

**COMMISSION ON STATE MANDATES**

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April 4, 2016

Mr. Arthur Palkowitz  
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Suite 200  
San Diego, CA 92106

Ms. Jill Kanemasu  
State Controller's Office  
Division of Accounting and Reporting  
3301 C Street  
Suite 700  
Sacramento, CA 95816

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

**Re: Decision and Parameters and Guidelines**

*California Assessment of Student Performance and Progress (CAASPP),  
14-TC-01 and 14-TC-04*

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

Plumas County Office of Education, Plumas Unified School District, Porterville Unified  
School District, Santa Ana Unified School District, and Vallejo City Unified School  
District, Claimants

Dear Mr. Palkowitz and Ms. Kanemasu:

On March 25, 2016, the Commission on State Mandates adopted the decision and parameters and guidelines on the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey  
Executive Director

BEFORE THE  
 COMMISSION ON STATE MANDATES  
 STATE OF CALIFORNIA

**IN RE PARAMETERS AND GUIDELINES FOR:**

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

The period of reimbursement begins on the effective dates of the statute or regulation that imposes the reimbursable state-mandated activity: beginning January 1, 2014, or on later dates (February 3, 2014, and August 27, 2014) as specified.

Case No.: 14-TC-01 and 14-TC-04

*California Assessment of Student Performance and Progress (CAASPP)*

**DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500, ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7.**

*(Adopted March 25, 2016)*

*(Served April 4, 2016)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided the parameters and guidelines during a regularly scheduled hearing on March 25, 2016. Arthur Palkowitz appeared on behalf of the claimants, and Keith Bray, General Counsel for the California School Boards Association, appeared on behalf of California School Boards Association (CSBA). Amber Alexander and Susan Geanacou appeared on behalf of the Department of Finance.

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 section 17500 et seq., and related case law.

The Commission adopted the proposed decision to approve the parameters and guidelines by a vote of 6-0, as follows:

<b>Member</b>	<b>Vote</b>
Ken Alex, Director of the Office of Planning and Research	Yes
John Chiang, State Treasurer, Vice Chairperson	Yes
Richard Chivaro, Representative of the State Controller	Yes
Sarah Olsen, Public Member	Yes
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	Yes
Carmen Ramirez, City Council Member	Yes
Don Saylor, County Supervisor	Absent

## **I. Summary of the Mandate**

On January 22, 2016, the Commission adopted a decision finding that specified provisions of the test claim statutes and regulations impose a reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. On February 4, 2016, the Commission issued a corrected decision reflecting an activity inadvertently omitted from the final summary of activities found in the conclusion section. The Commission partially approved the test claim, finding only the following activities to be reimbursable:

- Beginning January 1, 2014, provide “a computing device, the use of an assessment technology platform, and the adaptive engine” to administer the CAASPP assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology requirements.<sup>1</sup>
- Beginning February 3, 2014, the local educational agency (LEA) CAASPP coordinator shall be responsible for assessment technology, and shall ensure current and ongoing compliance with minimum technology specifications as identified by the CAASPP contractor(s) or consortium.<sup>2</sup>
- Beginning February 3, 2014, notify parents or guardians each year of their pupil’s participation in the CAASPP assessment system, including notification that notwithstanding any other provision of law, a parent’s or guardian’s written request to excuse his or her child from any or all parts of the CAASPP assessments shall be granted.<sup>3</sup>
- Beginning February 3, 2014, score and transmit the CAASPP tests in accordance with manuals or other instructions provided by the contractor or the California Department of Education (CDE).<sup>4</sup>
- Beginning February 3, 2014, identify pupils unable to access the computer-based version of the CAASPP tests; and report to the CAASPP contractor the number of pupils unable to access the computer-based version of the test.<sup>5</sup>
- Beginning February 3, 2014, report to CDE if a pupil in grade 2 was administered a diagnostic assessment in language arts and mathematics that is aligned to the common core academic content standards pursuant to Education Code section 60644.<sup>6</sup>
- Beginning February 3, 2014, comply with any and all requests from CAASPP contractors, and abide by any and all instructions provided by the CAASPP contractor or

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<sup>1</sup> Education Code section 60640 (Stats. 2013, ch. 489), interpreted in light of California Code of Regulations, title 5, sections 850, 853, 853.5, and 857 (Register 2014, Nos. 6, 30, 35).

<sup>2</sup> California Code of Regulations, title 5, section 857(d) (Register 2014, No. 6).

<sup>3</sup> California Code of Regulations, title 5, section 852 (Register 2014, No. 6).

<sup>4</sup> California Code of Regulations, title 5, section 853 (Register 2014, No. 6).

<sup>5</sup> California Code of Regulations, title 5, section 857(a) (Register 2014, No. 6).

<sup>6</sup> California Code of Regulations, title 5, section 861(b)(5) (Register 2014, No. 6).

consortium, whether written or oral, that are provided for training or provided for in the administration of a CAASPP test.<sup>7</sup>

- Beginning August 27, 2014, the CAASPP test site coordinator shall be responsible for ensuring that all designated supports, accommodations and individualized aids are entered into the registration system.<sup>8</sup>

The Commission also found that the following state and federal funds must be identified and deducted as offsetting revenues from any school district's reimbursement claim:

- Statutes 2013, chapter 48 (\$1.25 billion in Common Core implementation funding), *if* used by a school district on the reimbursable CAASPP activities to support the administration of computer-based assessments.
- Funding apportioned by SBE from Statutes 2014, chapter 25, Line Item 6110-113-0001, schedule (8), for fiscal year 2013-2014 CAASPP costs.
- Funding apportioned by SBE from Statutes 2015, chapter 10, Line Item 6100-113-0001, schedule (7) for fiscal year 2014-2015 CAASPP costs.
- Statutes 2014, chapter 25 (Line Item 6110-488) and chapter 32 (appropriation for outstanding mandate claims) *if* used by a school district on the reimbursable CAASPP activities.
- Statutes 2014, chapter 25, Line Item 6110-182-0001, Provision 2 (appropriation "to support network connectivity infrastructure grants) *if* used by a school district on the reimbursable CAASPP activities.
- Any federal funds received and applied to the reimbursable CAASPP activities.

## **II. Procedural History**

On January 22, 2016, the Commission adopted a decision partially approving the test claim, which was re-issued as corrected February 4, 2016.<sup>9</sup> On January 27, 2016, Commission staff issued draft expedited parameters and guidelines.<sup>10</sup> On February 11, 2016, Plumas County Office of Education, Plumas Unified School District, Porterville Unified School District, Santa Ana Unified School District, and Vallejo City Unified School District (claimants) filed comments on the draft expedited parameters and guidelines.<sup>11</sup> On February 11, 2016, the State Controller's Office (Controller) also filed comments on the draft expedited parameters and guidelines.<sup>12</sup> On February 16, 2016, the Department of Finance (Finance) filed comments on the

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<sup>7</sup> California Code of Regulations, title 5, section 864 (Register 2014, No. 6).

<sup>8</sup> California Code of Regulations, title 5, section 858(d) (Register 2014, No. 35).

<sup>9</sup> Exhibit A, Corrected Test Claim Decision, 14-TC-01 and 14-TC-04.

<sup>10</sup> Exhibit B, Draft Expedited Parameters and Guidelines.

<sup>11</sup> Exhibit C, Claimants' Comments on Draft Expedited Parameters and Guidelines.

<sup>12</sup> Exhibit D, Controller's Comments on Draft Expedited Parameters and Guidelines.

draft expedited parameters and guidelines.<sup>13</sup> On February 23, 2016, claimants filed rebuttal comments.<sup>14</sup>

### **III. Discussion**

#### **A. Period of Reimbursement (Section III. of Parameters and Guidelines)**

Government Code section 17557(e) states that a test claim shall be submitted on or before June 30 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The claimants filed test claim 14-TC-01 on December 23, 2014. On March 17, 2015, claimants filed an amended test claim on 14-TC-01, to replace the original filing. On June 26, 2015, a second test claim (14-TC-04) was filed and consolidated with 14-TC-01. These test claims, all filed before June 30, 2015, establish eligibility for reimbursement pursuant to Government Code section 17557(e), beginning July 1, 2013. However, the earliest of the test claim statutes, Statutes 2013, chapter 489, has an effective date of January 1, 2014. Additionally, activities added by the test claim regulations adopted in Register 2014, No. 6 are effective February 3, 2014 and those added by Register 2014, No. 35 are effective August 27, 2014.<sup>15</sup> Therefore, the period of reimbursement begins on the effective date of each statute or regulation that imposes the reimbursable state-mandated activity, as specified in Section IV. of the parameters and guidelines.

#### **B. Claiming Costs for Reimbursable Activities (Sections IV. and V. of Parameters and Guidelines)**

Government Code section 17557 provides that parameters and guidelines may identify activities that are reasonably necessary to comply with the mandated program. California Code of Regulations, title 2, section 1183.7 states that:

Activities required by statutes, regulations and other executive orders that were not pled in the test claim may only be used to define reasonably necessary activities to the extent that compliance with the approved state-mandated activities would not otherwise be possible. Whether an activity is reasonably necessary is a mixed question of law and fact. All representations of fact to support any proposed reasonably necessary activities shall be supported by documentary evidence submitted in accordance with section 1187.5 of these regulations.

Government Code section 17559 also provides that Commission decisions must be based on substantial evidence.

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<sup>13</sup> Exhibit E, Finance's Comments on Draft Expedited Parameters and Guidelines.

<sup>14</sup> Exhibit F, Claimants' Rebuttal Comments.

<sup>15</sup> Register 2014, No. 30 reenacted the emergency regulations added by Register 2014, No. 6, and was later amended slightly by Register 2014, No. 35, but did not, itself, add any approved activities, and therefore the effective date of Register 2014, No. 30 has no bearing on the period of reimbursement.

Accordingly, reasonably necessary activities are those that a claimant proposes, and provides substantial evidence in the record to support, as being necessary to comply with the mandated activities approved by the Commission.

The draft expedited parameters and guidelines included only the activities approved in the test claim decision. Claimants submitted comments on the draft expedited parameters and guidelines seeking additional language and clarification of certain activities, and substantive additions to others, but without any additional evidence or declarations in the record to support the proposed activities. Therefore the Commission’s analysis is limited to the declarations and evidence provided with the test claim, the testimony offered at the hearing on the test claim, and documentation and guidance produced by the Smarter Balanced Assessment Consortium (SBAC) or the contractor(s), found on the Department of Education’s (CDE’s) website. The Commission can take administrative notice, in accordance with the Commission’s regulations, of the materials available on CDE’s website pertaining to the CAASPP assessments.<sup>16</sup>

Finance also submitted comments, requesting that reimbursable activities be clarified to limit reimbursement to only the incremental increase in service required to administer the CAASPP tests *via computer*, and to provide only pro-rata reimbursement based on the actual use of technology upgrades and acquisitions to administer the CAASPP tests. Finance also requests that the reimbursable technology costs be limited to the *minimum* requirements to accomplish the computer-based test administration. The analysis below will clarify and make more specific, as necessary, the activities that the Commission approved in the test claim decision based on evidence in the test claim record and evidence available from CDE and the CAASPP contractor(s) or consortium, and address the comments submitted by claimants and Finance.

