will have their fifth birthday between specified date ranges shall be admitted into a transitional kindergarten program maintained by the school district.²⁶³ This would have made the TK program mandatory for all school districts. This language changed after the Assembly Committee on Appropriations found that making TK a requirement for all school districts would be fiscally inefficient and not cost effective.²⁶⁴ It also added a paragraph stating that “[a] transitional kindergarten shall not be construed as a new program or higher level of service.”²⁶⁵ Although the Commission has exclusive jurisdiction over whether or not something imposes a state mandate, rendering this statement powerless, it does support that the Legislature was mindful of the possibility the transitional kindergarten program might impose a reimbursable state mandate, and was intentionally trying to avoid that outcome.

The language used to summarize the bill in the legislative analysis changed as well; instead of stating the bill “requires, commencing with the 2012-2013 school year, a child who would otherwise be eligible for enrollment in kindergarten be admitted to a transitional kindergarten program maintained by a school district,” the analysis now described the bill by saying it would “allow districts to claim funding for two years of kindergarten for children born between September and December, assuming certain conditions are met.”²⁶⁶ Though the bill’s author later went on to claim that it was the Legislature’s intent that all school districts be required to provide TK, statements by a bill’s author about the bill’s intended purpose do not qualify as legislative history.²⁶⁷

The language used in subsequent legislation also shows that the Legislature understood TK programs were not mandatory. There have been several amendments to Education Code section 48000 regarding the TK program, including the test claim statute. In all but one, the Legislative Digest described the existing law by saying it “authorizes a school district or charter school to maintain a transitional kindergarten program.”²⁶⁸ In the one exception, the change the Legislature made was regarding the

²⁶³ Exhibit X (5), Assembly Amendment to SB 1381, August 4, 2010, section 2.

²⁶⁴ Exhibit X (1), Assembly Committee on Appropriations, Analysis of SB 1381, as amended August 2, 2010, page 3.

²⁶⁵ Education Code section 48000(e) (as amended by Statutes 2010, chapter 705 (SB 1381), section 3). That language remains current in section 48000(e).

²⁶⁶ Exhibit X (1), Assembly Committee on Appropriations, Analysis of SB 1381, as amended August 2, 2010, page 1; Exhibit X (15), Senate Appropriations Committee, Fiscal Summary of SB 1381, as amended August 30, 2010, page 1, emphasis added.

²⁶⁷ *Kaufman and Broad Communities, Inc., v. Performance Plastering Inc.*, (2005) 133 Cal.App.4th 26, 37.

²⁶⁸ See Statutes 2014, chapter 32, (SB 858) Summary Digest, paragraph 18; Statutes 2015, chapter 13, (AB 104) Summary Digest, paragraph 18; Statutes 2018, chapter 32 (AB 1808) Summary Digest, paragraph 9; Statute 2020, chapter 24 (SB 98) Summary Digest, paragraph 27.

requirement that TK teachers have specified credentials, and thus it addressed that specific portion of the law by saying it “requires a school district or charter school, as a condition of receipt of apportionment for pupils in a transitional kindergarten program, to ensure that teachers who are assigned to a transitional kindergarten classroom after July 1, 2015, be credentialed, and, by August 1, 2020, have a minimum number of units in early childhood education or childhood development, comparable experience in a preschool setting, or a child development permit issued by the Commission on Teacher Credentialing.”²⁶⁹ Authorization to maintain a program is not the same thing as a requirement to maintain the program, and the Legislature made sure to preface its description of the existing requirement by noting it was a condition of receipt of apportionment for pupils in a TK program, not an obligation on school districts in and of itself. When stating what the change in law in the test claim statute would do, the Legislature said it would “revise the timespans for those mandatory and optional admittance requirements to be phased in from the 2022-2023 school year to the 2025-2026 school year, at which time a school district or charter school, as a condition of receipt of apportionments for pupils in a transitional kindergarten program, would be required to admit to a transitional kindergarten program maintained by the school district or charter school a child who will have their 4th birthday by September 1.”²⁷⁰ There is no mention in the legislative history of section 48000 that TK programs are mandatory. Thus, the test claim statute simply expanded eligibility for TK programs, but did not require school districts to provide the program.

