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March 3, 2021

VIA DROP BOX

Heather Halsey
Executive Director
State of California Commission on State Mandates
980 Ninth Street, Suite 300
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Re: Comments of Castro Valley Unified School, Clovis Unified School District, Fullerton Joint Union High School District, Grossmont Union High School District, Poway Unified School District; and San Jose Unified School District Request to Amend Parameters and Guidelines Graduation Requirements, 11-PGA-03 (CSM-4435) Education Code Sections 51225.3 and 42238.24 Statutes 1983, Chapter 498; Statutes 2010, Chapter 724 Department of Finance, Requester Our file 3313-10320

Dear Ms. Halsey:

Our firm represents San Jose Unified School District; Clovis Unified School District; Grossmont Union High School District; Poway Unified School District; Castro Valley Unified School and Fullerton Joint Union High School District, (collectively "Districts" or "Claimants"), the test claimants in this matter. The Districts submit the following comments, pursuant to the Commission's letter dated February 16, 2021. These comments incorporate the recitation of facts and assertion of law set forth in the complete file in this matter.

I. BACKGROUND

In its original July 25, 2011 letter requesting amendments to the Parameters and Guidelines adopted, November 6, 2008, and corrected on December 18, 2008, the Department of Finance stated:

The Department of Finance respectfully requests the Commission on State Mandates to amend the parameters and guidelines for Chapter 498 of the Statutes of 1983 (CSM 4435 Graduation

Requirements) to reflect the addition of Education Code section 42238.24 by Chapter 724 of the Statutes of 2010 (AB 1610, Assembly Budget). Education Code section 42238.24 require that state apportionment and select categorical program funding first be used by school districts and county offices of education to offset the classroom teacher salary and benefit costs incurred for courses required by the state. Further, we request that the effective date for the period of reimbursement resulting from adoption of these amendments reflect the enactment date of the governing statute, which was October 19, 2010. (emphasis in original)

Specifically, we propose amending the parameters and guidelines to include the following language regarding the offset and reimbursement of teacher salary and benefit costs, instructional materials costs, and supplies costs, in section IX, Offsetting Revenues and Other Reimbursements as follows:

The Department of Finance then stated:

The State Controller's Office (SCO) will adjust the claims for any prior reimbursements received for the Graduation Requirements program from claims submitted for the period beginning October 19, 2010. (Underline in original.)

If the school district or county office submits a valid reimbursement claim for a new science facility, the reimbursement shall be reduced by the amount of state bond funds, if any, received by the school district or county office to construct the new science facility.

II. ARGUMENT

1. The California Supreme Court Decision in *California School Boards Association (CSBA) v. State of California* (2019) 8 Cal.5th 713.

The Commission requested comment upon the impact of CSBA, (*California School Boards Assn. v. State of California* (2019) 8 Cal.5th 713) ("*CSBA III*"), upon this Department of Finance request to amend the Parameters and Guidelines. The Districts herein incorporate Section II.1-3 of the Comments of the California School Board Association, filed this same date, into this Comment.

2. Local Bonds are Not "Offsetting Revenues"

a. Offsetting Revenues Are Limited to State and Federal Funds.

The Districts request clarification in the adopted Parameters and Guidelines regarding the status of local bond funds as "offsetting revenue." By definition, offsetting revenues should be limited

to State and Federal funds. The 2008 Parameters and Guidelines for this mandate, as it relates to offsetting revenues, provides as follows:

IX. OFFSETTING REVENUES AND OTHER REIMBURSEMENTS

Any offsetting revenues 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, federal, state, and block grants; total science classrooms and labs teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California School Accounting Manual; funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructional Materials Program (Ed. Code, §§ 60450 et seq., repealed by Stats, 2002, ch. 1168 (AB 1818, § 71, eff. Jan. 1, 2004) and used for supplying the second science classrooms and labs course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials; funds appropriated from the State Instructional Materials Fund (Ed. Code, §§ 60240 et seq.) and used for supplying the second science classrooms and labs course mandated by Education Code section 51223.5 (as amended by Stats. 1983, ch. 498) with instructional materials and supplies; and other state funds, shall be identified and deducted from this claim. The State Controller's Office (SCO) will adjust the claims for any prior reimbursements received for the Graduation Requirements program from claims submitted for the period beginning January 1, 2005.