**1. Providing a computing device and minimum technology requirements to administer the CAASPP assessments to all eligible pupils via computer.**

The Commission approved, in the test claim decision, the following activity:

Beginning January 1, 2014, provide “a computing device, the use of an assessment technology platform, and the adaptive engine” to administer the CAASPP assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology requirements.

The technology requirements that the Commission approved are those “identified by the contractor(s) or consortium,” in accordance with the plain language of California Code of Regulations, title 5, section 857.<sup>17</sup>

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<sup>16</sup> California Code of Regulations, title 2, section 1187.5 [“Official notice may be taken in the manner and of the information described in Government Code Section 11515.”]; Government Code section 11515 [“In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State.”]; Evidence Code section 452(h) [Judicial notice may be taken of... “Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.”].

<sup>17</sup> California Code of Regulations, title 5, section 857 (Register 2014, Nos. 6, 30, 35).

Claimants propose to add the following language:

*The reimbursement costs shall include, but is not limited to, the following: computers, laptops, Ipads, tablets, Professional Development, training, Consultants, servers, broadband, carts, peripheral infrastructure equipment: fiber optic cabling, headphones; earplugs; keyboards; microphones, electrical cords; hardware and software.*<sup>18</sup>

Finance opposes the claimant's proposed language and argues that "including loose terms...could be interpreted in a way that expands the scope of reimbursable technology costs, because it is possible that many computers and headphones, and all microphones and earplugs, claimed under these parameters and guidelines will exceed the minimum technology requirements." Finance cites the Smarter Balanced Technology Strategy Framework and Testing Device Requirements, and argues that the minimum technology requirements state that microphones are not required, and that standard headphones will suffice, and do not mention earplugs.<sup>19</sup> Finance further argues that these parameters and guidelines "should be amended to require claimants to report: (1) the dates and times within the assigned testing window they administered the CAASPP summative assessments; and (2) the technology infrastructure and device inventory that was replaced to accommodate the CAASPP summative assessments." Finance asserts that "these amendments will ensure that only the costs for fixed assets that were absolutely necessary for meeting the minimum technology requirements of the CAASPP summative assessments are reimbursed." Finance also requests that the parameters and guidelines appropriately specify that only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.<sup>20</sup>

The analysis herein will discuss computing devices separately from internet connectivity and bandwidth requirements ("broadband"), including costs alleged for consultants and engineers, followed by accessories such as headphones and keyboards, all of which are analyzed as needed to ensure compliance with current and ongoing minimum technology requirements. The analysis will then address Finance's proposed limitations on reimbursable costs for devices and technology infrastructure. Training, or "Professional Development," as proposed by claimants, is analyzed separately under section 6.

*a) Claimant's request for reimbursement for "servers," "carts, peripheral infrastructure equipment, fiber optic cabling," "electrical cords, hardware and software," is too broad, vague and ambiguous, and not supported by evidence in the record and is, therefore, denied.*

The Commission finds, as a threshold issue, that several of the terms included in claimants' proposed language are not defined in claimants' comments or in the test claim record, are vague and ambiguous, or are susceptible of multiple meanings. For example, "hardware" could be the same as an iPad or tablet computer, which the claimant also requests, and in that way "hardware" is duplicative. "Software," in turn, could include operating systems for devices, or could refer to other computer programs that claimants would seek to purchase. However, SBAC asserts,

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<sup>18</sup> Exhibit C, Claimants' Comments on Draft Expedited Parameters and Guidelines, page 1.

<sup>19</sup> Exhibit E, Finance's Comments on Draft Expedited Parameters and Guidelines, page 3.

<sup>20</sup> Exhibit E, Finance's Comments on Draft Expedited Parameters and Guidelines, page 2.

referring to operating system requirements, that “[m]ost new hardware will naturally fall well into the specifications released so far...”<sup>21</sup> and “[a]ll public-facing components...*can be accessed by a variety of common web browsers...*, while the actual student test itself is accessible online via *a secure browser released for supported operating systems.*”<sup>22</sup> SBAC states that this creates “a simple, secure interface for students to access only the test *without any other online-enabled utility.*”<sup>23</sup> Thus, SBAC does not describe any additional requirements characterized as “software.”

In addition, SBAC asserts that because the CAASPP assessment is a web-based application, it “requires no local *servers.*”<sup>24</sup>

The Commission also finds that “carts, peripheral infrastructure equipment, fiber optic cabling,...[and] electrical cords” are not supported by evidence in the record or are not defined, and are therefore denied.

Therefore, the claimant’s request for reimbursement for “hardware and software,” “servers,” “carts, peripheral infrastructure equipment, fiber optic cabling,” and “electrical cords” is denied and these terms are excluded from the parameters and guidelines.

*b) Reimbursement to provide a computing device to administer the CAASPP assessments to all eligible pupils must be limited to the minimum technology requirements identified by the contractor(s) or consortium.*

The test claim decision explains that the CAASPP tests are “vastly different” from the former STAR assessments, most notably in that they are designed to be administered on-line, and to be adaptive to student responses.<sup>25</sup> The Commission relied on the definitions contained in section 850 of the title 5 regulations and on the plain language of section 853 of the regulations to conclude that the “primary mode of administration of a CAASPP test” was intended to utilize computers. And, the Commission found, based on section 857 of the regulations, that the LEA CAASPP coordinator has an ongoing duty to maintain adequate technology to conduct the assessments by “ensur[ing] current and ongoing compliance with the minimum technology specifications as identified by the CAASPP contractor(s) or consortium.” In particular, the Commission observed that some districts may be required to replace or upgrade computing devices used for testing and that eventual obsolescence for various operating systems is planned:

In addition to the likely inevitable, but intermittent, replacement of testing devices and hardware, the Smarter Balanced Assessment Consortium has also published a projected schedule of the “End-of Support Date[s]” for various operating systems.

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<sup>21</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 27.

<sup>22</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 17.

<sup>23</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 18.

<sup>24</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 17.

<sup>25</sup> Exhibit A, Corrected Test Claim Decision, 14-TC-01 and 14-TC-04, pages 50-51.



For example, “Mac OS 10.5” and “Windows Vista” are two common operating systems that SBAC expects to cease supporting after the 2016-2017 school year, and newer operating system software will be required at that time. Thus, not only do section 857 and Education Code section 60640, require replacing or upgrading testing devices and hardware, but a certain degree of obsolescence for various software, including the underlying operating systems, is also planned.<sup>26</sup>

Accordingly, the Commission approved the activity of providing and maintaining “a computing device, the use of an assessment technology platform, and the adaptive engine” to administer the CAASPP assessments to all eligible pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology specifications, as identified by the contractor(s) or consortium.<sup>27</sup>

Finance focuses on the word “minimum,” within the approved activity, arguing that only the barest technology acquisitions and upgrades to accomplish the purpose are reimbursable: “it is critical that the parameters and guidelines are clear that any technology costs claimed that are in excess of the minimum technology requirements will not be reimbursed.”<sup>28</sup> It is unclear from Finance’s comments whether it is suggesting that the schools disregard the lifecycle costs contemplated by section 20118.2(a) of the Public Contract Code when it is required to purchase new technology and simply purchase new software and hardware based solely on price, despite the fact that that could mean software and computers will need to be purchased more frequently to keep up with the minimum technology requirements.<sup>29</sup>

Claimants argue that the test claim statutes and regulations “do not require [school districts] to use existing equipment during the ‘administration of computer-based assessments.’” Claimants allege that “LEA[s] have the discretion to purchase the necessary tools to implement the mandate, regardless of their pre-CAASPP fixed assets inventory.”<sup>30</sup>

As noted, claimants have not submitted any additional evidence or declarations to support their arguments, or the additional language they have proposed. Therefore, the Commission must analyze the scope of the mandate with respect to providing computing devices based on the evidence in the test claim record and SBAC’s published technology specifications.

The Commission first finds that providing devices to administer the CAASPP to all pupils via computer does not mean providing a computer for every student. Testimony at the test claim hearing indicated that rotating students through a computer lab may be sufficient in some schools, while others may choose “computers on wheels.”<sup>31</sup> Similarly, SBAC’s technology requirements guidance states that “districts might consider pooling more mobile units, like

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<sup>26</sup> Exhibit A, Corrected Test Claim Decision, 14-TC-01 and 14-TC-04, pages 50-52.

<sup>27</sup> Education Code section 60640 (Stats. 2013, ch. 489), interpreted in light of California Code of Regulations, title 5, sections 850, 853, 853.5, and 857 (Register 2014, Nos. 6, 30, 35).

<sup>28</sup> Exhibit E, Finance’s Comments on Draft Expedited Parameters and Guidelines, page 3.

<sup>29</sup> Public Contract Code section 20118.2 (Stats. 2005, ch. 509).

<sup>30</sup> Exhibit F, Claimant Rebuttal Comments, page 2.

<sup>31</sup> Exhibit G, Hearing Transcript, January 22, 2016, pages 30; 32.

laptops or tablets within their district for transport from one school site to the next as testing windows are staggered across sites.”<sup>32</sup>

In addition, SBAC maintains that the technology requirements to implement the assessment “were deliberately established as a low entry point to help ensure that technology-purchasing decisions are made based on instructional plans and to increase the likelihood that schools will successfully engage in online testing.”<sup>33</sup> The SBAC guidance states the following:

Based on the general research and data reviews conducted for the development of this guideline, *most districts will find much of their existing infrastructure and device inventory will serve to administer the online assessments.* By all estimations at this time, the fear that states and districts will be forced to make large volumes of hardware and infrastructure purchases between now and the 2014–15 school year is not consistent with the implementation data available. However, some more specific areas will need a degree of review and consideration based on national trends at this time. While the Smarter Balanced assessment plans to support Windows XP configurations and will continue to include Windows XP in its specifications moving to 2015, it is recommended that districts consider migrating existing devices to Windows 7 where possible. This recommendation is due to the high number of Windows-based machines still using XP in the K-12 environment, and the fact that Microsoft will not provide security support to this OS beyond April of 2014. In general, Smarter Balanced will set a goal to support all prevalent operating systems at least two years beyond their own life cycle as indicated by the date in which they are removed from mainstream support by their authoring companies/agencies. The following is a table identifying the anticipated end-of-support dates for various operating systems in use today.

[A chart detailing the release dates of several common operating systems and the “Anticipated Smarter Balanced End-of-Support Date” follows.]