Other sections within the test claim statute also show the Legislature understood school districts are not required to offer TK programs. The California Prekindergarten Planning and Implementation Grant Program offered additional funding for the costs associated with “*creating* or expanding” state preschool and TK programs, and the California Preschool, Transitional Kindergarten, and Full-Day Kindergarten Facilities Grant Program specified that a condition for receiving funding for a transitional kindergarten facilities project is that the school district’s governing body pass a resolution at a public meeting stating the district’s “*intent to offer* or expand enrollment” in a TK program.²⁷¹ The Legislature clearly understood that school districts are not required to offer transitional kindergarten, and though it may want transitional kindergarten to be available to everyone, it has not gone as far as to mandate all school districts provide TK programs.

Further cementing this, the TK program’s actual history shows not all school districts treat TK as a mandatory program. A study found that 89 percent of school districts offered a TK program within the first year the Legislature made the program available,

²⁶⁹ Statutes 2014, chapter 687, (SB 876) Summary Digest, paragraph 5.

²⁷⁰ Statutes 2021, chapter 44, (AB 130), Summary Digest, paragraph 2.

²⁷¹ See Education Code section 8281.5, as added by Statutes 2021, chapter 44, section 4 (AB 130), emphasis added; Education Code section 17375, as amended by Statutes 2021, chapter 44, section 15 (AB 130), emphasis added.

meaning 11 percent of school districts did not offer TK that year.²⁷² Though most of these districts were small districts that simply did not have any eligible students in that first year, four percent of school districts did not offer TK despite there being eligible students, citing concerns about inadequate funding, including some basic aid districts.²⁷³ An article written in September 2021, after the test claim statute went into effect, reported that there were at least a dozen basic aid districts that still did not offer TK programs.²⁷⁴ At the time of drafting this Decision, at least some school districts only offer kindergarten, without a TK program.²⁷⁵

The only source that claims school districts are required to provide TK programs is the CDE. The CDE has made public statements that “[e]ach elementary or unified school district must offer TK classes for all children eligible to attend,” and that “[r]egardless if a district receives state revenues through the Local Control Funding Formula or is a basic aid district, if it offers kindergarten, *then the expectation* is that it also offers TK as TK is

²⁷² Exhibit X (6), American Institutes for Research, *Study of California’s Transitional Kindergarten Program, Report on the First Year of Implementation*, April 2014, <https://www.air.org/sites/default/files/2025-01/Transitional-Kindergarten-Implementation-Study-Report-April-2014.pdf> (accessed on January 21, 2025), page 10.

²⁷³ Exhibit X (6), American Institutes for Research, *Study of California’s Transitional Kindergarten Program, Report on the First Year of Implementation*, April 2014, <https://www.air.org/sites/default/files/2025-01/Transitional-Kindergarten-Implementation-Study-Report-April-2014.pdf> (accessed on January 21, 2025), page 40.

²⁷⁴ Exhibit X (2), D’Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsources.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025), page 4.

²⁷⁵ Exhibit X (8), Alexander Valley School District, Intent to Enroll Form, https://docs.google.com/forms/d/e/1FAIpQLSe8YE--tzU5tnK5JQUBNHfqbo76RBLiLPoaxon9Ok_G0pdP9g/viewform (accessed on February 3, 2025), page 3; Exhibit X (9) Cardiff School District, Enrollment & Registration Information Page, <https://www.cardiffschools.com/Page/5220> (accessed on March 20, 2025), page 2; Exhibit X (10) Encinitas Union School District, New Student Registration, <https://www.eusd.net/registration/new-student-registration> (accessed on March 20, 2025), page 1; Exhibit X (11) Rancho Santa Fe School District, Enrollment Information, <https://www.rfschool.net/parent-portal/pre-reg-registration-information> (accessed on March 20, 2025), page 1; Exhibit X (12), Ross School District, Kindergarten Registration, https://drive.google.com/file/d/1WWT6SLyolUaJSHArwy679JBle9KVec_W/view (accessed on February 3, 2025), page 1; Exhibit X (13) Solana Beach School District, Registration, <https://www.sbsd.k12.ca.us/Page/443> (accessed on March 20, 2025), page 2.