If the school district or county office submits a valid reimbursement claim for a new science classrooms and labs facility, the reimbursement shall be reduced by the amount of *state bond funds*, if any, received by the school district or county office to construct the new science classrooms and labs facility.

(Parameters and Guidelines, p. 8, emphasis added.)

None of the above categories of eligible offsets include local funds, such as local bond proceeds. Rather, the categories specifically include:

- federal, state, and block grants;
- total science classrooms and labs teacher salary costs, including related indirect costs, that are funded by restricted resources as identified by the California Department of Education California School Accounting Manual ["CSAM"];

- funds appropriated to school districts from the Schiff-Bustamante Standards-Based Instructional Materials Program and used for supplying the second science classrooms and labs course mandated by Education Code section 51223.5 with instructional materials [“Schiff-Bustamante Program”];
- funds appropriated from the State Instructional Materials Fund (Ed. Code, §§ 60240 et seq.) and used for supplying the second science classrooms and labs course mandated by Education Code section 51223.5 with instructional materials and supplies [“SIMF”];
- other state funds;
- *State bond funds*, if any, received by the school district or county office to construct the new science classrooms and labs facility. (emphasis added)

Nevertheless, in at least one matter,¹ the Controller took the position local bond funds were “other state funds” for purposes of offsetting. However, the above language clearly and unambiguously directs that offsets must come from federal or state sources. When the language is clear and unambiguous, there is no need for construction and courts should not indulge in it. (*People v. Benson* (1998) 18 Cal. 4th 24, 30; *Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 38 (“It is axiomatic that in the interpretation of a statute where the language is clear, its plain meaning should be followed”) (quoting *Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal.3d 152, 155); *Matson v. Dvorak* (1995) 40 Cal.App.4th 539, 547 (“When statutory language is clear and unambiguous, there is no need for interpretation, and we must apply the statute as written.”)) None of the above categories expressly or by implication touch upon local bond revenues. To be precise, *local* bond revenues are not: (i) federal, state, and block grants, (ii) restricted resources as indicated by the CSAM, (iii) Schiff-Bustamante Program funds, (iv) SIMF funds, (v) other State funds, or (vi) State bond funds.

Such restricted resources must be federal or State resources, as further described below. And, while, state-mandated budget and financial reporting standards require bond proceeds to be accounted for in restricted accounts (e.g., the “Building Fund” (Fund 21) and the “Bond Interest and Redemption Fund” (Fund 51), each held by the County), the account code, which is specified by the State, and used for the local bond proceeds is not determinative of mandate reimbursement at issue here. Any other interpretation flies in the face of statutory construction.

Local bond revenues are proceeds received from purchasers of general obligation bonds issued under the authority of the State Constitution “for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters

¹ *Graduation Requirements*, 16-4435-I-56, Education Code section 51225.3; Statutes 1983, Chapter 498; Fiscal Years: 2008-2009 and 2009-2010, Grossmont Union High School District, Claimant.

of the [school] district” (Cal. Const., art. XIII A, sec. 1, subd. (b)(3)), commonly known as “Proposition 39 Bonds.” Proposition 39 was approved by California voters in 2000 as a vehicle to provide school districts with a financing source, the repayment of which was supported by an *ad valorem* tax on all taxable property within the jurisdiction of the school district, to pay for voter-approved projects. Prop 39 Bonds are approved upon a 55% positive vote of the electorate. (*Id.*) Prop 39 Bonds may only be issued by a school district in exchange for certain accountability and transparency requirements mandated by the State Constitution, including that all projects must be on the voter-approved “bond project list” and that a community oversight committee reviews performance and financial audits of such expenditures. (*Id.* at subd. (b)(3)(B)-(D).) It is true that the improvement of school facilities for additional science classes may be within the permitted scope of projects under the Constitution, however, Prop 39 Bonds were never intended as a replacement for subvention from the State. To decide to the contrary robs the local community of its rights to local control and accountability required by Article XIII A of the Constitution.

b. Local Bonds are “Proceeds of Taxes” Restricted to Capital Projects Approved By the Electorate.