There will be instances in which districts might consider pooling more mobile units, like laptops or tablets within their district for transport from one school site to the next as testing windows are staggered across sites. In some instances, however, certain equipment was purchased and deployed to specific sites and to specific user populations with program funding that requires it be kept at a single site, or be appropriated for a single population as a condition of the corresponding funds. Districts will want to check out the use provisions for all assets in accordance with such documentation.

There will also be a need in certain scenarios for various districts to consider the purchase of additional computers or computational devices. As is standard for most districts, there will be purchasing guidelines and vendor relationships in place to dictate the types and specifications of units to be secured and integrated

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<sup>32</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 27.

<sup>33</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 4.

into existing site inventories. *Most new hardware will naturally fall well into the specifications released so far by Smarter Balanced.* District purchasing agents and technology officers should be diligent in working with their existing vendors to make them aware of the new hardware minimum recommendations to ensure that all new purchases meet or exceed those specifications.<sup>34</sup>

Thus, SBAC maintains that the assessments, at least for the initial years of implementation, are designed to be compatible with existing technology in which districts have previously invested: “this document is intended to be a living document that provides districts with basic information that is necessary to assist them in their plans for the continued use of legacy systems as instructional resources and as delivery devices for online assessments.”<sup>35</sup> In addition, SBAC notes that the “specifications described in this document are minimum specifications necessary for the Smarter Balanced assessment only,” while technology specifications “to support *instruction* and other more *media-heavy applications* are higher than those necessary for the assessment.”<sup>36</sup>

SBAC also acknowledges, however, that some school districts may be required to make new purchases: “There will also be a need in certain scenarios for various districts to consider the purchase of additional computers or computational devices...[m]ost new hardware will naturally fall well into the specifications released so far...”<sup>37</sup> The Commission’s test claim decision acknowledged that the purchase of computing devices, and the eventual upgrade of testing devices is inevitable, if somewhat uneven from year to year and from one district to the next.<sup>38</sup> There is not sufficient evidence in the record, however, to provide a clear picture of what will be required statewide; existing technology integration within some school districts may be sufficient to administer the mandate, while others may be far behind.

Nevertheless, Finance’s interpretation requiring districts to adhere to the *minimum* technology specifications provided by SBAC is consistent with the plain language of the regulations and with the ongoing duty as stated in the test claim decision, to the extent that districts already have compatible computing devices deployed in their schools. SBAC expressly states that the assessment was designed to be administered using existing technology already deployed in schools, not to require massive overhaul and/or replacement of existing devices and infrastructure:

All public-facing components of the system are accessible via an online remote portal and can be accessed by a variety of common web browsers for the administrative and diagnostic resources, while *the actual student test itself is accessible online via a secure browser released for supported operating systems.*

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<sup>34</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, pages 24-27 [emphasis added].

<sup>35</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 8.

<sup>36</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 4.

<sup>37</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 27.

<sup>38</sup> Exhibit A, Corrected Test Claim Decision, 14-TC-01 and 14-TC-04, pages 50-55.

[¶...¶]

Each year, Smarter Balanced anticipates releasing a new set of secure browsers. These browsers prevent students from accessing other applications and copying or creating screenshots. The browser must be installed on each computer used for online testing. The secure browser must be installed on a yearly basis due to implementation of new features in the test delivery system and to support operating system updates.<sup>39</sup>

As noted in the test claim, SBAC expressly states its intention to eventually cease supporting certain operating systems in favor of newer versions to administer the CAASPP test and it has in fact begun to do so.<sup>40</sup> More specifically, “Smarter Balanced will set a goal to support all prevalent operating systems at least two years beyond their own life cycle as indicated by the date in which they are removed from mainstream support by their authoring companies/agencies.”<sup>41</sup> Therefore, “support” of an operating system, in this context, means that the contractor provides a secure browser compatible with the particular operating system and version. Accordingly, the CAASPP technology website states:

A supported operating system is one for which American Institutes for Research (AIR) [the subcontractor] provides updates to the secure browser for that operating system. AIR provides such updates as the supported operating systems are updated or as bugs in the secure browser are detected and fixed.<sup>42</sup>

Thus, the critical requirement for compliance with the mandate to “ensure current and ongoing minimum technology specifications as identified by the contractor(s) or consortium” is to provide a computing device and operating system for which Smarter Balanced, through its subcontractor AIR, provides a secure browser support during a given school year.

The changes in operating systems and device specifications result from AIR’s operating system support timeline, which provides generally for a 10 year life span for Windows and Macintosh systems, and provides, with respect to iOS, Android, and Chrome OS [the most prevalent tablet systems]: “The supported operating system versions will be updated as required each year to support advances in technology and online assessments.” This is consistent with SBAC’s Technology Strategy Framework recommendations, which recognize existing operating systems and device specifications that are supported for the Field Test (2013-2014 school year) and for the first year of full implementation (2014-2015 school year), but simultaneously recommend, for districts purchasing replacement or additional devices, operating systems and device specifications that exceed those minimum supported devices: for example, Windows XP with a

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<sup>39</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 17.

<sup>40</sup> Exhibit G, CAASPP Operating System Support Plan for 2015-2016 Test Delivery System, pages 2-3.

<sup>41</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 25.

<sup>42</sup> Exhibit G, CAASPP, Operating System Support Plan for 2015-2016 End of Operating System Support, pages 2-3.

233MHz processor “for Current Computers” and Windows 7 to Windows 8.1 with a 1GHz processor for the “Recommended Smarter Balanced Minimum for New Purchases.”<sup>43</sup>

Thus, the compatibility of districts’ technology with the secure browsers offered by the contractor is inevitably going to change over a period of years. Finance’s adherence to a “minimum” technology standard is supported insofar as districts that have compatible devices are not compelled by this mandate to purchase new computing devices or upgrade operating systems. But the same “minimum” formulation should not be construed to require districts when making new purchases, to select the oldest operating system or the absolute least expensive manufacturer or model. Such an approach would clearly be in conflict with Public Contract Code section 20118.2, which states:

(a) Due to the highly specialized and unique nature of technology, telecommunications, related equipment, software, and services, because products and materials of that nature are undergoing rapid technological changes, and in order to allow for the introduction of new technological changes into the operations of the school district, it is in the public’s best interest to allow a school district to consider, in addition to price, factors such as vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, the broadest possible range of competing products and materials available, fitness of purchase, manufacturer’s warranties, and similar factors in the award of contracts for technology, telecommunications, related equipment, software, and services.

(b) This section applies only to a school district’s procurement of computers, software, telecommunications equipment, microwave equipment, and other related electronic equipment and apparatus. This section does not apply to contracts for construction or for the procurement of any product that is available in substantial quantities to the general public.<sup>44</sup>

In keeping with Public Contract Code section 20118.2, then, “minimum technology specifications as identified by the contractor(s) or consortium” must be read to include not only the minimum specifications for current computers, which identifies computing devices and operating systems that are currently serviceable and not yet in need of replacement solely to administer the CAASPP assessments, but, with regard to the required purchase of new technology, also the recommended minimum specifications for new purchases, which identifies a broad range of devices for which secure browser support is available now and for a projected number of years.<sup>45</sup>

Accordingly, the parameters and guidelines authorize reimbursement for providing desktop or laptop computers, iPads, or other tablet computers for which the contractor(s) or consortium

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<sup>43</sup> Exhibit G, CAASPP, Operating System Support Plan for 2015-2016 Test Delivery System, pages 2-3.

<sup>44</sup> Public Contract Code section 20118.2 (Stats. 2005, ch. 509).

<sup>45</sup> Exhibit G, CAASPP, Operating System Support Plan for 2015-2016 Test Delivery System, pages 2-3; SBAC Technology Strategy Framework and Testing Device Requirements, pages 21; 26.

provides secure browser support in the academic year. The number of devices required to implement the CAASPP assessment is discussed further below in section 1(e) of this decision.

- c) *Infrastructure upgrades necessary to meet minimum bandwidth and network connectivity requirements to administer the CAASPP assessments to all eligible pupils.*

As discussed above, the computer-based assessments are administered via the Internet, and therefore network connectivity and Internet connectivity are necessary to carry out the mandate. Claimants have proposed adding to the activity of providing a computing device and access to the assessment technology platform, “*Consultants, servers, broadband, carts, peripheral infrastructure equipment, fiber optic cabling...*”<sup>46</sup> The Commission’s findings above exclude “servers,” “carts, peripheral infrastructure equipment, [and] fiber optic cabling,” based on insufficient evidence or a lack of definition. However, the SBAC technology requirements provide that bandwidth (i.e., connection speed) may be a necessary upgrade for some districts, and therefore the Commission will herein analyze “broadband,” as pled, presuming that this term includes the infrastructure upgrades necessary to meet minimum bandwidth and connectivity requirements to administer the CAASPP.

SBAC states, on its “Technology” web page: “A bandwidth test will measure current internet bandwidth at your school... You can use information obtained from these tools with the Technology Readiness Calculator...” which “can help schools estimate the number of days and associated network bandwidth required to complete the assessments given the number of students, number of computers, and number of hours per day computers are available for testing at the school.”<sup>47</sup> SBAC states that “[w]e currently estimate that the Smarter Balanced assessment will require 10-20 Kbps per student or less.” Therefore, SBAC states that each computing device “[m]ust connect to the Internet with a minimum of 20Kbps available per student to be tested simultaneously.”<sup>48</sup> As a result, SBAC recognizes that existing “legacy systems” may not be sufficient, and “[m]any districts will, by design or by need, have to consider the implementation of changes to their systems of information technology.”<sup>49</sup>

There was evidence in the test claim record that the named claimants are among those compelled to either implement changes to their local network, or to upgrade incoming bandwidth and speed. Mr. Nelson, of Porterville Unified, explained that in order to accommodate the network demands, “[w]e had to move from a model that we had purchased a year before, to one that was quite a bit more expensive to support the additional traffic capacity.” Mr. Nelson further testified that “[o]nce you move from different tiers [of broadband internet service], there’s a pretty significant increase in terms of what you’re paying for annual support.”<sup>50</sup> In addition, for some districts, a completely new broadband internet connection may be required. Ms. Miglis, of

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<sup>46</sup> Exhibit C, Claimants’ Comments on Draft Expedited Parameters and Guidelines, page 1.

<sup>47</sup> Exhibit G, SBAC website, “Technology” (saved February 24, 2016).

<sup>48</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 22.

<sup>49</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 8.

<sup>50</sup> Exhibit G, Hearing Transcript, January 22, 2016, pages 26-27.