the first year of a two-year kindergarten program.”²⁷⁶ The CDE’s statements do not cite to any specific laws supporting these claims, and when it has referenced Education Code section 48000(c), it stated the law “requires any school district operating a kindergarten to also provide a transitional kindergarten (TK) program for all 4-year-old children by 2025-26,” which is not consistent with the section’s plain language.²⁷⁷ The Commission is not required to give the agency’s interpretation of the statute deference because interpretation of the statute is a question of law, requiring the Commission’s independent review.²⁷⁸ “Whether judicial deference to an agency’s interpretation is appropriate and, if so, its extent — the “weight” it should be given — is thus fundamentally situational.”²⁷⁹

Courts must, in short, independently judge the text of the statute, taking into account and respecting the agency’s interpretation of its meaning, of course, whether embodied in a formal rule or less formal representation. Where the meaning and legal effect of a statute is the issue, an agency’s interpretation is one among several tools available to the court. Depending on the context, it may be helpful, enlightening, even convincing. It may sometimes be of little worth. Considered alone and apart from the context and circumstances that produce them, agency interpretations are not binding or necessarily even authoritative. To quote the statement of the Law Revision Commission in a recent report, “The standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action.”²⁸⁰

The CDE’s interpretation of the statute implementing the Transitional Kindergarten program is inconsistent with the plain language of the test claim statute, its legislative history, and how the program has been historically implemented.

Accordingly, the Commission finds that the new requirements imposed by the test claim statute are not legally compelled by state law but are triggered by a district’s discretionary decision to provide a TK program.

²⁷⁶ Exhibit X (3), California Department of Education, *Universal Prekindergarten FAQs*, <https://www.cde.ca.gov/ci/gs/em/kinderfaq.asp#accordionfaq> (accessed on March 20, 2025), page 31, emphasis added.

²⁷⁷ Exhibit X (3), California Department of Education, *Universal Prekindergarten FAQs*, <https://www.cde.ca.gov/ci/gs/em/kinderfaq.asp#accordionfaq> (accessed on March 20, 2025), page 31.

²⁷⁸ *Department of Finance v. Commission on State Mandates* (2016) 1 Cal.5th 749, 762; *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 814.

²⁷⁹ *Yamaha Corp. v. State Board of Equalization* (1998) 19 Cal.4th 1, 7.

²⁸⁰ *Yamaha Corp. v. State Board of Equalization* (1998) 19 Cal.4th 1, 7-8, internal citations omitted.

- c. There is no evidence that school districts are practically compelled to provide transitional kindergarten and, thus, they are not mandated by the state to comply with the new downstream requirements.

Practical compulsion occurs when the consequences for not complying with a technically optional requirement are so onerous they result in “certain and severe penalties such as double taxation and other draconian consequences,” such that a local government has no reasonable alternative but to comply.²⁸¹ In *Coast Community College Dist. v. Commission on State Mandates*, the most recent Supreme Court decision to weigh in on the nature of practical compulsion, the Court stated that practical compulsion exists when “noncompliance is likely to result in withholding of a significant amount of state aid, or that the risk of such withholding leaves them with no true alternative but to comply.”²⁸² When there is “no true alternative,” any alternative options that may exist must be “so far beyond the realm of practical reality” that it leaves the local government “without discretion” not to comply with the state’s conditions, such that the alternative amounts to “no alternative at all.”²⁸³ In such cases, the state “does not command a local entity to engage in conduct, but rather induces compliance through the imposition of severe consequences that leave the local entity no reasonable alternative but to comply.”²⁸⁴

However, the benefits of a program being “too good to refuse” are not sufficient to be considered practical compulsion, and if the state coerces participation by imposing penalties for non-compliance, the penalty must be something harsher than simply withholding the funding a claimant would have received for the program.²⁸⁵ In *Department of Finance v. Commission on State Mandates (Kern High School Dist.)*, the Supreme Court found a requirement for school districts to provide notices and agendas for meetings of several state and federally-funded programs was not legally compelled because the school districts’ participation in the programs was voluntary.²⁸⁶ The claimants presented an alternative argument that they were practically compelled to participate in these programs, claiming they had “no true option or choice” but to

²⁸¹ *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1360, 1364.