On the one hand, local governments are given the power to raise local revenues through taxation but are also limited in the amount of tax revenues that can be generated. On the other hand, mindful of the limited sources of local tax revenues, Article XIII B, section 6, prevents the State from redirecting the limited pot of local tax revenues to fulfill State mandates. This is precisely why, in 2008, the Commission amended the parameters and guidelines for the Graduation Requirements mandate: to make sure that proceeds of taxes were not pulled into the calculus of offsetting revenues. In its findings, the Commission stated that “such an interpretation [i.e., use of proceeds of taxes to offset] would require the local school districts to use proceeds of taxes on a state-mandated program. This violates the purpose of article XIII B, section 6 [which] was specifically designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues and restrict local spending in other areas.” Commission, Revised Final Staff Analysis [relating to 2008 Amendments to the Parameters and Guidelines], pp. 53-54.)

Case law makes clear that the only locally-derived amounts permitted to be included in the calculus of offsetting revenues are where a local agency can levy assessments or fees. (*County of Fresno v. State of California*, 53 Cal.3d 482, 487). Of course, local bonds are neither fees nor assessments.

Rather, local bonds are a financing vehicle, permitted by the State Constitution, whereby the local agency raises funds for capital expenditures approved by the voters, the repayment of which is secured by proceeds of taxes – the *ad valorem* tax to be exact. The *ad valorem* tax, much like local property taxes, are locally-derived sources of revenue and are therefore considered proceeds of taxes that are not derived from the State.

Finally, the Education Code states that “[w]hen collected, all taxes levied shall be paid into the county treasury of the county whose superintendent of schools has jurisdiction over the school district ... and shall be used for the payment of the principal and interest of the bonds and for no other purpose.” (Ed. Code, § section 15251, subd. (a).) Even if the *ad valorem* tax was deemed to be something other than proceeds of taxes, the statute does not permit it to be used

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for any purpose other than retirement of local bonds; and, as established above, the State Constitution does not permit the bonds to be ultimately spent on anything other than the capital projects approved by the voters within the local tax base.

While local bonds are not subject to Constitutional spending limitations, they are in fact otherwise limited by the Constitution and statute. The Constitution provides that Prop 39 bonds, may only be spent on the scope of projects approved by the voters, and statute provides that such bonds may only be issued up to the statutory bonding capacity for a school district and are subject to tax rate limitations. (Cal. Const., art. XIII A, sec. 1(b)(3), art. XVI, sec. 18(b); Ed. Code, § 15268.)

Local bond revenue is simply not "reimbursement for this mandate from any source" because, unlike state bond revenue, it must be repaid by the District tax base, a local source. A "reimbursement" that has to be repaid is not a reimbursement. The audit report does not state a legal basis which would allow local property tax proceeds to be considered an offset to reimburse Claimant for construction costs to accommodate and implement the State-mandated increased instructional programs such as the Graduation Requirement mandate

III. CONCLUSION

The Districts hereby submit these Comments pursuant to the Commission's February 16, 2021 letter.

IV. CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the factual statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

DANNIS WOLIVER KELLEY



Christian M. Keiner

CMK:fh

cc: Interested Parties via CSM's Electronic Filing Mailing List

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 4, 2021, I served the:

- **Mr. William B. Tunick's Comments on behalf of the California School Boards Association on the Request for Simultaneous Comment filed March 3, 2021**
- **Mr. Christian M. Keiner's Comments on behalf of School Districts on the Request for Simultaneous Comment filed March 3, 2021**

Request to Amend Parameters and Guidelines
Graduation Requirements, 11-PGA-03 (CSM-4435)
Education Code Sections 51225.3 and 42238.24
Statutes 1983, Chapter 498; Statutes 2010, Chapter 724
Department of Finance, Requester

By making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 4, 2021 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/3/21

Claim Number: 11-PGA-03

Matter: Graduation Requirements (CSM-4435)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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