Plumas Unified School District, testified that Plumas Unified is a “frontier district, beyond rural,” and had a total “absence of broadband in many of our communities.”<sup>51</sup> Ms. Miglis stated that some of the district’s schools had no computer lab at all, and no reliable internet connection with which to participate in the CAASPP assessments.<sup>52</sup>

Thus, there was testimony at the test claim hearing that districts needed to improve their wireless access capability,<sup>53</sup> improve bandwidth capacity and hire additional technicians,<sup>54</sup> and that wireless access points and wireless infrastructure within some schools might necessitate bringing in outside engineers or other consultants. And therefore, adequate bandwidth to administer the CAASPP tests in large groups exceeds the previous capacity that many schools had established.<sup>55</sup> Plumas Unified represents an extreme case; none of the other claimants testified to a complete absence of broadband internet connectivity. However, to the extent other school districts, like Porterville Unified, were required to increase the speed of their incoming connection to meet the peak demand requirements of the CAASPP tests, those costs are within the scope of the mandate, and are reimbursable.

Based on the foregoing, the Commission approves “broadband internet service,” providing at least 20 Kbps per student to be tested simultaneously, as a part of providing a computing device to administer the CAASPP. And, the evidence in the record supports clarifying that “broadband” includes the acquisition and installation of wireless (or wired) network equipment, and hiring “consultants” or “engineers” to assist districts in completing and troubleshooting that installation. Finally, to the extent the contractor(s) or consortium later increase the bandwidth requirements to effectively administer the test, additional upgrades to infrastructure equipment, and additional costs for monthly or annual “broadband internet service” will be reimbursable.

*d) Headphones, keyboards, microphones, earplugs, and other accessory devices necessary to comply with the minimum technology specifications identified by the consortium.*

With respect to claimants’ proposed inclusion of “*headphones; earplugs; keyboards; [and] microphones,*” Finance argues that “standard headphones” are sufficient, and that microphones and earplugs are not necessary. Again, Finance’s assertion of what accessory devices are necessary follows from its interpretation of “minimum technology requirements,” and a strict reading of the SBAC Technology Strategy Framework and Testing Device Requirements guidance documents. The passage that Finance relies upon states as follows:

#### Headphones

The English-language arts assessments contain audio (recorded and/or computer-based read-aloud), and students must be provided with headphones so they have the option to clearly listen to the audio in these tests. Similarly, some students may need the support of text read-aloud by the computer as part of the

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<sup>51</sup> Exhibit G, Hearing Transcript, January 22, 2016, page 29.

<sup>52</sup> Exhibit G, Hearing Transcript, January 22, 2016, pages 29-30.

<sup>53</sup> Exhibit G, Hearing Transcript, January 22, 2016, page 24.

<sup>54</sup> Exhibit G, Hearing Transcript, January 22, 2016, pages 26-27.

<sup>55</sup> Exhibit G, Hearing Transcript, January 22, 2016, pages 26-28.

mathematics assessment. In these cases, students should be provided headphones as well. *Districts are encouraged to test the quality of the headphones in advance, as many districts and schools opt to purchase fairly inexpensive, bulk-type units when it comes to headphones for general student use.*

*USB headphones are recommended, as they are typically plug-and-play devices. However, standard headphones connected via standard TRS (headphone jack) connections will suffice.* Additionally, the computer-based read-aloud accommodation requires voice packs to be preinstalled on computers that will be used for testing. For Windows and Mac operating systems, default voice packs are typically preinstalled. *For computers running Linux Fedora Core 6 (K12LTSP 4.2+) or Ubuntu 9–12, voice packs may need to be downloaded and installed.* AIR tests a number of existing Windows and Mac internal voice packs as well as a number of fee-based external, third-party voice packs and releases a list of those best suited to the audio portions of their assessments.

It is assumed that most computers and similar devices come with requisite sound cards, but it is important to run the sample test, student tests, and diagnostic programs on all devices, particularly those that will be supporting audio in some form. *At this time, neither microphones nor stylus devices have been identified as necessary input devices for the 2014–15 assessment implementation.* However, Smarter Balanced anticipates integrating manipulative media and interactive data elements for students as a means to generate more authentic input capacities.<sup>56</sup>

Based on this passage from SBAC, “USB headphones are recommended...” but “standard headphones...will suffice.” And currently “neither microphones nor stylus devices have been identified as necessary...” for 2014-2015, although “Smarter Balanced anticipates integrating manipulative media and interactive data elements...”<sup>57</sup> At this time, SBAC acknowledges that a variety of different accessories might accomplish the task, but state mandate reimbursement must be limited to that which is necessary to accomplish the approved mandated activity: here, “minimum technology specifications as identified by the CAASPP contractor(s) or consortium.”<sup>58</sup>

In addition, the SBAC guidance states that “A pointing device must be included...” such as “a mouse, touch screen, touchpad, or other pointing device with which the student is familiar.” And, the guidance states that “External keyboards are required in all cases unless specified differently by a student’s Individualized Education Program,” [sic] and that any keyboard that disables the on-screen keyboard is acceptable, including “mechanical, manual, plug and play, and wireless-based...”<sup>59</sup> This guidance is broadly worded, and although it does recommend that districts “consider wired alternatives,” the Commission can take administrative notice that some

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<sup>56</sup> Exhibit G, Smarter Balanced Assessment Consortium Technology Strategy Framework and Testing Device Requirements, page 23 [emphasis added].

<sup>57</sup> *Ibid.*

<sup>58</sup> California Code of Regulations, title 5, section 857.

<sup>59</sup> Exhibit G, Smarter Balanced Assessment Consortium Technology Strategy Framework and Testing Device Requirements, page 22.



tablets, including the “iPad” do not have USB inputs or other plugs to make use of a wired keyboard or mouse.<sup>60</sup> Therefore, with respect to a “keyboard” and a “pointing device,” these terms must be left open-ended, consistently with the SBAC guidance regarding “Minimum...Requirements for Current Computers.”<sup>61</sup>

Finally, SBAC’s published device requirements support Finance’s conclusion that microphones and earplugs are not required. The claimants argue, in rebuttal comments, that microphones or earplugs may be needed by students with special needs, and that these requirements may be articulated in their 504 Plan or Individualized Education Program (IEP): “[f]urther, there are issues of health and safety that surround sharing the equipment.”<sup>62</sup> Thus, claimants assert that special needs pupils may require individual microphones and/or earplugs, and the districts must have the discretion within the parameters and guidelines to make those acquisitions.

However, as above, claimants have not introduced any evidence or documentation to support this or any other alleged additional activity or cost. To the extent microphones or earplugs are required in a pupil’s IEP or Section 504 plan, such devices would fall under the regulations as “designated supports,” “accommodations,” or “individualized aids.” The Commission denied, in the test claim decision, all accommodations, designated supports, and individualized aids, reasoning that providing these was not a new activity, or not required, by definition.<sup>63</sup>

Based on the foregoing, the Commission finds that *only* “keyboards,” “headphones,” and “pointing devices” satisfy the minimum technology specifications, as identified by SBAC, and therefore only these items are included in the parameters and guidelines.

*e) Finance’s request to require claimants to report information supporting a claim for reimbursement for devices, accessories, and infrastructure that were actually required to be replaced to comply with the mandate, and to reimburse only on a pro-rata basis if technology infrastructure and computing devices are used for purposes other than the CAASPP assessments, is consistent with the approved activity.*

In the test claim decision, the Commission approved the following:

- Beginning January 1, 2014, provide “a computing device, the use of an assessment technology platform, and the adaptive engine” to administer the CAASPP assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology requirements.<sup>64</sup>

In the foregoing analysis, the Commission finds that “minimum technology requirements” means the minimum technology specifications identified by the contractor(s) or consortium, in

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<sup>60</sup> Evidence Code section 451(f) [Judicial notice shall be taken of: “Facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute.”].

<sup>61</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 22.

<sup>62</sup> Exhibit F, Claimants’ Rebuttal Comments, page 2.

<sup>63</sup> Exhibit A, Corrected Test Claim Decision, 14-TC-01 and 14-TC-04, pages 37-43.

<sup>64</sup> Exhibit A, Corrected Test Claim Decision, 14-TC-01 and 14-TC-04, page 85.

accordance with California Code of Regulations, title 5, section 857. As analyzed, those specifications include desktop or laptop computers, iPads, or other tablet computers for which Smarter Balanced provides secure browser support to administer the CAASPP in the academic year; accompanied by a keyboard, headphones, and a pointing device; and connected to broadband internet service, providing at least 20 Kbps per student to be tested simultaneously, which may include costs of acquisition and installation of wireless (or wired) network equipment, and hiring consultants or engineers to assist districts in completing and troubleshooting that installation.

Finance proposes the following language limiting reimbursement to only the incremental increase in service (and cost) necessary to meet the *minimum* technology specifications as identified by the contractor, and providing for pro-rata reimbursement only for the actual use of devices and infrastructure upgrades for mandate-related activities:

Section V, subsection A, beginning on page five, specifies the direct costs that are eligible for reimbursement, and how those costs must be reported. When claiming reimbursement for fixed assets, including computers, the parameters and guidelines appropriately specify that only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed. However, the "Fixed Assets" section should be amended to require claimants to report: (1) the dates and times within the assigned testing window they administered the CAASPP summative assessments; and (2) the technology infrastructure and device inventory that was replaced to accommodate the CAASPP summative assessments. These amendments are necessary to ensure that the costs for fixed assets used for purposes other than CAASPP summative assessment administration are not reimbursed. Further, these amendments will ensure that only the costs for fixed assets that were absolutely necessary for meeting the minimum technology requirements of the CAASPP summative assessments are reimbursed.<sup>65</sup>

Claimants argue that the test claim statutes and regulations “do not require [LEAs] to use existing equipment during the ‘administration of computer-based assessments.’” Claimants allege that “LEA[s] have the discretion to purchase the necessary tools to implement the mandate, regardless of their pre-CAASPP fixed assets inventory.” The claimants argue: “Furthermore, the test claim statutes/regulations did not require that equipment purchased for CAASPP be used exclusively for assessments.” Claimants maintain that “[s]tudents use of equipment for instruction and assessments eliminates problems of transitioning from their normal device to the SBAC device, that otherwise might affect their performance on the test [sic].”<sup>66</sup>

The Commission finds that claimants *are required*, based on the approved activity, and the technology specifications issued by the contractor(s), to use existing devices and technology infrastructure, if compatible (i.e., if there is an available secure browser and sufficient network speed). And, if existing devices and technology infrastructure are not sufficient, the burden is on the claimant to establish, based on supporting documentation, that increased costs are required to

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<sup>65</sup> Exhibit E, Finance’s Comments on Draft Expedited Parameters and Guidelines, page 3.

<sup>66</sup> Exhibit F, Claimants’ Rebuttal Comments, page 2.

administer the assessments in accordance with the law. In addition, as the “boilerplate” language in Section V. of the parameters and guidelines already provide, reimbursement on a pro-rata basis is required *if* technology infrastructure and computing devices are used for purposes other than the CAASPP assessments.