²⁸² *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 822.

²⁸³ *Department of Finance v. Commission on State Mandates* (2022) 85 Cal.App.5th 535, 558 (finding that urbanized cities and counties were practically compelled to obtain a permit for their stormwater drainage systems).

²⁸⁴ *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 816.

²⁸⁵ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 731.

²⁸⁶ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727-728.

participate in the programs at issue because funding was provided for these programs and school districts are reliant on the state for funding.²⁸⁷ The Supreme Court found the record did not support that the claimants were practically compelled to participate in the programs, and for all of the programs, the notice and agenda costs were de minimis administrative costs the claimants were able to pay for out of the funding they received from the state for the programs.²⁸⁸ Although this would mean that the claimants would have less to spend on the substantive parts of the programs, it was up to the claimants to determine if the program was still worth participating in when factoring in these additional costs:

Presumably, a school district will continue to participate only if it determines that the best interests of the district and its students are served by participation—in other words, if, *on balance*, the funded program, even with strings attached, is deemed beneficial. And, presumably, a school district will decline participation if and when it determines that the costs of program compliance outweigh the funding benefits.

...Although it is completely understandable that a participant in a funded program may be disappointed when additional requirements (with their attendant costs) are imposed as a condition of continued participation in the program, just as such a participant would be disappointed if the total amount of the annual funds provided for the program were reduced by legislative or gubernatorial action, the circumstance that the Legislature has determined that the requirements of an ongoing elective program should be modified does not render a local entity's decision whether to continue its participation in the modified program any less voluntary."²⁸⁹

Here, the state provides an apportionment of funds based on the increase in a school district's ADA from enrolling pupils into a TK program. ADA is used to determine how much state funding each school district receives from the LCFF and other constitutionally protected sources.²⁹⁰ Students who are eligible to enroll in TK are generally ineligible to enroll in kindergarten that same year, and so would not otherwise be generating ADA for the school district if not for the TK program.

The alternative available to school districts is to not offer a TK program. If a school district chooses not to provide transitional kindergarten, the only punishment it receives from the state is it does not receive the additional ADA funding for its nonexistent TK

²⁸⁷ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 752.

²⁸⁸ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 752-753.

²⁸⁹ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 753-754, emphasis in original.

²⁹⁰ See California Constitution, article IX, section 6; article XIII, section 36(g); Education Code section 42238.02.

students. This is a fair example of the Legislature providing funding to encourage participation in a program that does not rise to the level of practical compulsion. Not providing a TK program is demonstrably a viable alternative since, as previously discussed, there are school districts that historically and currently do not offer TK programs and some that even chose to end their TK programs after initially choosing to provide it.²⁹¹ The school districts have a reasonable alternative available to them in not providing a TK program, and withholding additional funding to nonparticipants is not a severe penalty that rises to the level of practical compulsion.

Indeed, the claimants have objectively strong reasons in favor of not participating in the TK program. The TK program is funded through the additional TK students increasing the school district's ADA. Most school districts' overall funding is primarily driven by ADA. However, the claimants are basic aid districts, whose overall funding primarily comes from local property taxes. Although an increase in ADA will also increase a basic aid district's LCFF entitlement, unless the change were so significant it caused the district's entitlement to exceed its property tax revenue (i.e., it lost its basic aid status), this will have only a minor impact on the basic aid district's overall funding. Basic aid districts still technically receive constitutionally protected state funds based on ADA, but the cost of the TK program may affect or reduce other programs provided by the district. But that is exactly the argument for why a basic aid district would choose not to participate in the TK program. Because the TK program's funding structure provides little financial incentive for basic aid districts, they would be justified in determining that the costs of program compliance outweigh the funding benefits and choose not to participate in the program as a result.

