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STATE SUPERINTENDENT OF
PUBLIC INSTRUCTION

April 17, 2025

RECEIVED
April 17, 2025
**Commission on
State Mandates**

Via Electronic Submission

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

Re: Comments on Draft Proposed Decision – Transitional Kindergarten Test Claim
(21-TC-01)
(*Education Code § 48000, as amended by Stats. 2021, ch. 44*)

Dear Chairpersons and Members of the Commission:

The California Department of Education (CDE) respectfully submits the following comments regarding the Draft Proposed Decision, issued March 27, 2025, in the above-referenced matter. We appreciate the Commission's careful analysis of Education Code Section 48000 and its conclusion that the statute, as currently worded, does not impose a reimbursable state mandate under Article XIII B, Section 6 of the California Constitution. We write to offer additional analysis of the legal and practical compulsion framework that we believe applies to the transitional kindergarten (TK) implementation requirements.

I. Statutory Integration of TK and Kindergarten as Legal Compulsion

Education Code Section 48000 creates an integrated statutory framework that effectively requires any LEA offering kindergarten to implement TK. This conclusion stems from the text itself, not merely administrative interpretation or preference: First, Section 48000(d) expressly defines TK as "the first year of a two-year kindergarten program that uses a modified kindergarten curriculum that is age and developmentally appropriate." This definition creates a statutory reality where kindergarten is no longer a single-year program but a two-year sequence beginning with TK. Second, Section 48000(c)(1) mandates admission for children meeting specific birth date criteria according to the phased implementation schedule. The statutory language states that these children "shall be admitted" to TK, using mandatory rather than permissive language. When these provisions are read together using the well-established canon that statutes must be interpreted as a coherent whole (See *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 440.) the conclusion is: LEAs offering kindergarten must by logical necessity offer the "first year" of that program as defined by statute. The Legislature's choice to define kindergarten as a two-year

program means that offering only the second year (traditional kindergarten) without the first year (TK) would contradict the express statutory definition.

II. Practical Compulsion Through ADA Funding Structure

Even absent an explicit statutory, reimbursable mandate, the California Supreme Court has established that practical compulsion creates one when local entities have "no true option or choice" in implementing a program. *Coast Community College Dist. v. Commission on State Mandates* (2022) 13 Cal.5th 800, 820.

The structure of the Average Daily Attendance (ADA) apportionment system creates precisely such practical compulsion in this case:

1. **Loss of Core Operational Revenue:** LEAs failing to implement TK would forfeit ADA funding for all eligible four-year-olds under the Section 48000(c) implementation schedule. As the eligible population expands each year through 2025-26, this revenue loss becomes increasingly significant.
2. **Risk to Kindergarten ADA:** Because TK is statutorily defined as the first year of kindergarten, a district not offering TK could face legal challenges to its authority to collect kindergarten ADA at all, as it would effectively be offering only half of the statutorily defined kindergarten program. The Education Code does not contemplate partial implementation of the now statutorily defined two-year kindergarten program.
3. **Enrollment Pipeline Disruption:** Districts declining to implement TK would lose students to neighboring districts offering the full two-year kindergarten program, creating long-term enrollment and funding instability that extends well beyond the TK year itself. This creates a form of competitive disadvantage that practically compels participation.

This is precisely the type of consequence the Supreme Court contemplated in *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 731, when it noted that practical compulsion may exist where "the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate."

III. Fiscal Framework Applies Uniformly to Basic Aid and LCFF Districts

The Commission's own findings reinforce that all LEAs operate under the same fiscal framework, regardless of whether their LCFF entitlement is met through state apportionment or local property taxes.

As the Draft Proposed Decision acknowledges: "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." (Draft Proposed Decision, p. 71.)

This confirms that Basic Aid districts must apply their property tax revenue to fulfill a state obligation, just as other districts rely on apportionment. These funds, though locally sourced, function within the same statutory entitlement structure and are subject to the same compliance expectations. Accordingly, both Basic Aid and other districts face the same functional and practical obligation to implement TK if they offer kindergarten.

IV. Request for Clarification

While we respect the Commission's determination regarding reimbursement under Article XIII B, Section 6, we respectfully request that the Final Decision clarify the following legal points:

1. That Education Code Section 48000's definition of kindergarten as a two-year program functionally requires LEAs to implement both years of the program if they offer kindergarten at all;
2. That an LEA's decision not to implement TK would jeopardize its authority to collect ADA funding for kindergarten, creating a practical compulsion that leaves LEAs with "no true option or choice"; and
3. That this practical compulsion applies equally to all LEAs offering kindergarten, regardless of funding mechanism.

This clarification would provide needed guidance to LEAs regarding their obligations under current law while maintaining consistency with the Commission's conclusions on reimbursement.

Thank you for your consideration and for your continued service on this matter.

Sincerely,

Len Garfinkel Digitally signed by Len Garfinkel
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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 April 18, 2025, I served the:

- **Current Mailing List dated April 18, 2025**
- **California Department of Education's Comments on the Draft Proposed Decision filed April 17, 2025**
- **Claimants' Comments on the Draft Proposed Decision filed April 17, 2025**
- **Finance's Comments on the Draft Proposed Decision filed April 17, 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 April 18, 2025 at Sacramento, California.



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Mailing List

Last Updated: 4/18/25

**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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