- i. *The request to require claimants to report information supporting a claim for reimbursement for devices, accessories, and infrastructure that were actually required to be replaced to comply with the mandate is supported by the requirement to claim only increased costs necessary to comply with the mandated program.*

Finance requests that the parameters and guidelines require claimants to report the technology infrastructure and device inventory that was replaced to accommodate the CAASPP summative assessments. Because SBAC established the technology specifications as “a low entry point,” and with the intention that “most districts will find much of their existing infrastructure and device inventory will serve to administer the online assessments,”<sup>67</sup> requiring claimants to maintain supporting documentation showing how their existing inventory of computing devices is not sufficient to comply with the mandated program is legally correct. Claimants’ assertion that school districts “have the discretion to purchase the necessary tools to implement the mandate, regardless of their pre-CAASPP fixed assets inventory”<sup>68</sup> is inconsistent with the approved activity, as implemented by SBAC, and inconsistent with state mandate reimbursement.<sup>69</sup>

As noted above, the needs of schools and districts statewide will vary dramatically. At least one of the named claimants asserted in the test claim hearing that at least one of the LEA’s schools had no broadband internet connection at all.<sup>70</sup> In addition, Ms. Miglis, Former Superintendent of Plumas Unified School District, stated that “we are not even close to faithfully implementing the high-stakes assessment, and we still have a very long way to go.”<sup>71</sup> Similarly, Dr. Ramona Bishop, superintendent of Vallejo Unified School District, testified that two of the district’s schools had wireless infrastructure and computers, but for the rest, “[w]e had to purchase from A-to-Z computer technology, whether it was computers on wheels, computers in labs...” and that there remain “considerable challenges.”<sup>72</sup>

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<sup>67</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, pages 4; 10.

<sup>68</sup> Exhibit F, Claimant Rebuttal Comments, page 2.

<sup>69</sup> *County of Los Angeles v. Commission* (2003) 110 Cal.App.4th 1176, 1189 [“[I]n order for a state mandate to be found...there must be compulsion to expend revenue.” (*City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 780, 783 [revisions to Code of Civil Procedure required entities exercising the power of eminent domain to compensate businesses for lost goodwill did not create state mandate, because the power of eminent domain was discretionary, and need not be exercised at all]).].

<sup>70</sup> Exhibit G, Hearing Transcript, January 22, 2016, pages 29-30.

<sup>71</sup> Exhibit G, Hearing Transcript, January 22, 2016, page 31.

<sup>72</sup> Exhibit G, Hearing Transcript, January 22, 2016, pages 32-33.

Thus, for these districts, the “incremental increase” in service will be essentially all new costs, at least for the early years of implementation. For other districts, the “device inventory” and showing existing technology infrastructure will provide documentation showing that their existing devices are not sufficient, either because they are not supported by a secure browser provided by the contractor(s) or consortium, or because they do not have enough computing devices to administer the assessment within the testing window provided by the regulations. An inventory of existing devices does not necessarily capture all of the information necessary to determine whether a district was compelled to purchase new devices or install new technology infrastructure, but it does establish a “baseline” by which to measure the incremental increase in service (and cost).

The Commission noted previously that providing devices to administer the CAASPP to all pupils via computer does not mean providing a computer for every student. Testimony at the test claim hearing indicated that rotating students through a computer lab may be sufficient in some schools, while others may choose “computers on wheels.”<sup>73</sup> Similarly, SBAC’s technology requirements guidance states that “districts might consider pooling more mobile units, like laptops or tablets within their district for transport from one school site to the next as testing windows are staggered across sites.”<sup>74</sup> However, SBAC also recognized that in some districts “certain equipment was purchased and deployed to specific sites and to specific user populations with program funding that requires it be kept at a single site, or be appropriated for a single population as a condition of the corresponding funds.”<sup>75</sup> Thus, program-limited funds, or other legal requirements attached to existing resources, may be a factor in determining whether a district has a sufficient inventory of existing technology infrastructure and devices to administer the assessment.

The other key legal requirement applicable to administration of CAASPP, mentioned above, is the testing window provided by the regulations pled in the test claim. Section 855 of the test claim regulations was denied because it did not impose an activity, but rather defined a time frame for testing.<sup>76</sup> However, to the extent that time frame affects how many computing devices are needed, and how much bandwidth is needed, it must be understood to be a part of “minimum technology specifications.” For the 2013-2014 Field Test, section 855 provided that the assessments be administered “during a testing window of 25 instructional days that includes 12 instructional days before and after completion of 85% of the school’s...instructional days.”<sup>77</sup> Beginning in the 2014-2015 school year, section 855 stated that testing “shall not begin until at least 66 percent of a school’s annual instructional days have been completed, and testing may continue up to and including the last day of instruction.”<sup>78</sup> Beginning in the 2015-2016 school

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<sup>73</sup> Exhibit G, Hearing Transcript, January 22, 2016, pages 30; 32.

<sup>74</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 27.

<sup>75</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, page 27.

<sup>76</sup> Exhibit A, Corrected Test Claim Decision, 14-TC-01 and 14-TC-04, page 44.

<sup>77</sup> Exhibit G, February 2014 Emergency Regulations, page 22.

<sup>78</sup> California Code of Regulations, title 5, section 855 (Register 2014, No. 6).

year, “the available testing window shall begin on the day in which 66 percent of the school's or track's annual instructional days have been completed, and testing may continue up to and including the last day of instruction for the regular school's or track's annual calendar.”<sup>79</sup> The requirement to complete testing within the regulatory period provided is thus a factor in establishing what a district needed to comply with the mandate, as is the compatibility of existing devices.

Completing the assessment within the testing window depends in part on whether a district can provide a sufficient number of computing devices to students, but those devices must also be connected to a network of sufficient speed to support the number of devices running simultaneously. Thus, as Mr. Nelson, of Porterville Unified noted, the question is essentially one of the “peak demand.”<sup>80</sup> Similarly, SBAC states that districts must “predict the highest estimated bandwidth needs for the most “network-intensive” parts of the test...” As explained above, the SBAC technology guidance states that a school’s broadband speed must provide approximately 20Kbps per student to be tested simultaneously, but how many students must be tested simultaneously is a function of the number of devices available and the amount of time within the regulatory testing window that is allotted to a particular test site.

Based on the foregoing analysis, the *sufficiency* of a district’s existing inventory must be understood to include not only devices and technology infrastructure that meet the design specifications, and for which secure browser support is available, but also a *sufficient number* of devices, and *sufficient bandwidth* per student to effectively administer the CAASPP assessments within the testing window.

Accordingly, with respect to the first mandated activity, the parameters and guidelines, in Section IV.A., states the following:

- A. Beginning January 1, 2014, provide “a computing device, the use of an assessment technology platform, and the adaptive engine” to administer the CAASPP assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology requirements specifications, as identified by the CAASPP contractor(s) or consortium.<sup>81</sup> Reimbursement for this activity includes the following:
  1. A sufficient number of desktop or laptop computers, iPads, or other tablet computers for which Smarter Balanced provides secure browser support in the academic year, along with a keyboard, headphones, and a pointing device for each, to administer the CAASPP to all eligible pupils within the testing window provided by CDE regulations.<sup>82</sup>
  2. Broadband internet service providing at least 20 Kbps per pupil to be tested simultaneously, costs for acquisition and installation of wireless or wired network

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<sup>79</sup> California Code of Regulations, title 5, section 855 (Register 2015, No. 48).

<sup>80</sup> Exhibit G, Hearing Transcript, January 22, 2016, pages 26-27.

<sup>81</sup> Education Code section 60640 (Stats. 2013, ch. 489), interpreted in light of California Code of Regulations, title 5, sections 850, 853, 853.5, and 857 (Register 2014, Nos. 6, 30, 35).

<sup>82</sup> California Code of Regulations, title 5, section 855 (Register 2014, Nos. 6, 30, 35).

equipment, and hiring consultants or engineers to assist a district in completing and troubleshooting the installation.

**Claimants shall maintain supporting documentation showing how their existing inventory of computing devices and accessories, technology infrastructure, and broadband internet service is not sufficient to administer the CAASPP test to all eligible pupils in the testing window, based on the minimum technical specifications identified by the contractor(s) or consortium.**

**Reimbursement is NOT required to provide a computing device for every pupil, for the time to assess each pupil, or for the purchase of other equipment not listed.**

Section V. of the parameters and guidelines is amended to refer to the above documentation requirements described in Section IV. of the parameters and guidelines.

- ii. Finance’s request for pro-rata attribution of costs is already reflected in Section V. of the parameters and guidelines and there is no reason to amend the draft expedited parameters and guidelines in this regard.

Finance also requests that although “the parameters and guidelines appropriately specify that only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed...the ‘Fixed Assets’ section should be amended to require claimants to report: (1) the dates and times within the assigned testing window they administered the CAASPP summative assessments...” Finance maintains that “[t]hese amendments are necessary to ensure that the costs for fixed assets used for purposes other than CAASPP summative assessment administration are not reimbursed.”<sup>83</sup> Claimants respond that “[t]hese fixed assets were purchased to benefit other organizational goals including student access to technology and digital learning resources.” Claimants continue: “Furthermore, the test claim statutes/regulations did not require that equipment purchased for CAASPP be used exclusively for assessments.” Claimants argue that districts need not “lock up the equipment” and that using the same equipment for instruction and assessments “eliminates problems of transitioning from their normal device to the SBAC device, that otherwise might affect their performance on the test.”<sup>84</sup>

Claimants have not provided any supporting evidence or documentation for this argument. And, when fixed assets are “purchased to benefit other organizational goals, it is unreasonable to expect the state to reimburse the full cost of assets that are utilized for a number of different functions of the local entity that are not part of the reimbursable state-mandated program. Accordingly, the “boilerplate” language of parameters and guidelines provides for pro-rata attribution as a matter of course for fixed asset costs, as well as contracted services “if also used for purposes other than the reimbursable activities.” (Emphasis added.)

Where, however, school districts were compelled to purchase computing devices, and make infrastructure upgrades needed to comply with the mandate and those devices and upgrades are only used for the mandated program in that fiscal year, they are entitled to reimbursement of 100 percent of the of the mandated device or upgrade. The mandate is “to provide a computing

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<sup>83</sup> Exhibit E, Finance’s Comments on Draft Expedited Parameters and Guidelines, page 2.

<sup>84</sup> Exhibit F, Claimants’ Rebuttal Comments, page 2.

device...which includes the acquisition of and ongoing compliance with minimum technology requirements.”<sup>85</sup>

The evidence in the record makes clear that SBAC designed the CAASPP assessment to be administered on older “legacy” computing devices, and that the technology specifications were “deliberately established as a low entry point to help ensure that technology-purchasing decisions are made based on instructional plans...”<sup>86</sup> Nevertheless, the testimony at the test claim hearing was that some districts had no such “legacy” systems, and thus were required to make infrastructure improvements and acquire new or additional devices solely because of the mandate.<sup>87</sup> That is, their primary functions of educating students did not previously demand wireless connectivity, or a large number of computing devices. And, while some schools may have already incorporated elements of mobile technology into their everyday instruction, this mandated program required some schools to replace devices that were not sufficient for the CAASPP testing: as Mr. Miller, Superintendent of Santa Ana Unified School District, stated, “in one of my prior districts...we had 28,000 student devices...[but] did not have devices that were compatible with the new assessment.”<sup>88</sup> Accordingly, there is evidence in the record that at least some schools among the named claimant districts were compelled, solely on the basis of the mandated program, to acquire replacement or additional computing devices in order to administer the CAASPP assessments. This evidence has not been contradicted or rebutted.