If anything, basic aid districts are in better positions than most to forgo state funding for TK if they no longer want to follow the state's conditions for the program. As basic aid districts are able to spend excess tax revenue on any local priorities, a basic aid district that still sees a benefit in offering TK but does not want to comply with the state's conditions for funding could offer its own program consistent with whatever level of funding it is willing to provide. For example, one school district offers a TK program only for four-year olds living within the district who are low-income eligible, homeless, or foster youth.²⁹² This would not be shifting the costs of a program from state to local government, as it would be the district's voluntary decision to offer a TK program after rejecting the state's conditions to receive funding for the program. Thus, the claimants' arguments that the funding structure the state uses for the TK program provides

²⁹¹ Exhibit X (2), D'Souza, *Should All School Districts be Required to Offer Transitional Kindergarten*, EdSource, September 1, 2021, <https://edsource.org/2021/should-all-school-districts-be-required-to-offer-transitional-kindergarten/660461> (accessed on March 20, 2025), pages 4, 6.

²⁹² See Exhibit X (17), Del Mar Union School District, *Transitional Kindergarten Early Intervention*, <https://www.dmusd.org/Departments/Enrollment/Transitional-Kindergarten-Early-Intervention/index.html> (accessed on February 3, 2025), page 2, (school district whose TK program is only available to four-year olds living within the district who are low-income eligible, homeless, or foster youth).

inadequate funding to basic aid districts is, in fact, a compelling justification not to participate in the program, demonstrating there is no practical compulsion. Though the claimants might argue that it is unfair to deprive their students of these programs, Commission decisions are questions of law, not questions of equity or policy.²⁹³ The claimants are not practically compelled to participate in the TK program. Rather, it is up to the claimants to determine if *on balance*, the benefits of the TK program under the state's conditions for funding outweigh its costs.

Accordingly, school districts are not practically compelled to provide transitional kindergarten and, thus, they are not mandated by the state to comply with the new requirements imposed by the test claim statute.

C. Even if the New Requirements Were Mandated, There Are No Costs Mandated by the State Pursuant to Government Code Section 17556(e) Because the State Has Provided Additional Revenue Specifically Intended to Fund the Costs of the Transitional Kindergarten Program.

Government Code section 17556(e) provides that the Commission shall not find costs mandated by the state if a bill includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate. Here, the parties dispute whether funding has been provided to pay for the TK program.

The claimants allege that the test claim statute imposes a reimbursable state-mandated program within the meaning of article XIII B, section 6 because they are basic aid districts that receive property tax revenue instead of state funding under the LCFF formula, and therefore they did not receive funding from the state for pupils admitted in the transitional kindergarten program in 2023-2024.²⁹⁴

Finance argues that all school districts, including basic aid districts such as the claimants, receive an entitlement according to the LCFF, but the entitlements are funded through a mix of property tax revenue, the Education Protection Account, and state funding.²⁹⁵ Because basic aid districts' property tax revenue exceeds their LCFF entitlement, they do not receive any additional state funds for their entitlement. The costs for TK attendance are included in the 2022-2023 and 2023-2024 apportionment calculations "which means that all apportionment-generating local education agencies, which includes basic aid districts, will receive ongoing LCFF funding for TK pupils."²⁹⁶ Finance argues that while increasing basic aid districts' entitlements means decreasing the amount of excess property tax revenue they are allowed to use on local educational priorities, "basic aid districts are not entitled to a specific amount of excess property tax revenue."²⁹⁷ Finance also points out that Education Code section 41202(g) defines the

²⁹³ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

²⁹⁴ Exhibit A, Test Claim, page 13.

²⁹⁵ Exhibit B, Finance's Comments on the Test Claim, pages 1-2.

²⁹⁶ Exhibit B, Finance's Comments on the Test Claim, page 2.

²⁹⁷ Exhibit B, Finance's Comments on the Test Claim, page 2.

term “allocated local proceeds of taxes,” to include local revenues used to offset LCFF state aid.²⁹⁸

The claimants respond that this explanation does not acknowledge the funding that other school districts receive specifically for the TK program, and fails to explain why other LEAs receive TK funding but basic aid districts were excluded.²⁹⁹ Comments from interested parties and interested persons assert that while Finance’s statements are accurate, it does not acknowledge that basic aid districts do not receive any additional state dollars to support TK implementation despite their entitlements growing; in other words that “the state’s mechanism for funding UTK leaves out community-funded districts and has effectively made those districts pay for the implementation of a new, full grade level with existing resources.”³⁰⁰

In short, all parties agree that transitional kindergarten is funded through school districts’ LCFF entitlements. Finance alleges that this satisfies the state’s funding obligations, but claimants and interested parties and interested persons argue that because basic aid districts’ LCFF entitlements are completely offset by their local property tax revenue, the state does not provide them additional funding for this program, making this an unfunded state mandate.