However, claimants have stated that these devices were purchased with other organizational goals in mind, and that they should not be required to use the devices exclusively for CAASPP. Indeed, they are not being required to use the devices exclusively for CAASPP, but to the extent computing devices and information technology upgrades are used for purposes outside the mandate, pro-rata reimbursement is consistent with reimbursing for only the mandated costs associated with the program.

Finance’s request to require districts to report the dates and times within the assigned testing window is denied. The request, in context, appears to be aimed at isolating the pro-rata costs of the test administration, so that costs for fixed assets can be attributed pro-rata. However, Finance’s comment does not make clear how that information would be helpful in apportioning costs, and, moreover, the Commission has denied all costs for test administration during the testing window itself. The standard pro-rata language in Section V. of the parameters and guidelines is sufficient.

Based on the foregoing, to the extent districts use the reimbursable devices, accessories, broadband internet service, or the installation of wireless or wired network equipment for general instruction or other purposes aside from the administration of the CAASPP assessments in a fiscal year, those costs are not attributable to the mandated program, and therefore the parameters and guidelines, in Section V.4 provide as follows:

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<sup>85</sup> Exhibit A, Corrected Test Claim Decision, 14-TC-01 and 14-TC-04, page 85.

<sup>86</sup> Exhibit G, SBAC Technology Strategy Framework and Testing Device Requirements, pages 4; 8.

<sup>87</sup> Exhibit G, Hearing Transcript, January 22, 2016, pages 28-31.

<sup>88</sup> Exhibit G, Hearing Transcript, January 22, 2016, page 24.

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities, in accordance with Section IV.A of these parameters and guidelines. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

As stated above, full reimbursement would be required if a school district uses the fixed asset solely for the CAASPP program in a fiscal year.

The same language is also included in Section V.A.3. for Contracted Services as follows: “If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed.”

Accordingly, the Commission finds that Finance’s request to add additional language to the parameters and guidelines, in addition to the boilerplate language of the parameters and guidelines, is not necessary since pro rata reimbursement for fixed assets and contracted services is already addressed in the parameters and guidelines.

## **2. Notification to parents or guardians of their pupils’ participation in CAASPP.**

The Commission approved the following in the test claim decision:

- Beginning February 3, 2014, notify parents or guardians each year of their pupil’s participation in the CAASPP assessment system, including notification that notwithstanding any other provision of law, a parent’s or guardian’s written request to excuse his or her child from any or all parts of the CAASPP assessments shall be granted.<sup>89</sup>

Claimants have requested to add the following:

The reimbursement costs shall include, but is not limited to, the following:  
Making arrangements for the testing of all eligible pupils in alternative education programs or programs conducted off campus, including, but not limited to, non-classroom based programs, continuation schools, independent study, community day schools, county community schools, juvenile court schools, or NPSs.

Finance asserts that this activity is not new, and the Commission has already determined accordingly: “Prior to the test claim regulations, section 851 required school districts to ‘make whatever arrangements are necessary to test all eligible pupils in alternative education programs or programs conducted off campus, including ... continuation schools, independent study, community day schools, county community schools, juvenile court schools, or nonpublic schools.’”<sup>90</sup>

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<sup>89</sup> California Code of Regulations, title 5, section 852 (Register 2014, No. 6).

<sup>90</sup> Exhibit E, Finance’s Comments on Draft Expedited Parameters and Guidelines, page 3.



The Commission agrees that the proposed additional language was expressly denied in the test claim decision, because the requirements described are not new.<sup>91</sup> Based on the foregoing, the Commission denies the requested additional language quoted above.

**3. Adding the words “local educational agency” to approved activities.**

Claimants have proposed adding language clarifying that each local educational agency is responsible for performing the approved activities. The parameters and guidelines already state that the listed activities are reimbursable to “each eligible claimant,” and the Commission finds that the parameters and guidelines already sufficiently describe the population of eligible claimants in Section III., consistent with Government Code section 17519, as follows:

Any "school district" as defined in Government Code section 17519, except for community colleges, that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

Government Code section 17519, in turn, provides that “school district,” for purposes of mandate reimbursement, includes county offices of education.

Therefore, the Commission finds that the eligible claimants who perform the mandate have been sufficiently identified, and the claimant’s proposed additional language is not necessary and could create confusion. Based on the foregoing, the Commission denies the requested additional language quoted above.

**4. Test site coordinator’s duty to enter all designated supports, accommodations, and individualized aids into the registration system.**

The Commission’s decision on the test claim approved duties of the test site coordinator to enter all designated supports, accommodations and individualized aids into the registration system beginning August 27, 2014, based on amended section 858 of Code of Regulations, title 5, as follows:

- Beginning August 27, 2014, the CAASPP test site coordinator shall be responsible for ensuring that all designated supports, accommodations and individualized aids are entered into the registration system.<sup>92</sup>

This activity was inadvertently omitted from the draft expedited parameters and guidelines,<sup>93</sup> and the claimants have requested that it be included, as follows:

Beginning February 3, 2014, the local educational agency (LEA)/CAASPP test site coordinator shall be responsible for ensuring that all designated supports, accommodations and individuals aids are entered into the registration system.<sup>94</sup>

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<sup>91</sup> Exhibit A, Corrected Test Claim Decision, 14-TC-01 and 14-TC-04, pages 36-37.

<sup>92</sup> California Code of Regulations, title 5, section 858(d) (Register 2014, No. 35). See Exhibit A, Corrected Test Claim Decision, 14-TC-01 and 14-TC-04, pages 59-60; 85.

<sup>93</sup> Exhibit B, Draft Expedited Parameters and Guidelines, page 4.

<sup>94</sup> Exhibit C, Claimants’ Comments on Draft Expedited Parameters and Guidelines, page 1.

Finance has noted that the same activity was approved beginning August 27, 2014, in accordance with the effective date of the amendment to section 858 of the test claim regulations.<sup>95</sup>

Accordingly, the Commission finds that the activity of entering all designated supports, accommodations, and individualized aids, directed to an LEA's CAASPP test site coordinator(s), shall be included in the parameters and guidelines, beginning August 27, 2014, as was approved in the test claim decision.

**5. Personnel costs for training, as directed by the Smarter Balanced Assessment Consortium.**

The Commission approved the following activity in the test claim decision:

- Beginning February 3, 2014, comply with any and all requests from CAASPP contractors, and abide by any and all instructions provided by the CAASPP contractor or consortium, whether written or oral, *that are provided for training* or provided for in the administration of a CAASPP test.<sup>96</sup>

The Commission found, in the test claim decision, that “[t]hese requirements, though non-specific, are newly required by” amended section 864 of the test claim regulations. The regulation thus requires districts to cooperate with the CAASPP contractor(s) or consortium, and abide by “any and all instructions” for training. The consortium of which California is part is SBAC, which has provided instructions in the form of an Online Test Administration Manual, a Secure Browser Installation Manual, Smarter Balanced Usability, Accessibility, and Accommodations Guidelines, and many other documents. The Online Field Test Administration Manual states that district CAASPP coordinators, school site coordinators, test administrators and “school administrative staff who will be involved in...assessment administration should complete the Smarter Balanced Field Test online training modules...in addition to the supplemental videos, which can be found on the Training Web page...”<sup>97</sup> As revised February 2015, the SBAC Online Test Administration Manual states as follows:

All LEA CAASPP Coordinators, CAASPP Test Site Coordinators (SCs), Test Administrators (TAs), and school administrative staff who will be involved in the Smarter Balanced assessment administration should review the applicable supplemental videos and archived Webcasts, which can be found on the CAASPP Current Administration Training Web page at <http://caaspp.org/training/caaspp/>.

The LEA CAASPP Coordinator, SC, and/or other staff designated by the state are responsible for ensuring all appropriate trainings have been completed. Such training should include, but is not limited to, training on item security and professional conduct associated with the administration of standardized assessments.

Prior to administering a test, Test Administrators (and any other individuals who will be administering any secure Smarter Balanced assessment) will read the CAASPP *Smarter Balanced Online Test Administration Manual*, the *Smarter*

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<sup>95</sup> Exhibit E, Finance's Comments on Draft Expedited Parameters and Guidelines, page 3.

<sup>96</sup> California Code of Regulations, title 5, section 864 (Register 2014, No. 6).

<sup>97</sup> Exhibit G, 2014 Field Test Online Test Administration Manual, page 10.

*Balanced Usability, Accessibility, and Accommodations Guidelines*, and the *Test Administrator (TA) Reference Guide*, and view the associated Smarter Balanced training modules. All of these documents are linked on the CAASPP Instructions and Manuals Web page at <http://caaspp.org/administration/instructions/>.<sup>98</sup>

As revised for 2016, the Online Test Administration Manual continues to provide similarly. The web addresses stated provide online tutorials and web-based training materials, including webcast informational presentations. The Field Test instructions, viewed together with the revised instructions, thus suggest that training is an ongoing, yearly activity that districts are expected to “abide by.” Because the test claim regulations, as approved, expressly require districts to abide by any and all instructions from the CAASPP contractor(s) or consortium, including those provided for training, this instruction constitutes an ongoing activity to review the materials, as stated.

However, the statement in the second paragraph, above, that “[t]he LEA CAASPP Coordinator, SC, and/or other staff designated by the state are responsible for ensuring all appropriate trainings have been completed...” is very similar to the language of California Code of Regulations, title 5, section 857, which was denied in the test claim decision.<sup>99</sup> Section 857(c) states that the LEA CAASPP coordinator’s responsibilities shall include, but are not limited to, overseeing preparation, registration, coordination, training, assessment technology...” And section 857(e) states that the LEA CAASPP coordinator shall ensure the training of CAASPP test site coordinators, who will oversee the test administration.<sup>100</sup> The test claim decision finds that these activities are generally the same as under the former STAR test, and therefore not new.<sup>101</sup> Therefore, the parameters and guidelines do not authorize reimbursement for the LEA CAASPP coordinator and test site coordinator to ensure all appropriate trainings have been completed. Approval of this activity contradicts the Commission’s test claim decision.

Moreover, claimants’ request for training is too vague and too broad to be supported based on the evidence in the record. Claimants request that the parameters and guidelines include an additional section on “Professional Development, training,” with the activities in section IV., but claimants do not provide any new evidence in the record to substantiate these costs and activities. Upon reviewing the test claim record, there is some evidence that training (or, “Professional Development”) was provided for school district employees, but the extent of that training is not well defined.