The Commission finds that, regardless of whether there is legal or practical compulsion for school districts to provide a TK program, the state has provided funding specifically intended to fund the TK program, including the new required activities and, thus, there are no costs mandated by the state pursuant to Government Code section 17556(e).

As explained in the Background, the Legislature has provided funding specifically for the TK program.³⁰¹ Education Code section 46300(g)(1) expressly states that in computing the ADA of a school district, “there shall be included the attendance of pupils in . . . a transitional kindergarten program after they have completed one year in that program if . . . (B) The pupils participated in a transitional kindergarten program pursuant to subdivision (c) of Section 48000.”³⁰² The state uses ADA when determining how much funding to provide for school districts, both the overall funding set aside for all school districts through Proposition 98, and when determining how much to provide each school district under the LCFF.

Article XVI, section 8(b) of the California Constitution provides the formulas used to determine the General Fund proceeds of taxes and allocated local proceeds of taxes

²⁹⁸ Exhibit B, Finance’s Comments on the Test Claim, pages 2-3.

²⁹⁹ Exhibit C, Claimants’ Rebuttal Comments, page 3.

³⁰⁰ Exhibit C, Claimants’ Rebuttal Comments, page 13 (Letter from Anthony Ranii, President, Schools for Sound Finance).

³⁰¹ Statutes 2010, chapter 705, section 5; Education Code section 42238.02(d)(1), (4), (g)(2).

³⁰² Education Code section 46300 (as last amended by Statutes 2010, chapter 705).

the state shall set aside for public education each year under Proposition 98.³⁰³ Education Code section 41202(g) defines “allocated local proceeds of taxes,” as used in those formulas to include local revenues that are used to offset state aid for school districts in LCFF calculations, i.e., property tax revenue.³⁰⁴ In other words, the property tax revenue that is used towards a school district’s LCFF entitlement is not part of their “local proceeds of taxes,” but is part of the state’s apportionment required by Proposition 98.

The LCFF entitlement formula provides school districts base rate funding per unit of ADA for pupils in a TK program, adjusted annually; as of the 2022-23 fiscal year the base rate was \$10,119.³⁰⁵ This base rate includes an existing 10.4 percent adjustment that is contingent on maintaining an average class size of 24 pupils.³⁰⁶ In 2022, the Legislature also provided an add-on to the LCFF entitlement formula equal to \$2,813 per unit of ADA generated by TK pupils, to be adjusted annually for cost-of-living increases, which it specified was intended to cover the costs to meet the requirement to maintain an average of one adult for every twelve pupils in a TK classroom.³⁰⁷ In total school districts are entitled to at least \$12,932 per unit of ADA generated by TK pupils for a school district to admit all pupils born within the mandatory date ranges, maintain a maximum average TK class size of 24 pupils per school site, and maintain an average of one adult for every twelve pupils in a TK classroom. The Education Code further requires school districts to use all money apportioned from the State School Fund during any fiscal year *exclusively for the support of the school or schools* of the school district, and further specifies that 60 percent of elementary school districts’ expenses shall go towards classroom teachers’ salaries.³⁰⁸ Therefore, the state has provided funding to school districts specifically intended for the new requirements in the TK program in an amount sufficient to fund the cost of the state mandate through the LCFF entitlement.

The Supreme Court’s 2019 decision in *California School Boards’ Association v. State of California* (CSBA) is instructive.³⁰⁹ There, CSBA challenged the constitutionality of statutes enacted in 2010 directing the use of existing “unrestricted” Proposition 98 funding as offsetting revenues to prospectively pay the costs of two education

³⁰³ California Constitution, article XVI, section 8(b)(2) and (3).

³⁰⁴ Education Code section 41202(g).