Mr. Nelson, of Porterville Unified testified at the test claim hearing that “[we] looked to gear up our staff internally, and provided additional training; and that we know that [sic] there’s maintenance required for these devices and for this infrastructure...” He continued: “We also took the technicians that we had on the staff and trained them in some of the kind of new deployments they’d have to do, the very dense deployments...people talk about it being

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<sup>98</sup> Exhibit G, SBAC Online Test Administration Manual, 2015, page 9.

<sup>99</sup> California Code of Regulations, title 5, section 857 (Register 2014, No. 6, 30, 35).

<sup>100</sup> California Code of Regulations, title 5, section 857(c);e) (Register 2014, No. 6, 30, 35).

<sup>101</sup> Exhibit A, Corrected Test Claim Decision, 14-TC-01 and 14-TC-04, pages 59-60.

engineering; but it's almost an art form in tuning the signals and getting them just right, so you don't have people kind of talking on top of one another."<sup>102</sup> And, Mr. Nelson testified:

And then finally, just kind of the lower-level support required moving from the pencil and paper, the logistics required to distribute paper tests and the planning. That's always been there. But, of course, it's ramped up a little bit when you have to get people that aren't familiar with technology trained on what we're going to do to enter students into the system. If we have somebody come from an outside district three days before they're ready to test, what's it going to take to get them in the system in a timely manner and have them ready to test. And we've estimated, we're probably talking up to 10 hours of different training for those people on the ground level; and that involves our resource clerks and even our principals. And again, a significant investment.<sup>103</sup>

Thus, Porterville Unified declares that it was necessary to train their technicians on setting up the additional wireless technology ("the kind of new deployments they'd have to do"), and to perform "maintenance required for these devices and for this infrastructure..." In addition, Mr. Nelson declares that the tracking of students and entering their information into "the system" required some training for "our resource clerks and even our principals."

Similarly, Dr. Bishop, of Vallejo Unified, testified that the computerized test presented a significant adjustment for her students and staff:

We had to purchase from A-to-Z computer technology, whether it was computers on wheels, computers in labs. We had to ensure that our students were comfortable, and therefore having staff available for our staff and students who needed considerable training and considerable abilities to implement this assessment.<sup>104</sup>

It is not clear in Dr. Bishop's testimony who is included in "staff," but to the extent her comment addresses the need for staff to be "comfortable" with the new testing technology, it can be inferred, in context, that test examiners who will administer the CAASPP tests are included within "staff" that "needed considerable training and considerable abilities to implement this assessment."

Although the testimony supports the fact that some training was provided to staff, claimants have not defined what training is required; nor have claimants alleged that they are required to develop training. And, Mr. Nelson's testimony is not sufficiently specific as to the nature of training needed for "technicians" or "resource clerks and...principals." Therefore, simply including "training" as a reimbursable activity, without any limitation as to the type of training required for the program, is not supported the record. Moreover, the claimants' request implies that training would also be provided to students, which is not eligible for reimbursement. The Commission denied any activity associated with administering the test to pupils.

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<sup>102</sup> Exhibit G, Transcript of Hearing, January 22, 2016, page 27.

<sup>103</sup> Exhibit G, Transcript of Hearing, January 22, 2016, page 28.

<sup>104</sup> Exhibit G, Transcript of Hearing, January 22, 2016, page 32.

Based on the foregoing, the Commission denies the claimants' request for "Professional Development, training" since the phrase is too broad and not supported by evidence in the record.

Note that the plain language of the approved activities in the test claim does not provide reimbursement for implementing the new CAASPP tests, or for "administering" the test; reimbursement is provided, based on the plain language, for compliance with all instructions, including the instruction to review the training materials, as follows:

1. All LEA CAASPP Coordinators, CAASPP Test Site Coordinators (SCs), Test Administrators (TAs), and school administrative staff who will be involved in the Smarter Balanced assessment administration to review the applicable supplemental videos and archived Webcasts, which can be found on the CAASPP Current Administration Training Web page at <http://caaspp.org/training/caaspp/>.
2. Prior to administering a test, Test Administrators (and any other individuals who will be administering any secure Smarter Balanced assessment) to read the CAASPP *Smarter Balanced Online Test Administration Manual*, the *Smarter Balanced Usability, Accessibility, and Accommodations Guidelines*, and the *Test Administrator (TA) Reference Guide*, and view the associated Smarter Balanced training modules. All of these documents are linked on the CAASPP Instructions and Manuals Web page at <http://caaspp.org/administration/instructions/>.

In addition, since reimbursement for training is limited to the specific CAASPP training described above, the pro rata language and language authorizing reimbursement for training materials and supplies in Section V.A.5 is deleted as follows:

~~Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV.G. of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1., Salaries and Benefits, and A.2., Materials and Supplies.~~

### **C. Offsetting Revenues and Reimbursements (Section VII. of Parameters and Guidelines)**

The draft expedited parameters and guidelines identify offsetting revenues that must be reported as follows:

The following state and federal funds must be identified as offsetting revenues:

- Funding apportioned by SBE from Statutes 2014, chapter 25, Line Item 6110-113-0001, schedule (8), for fiscal year 2013-2014 CAASPP costs.
- Funding apportioned by SBE from Statutes 2015, chapter 10, Line Item 6100-113-0001, schedule (7) for fiscal year 2014-2015 CAASPP costs.

- Statutes 2013, chapter 48 (Common Core implementation funding), *if* used by a school district on the reimbursable CAASPP activities.
- Statutes 2014, chapter 25 (Line Item 6110-488) and chapter 32 (appropriation for outstanding mandate claims) *if* used by a school district on the reimbursable CAASPP activities.
- Statutes 2014, chapter 25, Line Item 6110-182-0001, Provision 2 (appropriation “to support network connectivity infrastructure grants) *if* used by a school district on the reimbursable CAASPP activities.

Any other offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.

Finance asserts that the mention of Common Core implementation funding, Statutes 2013, chapter 48, should “clarify that the \$1.25 billion in Common Core implementation funding is considered offsetting revenues if used by a school district on any of the reimbursable CAASPP activities.”<sup>105</sup> The same clarification applies to the fourth and fifth bulleted budget items listed above, and therefore the language will be modified, consistently with Finance’s request.

#### **IV. Conclusion**

Based on the foregoing, the Commission hereby adopts the proposed decision and parameters and guidelines.

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<sup>105</sup> Exhibit E, Finance’s Comments on Draft Expedited Parameters and Guidelines, pages 1-2.

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

**IN RE PARAMETERS AND GUIDELINES  
FOR:**

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

The period of reimbursement begins on the effective dates of the statute or regulation that imposes the reimbursable state-mandated activity: beginning January 1, 2014, or on later dates (February 3, 2014, and August 27, 2014) as specified.

Case No.: 14-TC-01 and 14-TC-04

*California Assessment of Student  
Performance and Progress (CAASPP)*

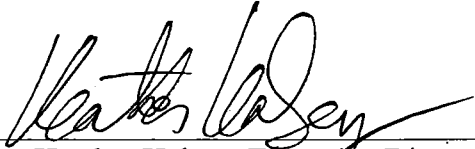
DECISION PURSUANT TO  
GOVERNMENT CODE SECTION  
17500 ET SEQ.; CALIFORNIA CODE  
OF REGULATIONS, TITLE 2,  
DIVISION 2, CHAPTER 2.5,  
ARTICLE 7.

*(Adopted March 25, 2016)*

*(Served April 4, 2016)*

**PARAMETERS AND GUIDELINES**

The Commission on State Mandates adopted the attached parameters and guidelines on March 25, 2016.

  
\_\_\_\_\_  
Heather Halsey, Executive Director

## PARAMETERS AND GUIDELINES

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

### *California Assessment of Student Performance and Progress (CAASPP)*

#### 14-TC-01 and 14-TC-04

The period of reimbursement begins on the effective dates of the statute or regulation that imposes the reimbursable state-mandated activity: beginning January 1, 2014, or on later dates (February 3, 2014, and August 27, 2014) as specified.

### **I. SUMMARY OF THE MANDATE**

On January 22, 2016, the Commission on State Mandates (Commission) adopted a decision finding that the test claim statutes and regulations impose a reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission partially approved the test claim, finding only the following activities to be reimbursable:

- Beginning January 1, 2014, provide “a computing device, the use of an assessment technology platform, and the adaptive engine” to administer the CAASPP assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology requirements.<sup>1</sup>
- Beginning February 3, 2014, the local educational agency (LEA) CAASPP coordinator shall be responsible for assessment technology, and shall ensure current and ongoing compliance with minimum technology specifications as identified by the CAASPP contractor(s) or consortium.<sup>2</sup>
- Beginning February 3, 2014, notify parents or guardians each year of their pupil’s participation in the CAASPP assessment system, including notification that notwithstanding any other provision of law, a parent’s or guardian’s written request to excuse his or her child from any or all parts of the CAASPP assessments shall be granted.<sup>3</sup>
- Beginning February 3, 2014, score and transmit the CAASPP tests in accordance with manuals or other instructions provided by the contractor or the California Department of Education (CDE).<sup>4</sup>

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<sup>1</sup> Education Code section 60640 (Stats. 2013, ch. 489), interpreted in light of California Code of Regulations, title 5, sections 850, 853, 853.5, and 857 (Register 2014, Nos. 6, 30, 35).

<sup>2</sup> California Code of Regulations, title 5, section 857(d) (Register 2014, No. 6).

<sup>3</sup> California Code of Regulations, title 5, section 852 (Register 2014, No. 6).

<sup>4</sup> California Code of Regulations, title 5, section 853 (Register 2014, No. 6).



- Beginning February 3, 2014, identify pupils unable to access the computer-based version of the CAASPP tests; and report to the CAASPP contractor the number of pupils unable to access the computer-based version of the test.<sup>5</sup>
- Beginning February 3, 2014, report to CDE if a pupil in grade 2 was administered a diagnostic assessment in language arts and mathematics that is aligned to the common core academic content standards pursuant to Education Code section 60644.<sup>6</sup>
- Beginning February 3, 2014, comply with any and all requests from CAASPP contractors, and abide by any and all instructions provided by the CAASPP contractor or consortium, whether written or oral, that are provided for training or provided for in the administration of a CAASPP test.<sup>7</sup>
- Beginning August 27, 2014, the CAASPP test site coordinator shall be responsible for ensuring that all designated supports, accommodations and individualized aids are entered into the registration system.<sup>8</sup>

The Commission also found that the following state and federal funds must be identified and deducted as offsetting revenues from any school district's reimbursement claim:

- Statutes 2013, chapter 48, *if* used by a school district on the reimbursable CAASPP activities to support the administration of computer-based assessments.
- Funding apportioned by SBE from Statutes 2014, chapter 25, Line Item 6110-113-0001, schedule (8), for fiscal year 2013-2014 CAASPP costs.
- Funding apportioned by SBE from Statutes 2015, chapter 10, Line Item 6100-113-0001, schedule (7) for fiscal year 2014-2015 CAASPP costs.
- Statutes 2014, chapter 25 (Line Item 6110-488) and chapter 32 (appropriation for outstanding mandate claims) *if* used by a school district on the reimbursable CAASPP activities.
- Statutes 2014, chapter 25, Line Item 6110-182-0001, Provision 2 (appropriation "to support network connectivity infrastructure grants) *if* used by a school district on the reimbursable CAASPP activities.
- Any federal funds received and applied to the reimbursable CAASPP activities.