³⁰⁵ Exhibit X (18), Petek, *The Local Control Funding Formula for School Districts and Charter Schools*, LAO, January 2023, <https://lao.ca.gov/Publications/Report/4661> (accessed on January 24, 2025), page 3.

³⁰⁶ Education Code section 42238.02(d)(3).

³⁰⁷ Education Code section 42238.02(g)(2), as amended by Statutes 2022, chapter 52, (AB 181) section 38.

³⁰⁸ Education Code sections 41370(a) and 41372.

³⁰⁹ *California School Board Association v. State of California* (2019) 8 Cal.5th 713.

mandates, including the *Graduation Requirements* mandate.³¹⁰ The *Graduation Requirements* program addressed a 1983 Education Code statute that increased the number of science courses required for high school graduation beginning with the 1986-1987 school year from one course to two courses, and reimbursement under article XIII B, section 6 was found to be required for several costs including the increased cost to school districts for staffing the new mandated science class.³¹¹ At the time the test claim decision was adopted by the Commission in 1986, the Legislature had not provided any funding specifically for the mandate.³¹² The 2010 statute, however, stated in relevant part the following: “Costs related to the salaries and benefits of teachers incurred by a school district or county office of education to provide the courses specified in paragraph (1) of subdivision (a) of Section 51225.3 [i.e., the test claim code section in *Graduation Requirements*] shall be offset by the amount of state funding apportioned to the district pursuant to this article” and “The proportion of the school district’s current expense of education that is required to be expended for payment of the salaries of classroom teachers pursuant to Section 41372 shall first be allocated to fund the teacher salary costs incurred to provide the courses required by the state.”³¹³

CSBA challenged the 2010 statute contending the Legislature may not “identify pre-existing education funding as mandate payment” but must instead allocate “additional funding” to satisfy its mandate reimbursement obligation under article XIII B, section 6. CSBA further argued the treatment of these funds as “offsetting revenues” . . . “allows the State to eliminate a mandate obligation without actually providing any payment by simply identifying existing funding and designating it ‘offsetting revenues.’”³¹⁴ The State disagreed, arguing the Legislature may designate state funding to offset the costs of the mandate without violating article XIII B, section 6 or any other constitutional provision.³¹⁵

The court in *CSBA* found the statutes constitutional and did not violate article XIII B, section 6. “Pursuant to its broad authority over revenue collection and allocation, the Legislature may increase, decrease, earmark, or otherwise modify state education funding in order to satisfy reimbursement obligations, so long as its chosen method is

³¹⁰ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 724.

³¹¹ Commission on State Mandates, Decision and Parameters and Guidelines Amendment, *Graduation Requirements*, 11-PGA-03 (CSM-4181A), adopted July 23, 2021, <https://www.csm.ca.gov/decisions/180.pdf> (accessed on February 3, 2025), page 26.

³¹² Commission on State Mandates, Test Claim Decision, *Graduation Requirements*, CSM-4181, adopted January 22, 1987, <https://www.csm.ca.gov/decisions/181.pdf> (accessed on February 3, 2025), page 6.

³¹³ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 722; Education Code section 42238.24 (Statutes 2010, chapter 724).

³¹⁴ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 724.

³¹⁵ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 725.

consistent with Proposition 98 and other constitutional guarantees.”³¹⁶ The court recognized that although the funds the claimants may have wished to use exclusively for other substantive program activities are now reduced as a result of the 2010 statute, this did not in itself transform the costs into a reimbursable state mandate.³¹⁷ “The circumstance that the program funds claimants may have wished to use exclusively for substantive program activities are thereby reduced, does not in itself transform the related costs into a reimbursable state mandate.”³¹⁸ The court explained that:

CSBA’s insistence that article XIII B, section 6 requires the state to provide “additional” funding to cover the [Graduation Requirements] mandates ultimately rests on its contention that the Legislature may not “identify pre-existing education funding as mandate payment.” But article XIII B, section 6 does not guarantee any baseline of “pre-existing education funding,” . . .³¹⁹

The court also rejected CSBA’s argument that “once certain funding is defined as the education agencies’ ‘proceeds of taxes,’ it is protected by Section 6 and the State’s authority is correspondingly limited,”³²⁰ as follows:

CSBA is correct that Government Code sections 7906 and 7907 define school districts’ and county superintendents’ “proceeds of taxes” to include unrestricted state education funding. But those statutes do not guarantee or lock into place any baseline of unrestricted state funding, and as explained above, article XIII B, section 6 does not preclude the Legislature from adjusting the mix of state funding allocated for unrestricted versus mandate purposes.³²¹

The court concluded, “CSBA cites no other constitutional provision or authority that bars the Legislature from identifying a portion of previously unrestricted state funding and prospectively designating it to be used to offset mandate costs. Funds so designated are not local proceeds of taxes.”³²²

Here, the Legislature has provided funding specifically for the TK program. Each student that attends a TK program generates ADA for the school district, which is used in calculating school district apportionments and how much general revenue the state shall apportion for education under Proposition 98.³²³ This ADA would not otherwise

³¹⁶ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 726.

³¹⁷ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 727.

³¹⁸ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 725.

³¹⁹ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 727.

³²⁰ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.

³²¹ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 728.

³²² *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

³²³ See Statutes 2010, chapter 705 (SB 1381), section 5.

exist if not for the TK program, as without transitional kindergarten, school districts are only required to admit a child into kindergarten if they will have their fifth birthday by September 1 of that school year, and the children who are eligible to enroll in TK do not meet that requirement. This is in contrast to the issue in *Graduation Requirements* in which the mandated program added a required course but did not initially provide additional ADA or other funding specifically intended to fund the cost of the mandate and thus the Commission found there were increased costs mandated by the state. There, the increased costs of the mandate were not specifically provided for until years after the mandate determination, when the Legislature designated funding that would from then on be used to offset and reduce costs for the program. Here, the Legislature has already provided funding through additional ADA and through add-on grants meant to address increased costs from specific requirements in the test claim statute. As indicated above, school districts are entitled to \$12,932 per unit of ADA generated by TK pupils specifically for the program.

The claimants nevertheless assert that reimbursement is required because the LCFF entitlement is first offset by property tax revenue, which causes basic aid districts to spend their property tax revenue on transitional kindergarten, while other districts receive additional state funding. However, as was the case in *CSBA*, the Legislature has broad discretion to determine the manner in which it satisfies its reimbursement obligations, “so long as its chosen method is consistent with Proposition 98 and other constitutional guarantees.”³²⁴ The Proposition 98 apportionment has increased to provide for additional TK students’ ADA, and basic aid districts still receive their constitutionally guaranteed minimum funding based on ADA, so there is no argument that this funding structure violates a constitutional guarantee. The property tax revenue used to offset a school district’s LCFF entitlement is not its local proceeds of taxes, but is an apportionment from the state it is obligated to use for the support of schools within the district. Although the state’s chosen method leaves basic aid school districts with less excess property tax revenue to spend on local education priorities, just like the unrestricted state funding in *CSBA*, basic aid districts are not guaranteed a minimum amount of excess property tax revenue, the legislature is not barred from offsetting the LCFF entitlement with a school districts property tax revenue, and funds so designated are not local proceeds of taxes.³²⁵ “The circumstance that the program funds claimants may have wished to use exclusively for substantive program activities are thereby reduced, does not in itself transform the related costs into a reimbursable state mandate.”³²⁶

Accordingly, there are no costs mandated by the state pursuant to Government Code section 17556(e).

³²⁴ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 726.

³²⁵ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 729.

³²⁶ *California School Board Association v. State of California* (2019) 8 Cal.5th 713, 725.

V. Conclusion

Based on the foregoing analysis, the Commission denies this Test Claim.

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 March 27, 2025, I served the:

- **Current Mailing List dated March 18, 2025**
- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued March 27, 2025**

Transitional Kindergarten, 23-TC-02

Statutes 2021, Chapter 44, Section 60 (AB 130);

Education Code Section 48000, Effective July 9, 2021

Hope Elementary School District and Sunnyvale School District, Claimants

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 March 27, 2025 at Sacramento, California.



Jill Magee

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

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/18/25

Claim Number: 23-TC-02

Matter: Transitional Kindergarten

Claimants: Hope Elementary School District
Sunnyvale 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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