## **II. ELIGIBLE CLAIMANTS**

Any "school district" as defined in Government Code section 17519, except for community colleges, that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

## **III. PERIOD OF REIMBURSEMENT**

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

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<sup>5</sup> California Code of Regulations, title 5, section 857(a) (Register 2014, No. 6).

<sup>6</sup> California Code of Regulations, title 5, section 861(b)(5) (Register 2014, No. 6).

<sup>7</sup> California Code of Regulations, title 5, section 864 (Register 2014, No. 6).

<sup>8</sup> California Code of Regulations, title 5, section 858(d) (Register 2014, No. 35).

The claimants filed test claim 14-TC-01 on December 23, 2014. On March 17, 2015, claimants filed an amended test claim on 14-TC-01, to replace the original filing. On June 26, 2015, a second test claim (14-TC-04) was filed and consolidated with 14-TC-01. These test claims, all filed before June 30, 2015, establish eligibility for reimbursement pursuant to Government Code section 17557(e), beginning July 1, 2013. However, because the test claim statute and regulations each have later effective dates, the period of reimbursement begins on the effective date of each statute or regulation that imposes the reimbursable state-mandated activity, as specified in Section IV. of these parameters and guidelines.

Reimbursement for state-mandated costs may be claimed as follows:

1. Actual costs for one fiscal year shall be included in each claim.
2. Pursuant to Government Code section 17561(d)(1)(A), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller (Controller) within 120 days of the issuance date for the claiming instructions.
3. Pursuant to Government Code section 17560(a), a school district may, by February 15 following the fiscal year in which costs were incurred, file an annual reimbursement claim that details the costs actually incurred for that fiscal year.
4. If revised claiming instructions are issued by the Controller pursuant to Government Code section 17558(c), between November 15 and February 15, a school district filing an annual reimbursement claim shall have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code §17560(b).)
5. If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed except as otherwise allowed by Government Code section 17564(a).
6. There shall be no reimbursement for any period in which the Legislature has suspended the operation of a mandate pursuant to state law.

#### **IV. REIMBURSABLE ACTIVITIES**

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event, or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agenda, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant that incurs increased costs, the following activities are reimbursable:

- A. Beginning January 1, 2014, provide “a computing device, the use of an assessment technology platform, and the adaptive engine” to administer the CAASPP assessments to all pupils via computer, which includes the acquisition of and ongoing compliance with minimum technology specifications, as identified by the CAASPP contractor(s) or consortium.<sup>9</sup> Reimbursement for this activity includes the following:
  1. A sufficient number of desktop or laptop computers, iPads, or other tablet computers for which Smarter Balanced provides secure browser support in the academic year, along with a keyboard, headphones, and a pointing device for each, to administer the CAASPP to all eligible pupils within the testing window provided by CDE regulations.<sup>10</sup>
  2. Broadband internet service providing at least 20 Kbps per pupil to be tested simultaneously, costs for acquisition and installation of wireless or wired network equipment, and hiring consultants or engineers to assist a district in completing and troubleshooting the installation.

**Claimants shall maintain supporting documentation showing how their existing inventory of computing devices and accessories, technology infrastructure, and broadband internet service is not sufficient to administer the CAASPP test to all eligible pupils in the testing window, based on the minimum technical specifications identified by the contractor(s) or consortium.**

**Reimbursement is NOT required to provide a computing device for every pupil, for the time to assess each pupil, or for the purchase of other equipment not listed.**

- B. Beginning February 3, 2014, the LEA CAASPP coordinator shall be responsible for assessment technology, and shall ensure current and ongoing compliance with minimum technology specifications as identified by the CAASPP contractor(s) or consortium.<sup>11</sup>
- C. Beginning February 3, 2014, notify parents or guardians each year of their pupil’s participation in the CAASPP assessment system, including notification that notwithstanding any other provision of law, a parent’s or guardian’s written request to excuse his or her child from any or all parts of the CAASPP assessments shall be granted.<sup>12</sup>

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<sup>9</sup> Education Code section 60640 (Stats. 2013, ch. 489), interpreted in light of California Code of Regulations, title 5, sections 850, 853, 853.5, and 857 (Register 2014, Nos. 6, 30, 35).

<sup>10</sup> California Code of Regulations, title 5, section 855 (Register 2014, Nos. 6, 30, 35).

<sup>11</sup> California Code of Regulations, title 5, section 857(d) (Register 2014, No. 6).

<sup>12</sup> California Code of Regulations, title 5, section 852 (Register 2014, No. 6).

- D. Beginning February 3, 2014, score and transmit the CAASPP tests in accordance with manuals or other instructions provided by the contractor or CDE.<sup>13</sup>
- E. Beginning February 3, 2014, identify pupils unable to access the computer-based version of the CAASPP tests; and report to the CAASPP contractor the number of pupils unable to access the computer-based version of the test.<sup>14</sup>
- F. Beginning February 3, 2014, report to CDE if a pupil in grade 2 was administered a diagnostic assessment in language arts and mathematics that is aligned to the common core academic content standards pursuant to Education Code section 60644.<sup>15</sup>
- G. Beginning February 3, 2014, comply with any and all requests from CAASPP contractors, and abide by any and all instructions provided by the CAASPP contractor or consortium, whether written or oral, that are provided for training or provided for in the administration of a CAASPP test.<sup>16</sup> Only participation in the training directed by the CAASPP contractor or consortium is reimbursable as follows:
1. *All LEA CAASPP Coordinators, CAASPP Test Site Coordinators (SCs), Test Administrators (TAs), and school administrative staff who will be involved in the Smarter Balanced assessment administration to review the applicable supplemental videos and archived Webcasts, which can be found on the CAASPP Current Administration Training Web page at <http://caaspp.org/training/caaspp/>.*
  2. *Prior to administering a test, Test Administrators (and any other individuals who will be administering any secure Smarter Balanced assessment) to read the CAASPP Smarter Balanced Online Test Administration Manual, the Smarter Balanced Usability, Accessibility, and Accommodations Guidelines, and the Test Administrator (TA) Reference Guide, and view the associated Smarter Balanced training modules. All of these documents are linked on the CAASPP Instructions and Manuals Web page at <http://caaspp.org/administration/instructions/>.*
- H. Beginning August 27, 2014, the CAASPP test site coordinator shall be responsible for ensuring that all designated supports, accommodations and individualized aids are entered into the registration system.<sup>17</sup>

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV., Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

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<sup>13</sup> California Code of Regulations, title 5, section 853 (Register 2014, No. 6).

<sup>14</sup> California Code of Regulations, title 5, section 857(a) (Register 2014, No. 6).

<sup>15</sup> California Code of Regulations, title 5, section 861(b)(5) (Register 2014, No. 6).

<sup>16</sup> California Code of Regulations, title 5, section 864 (Register 2014, No. 6).

<sup>17</sup> California Code of Regulations, title 5, section 858(d) (Register 2014, No. 35). See Exhibit A, Corrected Test Claim Decision, pages 59-60; 85.

## A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities, in accordance with Section IV.A of these parameters and guidelines. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the services that were performed during the period covered by the reimbursement claim. If the contract services are also used for purposes other than the reimbursable activities, only the pro-rata portion of the services used to implement the reimbursable activities can be claimed. Submit contract consultant and attorney invoices with the claim and a description of the contract scope of services.

### 4. Fixed Assets

Report the purchase price paid for fixed assets (including computers) necessary to implement the reimbursable activities, in accordance with Section IV.A of these parameters and guidelines. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

### 5. Training

Report the cost of training an employee as specified in Section IV.G. of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. Report employee training time according to the rules of cost element A.1., Salaries and Benefits.

## B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost

objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs may include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs; and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the CDE approved indirect cost rate for the year that funds are expended.

## **VI. RECORD RETENTION**

Pursuant to Government Code section 17558.5(a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>18</sup> is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documents used to support the reimbursable activities, as described in Section IV., must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

## **VII. OFFSETTING REVENUES AND REIMBURSEMENTS**

The following state and federal funds must be identified as offsetting revenues:

- Statutes 2013, chapter 48 (\$1.25 billion in Common Core implementation funding), *if* used by a school district on any of the reimbursable CAASPP activities to support the administration of computer-based assessments.
- Funding apportioned by SBE from Statutes 2014, chapter 25, Line Item 6110-113-0001, schedule (8), for fiscal year 2013-2014 CAASPP costs.
- Funding apportioned by SBE from Statutes 2015, chapter 10, Line Item 6100-113-0001, schedule (7) for fiscal year 2014-2015 CAASPP costs.
- Statutes 2014, chapter 25 (Line Item 6110-488) and chapter 32 (appropriation for outstanding mandate claims) *if* used by a school district on any of the reimbursable CAASPP activities.
- Statutes 2014, chapter 25, Line Item 6110-182-0001, Provision 2 (appropriation “to support network connectivity infrastructure grants) *if* used by a school district on any of the reimbursable CAASPP activities.

Any other offsetting revenue the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including but not limited

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<sup>18</sup> This refers to title 2, division 4, part 7, chapter 4 of the Government Code.

to, service fees collected, federal funds, and other applicable state funds, shall be identified and deducted from any claim submitted for reimbursement.

### **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558(b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 90 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from these parameters and guidelines and the decisions on the consolidated test claim and parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561(d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

### **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557(d), and California Code of Regulations, title 2, section 1183.17.

### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The decisions adopted for the consolidated test claims and parameters and guidelines are legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record. The administrative record is on file with the Commission.

**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 4, 2016, I served the:

**Decision and Parameters and Guidelines**

*California Assessment of Student Performance and Progress (CAASPP),  
14-TC-01 and 14-TC-04*

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

Plumas County Office of Education, Plumas Unified School District, Porterville Unified School District, Santa Ana Unified School District, and Vallejo City Unified 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 4, 2016 at Sacramento, California.



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



# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 3/24/16

**Claim Number:** 14-TC-01 and 14-TC-04

**Matter:** California Assessment of Student Performance and Progress (CAASPP)

**Claimants:** Plumas County Office of Education  
Plumas Unified School District  
Porterville Unified School District  
Santa Ana Unified School District  
Vallejo City Unified School District

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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